Detention - Latvia

Overview

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Relevant EU legislation

Latvia 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 Asylum Law | Patvēruma likums.

National legislation

Latvia has transposed the recast Reception Conditions Directive by the Asylum Law | Patvēruma likums. This law provides for detention of applicants for international protection.

Competent authority and stakeholders

Area	National authority/ stakeholder	Assistance to competent authority
Detention decision	State Border Guard | Valsts robežsardze for up to 6 days. For more than 6 days, a decision from the District Court is required.	
Administration and management of detention facilities	State Border Guard | Valsts robežsardze	

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Area	National authority/ stakeholder	Assistance to competent authority
Information provision in detention	State Border Guard | Valsts robežsardze Office of Citizenship and Migration Affairs (OCMA)| Pilsonības un migrācijas lietu pārvalde (PMLP)	
Interpretation services in detention	State Border Guard | Valsts robežsardze The State Border Guard has concluded a contract with the relevant merchant, which, in fact, ensures the availability of translation in 24/7 mode, including remotely. The detention order shall be translated into a language which the person understands and for which a separate note shall be made through an interpreter.	
Access to the procedure and provision of asylum information in detention	State Border Guard | Valsts robežsardze	
Detention for the Dublin procedure	State Border Guard | Valsts robežsardze	

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Area	National authority/ stakeholder	Assistance to competent authority
Processing of asylum applications of applicants who are in detention	Office of Citizenship and Migration Affairs (OCMA)| Pilsonības un migrācijas lietu pārvalde (PMLP)	
Legal assistance and representation in detention	Court Administration | Tiesu administrācija	
Review of detention	District Courts	

Grounds for detention during the asylum procedure

Grounds for detention in national law

Detention in the context of identification or verification of identity

According to Section 16, item 1 of the Asylum Law, an applicant may be detained if it is necessary to ascertain or verify the identity or nationality.

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

According to Section 16, item 2 of the Asylum Law, an applicant may be detained if it is necessary to ascertain the facts on which the application is based and which can only be determined through detention, particularly if there is a risk of absconding (e.g. the applicant crossed the state border without a valid reason, evaded border controls, previously evaded a removal, concealed their identity, provided false or conflicting information, or there are other facts indicating the likelihood of an escape).

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

According to Section 16, item 3 of the Asylum Law, an applicant may be detained if is necessary to decide on their right to enter Latvia.

Border guards have right to detain asylum seeker at the State border if there is a necessity to decide on the rights of the asylum seeker to enter the Republic of Latvia and at least one of the conditions mentioned below is met:

- another Member State has granted international protection to the asylum seeker;
- a country, which is not a Member State, is regarded as the first country of asylum of the asylum seeker;
- a country, which is not a Member State, is regarded as the safe third country for the asylum seeker;
- the asylum seeker has submitted a repeat application in the Republic of Latvia after a decision to refuse to grant refugee or alternative status has entered into effect, and such circumstances are not referred to therein, which would have significantly changed for the benefit of the asylum seeker and might serve as justification for granting refugee or alternative status.

If the application has been submitted at a border crossing point or in the border crossing transit zone and the issue regarding acceptance of the application for examination or leaving without examination is being decided, the State Border Guard shall ensure corresponding and appropriate support to the asylum seeker who has special procedural or reception needs so that he or she could exercise the rights laid down in this Law and comply with the obligations laid down in this Law during the asylum procedure.

Detention in the context of a return procedure

According to Section 16, item 4 of the Asylum Law, an applicant may be detained if there are grounds to believe that, during the removal procedure, the detained person submitted an application to hinder the execution of a voluntary return decision or removal order, or to make it impossible, and it is determined that the person did not have any obstacles to submitting such an application earlier.

Detention in the context of national security and public order

According to Section 16, item 5 of the Asylum Law, an applicant may be detained if the competent state authorities (including the State Border Guard) have reason

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to believe that the applicant poses a threat to national security or public order and safety.

Detention for the purpose of a Dublin transfer

According to Section 16, item 5 of the Asylum Law, an applicant may be detained if the necessity for a transfer procedure has been identified in accordance with the provisions of Article 28 of the Dublin III Regulation.

Less coercive measures (alternatives to detention)

According to Section 13 of the Asylum Law, restrictive measures to be applied to applicants, in conformity with the principle of proportionality, include regular reporting to a unit of the State Border Guard. The necessity of applying a restrictive measure is assessed by taking into account the individual situation and circumstances of the applicant.

Under Section 14, such a measure is imposed when:

1. The application has been submitted in order to obtain the right of residence without justification;
2. The application has been submitted to evade the execution of a voluntary return decision or a removal order without justification;
3. The applicant intends to evade the asylum procedure;
4. Circumstances have been established that justify detaining the applicants but, taking into account their individual situation and circumstances, detention would be an excessive restrictive measure.

The same section specifies that applicants are required to register regularly at the unit of the State Border Guard, at least once a month. The decision to impose regular reporting is made by the State Border Guard. The applicant must be informed of the decision in a language they understand or are reasonably expected to understand, with the assistance of an interpreter, and the essence of the decision, along with the procedures for contesting and appealing, must be explained to them.

Under Section 15, the decision to register regularly at the unit of the State Border Guard may be appealed within 7 working days after it has entered into effect, without suspending its effect. If the applicant wishes to receive state-funded legal aid for this process, they must submit an application to the State Border Guard.

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The State Border Guard shall, without delay, but no later than the following working day after receiving the application, send a request to the institution responsible for providing legal aid.

The Asylum Law provides for only one less restrictive measure - regular registration at the unit of the State Border Guard.

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

Section 8 (2) of the Asylum Law provides that the Cabinet shall determine the sample of the personal document of an asylum seeker and the procedures for issuing it, and Paragraph 6 of Cabinet Regulation No 727 of 2 November 2021 "Regulations Regarding the Personal Document of an Asylum Seeker" states that the document is to be issued within three days of receipt of the asylum seeker's application for refugee or alternative status. The document shall be valid from the day of its issue until the day when the administrative procedure regarding the application of the asylum seeker has been completed.

Section 8 (3) of the Asylum Law provides that a personal document of an asylum seeker shall not be issued if the asylum seeker has been detained, as well as until a decision has been taken to accept his or her application for examination, if it has been submitted at a border crossing point or in a transit zone of a border crossing point. As soon as the asylum seeker is released from detention, he or she is issued with the asylum seeker's identity document.

Procedural safeguards

Access to information and interpretation

The detention order is issued by the State Border Guard for up to 6 days. For more than 6 days, a decision from the District Court is required.

According to Section 17(5) of the Asylum Law, the reasons for the detention, the procedures for appealing detention as outlined in laws and regulations, and the procedures for assigning a provider of free legal aid and representation must be provided in a language the applicant understands or is reasonably expected to understand, with the services of an interpreter if necessary. The reasons for detention, the appeal procedures, the procedures for a court overview of

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detention, and the possibility of requesting free legal aid must be explained to the applicant.

Legal assistance and representation

According to Section 17(6) of the Asylum Law, the applicant in detention who wishes to receive state-provided legal aid must submit an application to the State Border Guard. The application must be completed using the sample application form specified in Section 15(4) of the Asylum Law. The State Border Guard shall, without delay, but no later than the following working day after receipt of the application, contact the provider of legal aid listed by the institution responsible for the provision of state-provided legal aid.

Length of detention

As per Section 17(1) of the Asylum Law, an official authorised by the Chief of the State Border Guard may detain an applicant for up to 6 days. An applicant may be detained for more than 6 days only on the basis of a decision by the District Court, which must decide within 24 hours. The detention period may not exceed 2 months and must not surpass the duration of the asylum procedure, according to Section 19(1) of the Asylum Law.

Judicial review of detention

The review of the detention procedure is required by law to be requested by the State Border Guard. If any of the conditions for detention are met, the State Border Guard, in accordance must submit a justified proposal to the District Court for detention beyond 6 days, no later than 48 hours before the expiration of the initial detention period. The court will then decide within 24 hours.

Under Section 20 of the Asylum Law, an applicant or their representative has the right to challenge the detention measure by submitting a claim to the District Court at any time to assess the necessity of continued detention. The court's decision is not subject to appeal.

Specific conditions relating to detention

Conditions of detention

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According to Section 21(5) of the Asylum Law, officials of state administration institutions, authorised representatives of associations, foundations and international organisations can visit the State Border Guard accommodation premises for applicants to verify how the premises are used to ensure the detention of applicants, evaluate the conditions of accommodation, and provide legal or other consultations to the detained applicant. The visit is coordinated with the Chief of the State Border Guard accommodation premises for applicants, unless otherwise specified by law.

Under Section 22(2), when an applicant is placed in the detention centre, their health condition must be assessed, and necessary sanitary treatment must be provided.

Section 22 (3) establishes the following conditions for the detention of applicants, including that men and women shall be accommodated separately, detained applicants shall be housed separately from individuals suspected of committing a criminal offense or detained under the Immigration Law, applicants with health disorders shall be accommodated in premises specifically equipped for such cases, as directed by a medical practitioner, and detained family members of applicants shall be housed together, provided none object, but separately from other detainees, ensuring privacy.

According to the Internal Rules of Procedure of Accommodation Premises for Detained Foreigners and Asylum Seekers, the daily schedule must include at least 2 hours of daily outdoor walking time, as well as time for visitors. The same rules establish that the detained applicant is allowed to meet with family members or relatives, as well as officials from state administration institutions, representatives of associations and foundations and international organisations.

Detention of applicants with special needs

Legislative overview

Section 22 (3) of the Asylum Law outlines the following provisions for detained minors:

- The detained minor must be given the opportunity to study and participate in activities related to leisure time, including games and recreational activities appropriate for their age.

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- An unaccompanied minor must be provided accommodation at State Border Guard facilities designated for asylum seekers, equipped and staffed according to the minor's age.

According to Section 51(1) of the Immigration Law, a foreign minor under the age of 14 cannot be detained. Section 59 of the Immigration Law provides that minors between the ages of 14 and 18 who are unaccompanied may be detained and placed in the special premises of the State Police. Under Section 59(3), children must be accommodated with their parents.

According to the Fourth periodic report of the Republic of Latvia on the implementation of 1966 United Nations International Covenant on Civil and Political Rights for the period from 1 January 2014 to 31 December 2019, minor applicants are detained only in exceptional cases when it is in the best interests of the child.

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