Detention - Luxembourg

Overview

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Relevant EU legislation

Luxembourg implemented to provisions of the Dublin III regulation and also transposed the provisions of the recast Reception Conditions Directive and the recast Asylum Procedures Directive into national law through the amended Law of 18 December 2015 on international protection and temporary protection (hereafter amended Asylum Law); and the amended Law of 28 May 2009 on the establishment and organisation of the Detention Centre.

National legislation

Luxembourg has transposed the provisions of the recast Reception Conditions Directive and the recast Asylum Procedures by:

- Amended Law of 18 December 2015 on international protection and temporary protection (amended Asylum Law) | Loi modifiée du 18 décembre 2015 relative à la protection internationale et à la protection temporaire
- Amended Law of 28 May 2009 on the establishment and organisation of the Detention Centre | Loi modifiée du 28 Mai 2009 portant création et organisation du Centre de rétention.

Competent authority and stakeholders

Area	National authority/ stakeholder	Assistance to competent authority
Detention decision	Ministry of Home Affairs, General Department of immigration, Department for Refugees	The Grand Ducal Police

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Area	National authority/ stakeholder	Assistance to competent authority
Administration and management of detention facilities	Directorate of the Detention Centre	N/A
Information provision in detention	Directorate of the Detention Centre	N/A
Interpretation services in detention	Interpretation department of the Luxembourgish Red Cross	N/A
Access to the procedure and provision of asylum information in detention	Ministry of Home Affairs, General Department of immigration, Department for Refugees	Directorate of the Detention Centre
Detention for the Dublin procedure	Ministry of Home Affairs, General Department of immigration, Department for Refugees	N/A
Processing of asylum applications of applicants who are in detention	Ministry of Home Affairs, General Department of immigration, Department for Refugees	N/A
Legal assistance and representation in detention	Bar Association of Luxembourg	N/A
Review of detention	Administrative Tribunal	N/A

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Grounds for detention during the asylum procedure

Grounds for detention in national law

Detention in the context of identification or verification of identity

Based on the amended Asylum Law and the amended Law of 28 May 2009 (Detention Centre), detention can be enforced when an applicant's identity must be established or verified. However, this condition alone does not suffice to justify detention. In practice, it is typically invoked in conjunction with a second condition—namely, when the elements underlying the application for international protection cannot be obtained without detention, particularly in cases where there is a risk of absconding.

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

Based on the amended Asylum Law, and the amended Law 28 May 2009 (Detention Centre), detention can be enforced when the elements on which the application for international protection is based need to be determined and where the applicant risks to abscond. This may arise when the applicant fails to cooperate with the authorities, provides false or inconsistent information, lacks valid identity or travel documents, or has previously absconded or violated procedural obligations. Detention may also be considered if the applicant's behaviour or travel history suggests an intention to evade the asylum procedure, or if they have moved irregularly within the EU under the Dublin Regulation.

In all cases, detention must be necessary, proportionate, individually assessed, and used only when less coercive measures are insufficient.

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

People making an application for international protection cannot be refused entry into the country.

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Luxembourg does not have external borders with the exception of the international airport, so it is improbable that an unaccompanied minor tries to enter the country through this entry point.

Detention in the context of a return procedure

Based on the amended Asylum Law, and the amended Law 28 May 2009 (Detention Centre), detention can be enforced for asylum applicants who received a negative decision on their application and for the purpose of preparing return and carrying out the removal, and where there are reasonable grounds to believe that the applicant has lodged the application for international protection solely to delay or prevent the execution of the return decision, having already had the opportunity to access the asylum procedure; in such cases, the period of detention under the present law shall begin on the date the application for international protection is lodged.

Detention in the context of national security and public order

Based on the amended Asylum Law, and the amended Law 28 May 2009 (Detention Centre), detention can be enforced when applicants for international protection pose a threat to national security and public order. Such assessments are conducted on a case-by-case basis, as there is no predefined rule or threshold for determining the level of threat.

Detention for the purpose of a Dublin transfer

Based on the amended Asylum Law, and the amended Law 28 May 2009 (Detention Centre), detention can be enforced in Dublin case. The July 2023 amendment to the Asylum Law introduced a defined list of criteria that establish a significant risk of absconding. These criteria are based on circumstances that suggest the applicant intends to evade the authorities specifically to obstruct the enforcement of a removal order.

Less coercive measures (alternatives to detention)

As foreseen by article 22(3) of the amended Asylum Law, the measures listed below are considered less coercive measures:

- the obligation for the applicant to report regularly, at intervals to be fixed by the Minister, to the services of the latter or another authority designated by him, after submission of the original passport and any supporting

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document of his identity in exchange for a receipt serving as proof of identity;

- house arrest in the places determined by the Minister, if the applicant presents effective guarantees of representation capable of preventing the risk of flight; the house arrest may be accompanied, if necessary, by an electronic surveillance measure which prohibits the applicant from leaving the perimeter set by the Minister. Control of the execution of the measure is ensured by means of a process making it possible to remotely detect the presence or absence of the applicant in the predicted perimeter. The implementation of this process may result in the applicant being required, for the entire duration of the placement under electronic surveillance, to have a device incorporating a transmitter. The process used is approved for this purpose by the Minister. Its implementation must guarantee respect for the dignity, integrity and privacy of the person. The implementation of the technical device allowing remote control and the remote control itself can be entrusted to a person governed by private law;
- the obligation for the applicant to deposit a financial guarantee (five thousand euros) to be transferred or paid either by himself or by a third party to the Caisse de consignation, in accordance with the relevant provisions of the Law of 29 April 1999 on deposits with the State. This sum is acquired by the State in the event of flight or removal by force of the person for whose benefit the deposit was made. The guarantee is returned by written decision of the Minister ordering the Caisse de consignation to do so if the reasons set out in paragraph (2) are no longer applicable or in the event of voluntary return.

Less coercive measures are ordered in writing and can be applied jointly. In the event of failure to comply with the obligations imposed by the Minister or in the event of a risk of absconding, the measure(s) is (are) revoked and placement in detention is ordered.

In practice, alternatives to detention are rarely used, with the exception of home custody for international protection applicants or irregularly staying, third-country nationals falling under the Dublin III Regulation. The semi-open detention/return facility (Maison Retour) is used for applicants subject to a transfer under the Dublin regulation and is also used for third-country nationals in irregular stay. With home custody, a person is obligated to check in and out to leave the facility. In the event of failing to comply with the obligations imposed by the Minister, the measure of home custody in the Maison Retour can be revoked and a placement in detention can be ordered.

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

In Luxembourg, applicants held in detention pending a Dublin transfer are not the responsibility of the Luxembourg authorities for the examination of their international protection claim, as this responsibility lies with the Member State designated under the Dublin III Regulation. Indeed, if Luxembourg were responsible for examining the application, the applicant would not be subject to the Dublin procedure.

For individuals who have received a negative decision on their application for international protection and are subsequently detained in view of removal, their application is deemed closed, and no further examination of the claim will occur.

Irregular migrants held in detention retain the right to apply for international protection. To initiate the procedure, they must submit a written request to the Ministry of Home Affairs, General Department of immigration, Department for Refugees. They may also contact the Psychosocial Support Service, which can assist them in obtaining and completing the necessary application form. Once the application is lodged, and it turns out that the applicant falls under the scope of the Dublin III Regulation, the Dublin procedure will take place in the detention center. In the event that Luxembourg is the responsible Member State, an agent from the Department for Refugees visits the detention facility to conduct an interview with the applicant regarding their claims for international protection. In many cases, it is assessed that the application was submitted solely for the purpose of delaying or preventing the enforcement of a return decision, particularly when the applicant previously had the opportunity to access the asylum procedure. If such abuse of process is established, the claim will be examined under the accelerated procedure, and the applicant will remain in detention until a final decision is rendered. However, if it is determined that the applicant has a well-founded fear of persecution or faces a risk of serious harm, and there is no indication of procedural misuse, the application will proceed under the regular procedure, and the individual will no longer be held in detention.

Procedural safeguards

Access to information and interpretation

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The Detention Centre has an agreement with the interpretation department of the Luxembourgish Red Cross which is able to provide translations in almost all languages needed. The translations can be done by phone or in person, which is preferred by the Detention Centre. The staff of the Detention Centre also speaks a wide range of languages, so they can often help with translating. If other detainees speak the language needed, the detainee who needs translating can be asked if they agree to have the translation done by the other detainee. If not, the Detention Centre makes use of a professional interpreter. A booklet containing the house rules and other information relevant to their stay at the centre is handed to each detainee in their preferred language upon arrival (currently available in 12 different languages). These rules are also displayed in the units in several languages.

Once the application is lodged, an agent from the Department for Refugees visits the detention facility to conduct an interview with the applicant regarding their claims for international protection. In many cases, it is assessed that the application was submitted solely for the purpose of delaying or preventing the enforcement of a return decision, particularly when the applicant previously had the opportunity to access the asylum procedure. If such abuse of process is established, the claim will be examined under the accelerated procedure, and the applicant will remain in detention until a final decision is rendered. The first instance decision will be issued to the applicant in detention, in person, by an agent of the Department for Refugees. If the applicant has a legal representative, a copy of said decision is also sent via post to the representative.

In some cases, particularly for nationals of countries where an accelerated procedure decision cannot be issued, detention ends either immediately after the interview or upon notification of the decision. These cases are rare, as detention usually applies to nationals of safe countries or to those submitting a second protection claim to delay removal. The Head of Service records the release decision. If release follows the interview, the interviewer notifies the applicant; if after the decision, the decision-maker formally lifts the detention order.

Applicants are generally detained until their protection claim is definitively rejected, usually under the accelerated procedure. The decision-maker and Administrative Support verify if an appeal has been filed.

If no appeal is filed, the decision-maker contacts the Department for Returns before the appeal deadline to confirm if detention will continue for removal. If yes, Department for Returns issues the detention order under the amended

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Immigration Law; if not, the decision-maker instructs immediate release of the applicant.

However, if it is determined that the applicant has a well-founded fear of persecution or faces a risk of serious harm, and there is no indication of procedural misuse, the application will proceed under the regular procedure, and the individual will no longer be held in detention.

Legal assistance and representation

Applicants held in detention have the right to receive assistance upon request and to be represented during appeal proceedings. They may be represented by a lawyer appointed by the President of the Bar Association, free of charge, in accordance with the conditions and procedures set forth in Section 37-1 of the amended Act of 10 August 1991 on the Legal Profession, except where the applicant's appeal is deemed to lack reasonable prospects of success. Free legal aid and representation are granted exclusively within the scope of the proceedings of international protection and do not extend to any other judicial or administrative appeals. When arriving at the Detention Centre, each detainee receives a list of lawyers who specialize in immigration and detention matters and who are willing to take on clients. The detainees are of course also free to contact lawyers whose names are not provided on the list. In addition to the list of persons that are entitled to provide legal assistance, upon arrival, the detainees receive a list of NGOs active in Luxembourg in the field of migration. Detainees have the right to inform a person of their choice of their arrival at the Centre.

Furthermore, the person held is immediately informed, in writing and with acknowledgment of receipt, in a language it is reasonable to assume they understand, of their right to be examined by a doctor within twenty-four hours of being placed in detention.

Length of detention

Applicants for international protection, and pursuant to the amended Asylum Law , any decision to detain must clearly state the factual and legal grounds on which it is based. Detention shall be ordered for the shortest possible duration and may not exceed three months initially. Without prejudice to the provisions of Regulation (EU) No 604/2013, the measure may be renewed by the Minister, each

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time for a maximum period of three months, provided that the grounds for detention remain valid; however, the total duration of detention may not exceed twelve months.

Delays in administrative procedures that are not attributable to the applicant may not justify an extension of the period of detention.

Judicial review of detention

Article 22(6) of the amended Asylum Law addresses an appeal of a detention order.

Regarding applicants for international protection, an appeal against the decision to place an applicant in detention or to order a less coercive measure may be lodged with the Administrative Tribunal as court of first instance within three months of notification. An appeal against the Tribunal's decision may be brought before the Administrative Court within three days of notification. The Administrative Court rules urgently within ten days of the appeal, suspending enforcement of any judgment annulling or amending the contested decision. If detention is ultimately ruled unlawful, the applicant must be released immediately.

A detention decision is reviewed at the request of the applicant. Each time the detention decision is prolonged, the applicant can appeal this decision within 3 months of the notification of the decision.

Regarding irregular migrants, an appeal against decisions for detention may be lodged with the Administrative Tribunal within one month of notification. The Tribunal shall rule urgently within ten days. Appeals against the Tribunal's decisions may be made to the Administrative Court within three days of notification. The Administrative Court also rules urgently within ten days, suspending enforcement of any judgment annulling or amending the contested decision during the appeal process.

Appeals shall be lodged with the Administrative Tribunal.

Specific conditions relating to detention

Conditions of detention

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Detainees have free access to a secured outdoor space attached to their respective unit during the daytime, except during mealtime. The outdoor space of the family unit has a playground for children. Detainees can exit their rooms during daytime and spend time in the kitchen/common room, where they can prepare themselves food and have access to the recreational outdoor areas within their unit. They can take up sports and access the premises equipped with gear for physical exercise.

Detainees may receive visitors without supervision 7 days a week from 8h00 to 12h00 and from 13h00 to 18h00. The detainee may not receive more than three adults per visit and minors have to be accompanied by an adult. The director determines the schedule and duration of visits, but the frequency of visits may not be restricted to less than 2 per week and per detainee. Normally, a visit lasts an hour, but they can be extended if there is availability.

Several representatives of organisations, approved by the Minister, have access to the centre within limits and under the conditions of the director, to provide guidance and support to detainees. The authorisation is granted for an unlimited term and can be granted to an unlimited number of representatives per association. Theoretically, an unlimited number of members of the NGOs can visit the centre simultaneously. In practice, the NGOs try to visit the Detention Centre in groups of at least two.

Lawyers can also visit the detainees every day of the week, between 8h00 and 20h00. There is one visitation room that is slightly bigger and intended for family visits. There are 3 additional visitor rooms, one of which is reserved for lawyer visits.

When in administrative detention, they have access to the Internet by using any of the 16 computers available in the centre. There are no restrictions on access apart from the general ones applicable to any computer used by the Luxembourg State Administration. They are allowed to use instant messaging applications (e.g. Facebook messenger) to help safeguard their mental health. Since 2021, Skype as well as other telecommunication applications are accessible on all the computers.

As minors can only be detained for a maximum of 7 days, there are no education programmes on offer. Language classes are provided on request for adults, in English and French. The courses are adapted to individual needs; in practice, this consists mostly of alphabetisation and computer skills. Study material for German

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and Luxembourgish courses can be accessed on demand. Arts and crafts workshops, as well as other social activities, are also regularly offered by NGOs (e.g. Red Cross) and the psychosocial staff.

Detainees cannot leave the facility except for health reasons, as well as for court appearances or interviews at relevant national representations or consulates to which they are summoned. The detainees can move freely within their unit, except if there are restrictions set by the director. Apart from their rooms, detainees have access to a common space as well as an outdoor space during the daytime. At night, from 21h30 to 7h00, the detainees are confined to their rooms.

A doctor examines every detainee within 24 hours of arrival. During their stay, detainees have free access to medical care. However, dental treatment is limited to urgent and necessary care. In general, the detainee is allowed to manage their prescribed medication. However, the doctor can request that the medical staff distribute the medication. A detainee cannot keep medication upon arrival at the Detention Centre; the medication is newly prescribed by the doctor of the Detention Centre. The information concerning the health of a person is registered in an individual medical file, which is managed by the doctor in collaboration with the medical staff. At departure, the detainee receives a copy of the medical file.

Detention of applicants with special needs

Legislative overview

As per the amended Asylum Law, Article 22(1) and national practice:

- Minors are placed in detention as a last resort;
- Women are placed in a different/separate unit from men;
- Families with children can only be detained for up to 7 days;
- Vulnerable people with health issues are excluded from detention upon issuing of a medical certificate.

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