Detention - Lithuania

Overview

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Relevant EU legislation

Lithuania is bound by the recast Reception Conditions Directive, the recast Asylum Procedures Directive and the Dublin III Regulation and has transposed their provisions through the Law on the Legal Status of Foreigners No IX-2206 of 29 April 2004.

National legislation

Lithuania has transposed the recast Reception Conditions Directive and the recast Asylum Procedures by Law on the Legal Status of Foreigners No IX-2206 of 29 April 2004. | STATYMAS DĖL UŽSIENIEČIŲ TEISINĖS PADĖTIES - 2004 m. balandžio 29, d. Nr. IX-2206.

Competent authority and stakeholders

Area	National authority/ stakeholder	Assistance to competent authority
Detention decision	State Border Guard Service under the Ministry of the Interior (detention up to 48 hours) for detentions longer than 48 hours, decisions on detention are made by a court.	Not applicable
Administration and management of detention facilities	The Foreigners' Registration Centre of the State Border Guard Service under the Ministry of the Interior	Not applicable

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Area	National authority/ stakeholder	Assistance to competent authority
Information provision in detention	The Foreigners' Registration Centre of the State Border Guard Service under the Ministry of the Interior	Not applicable
Interpretation services in detention	Reception and Integration Agency	Not applicable
Access to the procedure and provision of asylum information in detention	The Foreigners' Registration Centre of the State Border Guard Service under the Ministry of the Interior	Not applicable
Detention for the Dublin procedure	The Foreigners' Registration Centre of the State Border Guard Service under the Ministry of the Interior	Not applicable
Processing of asylum applications of applicants who are in detention	The Migration Department under the Ministry of the Interior	Not applicable
Legal assistance and representation in detention	Reception and Integration Agency	Not applicable
Review of detention	Supreme Administrative Court of Lithuania	Not applicable

Grounds for detention during the asylum procedure

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Grounds for detention in national law

Detention in the context of identification or verification of identity

Detention may be used as a last resort when the applicant is suspected of using forged documents.

Chapter VII “Freedom of movement of foreigners in the Republic of Lithuania” of the Law on the Legal Status of Foreigners of the Republic of Lithuania establishes the grounds for detention of foreigners, alternative measures to detention, etc.

By a written decision of a law enforcement officer, an alien may be detained for no longer than 48 hours. Law enforcement authorities, having detained an alien and having determined that there are grounds for detaining him for more than 48 hours, shall, within 5 hours from the moment of detention, transfer him to the officers of the State Border Guard Service.

An alien shall be detained for more than 48 hours by a court decision at the State Border Guard Service.

Vulnerable persons and members of families with minor aliens may be detained only in exceptional cases, taking into account the best interests of the child and vulnerable persons.

Detention to determine elements on which the application for international protection is based, in particular where there is a risk of absconding

Detention pending a return applies if the applicant hinders the issuance or enforcement of the decision and there is a risk of absconding to avoid return.

Article 113, paragraph 4, point 2 of the Law on the Legal Status of Foreigners of the Republic of Lithuania provides that an asylum seeker may be detained in order to clarify the grounds on which his/her application for asylum is based (when information on the grounds could not be obtained without detaining the asylum seeker), and having assessed the circumstances specified in paragraphs 1, 6–11 of paragraph 5 of this Article, there is reason to believe that the alien may abscond in order to avoid return to a foreign state or expulsion from the Republic of Lithuania.

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Article 113, paragraph 5 of the Law "On the Legal Status of Aliens": In deciding whether there are grounds for believing that the alien may abscond, the following circumstances shall be assessed:

1. the foreigner does not have a personal identity document and does not cooperate in order to establish his/her identity and/or citizenship (refuses to provide data about himself/herself, provides misleading information in order to mislead civil servants or employees of the competent institutions or institutions of the Republic of Lithuania, has submitted forged documents, etc.);
2. does not have a place of residence in the Republic of Lithuania or does not (does not reside) at the specified address of the place of residence;
3. does not have family ties with persons residing in the Republic of Lithuania or social, economic or other ties with the Republic of Lithuania;
4. does not have the means to live in the Republic of Lithuania;
5. has failed to fulfil the obligation to leave the Republic of Lithuania within the established time period, has not voluntarily left the Republic of Lithuania within the time limit established in the decision to return him to a foreign state or the time limit extended on the grounds specified in Paragraph 32 of Article 127 of this Law;
6. fails to comply with an alternative measure to detention imposed by a court decision;
7. a foreigner who has been accommodated in a place of temporary accommodation has violated the procedure of temporary departure from the place of temporary accommodation;
8. in order to avoid criminal liability for illegal crossing of the state border, submitted an application for asylum during the period of the pre-trial investigation initiated against him;
9. the presence of a foreigner in the Republic of Lithuania may pose a threat to public order;
10. during the examination of the application for asylum or in deciding the issue of the return of the alien to a foreign state, the alien does not cooperate with the civil servants or employees of the competent institutions or establishments of the Republic of Lithuania;
11. has illegally left or attempted to leave the Republic of Lithuania during the examination of the application for asylum;
12. attempted to travel illegally or transited through the Republic of Lithuania;
13. another Member State of the European Union has taken a decision on the return or expulsion of the alien;

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14. the alien shall be subject to an entry ban on the Member State(s) of the European Union.

Detention in the context of a procedure to decide on the applicant's right to enter the territory

Detention may be used as a last resort when the applicant is refused entry and will be returned to the country from which he/she arrived, he/she unlawfully enters or stays in the country, he/she is prohibited from entering an EU Member State.

Asylum seekers who apply for asylum at the border may be held at border crossing points and in transit zones until the Migration Department adopts a decision on how to process their asylum application—a procedure that is to be completed within 48 hours.

If the Migration Department decides to examine the application under the accelerated procedure, the applicant will be held in the transit zone until the application is fully processed, which can last up to 10 days (7 days plus 3 days for a possible extension). If the applicant appeals the decision, they may remain at the border crossing point or transit zone until a decision is issued. If no decision is made within 28 days of the application, the Migration Department will admit the applicant into Lithuania. Likewise, when it is not possible to ensure suitable conditions in these premises, the State Border Guard Service, in coordination with the Migration Department, will admit the individual into Lithuanian territory.

Article 5, paragraph 4 of the Law "On the Legal Status of Aliens" states that Aliens, except for asylum seekers who have submitted an application for asylum at border checkpoints, transit zones or shortly after illegally crossing the state border of the Republic of Lithuania, in respect of whom a decision to admit them to the Republic of Lithuania has not been taken, have the right to remain in the Republic of Lithuania during the period for filing an appeal set out in Article 138 of this Law, and if an application for measures to secure a claim is submitted during this period, until the Regional Administrative Court adopts a ruling on measures to secure a claim or when the enforcement of the appealed decision is suspended in accordance with Article 139(1) of this Law. Asylum seekers who have submitted an application for asylum at border checkpoints, transit zones or shortly after illegally crossing the state border of the Republic of Lithuania, and for whom a decision to admit them to the Republic of Lithuania has not been taken, have the right to remain in the temporary accommodation places specified in paragraph 6 of this Article during the period of time for filing a complaint set

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out in Article 138 of this Law, and if an application for measures to secure a claim is submitted during this period, until the Regional Administrative Court adopts a ruling on measures to secure a claim or when the enforcement of the appealed decision is suspended in accordance with Article 139, paragraph 1, point 2 of this Law. The rights specified in this paragraph shall not be granted if an alien submits a subsequent application for asylum, which does not contain new substantial grounds, solely with the aim of postponing or obstructing the execution of a decision to expel an alien from the Republic of Lithuania, on the basis of which he would be expelled in the near future, or if an alien submits a new subsequent application when a final decision has been made on a previous subsequent application for asylum, and there are no reasons specified in paragraphs 1 and 2 of Article 130 of this Law for which he cannot be expelled from the Republic of Lithuania.

Detention in the context of a return procedure

Detention pending a return applies if the applicant hinders the issuance or enforcement of the decision and there is a risk of absconding to avoid a return.

Law on the Legal Status of Foreigners No IX-2206 of 29 April 2004.

Detention in the context of national security and public order

Detention may be used as a last resort in order to prevent the spread of dangerous and particularly dangerous contagious diseases, and when the stay in Lithuania constitutes a threat to national security, public order or public health.

Law on the Legal Status of Foreigners No IX-2206 of 29 April 2004.

Detention for the purpose of a Dublin transfer

Detention may be used as a last resort when the applicant is waiting for a Dublin transfer which has not taken place due to objective reasons within the set period.

Article 113, paragraph 4 of the Law "On the Legal Status of Foreigners":

4. An asylum seeker may be detained only in the following cases:

- for the purpose of establishing and/or verifying his identity and/or nationality;
- in order to find out the reasons on which his application for asylum is based (when information on the reasons could not have been obtained without the detention of the asylum seeker) and after assessing the circumstances

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specified in Items 1, 6 to 11 of Paragraph 5 of this Article, there are grounds to believe that the alien may abscond in order to avoid return to a foreign state or expulsion from the Republic of Lithuania;
- where an application for asylum is lodged by a foreign national who has been detained on the grounds referred to in paragraph 2 of this Article, when a decision is being taken on his or her return to a foreign state, and there are serious grounds for believing that that application was made solely for the purpose of postponing or impeding the execution of the return decision and the foreign national has already had access to the asylum procedure;
- in accordance with Article 28 of Regulation (EU) No 604/2013; 5) when the asylum seeker poses a threat to state security or public order.

Article 113, paragraph 2 of the Law "On the Legal Status of Foreigners":

2. When deciding on the return of a foreigner to a foreign state, his expulsion from the Republic of Lithuania, the obligation of the foreigner to leave the Republic of Lithuania or the transfer of an asylum applicant to another EU Member State responsible for examining an application for asylum, the foreigner may be detained only if detention is necessary for the taking of and/or enforcement of the relevant decision (if the foreigner hampers the taking and/or enforcement of the decision and may abscond to avoid return, expulsion or transfer).

Less coercive measures (alternatives to detention)

Article 115 of Law No IX-2206 on the Legal Status of Foreigners of the Republic of Lithuania of 29 April 2004 provides for alternative measures to detention:

- The foreigner must periodically report to the Migration Department or the State Border Guard Service at a fixed time;
- The foreigner must inform the Migration Department or the State Border Guard Service of his/her whereabouts by electronic means within a fixed period of time;
- Entrust the care of the foreigner to a citizen of Lithuania or a foreigner legally residing in Lithuania if this person has undertaken to take care of the foreigner and to support him/her;
- accommodate the foreigner in a temporary accommodation place without applying restrictions on freedom of movement;

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- accommodate the foreigner in a temporary accommodation place by establishing the obligation not to leave the territory belonging to the temporary accommodation place without the permission of the head of the temporary accommodation place or a person authorised by him/her.

The court may impose an alternative measure to detention by taking into account that the foreigner's identity has been established, the person does not pose a threat to state security and public order, and the person assists the court, the State Border Guard Service and the Migration Department in establishing his/her legal status in Lithuania.

The Law on the Legal Status of Foreigners extended the possibility to grant an asylum seeker an alternative measure to detention. As of 1 March 2021, it is possible to accommodate a foreigner in the Reception and integration agency by establishing the right to move only in the territory belonging to the place of accommodation. The applicants may be placed in the Reception and integration agency without restricting the freedom of movement.

Application for international protection and processing while in detention/impact on the asylum procedure

There is no relevant impact on the asylum procedure.

The State Border Guard Service provides information to detained foreigners about internal rules and other procedures, the Agency ensures the provision of interpreters and state-guaranteed legal aid to asylum seekers, including detained asylum seekers.

When an alien submits an asylum application, the grounds for detention change, therefore the SBGS assesses whether there are grounds for the asylum seeker's detention and applies to the court for the cancellation or extension of the asylum seeker's detention.

The Migration Department issues a foreigner registration certificate to each asylum seeker who is admitted to the territory of the Republic of Lithuania and has the right to remain there during the examination of the asylum application, no later than 3 days from the date of submission of the application for asylum. The certificate is handed over to the asylum seeker by the employees of the institution in which he is detained. When an alien submits an asylum application, the grounds for detention change, therefore the SBGS assesses whether there

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are grounds for the asylum seeker's detention and applies to the court for the cancellation or extension of the asylum seeker's detention.

The process follows the same steps as of the regular procedure and The State Border Guard Service notifies the asylum seeker about the decision.

Asylum seekers are detained by court decision. The Migration Department decides on the asylum procedure to be applied. Detained asylum seekers are kept at the Foreigners Registration Centre of the SBGS. Reception conditions for detained asylum seekers are ensured by the Agency.

Dublin procedure: According to Article 124(3) of the Law on the Legal Status of Foreigners, an alien shall not be permitted to leave the Republic of Lithuania if a preventive measure or a temporary protective measure has been imposed on them that restricts their right to leave the Republic of Lithuania. In such cases, the responsible authorities shall not make decisions regarding the alien’s obligation to leave, return, expulsion, or the transfer of an asylum seeker to another European Union Member State responsible for examining the asylum application.

Procedural safeguards

Access to information and interpretation

The Agency must ensure the provision of interpretation and translation services during the following procedures: determination of the legal status of foreigners in the Republic of Lithuania, initial actions related to the lodging of an asylum application, informing foreigners of the decisions made concerning them by the court, the State Boarder Guard Service, or the Migration Department, and providing information regarding those decisions and their implementation. Decisions are communicated to the applicants in a language they understand.

Legal assistance and representation

According to the Law on the Legal Status of Foreigners asylum seekers have the right to use the state-guaranteed legal aid, insofar as it relates to the detention of a foreigner or the application or extension of an alternative to detention, as well as when appealing to the court of first instance against decisions related to

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an asylum application.

At the time of detention, persons are entitled to receive state-guaranteed legal aid. They can also hire a lawyer at their own expense.

Following an agreement between SGBS and Lithuanian Red Cross, LRCS appointed law specialists who will provide legal assistance for asylum seekers who are detained in the SBGS' Foreigners' Registration Centre (FRC) in Pabrade. If requested, this assistance will also be provided to asylum seekers held in border control areas (Source: European website on Integration, Lithuanian Red Cross and State Border Guard Service sign an agreement to provide assistance to foreigners, 10 June 2020)

Length of detention

Applicants cannot be detained for longer than 6 months, except if they refuse to cooperate and comply with the removal procedures (refuse to provide data, provide misleading information, etc.) or when documents to carry out the removal are not received. In such cases, detention can be extended up to 12 months.

The provisions of the Law on the Legal Status of Foreigners, which entered into force on 1 July 2019, prescribe that a request to a court to detain a foreigner for more than 48 hours or implementing an alternative to detention is submitted by the State Border Guard Service, rather than a law enforcement authority which has detained the foreigner and established that there are grounds for detaining the foreigner for more than 48 hours. In this case, the law enforcement authority which detained the foreigner transfers the person to the State Border Guard Service within 5 hours from the moment of detention.

Judicial review of detention

An applicant is entitled to appeal to the Supreme Administrative Court of Lithuania. The appeal may be submitted through the Foreigners' Registration Centre. The Foreigners' Registration Centre forwards the foreigner's complaint to the Supreme Administrative Court of Lithuania.

The Supreme Administrative Court of Lithuania decides within 10 days from the date of acceptance of the appeal.

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The court's decision to detain an applicant or impose an alternative to detention should be communicated to the applicant immediately in a language which he/she understands, indicating the reasons for the detention or alternative to detention. The court's decision to detain the alien or to impose an alternative to detention becomes effective upon its notification to the applicant.

The court's decision to detain the applicant should be fully founded, stating the grounds for detention, the time of detention with the exact calendar date indicated and the place of detention.

Applicants can appeal the Migration Department decision within 14 days.

Specific conditions relating to detention

Conditions of detention

Detainees in the Foreigners' Registration Centre can stay in the open air twice a day, and their movements are restricted to a certain part of the facility. Applicants cannot leave the facility.

Visits to the centre are organised according to Chapter IX of the Description. It allows visits by representatives of competent national, international and non-governmental organisations, religious communities and other agencies. In order to visit the centre, it is necessary to obtain written permission of the chief of the centre. Meetings take place in the visitors' room.

Subject to permission by the head of the centre, applicants can have other visitors (e.g. family members, lawyers, interpreters).

Foreigners can contact competent state institutions and agencies, as well as international and non-governmental organisations. Moreover, foreigners can receive and send unlimited letters, receive unrestricted number of parcels, and receive and send remittances or money.

Minor applicants are entitled to attend school and to participate, on the invitation of international or public organisations, in events organised outside of the centre. Minor foreigners can study according to common education and professional training programmes.

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Medical aid is provided at the centre. A medical examination is performed in a general practitioner's office. The general practitioner's office provides out-patient primary healthcare services, it receives patients 2 days a week, and general practice care is provided daily on working days. If a person needs to refer to another doctor, the general practitioner issues an appropriate referral and the applicant is taken there.

The Foreigners' Registration Centre follows the hygiene criteria indicated in order No V-836 (2005-10-28) of the Minister of Health of the Republic of Lithuania which approved the Lithuanian hygiene norm HN 61:2005: the living facility cannot be smaller than 5 sq.m. per person.

According to the Description of conditions and rules regarding temporary foreigners' detention in the Foreigners' Registration Centre, detained foreigners are granted the right to use video and sound players, radios, TVs and other types of personal belongings as long as they are not restricted in the centre. Radio communication devices, photo cameras, mobile phones and similar items are restricted items. Foreigners are allowed to keep their personal belongings in the lockers (one is provided for each detainee).

Foreigners are granted the right to use the centre's domestic appliances, as well as other equipment.

Every floor has a room, where, if necessary, foreigners can access laundry services. Foreigners are also provided with central laundry and disinfection services.

Upon detention, Agency staff conduct a thorough vulnerability assessment of each individual. If the assessment concludes that the individual is not vulnerable and will stay in detention, a daily activity schedule is developed and approved in coordination with the State Border Guard Service (SBGS).

Activities carried out by the Agency

To ensure the well-being and engagement of detained individuals, Agency staff implement a structured program of daily activities, which includes:

- Sports sessions and outdoor sports activities
- Board games and handicrafts
- Cooking sessions
- Movie screenings
- Lectures

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- Prayers (Mass) according to individuals' religious beliefs

Health and Psychological Support

The Agency provides physiotherapy services to individuals participating in gym activities or experiencing health-related issues. In addition, psychological counselling and general healthcare services are available. When necessary:

- Individuals are escorted to medical facilities
- Pharmaceuticals are procured and provided as required

Nutrition and Hygiene Services

All detained individuals receive meals with various dietary preferences, including:

- Traditional
- Alternative
- Vegetarian

Newly detained individuals are supplied with a 24-hour food package, along with hygiene products, seasonal clothing, and footwear.

Additional Support Services

To address personal needs, shopping for detained foreigners is organized twice a week, following a pre-approved list of permitted items.

Ongoing cleaning and, when required, disinfection services are arranged to maintain hygiene standards.

Detention of applicants with special needs

Legislative overview

The Law "On the Legal Status of Foreigners" article 114 - Vulnerable persons and members of families with foreign minors can only be detained in exceptional circumstances, taking into account the best interests of the child and the vulnerable persons. In all cases, the court takes an individual decision, taking into account the individual circumstances of the case. Alternative measures to detention are always considered before detention is applied.

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If a person is detained by a court decision, he/she is accommodated in a detention in the Foreigners' Registration Centre. Agency representatives carry out a vulnerability assessment. In most cases, after assessing that the person is vulnerable, an alternative measure to detention is applied.

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