



MADE REAL – Making Alternatives to Detention in Europe a Reality by Exchanges, Advocacy and Learning

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Completed Legal Questionnaire for the project MADE REAL

Lithuania

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- ✚ The aim of this questionnaire is to collect data on the legal framework in your national context with regards to alternatives to detention. It will be completed by the national member of the Odysseus network. The references in the questions to the Reception Conditions Directive concern the version of 2003 (Directive 2003/9/EC) unless your Member State has already transposed the recast Reception Conditions Directive (Directive 2013/33/EU)

Definitions¹:

'Applicant': (term used by the directive) or **asylum seeker (A/S)** (term employed by us but which we understand as synonymous): means a third-country national or a stateless person² who has made an application for international protection in respect of which a final decision has not yet been taken;

'Detention': means confinement of an applicant by a Member State within a particular place, where the applicant is deprived of his or her freedom of movement;

'Final decision': means a decision on whether the third- country national or stateless person be granted refugee or subsidiary protection status by virtue of Directive 2011/95/EU and which is no longer subject to a remedy within the framework of Chapter V of this Directive, irrespective of whether such remedy has the effect of allowing applicants to remain in the Member States concerned pending its outcome;

'Minor': means a third-country national or stateless person below the age of 18 years;

'Third-country national': means any person who is not a citizen of the Union within the meaning of Article 17(1) of the Treaty and who is not a person enjoying the

¹ The definitions used are taken by the recast reception conditions directive (Directive 2013/33/EU) and the returns directive (Directive 2008/115/EC). As we know that the first is not yet in force and both of these instruments not applicable in all Member States examined, if national law differs at any point from these definitions please specify it in your answers.

² We are aware of the incompatibility of this definition with the 1951 Refugee Convention but we decided to use the definitions as agreed in the EU legal instruments.

Community right of free movement, as defined in Article 2(5) of the Schengen Borders Code;

'Unaccompanied minor' (UAM): means a minor who arrives on the territory of the Member States unaccompanied by an adult responsible for him or her whether by law or by the practice of the Member State concerned, and for as long as he or she is not effectively taken into the care of such a person; it includes a minor who is left unaccompanied after he or she has entered the territory of the Member States;

✚ Concerning alternatives to detention, regardless of the definition that we will adopt later, this research should cover all schemes that are understood by governments as 'alternatives to detention', even if through our analysis we might conclude that some of them in fact do not satisfy our understanding of what can be considered an 'alternative to detention'.

A. National Legal Framework on detention and alternatives to detention

General

1. Is detention of asylum seekers regulated by law? (Please comment on the nature and level of the different norms employed: legislative, regulatory, administrative-like instructions/circulars etc.)

YES	NO	Comment
Detention is regulated by the law level legal act.		Aliens' Law of 2004 (with subsequent amendments) regulates detention in Section VII.

2. Please indicate the title, date, number and references of publication into the official gazette (if applicable) of the legal measure(s).
 - a. Send us as an annex an electronic version (or link) to the text of the measure(s) in question
 - b. For MS other than the UK and Belgium: Please provide access to any translation of the above into English, if they are available (even if it concerns unofficial, non-binding translations undertaken by UNHCR etc., this will be used for our comprehension)

Title	Law on Legal Status of Aliens of the Republic of Lithuania (Aliens'
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	Law)
Date	29 April 2004 (with subsequent amendments)
Number	IX-2206
Reference of publication in the official journal (if applicable)	News, 2004, No. 73-2539 Amendments relevant for section VII on detention: No. X-924, 2006-11-28, News, 2006, No. 137-5199 (2006-12-16) No. X-1442, 2008-02-01, News, 2008, No. 22-803 (2008-02-22) No. XI-1786, 2011-12-08, News, 2011, No. 156-7384 (2011-12-22) No. XI-2189, 2012-06-30, News, 2012, No. 85-4450 (2012-07-19) No. XII-548, 2013-10-10, News, 2013, No. 111-5488 (2013-10-24)
Relevant link	http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=458448&p_tr2=2 (version of the Law in Lithuanian language only).

3. Based on which grounds could an asylum seeker be detained during the asylum procedure? Please comment where necessary.

Question	Answer (yes/no)	Comment
Identity verification, in particular if the persons have no or false documents	Yes	The Aliens' Law does not provide for explicit ground of detention based on identity verification, but two grounds in the Law are related to it: para. 2 and 4 of Art. 113(1): when a foreigner has entered illegally to Lithuania or stays thereof illegally; in case of suspicion that the foreigner is using false documents. These grounds are not specifically targeting asylum seekers, but they could be applicable to them also. There is a guarantee for asylum seekers in applying para. 2 of Art. 113(1) in Art. 113(4) (introduced through amendment to the Law of 10 October



		2013), which provides that this ground can be applied to asylum seekers only with a view of establishing and (or) confirming the identity (nationality) and (or) establish the motives for submission of asylum request, as well as in cases when asylum application is based on motives, which are manifestly disconnected with persecution in the country of origin or based on deception, or when asylum seeker is refused temporary territorial asylum and there are grounds to consider that he/she may abscond with the aim of avoiding return to a foreign country or expulsion from Lithuania.
Protection of public order or national security	Yes	Para. 7 of Art. 113(1): provides for a possibility to detain a foreigner when his/her stay in Lithuania poses a risk for state security, public order or health of the population. These grounds are applicable to all foreigners, thus asylum seekers may also be affected.
Public health	Yes	Para. 6 of Art. 113(1): provides for a possibility to detain a foreigner with a view of preventing the spread of dangerous and particularly dangerous contagious



		disease. Para. 7 of the same article provides for the ground of health of the population. These grounds are applicable to all foreigners, thus asylum seekers may also be affected.
Risk of absconding	Yes	Art. 113 (2) of the Aliens' Law, which refers to a risk of absconding and situations of avoiding or hampering preparation of return/removal is a separate detention ground in legislation, but its elements may be applied as separate sub-grounds, e.g. a risk of absconding; the person hampers the return procedure. Under the current practice, if a person (an asylum seeker) has left Lithuania (e.g. moved to another MS and then was returned under the Dublin II Regulation) it is a sufficient ground to establish a risk of absconding. If a person in the first interview indicated that his destination country was another MS, this is again a ground to establish a risk of absconding. In practice, this ground is now applied to asylum



		seekers only. Risk of absconding specifically is mentioned with regard to asylum seekers also in Art. 113(4), as mentioned above (under the ground of identity verification).
Other (please specify)	Yes	There are several grounds of detention generally applicable to all foreigners, which may also include asylum seekers/rejected asylum seekers. These grounds include: prevention of illegal entry to Lithuania (para. 1 of Art. 113(1)), execution of return decision of foreigner who is not admitted to Lithuania (para. 3) and detention for the purpose of expulsion from Lithuania or another country on the basis of Council Directive 2001/40/EC (para. 5). However, in cases of para. 3 and para. 5, asylum seekers should only be detained if they are in the return procedure and submit an abusive asylum application (similarly to <i>Arslan</i> case situation). Art. 113(2) would be applied together in this



		case, as it limits the application of detention in the context of return to certain abusive cases only. In the court practice though there have been cases when courts decided to apply these grounds separately from Art. 113(2), as independent grounds.
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4. Is detention foreseen for asylum seekers in specific situations under the national legal framework? Are alternatives to detention foreseen in law for asylum seekers under those special circumstances?

Type of group	Detention foreseen?	Alternatives foreseen?	Comment ³
A/S in border procedures	Yes	Yes	Detention: there are no specific grounds of detention in the legislation that would be specifically addressed to asylum seekers, there are only certain guarantees concerning application of detention to asylum seekers. Only a few grounds in Art. 113

³ Please specify in your comments if alternatives to detention are foreseen only for a specific group, for example unaccompanied minors or families with minor children.

		<p>(1) of the Aliens' Law regulating detention are related to specific situations (e.g. entry (para. 1), refusal of entry (para. 3), expulsion (para. 5)).</p> <p>Pursuant to Art. 113(4) of the Law, detention of asylum seekers on the ground of illegal entry or stay in Lithuania can only be applied in case of [...] or when asylum seeker is refused temporary territorial asylum⁴ (provided there is a risk of absconding).</p> <p>Refusal of temporary territorial asylum also means refusal of entry to the country, which allows saying that detention applies to border procedures also.</p> <p>Alternatives: according to the legislation they apply at any stage</p>
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⁴ Temporary territorial asylum is a right to stay in the Republic of Lithuania while an application for asylum is being considered, granted to a foreigner in accordance with the Aliens' Law (Art. 2(12) of Aliens' Law).

			of asylum procedure, not fixed to particular procedures. In practice, though, the authorities usually ask for them after initial period of detention for 48 hours.
A/S in accelerated procedures	Yes	Yes	Only a few grounds in Art. 113 (1) of the Aliens' Law regulating detention are related to specific situations. For example, pursuant to Art. 113(4) of the Aliens' Law detention of asylum seekers on the ground of illegal entry or stay in Lithuania can only be applied in case of manifestly unfounded claim or when asylum seeker is refused temporary territorial asylum (provided there is a risk of absconding). These are considered accelerated procedures, even though the manifestly unfounded claim notion could be also applied



			during the regular procedure.
A/S subject to a Dublin transfer⁵	Yes	Yes	According to Art. 113(2) of the Aliens' Law, detention of asylum seeker in Dublin procedures is possible only if detention is necessary for the adoption or execution of a relevant decision (e.g. in case of risk of absconding or hampering expulsion/transfer procedure). The legislation does not specify if detention could be authorized at a preliminary stage in order to examine whether the provisions of the Dublin Regulation are applicable or in order to carry out the transfer. In practice, most of the cases of detention occurred after transfer under the Regulation. The law is not specific as to how significant the risk of absconding should be, this is decided in each case in the court.

⁵ Please specify in your comments whether the law allows for detention during a preliminary stage in order to examine whether the provisions of the Dublin regulation are applicable or in order to carry out the transfer or both? Please also comment whether the law requires a significant risk of absconding in order to justify the measure of detention in that case.

Other	No		
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Vulnerable applicants

5. Is there a mechanism/process in place to identify vulnerable applicants foreseen in the law?

There is no explicit obligation established by the law level legal act for state institutions to identify specific needs of vulnerable persons, no mechanism/process for identification of vulnerable applicants. The Aliens' Law only provides for a definition of vulnerable individuals (in Art. 2 (18¹) and a few guarantees for unaccompanied minors (UAMs). Rights of vulnerable persons are regulated by the Order on Examination of Asylum Claims approved by the Order No. 1V-361 of the Minister of Interior on 15 November 2004 (with subsequent amendments)⁶. Identification procedure and provisions on working with vulnerable applicants is provided by the by-law level legal act only. This by-law – the Order on Identification, Accommodation and Provision of Support in the Foreigners' Registration Centre to Asylum Seekers with Special Needs approved by the Order of the Head of the Foreigners Registration Centre (FRC) of 24 February 2010 (Order on Identification of Vulnerable Individuals), is mostly focused towards the work of social workers and psychologist in the Centre, but not towards carrying interviews with vulnerable applicants and specificity of working with them. Also, the Order does not envisage the relationship between the identification of vulnerability and detention related issues, e.g. the requirement to approach the court for re-consideration of detention or refrain from approaching the court with request of detention, etc. In terms of identification procedure, the Order provides that:

- a) Identification shall be carried out as soon as the asylum seeker arrives to the FRC (para. 9);*
- b) Identification is carried out during the medical screening, interviews, social interviews or other acts, information about vulnerability is transferred to social worker or psychologist in the FRC (paras. 8-10, 13, 18);*
- c) Asylum seekers shall be informed about the purpose of this procedure, participating persons and confidentiality (para. 8);*
- d) Vulnerable applicant has a right to request that each interview related to examination of asylum application includes a psychologist (para. 17);*
- e) Conclusion about special needs shall be drafted and submitted to the Head of the FRC (para. 14) and after 2 months a psychologist shall assess again the psychological state of the person (para. 16);*
- f) If vulnerability is established, proposals concerning accommodation conditions shall be prepared and such persons should be aimed to be accommodated separately from other persons (paras. 19-20).*

6. Does the system allow for identification of vulnerabilities also at a later stage in the procedure?

Since there is no explicit procedure for identification of vulnerable individuals provided by a general law level legal act, concrete stage when needs are determined is not established, thus they could arise during any stage of asylum procedure. While the Order on Identification of

⁶ News, 2004, No. 168-6196. Amendments: News, 2007, No. 53-2069; News, 2012, Nr. 10-439.

Vulnerable Individuals does not relate identification to a specific stage of asylum procedure, but rather to specific actions that may be undertaken by various personnel. It mentions that identification shall take place as soon as asylum seeker arrives to the FRC, but there is nothing to prevent the identification at any time of the asylum procedure. To the contrary, for instance, para. 18 of the Order (which states that if the officers of the FRC notice during their regular work some elements of vulnerability, they shall inform the social worker or psychologist) confirms that such vulnerability may become evident at any time of person's stay in the FRC.

7. Are specific categories of asylum seekers generally exempt from detention as a principle according to the legal framework? If so which? Please comment where necessary.

Categories	Exemption (yes/no)	Comment
Unaccompanied Minors	No	There is no general exemption in the legislation from detention of these individuals, however their situation in the context of detention is regulated specifically. Previously, the Aliens' Law provided that UAMs cannot be detained, however this provision was deleted from the law. Currently, the Aliens' Law contains a guarantee that vulnerable individuals and families having minor children, may be detained only in very exceptional cases taking into consideration also the interests of the child and vulnerable individuals (Art. 114(3), introduced as of 1 January 2013). The definition of vulnerable individuals according to the Law encompasses



		also minors (Art. 18 ¹). On the other hand, the Order on Accommodation at the FRC provides that UAMs shall not be accommodated in this Centre (para. 3), while detained applicants are usually detained at the FRC. Thus it could be implied that there would be no legal grounds to keep UAMs in the Centre at all, unless they are detained for some reasons.
Families with minor children	No	See above under comment on unaccompanied minors
Single mothers	No	See above under comment on unaccompanied minors; definition of vulnerable individuals covers single mothers
Vulnerable individuals	No	See above under comment on unaccompanied minors
Other	No	

8. Are there any special provisions in place regarding the detention of specific groups of asylum seekers? Please elaborate on the content of such provisions as well as specify which particular group of asylum seekers they concern.

Special provisions	Type of group	Comment
Time limits to detention	Asylum seekers who do not cooperate in the context of return procedures or persons	As of 1 January 2013, according to Art. 114(4) of the Aliens' Law,



	<p>for whom the documents for implementation of return are not received (this relates to rejected asylum seekers only)</p>	<p>generally foreigners shall not be detained for more than 6 months. However, in case of uncooperative applicants in the context of return procedures or when documents for implementation of return are not received, detention may be extended to additional period of up to 12 months. This provision was introduced as a result of transposition of the Return Directive and is currently applied to all foreigners, including asylum seekers.</p>
<p>Detention only permitted in exceptional circumstances</p>	<p>Vulnerable individuals and families having minor children</p>	<p>According to the Aliens' Law vulnerable individuals and families having minor children, may be detained only in very exceptional cases taking into consideration also the interests of the child and vulnerable individuals (Art. 114(3)). The definition of</p>



		vulnerable individuals according to the Law encompasses minors, persons with disabilities, persons above 75 years of age, single parent with minor children, pregnant women, victims of torture, rape or other serious psychological, physical or sexual violence (Art. 18 ¹).
Other	No	

Necessity and Proportionality Test and Individual Examination

9. Is there an explicit obligation to detain asylum seekers only:

Question	Answer	Comment
Only if a particular ground for detention exists?	Yes	There are two relevant provisions in this respect in the Aliens' Law. Art. 113(4) of the Aliens' Law (introduced through amendment to the Law on 24 October 2013) explicitly obliges the authorities to use detention of asylum seekers on the ground of illegal entry or stay in Lithuania <u>only in case of manifestly unfounded claim or when asylum seeker is refused temporary</u>



		territorial asylum (provided there is a risk of absconding). Also, Art. 113(2) provide that detention of asylum seeker in Dublin procedures is possible only if detention <u>is necessary for the adoption or execution of a relevant decision</u> (e.g. in case of risk of absconding or hampering expulsion/transfer procedure).
After an individualized examination?	No	There are no explicit guarantees for individual examination in the legislation. However, it could be implied that since the submission to the court is individual, examination in principle should also be individual. In addition, the jurisprudence of courts confirms that the need for detention shall be examined on individual basis. For instance, the Supreme Administrative Court of Lithuania (SAC) is forming a practice that asylum seekers who are returned under Dublin II Regulation from another Member State shall be detained as they are abusing asylum procedures and



		<p>obstruct the adoption of final decision. However, the same court is also adopting decisions not to detain, which shows that each case is examined individually. Also, Svencionys district court in its decision of 18/04/2013 in an administrative case No. A-540-617/2013 referred specifically to this practice by SAC and indicated that each case on detention shall be decided individually.</p>
<p>As a last resort if other less coercive measures are not applicable?</p>	<p>No</p>	<p>There is no explicit guarantee for asylum seekers or also other foreigners in the Aliens' Law which would ensure that firstly less coercive measures are applied. Indirectly, the application of alternative measures to detention depends on specific conditions (e.g. identity of the foreigner shall be known, he/she does not pose risk to state security and public order, he/she cooperates with the court in establishing a legal status, etc.) (Art. 115(1) of the Aliens' Law). However, some evidence of application of last resort principle is</p>



		<p>found in the jurisprudence of courts. For instance, in its decision of 22/11/2012 in administrative case No. N⁵⁷⁵-1317/2012 the SAC referred to the Resolution of the Constitutional Court of 05/02/1999 whereby it ruled that restriction on the freedom of person is possible only when it is necessary and indispensable, which means that detention is a measure <i>ultima ratio</i> (last resort) and may be applicable only in cases when objectives of the law may not be achieved by other means. In this case, the SAC did not receive any evidence from institutions requesting detention of the applicant that this is necessary and last resort measure, thus ordered alternative to detention. In another case, the SAC has stated that in other words, if a possibility to apply alternative measures to detention exists, such measures shall be applied in order to guarantee the rights of the individual (decision of 15/05/2013 in administrative case No.</p>
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N-575-52/2013).

10. Does the national legal framework take into account the principles of necessity and proportionality, and if so, how?

Yes to a certain extent, provisions of the Aliens' Law guarantee that detention of asylum seekers is applied only when it is necessary (e.g. Art. 113(2) provides that detention of asylum seeker in Dublin procedures is possible only if detention is necessary for the adoption or execution of a relevant decision (e.g. in case of risk of absconding or hampering expulsion/transfer procedure)). There is also a general provision in the Law, which states that freedom of movement of the foreigner may be limited in Lithuania if this is necessary for protecting state security, public order, health or morals of the population, prevention of crime and rights and freedoms of other persons (Art. 112). According to the Svencionys district court (which is mostly dealing with detention due to the fact that the FRC is located in its' area of jurisdiction and most of the foreigners are detained in the FRC), the necessity test is considered by applying the provisions on detention in conjunction with provisions on restriction of the freedom of movement (Art. 112) mentioned above.

Proportionality is not directly mentioned in the Aliens' Law or any other legislation related to asylum seekers. However, its application can be traced in the jurisprudence. For example, the decision of Svencionys district court of 15/03/2012 in administrative case No. A-453-617/2012, where the FRC requested the court to apply detention to a female foreigner with a minor son (infant) claiming that they have violated the internal order of the centre numerous times (they were returning to the centre after 2-3 days instead of within 24 hours) and thus may go hiding and constrain the execution of return decision. The court considered that because detention is a restriction of freedom of movement and while applying such restrictions on fundamental human rights, it is necessary to evaluate if, based on current circumstances, detention is proportional to the objectives sought by this measure. According to the court, detention of the foreigner due to his expulsion from the country would be justified only if restrictions on the person considering the circumstances may be recognized as proportional measure and when expulsion is being executed under reasonable time limits. While in case of the applicant the travel documents are not yet received, thus the expulsion procedure will take some time. The date of expulsion is also not yet clear, therefore detention period may last indefinitely. The failure of the state institutions to undertake effective measures to implement the expulsion decision of the Migration Department cannot create negative consequences for the applicant for indefinite time thereby restricting the freedom of the foreigner. Lastly, the court considered that the applicant's identity is established, there is no data that she would pose a risk to public order or state security, she has a minor child who cannot be detained and should stay with the mother. Even if she has been violating the order of the FRC, she had always informed the centre about the delayed return to the centre before the end of the deadline. As a result, the court assigned an alternative measure (periodic registration at police office) as it has considered detention being not proportional measure in this case. The same court referred directly to proportionality of the measure test in its decision



of 22 June 2012 in administrative case No. A-810-617/2012. In this case the applicant requested review of detention and application of alternative measure to detention considering that his identity is established, he is cooperating with authorities and poses no risk to state security and public order, and despite the fact that he is to be deported and is currently in illegal stay status. The court turned detention into alternative measure to detention on the basis that the foreigner has sufficient resources for living and available residence place until deportation takes place. The court considered that detention would not be proportional measure in this case. Evidences of applying the principle of proportionality can be found also in decisions of higher instance courts. For example, in its decision of 25/01/2012 in a case No. N⁵⁷⁵-1021/2012 the Supreme Administrative Court stated that it is necessary to evaluate the proportionality of detention to the objectives sought in these particular circumstances of the case and referred to reasonable time limits for expulsion. Considering that the date of applicant's expulsion from Lithuania is not yet defined, detention cannot last indefinitely, while the person cannot suffer negative consequences due to inactivity of the authorities in undertaking effective measures for implementation of expulsion decision. It ruled that detention is not proportional and thus alternative measure should be applied (periodic registration at police).

11. Is there an obligation established in law to inform detained asylum seekers about the existence of alternatives to detention? What are the possible consequences if they are not informed?

There is no such obligation in law, thus the consequences of not informing cannot be established. There is only an obligation contained in the Aliens' Law to provide an asylum seeker with the court decision on detention or assignment of alternative measure to detention immediately and in a language in which he/she understands. Such decision shall indicate the reasons for applying detention or assigning alternative measure to detention (Art. 116(3)). In the bylaw there is a general obligation to provide information to asylum seekers about their legal status in Lithuania and decisions adopted that concern them (para. 9.5.3 of the FRC Statute, approved by the Order of Head of the State Border Guard Service (SBGS) to the Ministry of Interior (MOI) of 30 September 2011). There is corresponding right of the foreigner to receive information about his/her legal status in Lithuania included in para. 17.2 of the Order on the Conditions and Order of Temporary Accommodation of Foreigner in the FRC, approved by the Order of the Minister of Interior of 4 October 2007 (Order on Accommodation of Foreigners in the FRC). Theoretically, it could be said that the right to free legal assistance guaranteed by the state, provided in Art. 116(1) of Aliens' Law, should ensure that the person who is detained is informed by the advocate about his/her rights and raise the issue of alternative to detention in the court if necessary.

Alternatives in national law

12. Alternatives to detention for asylum seekers:
- a) Is there an explicit obligation to establish alternatives to detention under the national legal framework?

MADE-REAL: LEGAL QUESTIONNAIRE

Partially, the Aliens' Law establishes the obligation for police or other law enforcement agencies to approach the district court within 48 hours from the moment of detention of the foreigner, if there are grounds for detention according to the Law for more than 48 hours or assignment of an alternative measure to detention (Art. 116(1). According to the judge of Svencionys district court (which is mostly dealing with detention) in his practice, if there are accommodation arrangements, the priority is given to an alternative measure than detention.

- b) Are some examples of alternatives to detention already laid down in national legislation and if so, which?

Yes, national legislation explicitly provides for a list of alternatives to detention in the Aliens' Law. The Law envisages the possibility of applying alternatives to detention when the court is satisfied that the foreigner whose identity is established, does not pose any threat to national security or public order, assists the court in determining his/her legal status in Lithuania, taking into account other circumstances, may adopt a decision not to detain a person, but to apply an alternative measure to detention (Art. 115). The following alternatives are available based on the legislation:

- 1) periodical reporting to territorial police office at a certain time;*
 - 2) reporting by means of communication at certain time to the territorial police Office his/her place of stay;*
 - 3) placing of an unaccompanied minor at a social institution;*
 - 4) trusting the foreigner to the guardianship by the citizen of Lithuania or a foreigner legally residing in Lithuania, who have family relations with the foreigner subject to detention, if this person committed to take care and maintain the foreigner;*
 - 5) accommodating the foreigner at the FRC without applying the restrictions on the freedom of movement (this alternative is applicable to asylum seekers only).*
- If these measures assigned by the court are not complied with, the territorial police office shall apply to the court with submission for detention of the foreigner.*

- c) Is it an exhaustive or an indicative list?

[Please do not describe here the legal framework on the functioning of alternatives to detention; a detailed section will follow. Please comment where necessary.]

Question	Answer	Comment
Explicit obligation	No	The law mentions alternatives to detention in the Aliens' Law explicitly, however the application is not mandatory and is left to the discretion of the court (as the court "may" assign it).
Alternatives already	Yes	Alternatives are laid



laid down?		down in the legislation (Art. 115 of the Aliens' Law).
If yes, which alternatives are mentioned?	-	Full list presented under section b) above.
Is it an indicative or exhaustive list?	-	It is an exhaustive list.

13. Are alternatives to detention foreseen for specific groups of asylum seekers?

Group	Answer	Comment
A/S subject to a Dublin procedure	No	The Aliens' Law does not relate the application of alternatives to a certain stage of asylum procedure, thus they could be applicable to Dublin procedure also, however there is no explicit mentioning of specific alternatives related to this procedure namely. It should be mentioned though that the practice of the SAC is to apply detention in Dublin II return cases, as asylum seekers are considered as misusing the asylum procedure and obstructing the adoption of final decision, but there are also other decisions that do not authorize detention. The lower courts do not automatically follow the practice of

		detaining applicants in Dublin cases, thus they sometimes apply alternatives at this stage.
Unaccompanied minors?	Yes	Alternative to detention mentioned in Art. 115(3) of the Aliens' Law - placing an unaccompanied minor at a social institution -, is directly related to unaccompanied minors' situation.
Vulnerable A/S other than UAMs?	No	The Aliens' Law does not relate the application of alternatives to a certain group of persons (except particular alternative for UAMs), thus they could be applied to any asylum seeker.
Other?	-	-

14. Alternatives to detention for other categories of migrants:

- a) Are alternatives to detention provided for in legislation for other categories of migrants? (yes/no)

Yes. Alternatives to detention mentioned in Art. 115 of the Aliens' Law are applicable to all foreigners (migrants), not exclusively asylum seekers. One measure though is applicable to asylum seekers only (Art. 115(5) - accommodation of the foreigner at the FRC without applying the restrictions on the freedom of movement).

- b) If so for which groups?

Please comment when necessary.

Group	Alternatives provided in law?	Comment
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<p>Individuals subject to a return procedure</p>	<p>Yes</p>	<p>Alternatives to detention mentioned in Art. 115 of the Aliens' Law are applicable to all foreigners (migrants), thus could cover individuals subject to return procedure also. One measure though is applicable to asylum seekers only (Art. 115(5) - accommodation of the foreigner at the FRC without applying the restrictions on the freedom of movement).</p>
<p>Exclusively for failed asylum seekers</p>	<p>No</p>	<p>There are no specific alternatives that would be envisaged exclusively for failed asylum seekers. Alternatives to detention mentioned in Art. 115 of the Aliens' Law are generally applicable to all foreigners (migrants). One measure though is applicable to asylum seekers only (Art. 115(5)), which would be applied until the final decision on asylum application is taken, but not afterwards.</p>
<p>Particular vulnerable group: children, families, persons with disabilities, persons with health issues, victims of torture, or other</p>	<p>Yes</p>	<p>Alternatives to detention mentioned in Art. 115 of the Aliens' Law are applicable to all foreigners (migrants), thus could cover vulnerable groups also. One measure though is applicable to asylum seekers only (Art. 115(5)). There is also courts' jurisprudence that refers</p>



		to vulnerability of the applicant in detention cases (e.g. pregnant women, minor children).
Other (please specify)	-	

15. Legislative amendments/developments:

- a) Have any changes already been made to the national legal framework concerning alternatives to detention?

Alternatives to detention were introduced to the legislation with the adoption of the Aliens' Law in 2004. However, it was supplemented on 28 November 2006 with the provision restricting the application of Art. 115(5) to the asylum seekers only. No further amendments to the provisions on alternatives have been made since then.

- b) Were they made in view of the transposition of Directive 2013/33/EU?

No, as this Directive is still not transposed in Lithuania.

- c) If not, are you aware of any legislative proposals that are pending, either in view of the transposition of the recast Directive or independently of the transposition, and could you briefly comment as regards their content as they relate to alternatives to detention?

There are no drafts at the moment for transposition of this or other recast directives. According to information available to the author of this Report, there is one pending draft law to amend the Law on Aliens' (as of April 2014). The draft law on amendments contain proposals related to detention of foreigners, which may negatively affect also asylum seekers. The amendments introduce the circumstances that shall be taken into account in order to determine whether there is a risk of absconding (new Art. 113(5)). Among these circumstances that could be applicable to asylum seekers are, e.g.: foreigner does not respect the alternative measure to detention assigned by the court; foreigner who is accommodated at the FRC without restrictions on the freedom of movement violates the order on temporary departure from the FRC; foreigner applies for asylum during pre-trial investigation with a view of avoiding criminal responsibility for illegal crossing of the border; foreigner's stay in the Republic of Lithuania may pose a risk to state security or public order.

B. National Legal Framework on the functioning of existing alternatives to detention

General

MADE-REAL: LEGAL QUESTIONNAIRE

16. What types of alternatives to detention are implemented in your Member State? Which categories of third country nationals do they concern? (i.e. asylum seekers, UAMs etc.)

Types of alternatives	Implementation in practice? (without description)	Group concerned
Obligation to surrender passport and documents	No	
Regular reporting to the police	Yes	All foreigners, including asylum seekers
Deposit of adequate financial guarantee	No	
Community release/supervision	Yes	All foreigners, including asylum seekers
Designated residence	Yes	Asylum seekers only (accommodation at FRC without restriction to the freedom of movement), UAMs (accommodation at the Refugee Reception Centre)
Electronic monitoring	No	
Other (please specify)	-	

17. How is the functioning of (the) existing particular scheme(s) of alternatives to detention regulated? (Please comment on the nature and level of the different norms employed: legislative, regulatory, administrative-like instructions/circulars etc.)

Alternatives to detention are regulated by the Aliens' Law. The Law envisages the possibility of applying alternatives to detention when the court is satisfied that the foreigner whose identity is established, does not pose any threat to national security or public order, assists the court in determining his/her legal status in Lithuania, taking into account other circumstances, may adopt a decision not to detain a person, but to apply an alternative measure to detention (Art. 115). Police or other law enforcement agencies approach the district court within 48 hours from the moment of detention of the foreigner, if there are grounds for detention according to the Law for more than 48 hours or assignment of an alternative measure to detention (Art. 116(1)). According to the judge of Svencionys district court (which is mostly dealing with detention) in his practice, if there are accommodation arrangements, the priority is given to an alternative measure than detention. Certain alternatives to detention are regulated by the bylaws. For instance alternative related to

accommodation at the FRC without applying restrictions of movement is regulated by the Order on Accommodation of Foreigners in the FRC; and to a certain extent by the FRC Statute. Alternative related to accommodation of unaccompanied minors at the Refugee Reception Centre (RRC) is regulated by the Regulations on accommodation of unaccompanied minor asylum seekers in the Refugee Reception Centre, approved by the Order No. 1V-31/A1-28 of the Minister of Interior and the Minister of Social Security and Labour on 2 February 2005⁷.

18. Please indicate the title, date, number and references of publication into the official gazette (if applicable) of the legal measure(s).

- Send us as an annex an electronic version (or link) to the text of the measure(s) in question
- For MS other than the UK and Belgium: Please provide access to any translation of the above into English, if they are available (even if it concerns unofficial, non-binding translations undertaken by UNHCR etc., this will be used for our comprehension)

Several legal acts are of relevance to alternatives to detention, thus their references are mentioned in separate tables below.

Title	Law on Legal Status of Aliens of the Republic of Lithuania
Date	29 April 2004 (with subsequent amendments)
Number	IX-2206
Reference of publication in the official journal (if applicable)	News, 2004, No. 73-2539 Amendment relevant for article on alternative measures to detention: No. X-924, 2006-11-28, News, 2006, No. 137-5199 (2006-12-16)
Relevant link	http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=458448&p_tr2=2 (version of the Law in Lithuanian language only).

Title	Order and Conditions of Temporary Accommodation of Foreigners in the FRC approved by the Order of the Minister of Interior
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⁷ News, 2005, No. 20-641.

MADE-REAL: LEGAL QUESTIONNAIRE

Date	4 October 2007 (with subsequent amendments)
Number	No. 1V-340
Reference of publication in the official journal (if applicable)	State News, 2007-10-11, No. 105-4326. Amendments: No. 1V-700, State News, 2011-09-24, No. 116-5482; No. 1V-727, State News, 2013-08-31, No. 92-4614.
Relevant link	http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=305952&p_tr2=2 (version of the Order in Lithuanian language only).

Title	Statute of the Foreigners Registration Centre to the State Border Guard Service of the MOI, approved by the Order of the Head of the State Border Guard Service on Approval of Regulations of Branches of State Border Guard Service and Border Guard School
Date	30 September 2011 (with subsequent amendments)
Number	No. 4-796
Reference of publication in the official journal (if applicable)	News, Relevant amendments: No. 4-872, News, No. 152-7809 , 2012-12-22
Relevant link	http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=408365 (version of the Order in Lithuanian language only).

Title	Regulations on accommodation of unaccompanied minor asylum seekers in the Refugee Reception Centre, approved by the Order of the Minister of Interior and the Minister of Social Security and Labour
Date	2 February 2005
Number	No. 1V-31/A1-28
Reference	News, 2005, N0. 20-641



of publication in the official journal (if applicable)	
Relevant link	http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=250167&p_tr2=2 (version of the Order in Lithuanian language only).

Analysis of each alternative to detention

19. Please provide the following information, as it is stated in the law/implementing circulars etc., for **each of the alternatives to detention** that is implemented:

- a) Summarize the basic characteristics/nature of the scheme as they are described in law/circulars etc. (namely does it consist of reporting obligations, financial guarantee etc.)

The Aliens' Law provides for general conditions in applying the alternatives to detention, as well as lists the alternatives, without providing any further specification. The possibility of applying alternatives to detention exists when the court is satisfied that three cumulative conditions are met (Art. 115(1)):

- 1) *The foreigner's identity is established;*
- 2) *He/she does not pose any threat to national security or public order;*
- 3) *He/she provides assistance to the court in determining his/her legal status in Lithuania.*

In the context of the above conditions the SAC established that the question of application of alternatives to detention is within the discretion of the court. It also stated that the inapplicability of at least one of the circumstances listed in Art. 115(1) of the Aliens' Law (see above), is a sufficient ground for the court to refuse applying alternative measures to detention, since those circumstances, due to their significance and importance for a proper administration of aliens who enter Lithuania illegally, must be regarded cumulatively as an obligatory condition for applying alternatives to detention.⁸

The court may take into account other circumstances (Art. 115(1) of the Aliens' Law). Even if the Law provides consideration of other circumstances, it does not specify what "other circumstances" could be, and in practice, no other circumstances than those explicitly enumerated by the law are considered by the courts.⁹ Usually courts refuse to grant alternatives to detention when a person's identity has not been established, or when a person breached the conditions of an alternative that was previously applied. Nevertheless, there have been cases when courts ordered the release from detention of a rejected asylum seeker whose identity could not be established but the person had spent several years in detention without prospects of prompt expulsion.¹⁰ Jurisprudence of the SAC confirms that the court is

⁸ Supreme Administrative Court of Lithuania, judgement of 28 May 2009, No. N^{575-5928/2009}.

⁹ Biekša, L., Bručkaitė G., Samuchovaitė, E., *Detention of asylum seekers and alternatives to detention in Lithuania*, Lithuanian Red Cross Society, Vilnius, 2011, p. 25.

¹⁰ *Ibid*, *Detention of asylum seekers and alternatives to detention in Lithuania*, p. 6.

justifying the application of alternatives on the following individual circumstances (administrative cases No. N⁵⁷⁵-52/2013 (decision of 15/05/2013), N⁵⁷⁵-1021/2012 (25/01/2012), N⁵⁷⁵-1317/2012 (22/11/2012), etc):

- Guarantee by another person (in case of request to stay in the residence of Lithuanian resident);
- Guarantees by the spouse to provide residence in a flat owned by the spouse; marriage to a Lithuanian citizen;
- Efforts by a third country national to regularize legal status: formalization of documents related to legal status in Lithuania; efforts to legalize stay in Lithuania;
- Willingness to reside in Lithuania expressed during the first interview and behaviour confirming such willingness: returned to grandmother several times, did not attempt to leave for other EU countries;
- Period of residence in Lithuania (e.g. since 1970), elderly age.

This practice clearly stresses the existence of social connections, place of residence, sources of income. This is a very important principle for the institute of alternatives to detention, while this principle is still not well understood by a number of institutions. Furthermore, the SAC established that when there are no grounds to detain an alien, the question whether to apply alternatives to detention is not even examined.¹¹

The practice of district courts in refusing alternatives to detention confirms the application of certain circumstances that play a role:

- Foreigner does not have a legal source of income, there are no persons who could take care, maintain him/her (decision of Svencionys district court in case No. A-1603-665/2012);
- Foreigner does not have personal identification documents, source of living and other income, no persons to take care or consenting to take care of him/her, legal status in Lithuania is not determined (decision of Svencionys district court in case No. A-1119-665/2012).

Examples of alternative measures as ordered by the courts in practice:

- Allow the foreigner X to be taken to care by person Y by accommodating him/her in his/her place of residence at address [...];
- Oblige the person X to communicate to [...] police office by means of communication about his/her place of stay every week at working hours on Tuesdays and Thursdays;
- Oblige the person X to visit [...] police office (located at address [...]) every week on Monday-Friday from 10.00-12.00 a.m.

Below is a description of each alternative provided by the law as it is reflected in the legislation and jurisprudence.

- **Alternative No. 1 - periodical reporting to territorial police Office at certain time** (Para. 1 of Art. 115(2) of the Aliens' Law). This alternative is not further detailed in the legislation, but it could be implied that it focuses on physical approaching the police at a specific time assigned by the court. The courts tend to choose this alternative, even when persons request for different alternatives, such as to inform the territorial police agency about one's whereabouts by means of communication. However, this alternative is usually applied in cases where the person has a place of residence, and thus in most situations e.g. rejected asylum seekers, complying with all the criteria set in the Law, cannot benefit from this

¹¹ Supreme Administrative Court of Lithuania, judgement of 30 March 2010, No. N-62-4398/2010; No. N⁵⁷⁵-56/2013.

alternative to detention.¹² In deciding upon the application of this alternative the courts take into account that:

- The foreigner has a place of residence, which he owns (decisions of Svencionys district court of 10/02/2012 in administrative case No. A-319-665/2012; of 18/01/2013, No. A-156-617/2013), in this case the court also determined that the foreigner is cooperating in establishment of his legal status in Lithuania on the basis that he concluded a legal representation agreement with an advocate;
- The foreigner has not violated the Order on Accommodation of Foreigners in the FRC (decision of Svencionys district court of 08/03/2012 in administrative case No. A-426-405/2012);
- The foreigner has resources for living (decisions of Svencionys district court of 08/03/2012 in administrative case No. A-426-405/2012; of 15/03/2012, No. A-453-617/2012; decision of SAC of 22/11/2012 in administrative case No. N⁵⁷⁵-1317/2012);
- The foreigner is granted by some persons a place of residence in Lithuania (decision of Svencionys district court of 08/03/2012 in administrative case No. A-426-405/2012); in this case the court also considered the necessity of detention referring that detention should be necessary for adoption of the decision and it was not in this particular case.
- The foreigner has relatives in Lithuania who have residence permits (decision of Svencionys district court of 15/03/2012, No. A-453-617/2012) or has spouse in Lithuania (decision of SAC of 22/11/2012 in administrative case No. N⁵⁷⁵-1317/2012); for instance, in a decision of Svencionys district court of 27/04/2012, case No. A-624-617/2012, the court decided to apply alternative measure to detention (registration at police office) having considered that the applicant has three minor children who need to stay with their mother and that her spouse is living in Lithuania.
- **Alternative No. 2 - reporting by means of communication at certain time to the territorial police Office his/her place of stay** (Para. 2 of Art. 115(2) of the Aliens' Law). This alternative is not further detailed in the legislation, but it could be implied that it means communication of information about the place of stay of the person, but not physically approaching the authorities. For instance, the SAC ordered in its decision of 15/05/2013 in a case No. N⁵⁷⁵-52/2013 the application of this alternative in combination with another alternative – trusting the foreigner to supervision by another person, because there was no sufficient evidence proving the family links of the applicant to that person (grandmother).
- **Alternative No. 3 - placing of an unaccompanied minor at a social institution** (Para. 3 of Art. 115(2) of the Aliens' Law). This alternative is not further detailed in the Aliens' Law, but the by-laws regulating the placement of unaccompanied minors at the Refugee Reception Centre (RRC) mention that such minors are placed at the Centre, which is considered a social institution.

¹² Detention of asylum seekers and alternatives to detention in Lithuania, p. 5.

Theoretically, there could be a possibility to place the unaccompanied minor also in foster homes, but the authorities use the Centre, which is specialising on foreigners. According to the Regulations on accommodation of unaccompanied minor asylum seekers in the Refugee Reception Centre, unaccompanied minors are accommodated in the Centre on the basis of the Migration Department decision (para. 2), the Centre is assigned as temporary guardian of such a minor (para. 8).

- **Alternative No. 4 - trusting the foreigner to the guardianship/supervision by the citizen of Lithuania or a foreigner legally residing in Lithuania, who have family links with the foreigner subject to detention, if this person committed to take care and maintain the foreigner** (Para. 4 of Art. 115(2) of the Aliens' Law). This alternative is not further detailed in the legislation. The lawyers of the Lithuanian Red Cross identify some legal barriers in applying this alternative. For instance, if asylum seekers are residing outside the FRC, social guarantees, such as medical assistance, social assistance and monthly payments are only provided to those asylum seekers who stay in the Centre. Meanwhile, those who reside in the place of their choice do not have access to medical assistance in public healthcare institutions, no social or psychological counselling is provided to them, they do not receive any allowances to cover even the basic expenses, such as food or clothing, so all the resulting difficulties effectively discourage asylum seekers from leaving the FRC and residing in a place of their choice.¹³ Concerning the procedures for application of this alternative, the person concerned has to submit a request supported by a certificate of the Registry regarding the property (ownership rights) and a consent approved by a notary that he/she agrees to take care of the foreigner (to allow him/her to stay in the place of residence. In case where there was no sufficient evidence to establish family links, the SAC ordered this alternative in combination with another alternative (decision of 15/05/2013 in a case No. N^{575-52/2013}).
- **Alternative No. 5 - accommodating the foreigner at the FRC without applying the restrictions on the freedom of movement** (Para. 5 of Art. 115(2) of the Aliens' Law). This alternative is not further detailed in the Aliens' Law, except that it and the by-laws regulate the placement of asylum seekers and other foreigners at the FRC. The implementation of this alternative is further regulated by the Order on Accommodation of Foreigners in the FRC and to a certain extent the FRC Statute. According to the bylaws, only asylum seekers could be accommodated in this Centre without restricting their freedom of movement, all other foreigners stay in a more restricted regime in the same Centre. The lawyers of the Lithuanian Red Cross identify a good practice in Lithuania, because due to this alternative to detention, many asylum seekers are not detained, but accommodated at the FRC.¹⁴ This practice was clearly affected with the transposition of the EU Return Directive in Lithuania (as Lithuania applies it also to asylum seekers), when the number of detentions increased in autumn 2012. Also, lawyers report that there have been cases when even rejected asylum seekers awaiting expulsion were allowed to stay in the FRC without restricting their freedom of movement instead of applying for their detention, and this is also regarded as an example of good practice.¹⁵ For instance, Svencionys district

¹³ Ibid, p. 27.

¹⁴ Ibid, p. 27.

¹⁵ Ibid, p. 5.

court in decision of 02/11/2012, case No. A-1340-405/2012 ordered this alternative measure to the applicant whose identity was established even if he was illegally in the country.

- b) Which is the institution in charge of deciding which individuals should be submitted to these alternatives?

Alternatives are assigned by a district court of a place of stay of the foreigner, but submission to the court has to be made by the police or other law enforcement institutions. Most frequently submissions are made by police or the FRC. Submission is made if there are grounds for applying alternatives to detention and it needs to be made within 48 hours from the moment of detention of the foreigner (Art. 116(1) of the Aliens' Law) or within detention review procedure (Art. 118 of the Law). The applicant may also approach the court at any time to ask for application of alternative measures. In addition, the application of alternative measures may arise in appeal process (e.g. appealing decision of district court to the SAC). The same applies as concerns all alternatives.

- c) Can it act ex officio or only after the application of the concerned individual?

According to the Aliens' Law, the institutions act ex officio when they approach the court for applying an alternative to detention, no application of the concerned individual is needed. The same applies to all alternatives. At the same time, there could be application by the individual directly to the court asking for application of alternatives instead of detention. In addition, according to the established practice of the SAC, the court decides on application of alternative ex officio, when deciding on whether detention is necessary and proportional, even if the institution does not request alternative measures.

- d) Which organization/entity/actor is responsible for implementing/running this scheme?

Alternative No. 1 - periodical reporting to territorial police Office at certain time – the implementation of this alternative is run by the territorial police. There is no specific regulation on how to do it, only court decisions that mention specific time for the applicant to approach local police office (e.g. every Thursday from 10.00-12.00 a.m.).

Alternative No. 2 - reporting by means of communication at certain time to the territorial police Office his/her place of stay– the implementation of this alternative is run by the territorial police, no further specification is provided by the laws. The courts provide in this respect, e.g. that the person shall inform a certain police office about his/her place of stay by means of communication at working hours every Tuesday and Thursday.

Alternative No. 3 - placing an unaccompanied minor at a social institution – is run by the RRC if the minor is accommodated in this Centre, which accommodates these minors and is assigned the functions of the temporary guardian of the minor. However, the decision on accommodation of unaccompanied minor in this Centre is being taken by the Migration Department (para. 2 of the Regulations on accommodation of unaccompanied minors asylum seekers in the RRC).

Alternative No. 4 - trusting the foreigner to the guardianship by the citizen of Lithuania or a foreigner legally residing in Lithuania, who have family relations with the foreigner subject to detention, if this person committed to take care and maintain the foreigner – in this case the person who is undertaking a responsibility for the foreigner signs a commitment to provide a place of residence to the applicant.



Alternative No. 5 - accommodate the foreigner at the FRC without applying the restrictions on the freedom of movement - this alternative is run by the FRC, which accommodates asylum seekers without applying the restrictions on the freedom of movement separately from other asylum seekers who are detained and other migrants.

- e) If it is a governmental actor do they work in collaboration with other actors? If so who (civil society, local authorities, institutions etc.) and how?

All alternatives are implemented by government actors (except Alternative 4), funded by the state budget. NGOs are involved in providing their services in the RRC and the FRC, but only in as much as these centres allow for such activities and are willing to cooperate with NGOs. Possibility for cooperation is not explicitly provided in the bylaws regulating the activities of these institutions. The Statute of the FRC only provides for the right to cooperate with state and municipal institutions and relevant institutions of other states (para. 14). Also, on 19 September 2011 the Order on Accommodation in the FRC was supplemented by the provision stating the right of asylum seekers to contact relevant competent state institutions and bodies, international and non-governmental organisations and agencies (para. 17.17). In practice, several NGOs carry their activities in the Centre on a project basis.

- f) If different, which organisations/institutions are in charge of supervising the implementation of these mechanisms?

Alternatives are being reviewed by the court, while territorial police unit may approach the court for detention of the applicant if obligations under alternative to detention are not complied with (Art. 115(3) of the Aliens' Law).

- g) Is the alternative to detention of general application or does it relate only to certain categories of asylum seekers (such as families with children, unaccompanied minors etc.)?

All alternatives to detention are alternatives of general application and do not relate to certain categories of asylum seekers, they also apply to other migrants except Alternative No. 5, which is available for asylum seekers only. However, the alternatives may be relevant for one or another group of asylum seekers as they apply under certain conditions. For instance, Alternative No. 3 is relevant for unaccompanied minors only.

- h) Are A/S subject to this procedure provided with documentation certifying their status as an applicant for international protection or testifying that they are allowed to stay on the territory (in accordance with the Reception conditions directive)?

According to the Aliens' Law asylum seekers are issued the Foreigners' Registration Card by the Migration Department within 48 hours from the moment of granting temporary territorial asylum (Art. 78(1)). This document confirms that the applicant is an asylum seeker and is allowed to stay on the territory pending the examination of his/her asylum application. However, there is a reported problem concerning the registration of the applicants who submit their asylum applications in oral form. In this case, it takes some time to translate this

request to Lithuanian and register it by the competent institution. As a result, there have been cases when asylum seekers' applications were registered some month after submission of asylum application. In this period they do not enjoy the reception conditions, even though de facto the person is an asylum seeker.¹⁶

- i) What are the obligations that asylum seekers must comply with in the framework of the alternative to detention?

Alternative No. 1. There is no specific regulation on how this alternative shall be applied except the provisions of the Aliens' Law. But there is some court jurisprudence on actual application of this alternative. For instance, the Svencionys district court while examining the application of this alternative considered that the conditions for applying alternative to detention are met (i.e. the identity of the applicant is established, there is no data that she would be obstructing the establishment of her legal status or would be posing a threat to national security and public order), while the applicant has a place of residence, which she owns. The court therefore assigned alternative measure to detention – obligation to periodically report to a specific police station (every Thursday between 10.00-12.00 a.m.).¹⁷ This case concerned rejected asylum seeker who was considered as staying in the country illegally. It is a good practice that the courts extend the application of alternative measures to detention also to rejected asylum seekers. Differently, e.g. from alternative No. 2, the obligation under this alternative is to approach police station by physical presence and not means of communication.

Alternative No. 2. The main obligation under this alternative is to report by means of communication to police office, assigned by the court, no physical presence is required. There are few cases when this alternative has been assigned.

Alternative No. 3. The obligations of the minor who is placed at a social institution (predominantly in the Refugee Reception Centre) are to obey the rules in the Centre.

Alternative No. 4. The law does not specify any details of applying this alternative, while the practice of courts show that there is a requirement of written commitment signed by the person who supervises the asylum seeker. No special obligations are enumerated in the legislation.

Alternative No. 5. Asylum seekers accommodated at the FRC without applying the restrictions on the freedom of movement have general obligations related to observing the order in the Centre. There are no specific obligations related namely to the application of the alternative to detention, but rather common obligations for everyone living in the Centre. For instance, according to the Order on Accommodation of Foreigners in the FRC, persons residing in the Centre must obey the laws and other legal acts of Lithuania, as well as rules of internal order in the Centre; comply with the obligations stated in the decisions of the Migration Department and the courts; provide accurate and correct information about himself/herself, documents in possession, cooperate in establishment of identity, citizenship, the circumstances of arrival to Lithuania; allow the doctor to inspect the state of health; comply with the lawful requests of the administration of the Centre, behave in polite manner with administration and other inhabitants of the Centre; respect the rights and lawful

¹⁶ Biekša, L., Samuchovaitė, E., Priėmimo slygų direktyvos įgyvendinimo Lietuvos teisinėje sistemoje problemos, Etniškumo studijos, Vilnius, 2013/1, p. 21-22 (available in Lithuanian only, translation: *Problems of Implementation of the Reception Conditions Directive in Lithuanian Legal System*, Ethnicity Studies, Vilnius, 2013/1, p. 21-22).

¹⁷ Svencionys district court decision of 18 January 2013, in administrative case No. A-156-617/2013.

interests of other persons in the Centre; maintain the premises of common use and living space; maintain tidiness in living, common spaces and territories, observe personal hygiene; comply with other obligations provided by the laws of Lithuania (para. 21). Asylum seekers in addition shall declare their income and property in Lithuania within 3 days of granting temporary territorial asylum, as well as possession of mobile phones (para. 22).

- j) Could asylum seekers be placed in detention if they do not comply with certain obligations stipulated? If yes, please provide a short description of these obligations and explanation on the procedure.

Yes, the Aliens' Law provides that if the alternative measure assigned by the court decision is not complied with (e.g. asylum seeker fails to appear at the appropriate police agency at fixed time), the territorial police institution applies to the court with request to detain the foreigner (Art. 115(3)).

Access to rights and compatibility with human rights law

20. Do asylum seekers who are subject to an alternative to detention have access to the full range of rights according to the implementing law and as foreseen in the RCD and namely:

- a) to healthcare;

Yes. The provision of health care services to asylum seekers is regulated by several legal acts in Lithuania: Aliens' Law (Art. 71(1)), Law on Health Insurance (Art. 6(5), para. 3 of Art. 6(1)), Order on Accommodation in the FRC (paras. 31-40), Order of the Minister of Health Care No. V-836 on Hygiene Norm in FRC of 28 October 2005 (paras. 37-46) and other by-laws.

The Aliens' Law provides that during the period of examination of the asylum application the asylum seeker has a right to use free of charge necessary health care services in the FRC or the RRC (para. 6 of Art. 71(1)). According to the RRC Statute, the Centre shall create conditions to use necessary health care services in accordance with the Order determined by the Minister of Health (para. 9.7.3, as well as para. 10.11.1 of the Order on Accommodation in the RRC). Asylum seekers thus staying in this Centre have the right to use health care services (para. 11.5 of the Order on Accommodation in the RRC). However, such Order of the Minister of Health has never been adopted. The Order on Accommodation in the FRC provides also for a right to obtain necessary health care and social services free of charge (para. 17.4). The Order contains a separate section on health care and provides that persons are ensured primary health care services and necessary medical aid, including a possibility of vaccination (para. 31). Primary health care services are provided by the family doctor and nurse (para. 33), these services are paid by the budgetary allocations of the SBGS (para. 39), while services provided in public health care institutions are paid from the state budget according to the order determined by the laws of Lithuania (para. 40). However, according to information available, such order has never been adopted. As a result of lacking regulation on how these services shall be paid for, asylum seekers who are at the border, territorial police offices or staying in private accommodation face problems with accessing health care services.¹⁸ According to the Order on Hygiene Norm in FRC, the out-patient health care services should be provided to

¹⁸ *Problems of Implementation of the Reception Conditions Directive in Lithuanian Legal System*, p. 31.

asylum seekers accommodated at the FRC when services provided in the Centre are insufficient. The person shall be prescribed a specialist consultation or treatment at hospital and he/she shall be transferred there (para. 43). The lawyers of the Lithuanian Red Cross confirm that all persons detained or accommodated in the FRC are ensured the primary healthcare services and essential medical assistance. These services are provided by the general practitioner or other medical staff of the FRC subject to their competence, according to the needs of the persons detained or accommodated in the FRC. There are also three nurses working in the FRC seven days a week. The psychologist, as well as social worker, mostly communicates with persons with special needs.¹⁹ If a case is more complicated, the person is sent to the hospital for appropriate consultations or medical treatment.²⁰ In this case the costs are covered by the state. According to Art. 6(5) of the Law on Health Insurance, health care of asylum seekers shall be paid by the state in accordance with the order determined by the Government of Lithuania or institution authorized by it. However, no such order is adopted so far, thus it is not clear what institution is responsible for covering asylum seekers' health care if they stay outside the FRC.²¹ Thus, according to reports, the FRC constantly faces problems whereby health care institutions refuse provide consultations and services to persons, because there is no (as mentioned above) order determined how these services should be paid for.²² There have been temporary solutions of this problem where EU-funded project covered cooperation between social workers of Lithuanian Red Cross and the FRC doctors in registering asylum seekers for medical examinations and treatment, and accompanying them to see the doctor in a clinic in Vilnius. But the project was also covering only limited services and limited amounts for a person, it terminated in June 2012.²³ Worthwhile mentioning that the Law on Health Insurance provides for compulsory health insurance for unaccompanied minors (para. 3 of Art. 6(1)), as a result of amendment to the Law on 1 October 2013.

b) to education;

Yes. Even though the general Law on Education (new version of the law of 1 July 2011)²⁴ provides that every Lithuanian citizen and foreigner, having the right of permanent or temporary residence in Lithuania has the right to study, obtain education and acquire qualification (Art. 24(1)), asylum seekers would not likely be considered as legal residents, thus would fall out of application of this law. However, the Aliens' Law provides that during the period of examination of the asylum application the asylum seekers who are minors have a right to study in ordinary schools and vocational training schools (Art. 71(2)), this right is also explicitly mentioned for unaccompanied minors and realized in accordance with the order determined by the Minister of Education and Science (para. 2 of Art. 32(2)), no such right is guaranteed to the adults though. However adults have access to certain educational activities in the reception centres. For instance, according to the Order on Accommodation of Foreigners at the RRC, adults and children have access to Lithuanian language classes and courses on introduction to Lithuanian society, as well as vocational orientation (para. 10.9, 14.4, 16.1-16.2). The right to attend regular schools and pre-school institutions for children is also embodied in this Order (para. 13). The Order on Accommodation in the FRC mentions that foreigners who are minors have the right to attend the school in accordance with the

¹⁹ Detention of asylum seekers and alternatives to detention in Lithuania, p. 39.

²⁰ Ibid, p. 39.

²¹ Ibid, p. 40.

²² Problems of Implementation of the Reception Conditions Directive in Lithuanian Legal System, p. 32.

²³ Detention of asylum seekers and alternatives to detention in Lithuania, p. 40.

²⁴ No. XI-1281, 2011-03-17, News, 2011, No. 38-1804 (2011-03-31).

order determined by the Ministry of Education and Science (para. 17.16). The Order of the Minister of Education and Science No. ISAK-789 of 4 June 2003 (On implementation of the right of children to education in ordinary schools for foreigners who arrived to Lithuania for the purpose of work or stay)²⁵ states that unaccompanied minors shall be guaranteed education in ordinary schools irrespective of legality of their stay in Lithuania (para. 1). This provision was introduced to the Order through amendment of 19 August 2004.²⁶ However, there is no order on implementation of this right for children of asylum seekers who are not unaccompanied. The lawyers previously reported that for those minors who are exceptionally detained there are no conditions created for their studies at places of detention or possibilities to attend school.²⁷ However, recently the practice has been changing and detained children started to attend local school accompanied by the social workers.

c) access to the labour market;

According to current legislation, asylum seekers do not have a right to work while in the asylum procedure irrespective of whether alternative measures to detention apply to them or not. Thus no asylum seekers have access to the labour market.

d) to accommodation and in general assistance provided in kind or to financial assistance

Yes. This issue is regulated by the Aliens' Law (Art. 71(1)), Order on Accommodation in the FRC (paras. 17.1, 18.1, 18.2), Order on Accommodation in the RRC (paras. 10.1, 10.3, 11.1-11.4., 11.6), Order of the Minister of Social Security and Labour on Payment to Foreigners of Monthly Allowance for Minor Expenses, Order on Implementation of the Right of the Foreigner to Obtain Compensation for the Use of Public Transportation. There are several types of assistance:

- a) accommodation in the reception centres and services, material conditions provided there (including food, clothing)
- b) monthly cash allowance in the form of financial assistance for petty expenses
- c) compensation for public transport in relation to asylum procedure
- d) right to process notary documents and free of charge interpretation

The Aliens' Law provides that during the period of examination of the asylum application the asylum seeker has a right to reside in the FRC or the RRC and make use of their services; receive a monthly cash allowance in accordance with the order determined by the Minister of Social Security and Labour, compensation for use of public transport when it is related to examination of the asylum application; process in a notary form the documents, related to examination of asylum application; make use free of charge of the services of interpreter (paras. 1, 2, 4, 5, 7 of Art. 71(1)). When mentioning the monthly cash allowance, the Law does not limit it to certain asylum seekers or to certain places of stay of asylum seekers, or in no other ways differentiate the conditions for payment of such an allowance. Worthwhile mentioning that there is no common legal act regulating the payment of this allowance. For

²⁵ News, 2003, No. 57-2554.

²⁶ Order No. ISAK-1297, State news, 24-08-2004, No. 131-4742.

²⁷ Problems of Implementation of the Reception Conditions Directive in Lithuanian Legal System, p. 26.

those asylum seekers who reside in the RRC (UAMs only), the allowance is paid in accordance with the Order approved by the Minister of Social Security and Labour (see below), which covers those staying at this Centre (UAMs). The payment of allowance for asylum seekers accommodated in the FRC is not regulated by any by-law, except a general provision on the right to such allowance mentioned in the Order on Accommodation in the FRC. In the period between 13 February 2002 to 14 August 2009 the payment of allowance for persons staying both at RRC and FRC was regulated by one single legal act, but since it was changed by the Order of the Minister of Social Security and Labour, only payment to those staying in the RRC has been regulated (in the context of this study the Order basically applies to UAMs only). In practice, asylum seekers staying at the FRC are paid monthly allowance according to the old order.²⁸ At the same time, it should be stressed that the amount of the allowance is really very modest, is not based on any objective criteria and does not allow to meet the basic needs of an asylum seeker (e.g. hygiene items, educational tools, medicine, etc.).²⁹ There is a separate Order of the Minister of Social Security and Labour on Payment to Foreigners of Monthly Allowance for Minor Expenses, which provides that foreigners are assigned a monthly allowance from the state budget for petty expenses in the amount of 10 percent of state supported income (this is around 10 euro). This allowance is paid monthly in the RRC in accordance with the Order determined by the Director of the Centre. The Order provides for the same conditions of reduction or withdrawal of the allowance up to 75 percent for a period of up to 3 months as mentioned below (para. 2-4).

Both Orders on accommodation of foreigners in FRC and RRC provide for a possibility to reduce or completely withdraw financial assistance for asylum seekers as a disciplinary measure for violation of internal rules of the centre (para. 26.2 of the Order on Accommodation in the FRC, paras. 17.1, 17.4, 18.2-18.4, 19 of the Order on Accommodation in the RRC). For instance, according to the Order on Accommodation in the RRC, financial assistance may be reduced to 75 percent for a period of up to 3 months, as well as withdrawn completely for a period of up to 3 months in case of constant violation of internal order of the Centre, as well as failure to comply with obligations in the Centre (e.g. to perform medical screening, respect for the rights of others, cleaning of living premises, etc.), as well as for unauthorized leave from the Centre for more than 72 hours. In practice, such disciplinary measures are assigned quite frequently, e.g. in 2011 – 71 times, in first 9 months of 2012 – 201 time, the most frequent being the reduction of monthly cash allowance or withdrawal of its payment.³⁰

The orders on accommodation of foreigners in the FRC and RRC provide for food and clothing. Para. 42 of the Order on Accommodation of Foreigners in the FRC provides that adults are given food free of charge 3 times per day, while minors receive food 4 times per day in accordance with the hygiene norms approved by the Government of Lithuania. Furthermore, para. 43 provides for free of charge supply of clothing and footwear, but this is subject to possibilities of the Centre (thus it is not a guarantee). The main problem that has been raised recently was that the nutrition system at the FRC is centralised and does not take into account the religious aspects of some inhabitants (e.g. muslims, budists, as concerns supply of pork meat) (see more detailed information under question 23 below). Also, there are problems with provision of clothing/footwear and asylum seekers in this respect frequently rely on support from humanitarian organisations only. According to the Order on

²⁸ Ibid, p. 29-30.

²⁹ Ibid, p. 30.

³⁰ Ibid, p. 34.

Accommodation in the RRC, provision of food is organized in one of the three ways: paying a cash allowance for food, in a centralized way in a canteen of the Centre or by provision of food items in the amount of the food allowance (paras. 10.3-10.4). Situation with clothing and footwear is regulated in a similar way as in FRC (para. 10.7 of the Order on Accommodation in the RRC), thus there is no explicit obligation to provide clothing and footwear.

There is a separate Order of the Minister of Social Security and Labour on compensation for use of public transport when it is related to examination of the asylum application. The Order applies to asylum seekers in the RRC (in the context of this study the Order basically applies to UAMs only) and provides for compensation for the use of public transportation in cases when such use is related to asylum procedure, to sending by prescription of a doctor to health care institutions, visiting labour exchange office or participating in qualification raising or re-qualification courses (para. 1). In case the transportation is used for the purpose of asylum procedure, there should be an invitation of the inviting institution. The persons are compensated for public transportation if there are no possibilities to transport them by the vehicle of the Centre (para. 3). The foreigner is compensated for a paid travel ticket on the basis of request for compensation and invitation from institution visited with a mark that the visit did actually take place (para. 4). The Order also envisages compensation of transport expenses for those asylum seekers who stay outside the Centre under the same rules/procedure as explained above (paras. 5-6).

According to the reports, even if the legislation provides for a right of all asylum seekers to receive monthly cash allowance, in practice, those asylum seekers who are not granted temporary territorial asylum do not receive such allowance, as well as compensation for the use of public transportation in relation to the asylum procedure. Also, those asylum seekers who are allowed to stay in private accommodation by the Migration Department are not provided with material reception conditions (e.g. food, clothing, monthly allowance, free of charge health care services), except compensation for the use of public transport.³¹ Reception standards are not at all regulated by the legislation when asylum seekers are at the border or at local police office, except a few articles in the Aliens' Law.³² Thus mainly reception conditions are ensured only to those asylum seekers who stay at the FRC or RRC. Asylum seekers who stay at the border are helped by Caritas and the Lithuanian Red Cross, who cooperate with the SBGS. For instance, in the period of 2011-2012, the project of these three institutions was implemented (called "Adaptive reception of asylum seekers"). The project covered provision of humanitarian assistance for asylum seekers accommodated at the border (food, hygiene items). Another project was launched by Caritas and Lithuanian Red Cross in the FRC in May 2013 (called "Improvement of reception system and accommodation conditions for asylum seekers"). Within a framework of this project, a special day centre "Cultural Hill Side" was established and asylum seekers may obtain humanitarian assistance there: food packages, hygiene items and clothes.

e) to social and psychological assistance

³¹ Ibid, p. 22.

³² Ibid, p. 23, 27.

Yes, the Aliens' Law provides that during the period of examination of the asylum application the asylum seeker has a right to social services in the FRC or the RRC (para. 6 of Art. 71(1)). This right is confirmed by the Order on Accommodation in the RRC (para. 10.11.3 – concerning the right to use the services of a psychologist in the Centre; 16.3 – concerning the right to use the services of a psychologist free of charge). The Statute of the FRC provides that the centre organises and/or provides psychological and social assistance to foreigners accommodated and detained in the centre (para. 9.1.9). The Order on Accommodation in the FRC relates the right to use the services of a psychologist in the Centre to the vulnerability of the person (e.g. victims of torture or violence, minors, single women, elderly) and the needs of other persons (para. 19). In practice, there are reports that confirm the difficulties faced by the asylum seekers in using the services of a social worker or a psychologist at the FRC, because these services are only accessible to those who can speak Lithuanian or Russian only.³³ There are also no mandatory provision of rehabilitation services and necessary mental health care and consultations by qualified specialists in case of minors who were abused, as provided in Art. 18(2) of the Reception Conditions Directive.³⁴

If not please describe the gaps.

Right	Yes/No	Comment on the gaps
Healthcare	Yes	Asylum seekers are entitled to free of charge necessary health care in the reception centres only, but if they stay in another place of residence, are at the border or local police offices, they have difficulties to access free medical care, as well as if they need more sophisticated health care services. These difficulties are faced because there is no implementing legislation adopted with regard to asylum seekers outside the reception centres.
Education	Yes	Only minor asylum seekers have access to education, but not adults.

³³ Ibid, p. 33.

³⁴ Ibid.

Access to the labour market	No	Asylum seekers do not have access to the labour market at all pending the examination of their asylum application.
In kind/financial assistance	Yes	<p>Asylum seekers are entitled to financial assistance in the reception centres only, but if they stay in another place of residence, they have no right to receive monthly allowances. Also, financial assistance is extremely small and does not ensure the coverage of basic needs, while the grounds for reducing and withdrawing assistance are wide and widely applied. In addition, there is no legal act specifically regulating the implementation of the right to monthly assistance for asylum seekers staying in the FRC.</p> <p>Also problematic is provision of food in the FRC. It is only provided through in kind form in a centralised way and does not always respect the religious concerns of the foreigners. As concerns clothing and footwear in the FRC and RRC, asylum seekers are provided with them only on discretionary basis, there is no obligation in the legislation to ensure the right to get this type of in kind assistance.</p>
Social/psychological	Yes	Such assistance is available



assistance		only to those asylum seekers who stay in reception centres and also may be limited in practice due to lack of foreign language skills by personnel of the FRC providing such services.
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21. Is there an obligation to provide asylum seekers with information about the procedure with regards to the alternatives to detention they are subject to? Is there an obligation to inform them about the legal remedies to object the imposition of an alternative to detention?

The Aliens' Law does not contain an explicit obligation to provide an asylum seeker with information about the procedure with regard to alternatives to detention, he/she is only informed post facto, when court decision to assign an alternative to detention is taken, the foreigner shall be informed immediately in a language he/she understands. This information should contain the reasons for assigning alternative measure to detention (Art. 116(3)). Also, there is a possibility to appeal against the decision of district court in accordance with the order of administrative procedure. The complaint may be submitted via the FRC, which transfers the complaint of the foreigner to the SAC (Art. 117(1) of the Aliens' Law). It should also be mentioned that the Statute of the FRC establishes that one of the tasks of the FRC is to inform the foreigners detained and accommodated in the Centre about their legal status in Lithuania and get them acquainted with decisions taken in their regard (para. 9.5.3). The Order on Accommodation in the FRC provides that persons accommodated in the Centre are informed upon signature about their rights, obligations and internal rules of the Centre, information is provided in the language which they understand (para. 16). This provision was amended on 19 September 2011 and now provides that such information is supplied systematically, during the whole period of stay in the Centre and not less frequently than once per month. In practice, however, there are difficulties with provision of information to detained asylum seekers, because, according the lawyers, the leaflets of Lithuanian Red Cross about the asylum procedure and support during it are not distributed in the FRC.³⁵ Also, International Organisation for Migration (IOM) having conducted the interviews of asylum seekers reports that majority of asylum seekers who arrived to the territory of Lithuania (at state border crossing point) and were interviewed have not been explained their rights or received any written information. Another problem related to information and accessibility of legal assistance as reported by IOM is that according to majority of asylum seekers who were interviewed they received no information about the possibility to make use of legal services, thus did not request such services³⁶.

³⁵ *Problems of Implementation of the Reception Conditions Directive in Lithuanian Legal System*, p. 26.

³⁶ TMO, Prieglobsio Lietuvos Respublikoje prašytojų, pateikusių apeliacijų, apklausa. Tyrimo ataskaita, 2012 (translation: IOM, *Interview of asylum seekers who submitted appeal. Survey Report*, 2012).

22. a) Do they have access to legal assistance and representation for the purposes of their asylum application?

Yes, the Aliens' Law provides that during the period of examination of the asylum application the asylum seeker has a right to use state guaranteed legal assistance, if the laws of the Republic of Lithuania do not provide otherwise (para. 3 of Art. 71(1)). Also, the foreigner has a right to state guaranteed legal aid at the time of submission to the court on his/her detention or assignment of alternative measure and when this issue is being examined in the court (Art. 116(1) of the Aliens' Law) and also it is guaranteed to UAMs (para. 5 of Art. 32(1)). Furthermore, orders on accommodation of foreigners in reception centres also re-state this right (e.g. para. 17.3 of the Order on Accommodation in the FRC; para. 11.3 of the Order on Accommodation in the RRC). However, this legal assistance falls out of the scope of the general free legal aid system, which exists in Lithuania, because the later is not applicable to foreigners (Art. 1(3) of the Law on State Guaranteed Legal Aid³⁷). Also, even if this right provided by the Aliens' Law and other legal acts is not in any way limited, the Migration Department (responsible for organization of such assistance) in defining the conditions of use of state guaranteed legal aid is providing which exactly free of charge legal assistance shall be made available to asylum seekers. In law and in practice, free legal aid is provided to UAMs (during the initial interview and court hearing on application of an alternative to detention measure) and also other third country nationals at the time detention decision is being taken (court hearing). Currently, it is not provided during the subsequent review by the local court³⁸. In the context of reception conditions, state guaranteed and free of charge legal assistance is provided only in respect of court decisions to detain a foreigner or assign an alternative measure to him/her.³⁹ The Migration Department announces a public competition and hires a law company to provide legal aid to asylum seekers. However, the lack of state guaranteed legal assistance is compensated by the provision of free legal aid by the lawyers of the Lithuanian Red Cross, which is project-based and is also subject to the decision of the administration of the FRC to allow access of lawyers to the applicants.

- b) Is it free of charge for the AS or at his/her own expense?

Such legal aid guaranteed by the state is free of charge, but is limited to preparing appeals against negative decisions and representation in court, including for detention court hearings or deciding on alternatives to detention. However, it does not cover legal consultations related to any other question. The lawyers of the Lithuanian Red Cross provide legal consultations, which are outside the scope of state guaranteed legal assistance, but this often leads to situations where an asylum seeker is consulted by one lawyer, while his/her appeal is prepared and representation in court provided by another one. This results in confusion of asylum seekers who cannot understand why one lawyer cannot help with all legal aspects.⁴⁰ There is a possibility for asylum seekers also to hire an advocate on their own expense (e.g. para. 17.9 of the Order on Accommodation in the FRC).

³⁷ No. XII-270, 2013-05-09, News, 2013, No. 54-2675 (2013-05-25).

³⁸ Interview for Return Directive Study with FRC, SBGS, 2013.

³⁹ Problems of Implementation of the Reception Conditions Directive in Lithuanian Legal System, p. 35.

⁴⁰ Detention of asylum seekers and alternatives to detention in Lithuania, p. 31-32.

d) Is it provided ex officio or should they apply for it?

There is no clear procedure established by the law on how free legal aid to asylum seekers are provided, but applicants in principle have to ask for it, except court hearings on detention or assignment of an alternative measure to detention, where representation is ex officio.

23. According to your evaluation as legal experts, does each national legal scheme, as it is established under national law, respect the obligations of your Member State under international and European human rights law (in particular the prohibition of inhuman, degrading treatment and arbitrary deprivation of liberty)? Please use references to case-law where available (national jurisprudence and/or case-law from the Human Rights Committee/ECHR) in order to support your opinion.

The national legal scheme as established under national law and implemented in practice raise the following concerns in the broader human rights context:

- 1) *Material reception conditions of asylum seekers are not appropriate in terms of accommodation conditions at the border and the FRC, insufficient financial assistance to ensure for provision of basic needs, lack of reception conditions for those who stay in alternative accommodation than in the FRC or the RRC. For example, the European Commission against Racism and Intolerance (ECRI) in its fourth report on Lithuania as one of the problems mentions the accommodation conditions for asylum seekers at the border, where they spend the first 48 hours⁴¹.*
- 2) *Extensive attempts by the authorities to use detention as a measure where alternatives could apply, including in situations of vulnerable individuals, such as pregnant women, families, minor children (this is evidenced by a number of requests to the courts to authorize detention, which are not always accepted, because the courts do not consider detention necessary and/or proportional to the aims sought). Such practices, if authorized could raise concerns in view of Art. 5 of the ECHR.*
- 3) *There have been reports recently concerning violence against foreigners accommodated in the FRC and their mistreatment by the authorities, which may raise issues of Art. 3 of the ECHR. For instance, the Human Rights Monitoring Institute reports physical and psychological abuse of residents of the FRC during a search in the Centre by 40 officers on 17 October 2013, where the local police refused to open a pre-trial investigation and appeal by the Lithuanian Red Cross is currently pending before the court.⁴²*
- 4) *Respect for the freedom of religion. One of the concerns recently raised by the NGOs is nutrition system in the detention/accommodation centre for foreigners, which is in conflict with their religious beliefs. In this respect, the Ombudsperson of Equal*

⁴¹ European Commission against Racism and Intolerance, ECRI Report on Lithuania (fourth monitoring cycle), CRI(2011)38, published on 11 September 2011, para. 165, p. 41, available at: <http://www.coe.int/t/dghl/monitoring/ecri/Country-by-country/Lithuania/LTU-CbC-IV-2011-038-ENG.pdf> (accessed on 02/01/2014).

⁴² *Asylum seekers in Lithuania: instead of refuge – abuse at the hands of the officers*, available at: <http://www.hrmi.lt/en/new/911/> (accessed on 02/01/2014).

Opportunities made a conclusion on 6 January 2014 in response to a complaint submitted by a group of foreigners detained/accommodated in this centre. The applicants claimed that their nutrition in the centre does not respect their religious convictions, because they are provided with pork, which is not usable by muslims and that budists do not eat meat at all. The Ombudsperson concluded that restrictions on the possibility to have nutrition in accordance with their religious convictions for a large group of persons shall be considered as discrimination of these persons. It also stated, that even though organisation of a special nutrition for a part of residents of the FRC may lead to additional inconveniences while preparing the food, but the financial burden of the state and arising inconveniences cannot be considered sufficient and proportional ground to justify the failure to ensure the fundamental right of persons to religious freedom, in particular, considering the possibility for a state to provide support in various forms.⁴³

C. Relevant legal remedies and national jurisprudence relating to alternatives to detention

Please provide us with the following information, as it is stated in the law/implementing circulars etc., **for each of the alternatives to detention** that is implemented:

Remedies/procedures

24. Remedies or procedures to object detention:

- a) Is there a specific procedure under national law allowing asylum seekers to appeal the fact that they are subject to detention or to challenge the detention conditions?

According to the Aliens' Law the foreigner is informed about detention only post facto, when court decision to detain the person is taken, the foreigner shall be informed immediately in a language he/she understands. This information should contain the reasons for assigning alternative measure to detention (Art. 116(3)). There is a possibility to appeal against such decision of district court. The complaint may be submitted via the FRC, which transfers the complaint of the foreigner to SAC (Art. 117(1) of the Aliens' Law). In addition, there is a possibility for the applicant to challenge detention according to the Law during any time claiming cessation of the grounds of detention through a detention review procedure (Art. 118(1)), which is a separate procedure differing from the appeal procedure. The court (i.e. Svencionys regional court), having received a request from the foreigner on review of detention, shall examine it not later than within 10 days and may either leave the decision as it is, change it, or abolish detention (Art. 118(2)). This procedure is applicable in the same manner for all grounds of detention. The courts also analyse alternative measures to detention

⁴³ Certificate No. (13-SN-260) of the Office of the Ombudsperson for Equal Opportunities concerning the complaint of residents of the Foreigners' Registration Centre, 6 January 2014, on file with the author.

ex officio in cases where the authorities request an extension of detention. In principle, all decisions of the authorities adopted in the context of legal situation of asylum seekers in accordance with the Aliens' Law may be appealed under administrative law (Art. 136 of the Aliens' Law). However, if there is no separate decision adopted it would be difficult to appeal separately the detention conditions. At the same time, the issue of detention conditions may be raised in the court in detention cases claiming that detention conditions e.g. given the vulnerability of the applicant are inappropriate, thus alternative to detention should apply.

- b) Please specify for each if it is a judicial or an administrative procedure.

The procedure is judicial, the appeals against detention decisions and decisions on assigning alternative measures are examined by the SAC in accordance with administrative cases' procedure (Art. 117(1) of the Aliens' Law). Authorisation of detention or alternative measures to detention as well as review of detention is carried out by district courts.

- c) Is there a right to (free) legal assistance and representation in the framework of this procedure?

Yes, the Aliens' Law provides that the foreigner's participation in the court hearing on detention is compulsory and during examination of detention or assignment of alternative measure to detention procedure the person has a right to state guaranteed legal assistance (Art. 116(1)). However, as reported by the Lithuanian Red Cross lawyers, the problem is that such assistance covers only representation in the court and no preparation or counselling before the court session. Thus it is a matter of effectiveness of assistance, since the client and the lawyer only meet in the court hearing⁴⁴.

25. Remedies or procedures to object placement in detention instead of the imposition of an alternative to detention:

- a) Is there a specific procedure under national law allowing asylum seekers to object their detention on the basis that they should fall instead under the application of an alternative scheme?

There is no specific procedure for that envisaged by the national laws, these objections could be raised during the court hearing while examining the request of police or other law enforcement agencies to detain the foreigner or as part of appeal against the district court decision to detain the person procedure, or also during detention review procedure, which can also be initiated by the person himself/herself at any time.

- b) Please specify if it is a judicial or an administrative procedure.

Procedures where detention could be questioned are judicial ones.

- c) Is there a right to (free) legal assistance and representation in the framework of this procedure?

⁴⁴ Detention of asylum seekers and alternatives to detention in Lithuania, p. 30.

As reported above, during examination of detention or assignment of alternative measure to detention procedure the person has a right to state guaranteed legal assistance (Art. 116(1) of the Aliens' Law).

26. Review of the imposition of detention:

- a) Is there a periodic and individual review of the placement in detention?

In accordance with the Aliens' Law, there is a detention review procedure, which is not periodic, but is based on the request of the detained person or submission from the institution responsible for detention of the foreigner, the basis of which is cessation of the grounds for detention. Thus there is a possibility for the applicant to challenge detention at any time claiming cessation of the grounds of detention through this procedure (Art. 118(1)). The court, having received a request from the foreigner or responsible institution on review of detention, shall examine it not later than within 10 days and may either leave the decision as it is, change it, or abolish detention (Art. 118(2)).

- a) Is this review made by a judge or a non-judicial independent body?

This review is carried out by a judge at district court of the place of stay of the foreigner.

- b) At this stage can the judge or non-judicial body examine whether they should fall instead under the application of an alternative scheme?

This aspect is not specifically regulated by the Aliens' Law. The law only states that at this stage the court can leave the decision as it is, change it, or abolish detention (Art. 118(2)). However, the court decisions on review of detention demonstrate that the court will look into the issue of alternative also during review of detention procedure.⁴⁵

27. Remedies or procedures to object the imposition of an alternative to detention:

- a) Is there a specific procedure under national law allowing asylum seekers to object the fact that they are subject to an alternative to detention scheme?

The foreigner can object the assignment of specific alternatives measure during the court hearing where assignment of this measure is being discussed. Otherwise, the objection could be raised during the appeal procedure where the applicant may appeal against assigned alternative to detention by a district court in accordance with the order of administrative procedure. The complaint may be submitted via the FRC, which transfers the complaint of the foreigner to the SAC (Art. 117(1) of the Aliens' Law).

⁴⁵ E.g. Svencionys district court decisions of: 10 January 2013 in administrative case No. A-73-405/2013; 4 January 2013 in administrative case No. A-80-405/2013, etc.

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- b) Is there a specific procedure under national law allowing asylum seekers to challenge the conditions/compatibility of such schemes with fundamental rights?

There is no special procedure to challenge the conditions/compatibility of such schemes with fundamental rights, however any decision adopted by the court or state institution may be appealed and concerns may be raised during ordinary appeal procedure. Also, human rights concerns are examined as part of detention review, appeal procedures as evidenced by the practice of courts. In addition, if complaint concerns discrimination, the person may apply to the Office of Equal Opportunities' Ombudsperson; complaints concerning bureaucracy and abuses by the officials, as well as violations of human rights in public administration sphere may also be brought to Parliamentary Ombudsmen, while complaints concerning rights of the child may be examined by the Child Rights Ombudsmen.

- c) Please specify for each if it is a judicial or an administrative procedure.

All appeals concerning detention and alternatives to detention are examined by the courts, thus it is a judicial procedure. However, general complaints concerning human rights violations (as mentioned under b) above) are administrative procedures.

- d) Is there a right to (free) legal assistance and representation in the framework of this procedure?

Free legal assistance according to the legislation is provided in detention/alternatives to detention cases. The Ministry of Interior has a contract with private law company, which is providing free legal representation in this case. The deficiency though as reported above is that this legal assistance does not cover counselling before the court hearing. As a result the lawyer and the client only meet in the hearing and not before, thus there is no time to prepare the case. However, there are some possibilities to consult with the lawyer for those asylum seekers who live in the FRC.

28. Review of the imposition of an alternative to detention:

- b) Is there a periodic and individual review of the placement under such an alternative to detention?

The legislation only explicitly refers to review of detention (Art. 118 of the Aliens' Law) and there is also a possibility to appeal decision on the placement under alternative to detention (Art. 117(1) of the Aliens' Law). Separate review in case of assigned alternatives to detention is not provided in the legislation. However, the Aliens' Law provides that in deciding on alternative measure to detention, the court shall establish the time limit for it's' application (Art. 115(4)) and the courts do it in practice. Therefore, before this time limit expires, the same institution, which approached the court before, shall apply again for extension of alternative measure to detention (the courts do not allow for the applicant himself/herself to approach the court on this issue).

- c) Is this review made by a judge or a non-judicial independent body?

Review is judicial.

Jurisprudence

29. Are there any precedents of asylum seekers appealing their detention on the basis that they should fall under the application of an alternative instead? If so please briefly summarize the case(s) and indicate the jurisdiction, date and case number.

Jurisdiction	Date	Case Number	Brief summary
<i>Decisions of Supreme Administrative Court of Lithuania in administrative cases</i>	21/07/2008 14/10/2010	N ¹⁴³ – 3565/2008 N ⁴⁴⁴ – 7196/2010	<i>The question about the application or non-application of alternative measures to detention falls under discretion of the court (as a result, the courts decide on alternatives in detention cases ex officio even if the alternatives are not invoked).</i>
<i>Decisions of Svencionys district court in administrative cases</i>	03/02/2012	A-270-617/2012	<i>The Migration Office requested in this case to extend the term of detention for 5 months based on the argument that despite the established identity of the person, the legal status in Lithuania is not. The court referred to the practice of SAC (reported above) on discretion of the court to decide on alternatives to detention and ruled out that detention would not be proportional measure and alternative to detention could be applied (because the identity of the person is established and there are no data confirming that the person have failed to cooperate in establishing his legal status or poses a risk to national security or public order). The court decided on application of periodic registration at police office.</i>
<i>Decisions of Svencionys district court in administrative cases</i>	10/02/2012	A-319-665/2012	<i>Similar decision was reached in this case having considered that the person is sick and is residing for 12 years in Lithuania with a factual family.</i>



<i>Decisions of Svencionys district court in administrative cases</i>	22/06/2012	A-810-617/2012	<i>In this case the applicant requested review of detention and application of alternative measure to detention considering that his identity is established, he is cooperating with authorities and poses no risk to state security and public order, and despite the fact that he is to be deported and is currently in illegal stay status. The court turned detention into alternative measure to detention (obligation to regularly report to police) on the basis that the foreigner has sufficient resources for living and available residence place until deportation takes place. The court considered that detention would not be proportional measure in this case. Even if this case did not per se concern an asylum seeker, general practice concerning treatment of foreigners in general is very important and influences/reflects the general developments concerning alternatives to detention.</i>
<i>Decisions of Svencionys district court in administrative cases</i>	27/04/2012	A-624-617/2012	<i>In this case the court decided to apply alternative measure to detention (registration at police office) having considered that the applicant has three minor children who need to stay with their mother and that her spouse is living in Lithuania.</i>
<i>Decisions of Svencionys district court in administrative cases</i>	18/04/2013	A-540-617/2013	<i>In this case, the court reviewed detention of the applicant with minor children who were returned to Lithuania under Dublin II Regulation. The court considered that detention is not reasonable in this case. It took into account the vulnerability of the applicant (a family with four minor children and pregnant mother) referring to definition of vulnerable persons in the Aliens' Law and decided</i>



				<i>that they should be released from detention all together (without even applying alternative measures to detention). This case departed from the practice of SAC to apply detention in Dublin II cases whereby the applicants are considered to have been misusing asylum procedures and obstructing the adoption of final decisions by the institutions. The court mentioned that there are also different decisions by the SAC in Dublin II cases whereby persons are not detained and each case should be examined individually.</i>
<i>Decisions of Supreme Administrative Court of Lithuania</i>	25/01/2012	N ⁵⁷⁵ 1021/2012	-	<i>The applicant appealed against a decision of the lower court to extend detention. The SAC considered that detention would not be proportional measure in this case, because the expulsion date of the applicant is not yet clear and failure of the authorities to find effective measures to implement expulsion decision cannot affect negatively the applicant by putting him into indefinite detention. The higher court ordered alternative to detention (periodic registration at police) and thereby changed the decision of lower court. Even if this case did not per se concern an asylum seeker, general practice concerning treatment of foreigners in general is very important and influences/reflects the general developments concerning alternatives to detention.</i>
<i>Decisions of Supreme Administrative Court of Lithuania</i>	22/11/2012	N ⁵⁷⁵ 1317/2012	-	<i>In this case the applicant appealed against detention ordered by the lower court, while the authorities claimed threat of the applicant to public order due to previous conviction. The SAC ordered alternative measure instead of detention, because it considered the risk</i>



			to public order to be low, while the applicant has a spouse in Lithuania, guarantees concerning place of residence, is unwilling to return to home country and takes efforts to regularize his legal status in Lithuania.
<i>Decisions of Supreme Administrative Court of Lithuania</i>	15/05/2013	N ⁵⁷⁵ – 52/2013	In this case the applicant appealed detention decision of the lower court. The SAC emphasized the change of circumstances since the adoption of the first instance court decision on detention and ordered alternative measure to detention. It considered that detention is not necessary under new circumstances and alternatives could be applied. However, since there was a lack of evidence confirming the family links to a person who was intending to supervise the foreigner, the SAC ordered two alternatives at the same time (trusting the foreigner to the guardianship of another person and reporting to police office by means of communication).
<i>Decisions of Supreme Administrative Court of Lithuania</i>	26/07/2013	N ⁵⁷⁵ – 79/2013	This is an important decision whereby the SAC departed from its previous practice to apply detention to asylum seekers based on EU Return Directive 2008/115/EC. Prior to this decision the practice formed by the SAC (e.g. in administrative case No. N ⁵⁷⁵ – 1297 and others) was that asylum seekers could be detained under EU Return Directive based on the argument that the questions concerning granting or refusal of asylum to the foreigner and his/her expulsion from Lithuania is examined during single administrative procedure and thus complies with Art. 6(6) of the Directive 2008/115/EC. In present decision the SAC was of the opinion that alternative to detention



			<p><i>should be applied (accommodation in the FRC without applying restrictions on the freedom of movement). The court considered that Art. 113(2) of the Aliens' Law (possibility to detain in return proceedings, but only if detention is necessary for adoption of relevant decision or its' execution) is applicable, but there is no necessity to detain the applicant in this particular case, because his identity is established, the main reason of leaving the country of origin as indicated by the foreigner is political opinion and not economic reasons, as well as the applicant did not hamper the resolution of his legal status by the institutions.</i></p>
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30. Is there any precedent of asylum seekers appealing the fact that they are subject to an alternative to detention scheme (i.e. arguing that they should be offered reception conditions in an open centre or financial assistance without any further obligation instead)? If so please briefly summarize the case(s) and indicate the jurisdiction, date and case number.

<i>Decisions of Supreme Administrative Court of Lithuania</i>	26/07/2013	N ⁵⁷⁵ - 78/2013	<i>Identical decision/grounds of the SAC as in the above referred case.</i>
Jurisdiction	Date	Case Number	Brief summary
<i>Decisions of Svencionys district court in administrative cases</i>	04/01/2013 15/01/2013 21/03/2013	A-80-405/2013 A-101-763/2013 A-109-763/2013 A-110-63/2013 A-384-405/2013	<i>There are a number of district court decisions that state the principle that the alternative measure to detention cannot be applied if grounds for detention do not exist or cease to exist. In these cases, the authorities have asked to apply alternative measures to detention, while the applicants were claiming that no alternatives could be used in the absence of grounds for detention and that they should be freed</i>



				<i>all together.</i>
<i>Decision of Svencionys district court in administrative case</i>	07/12/2012	A-1601-665/2012		<i>In this case the authorities requested to apply an alternative measure to detention (accommodation at the FRC without applying the restrictions on the freedom of movement) to the foreigner who was returned to Lithuania from Poland considering that the ground for detention ceased to exist, while the foreigner delayed his application for asylum and aims to go to other countries to apply for asylum. In the opinion of the court the previous aims to ask for asylum in other countries do not prevent the submission of asylum application in Lithuania, thus the ground of detention related to return procedures does not apply. The court did not apply an alternative to detention because it considered that without the ground for detention there is no ground for application of alternative measure to detention.</i>
<i>Decision of Supreme Administrative Court of Lithuania in administrative case</i>	08/08/2012	N ⁵⁷⁵ – 1246/2012	–	<i>In this case the authorities were appealing decision of the lower court which ordered alternative measure to detention contrary to request of the FRC to apply detention measure to the applicant. The authorities claimed the need for detention, because the person used forged documents for illegal travel within the EU, has allegedly the objective to travel to other EU countries and did not take any effort to regularize his status. The SAC upheld the decision of the lower court to use alternative measure and not detention.</i>
<i>Decisions of Supreme Administrative Court of</i>	28/05/2009; 20/03/2010; 14/10/2010	N ⁵⁷⁵ – 5928/2009; N ⁵⁷⁵ – 4311/2010; N ⁴⁴⁴ –	– – –	<i>In these three cases of rejected asylum seekers whose expulsion was pending, the SAC ordered the foreigners to regularly at the fixed time appear at the</i>



<i>Lithuania in administrative cases</i>		7186/2010	<i>appropriate territorial police agency, although applicants themselves asked to be requested to inform the appropriate territorial police agency about their whereabouts at the fixed time by means of communication. The Court did not motivate such a choice of the measure; it only stated that it found the chosen alternatives more suitable in the context of the circumstances of the case. The Court further added that the alternative measure – order to regularly appear at the territorial police agency – was proportionate to the goals sought and suitable to ensure the aims of the Aliens' Law.⁴⁶</i>
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D. Other

31. What are, in your view, the strengths of the system of alternatives to detention in your Member State?

The main strength of the alternatives to detention scheme is overall impact on detention of asylum seekers. Due to existence of alternatives (particularly relevant is an alternative to accommodate asylum seekers at the FRC without applying the restrictions on the freedom of movement), the detention of asylum seekers in Lithuania used to be quite low (the practice of detention became substantively more frequent due to transposition of the EU Return Directive, which Lithuania also applies to asylum seekers). The lawyers of the Lithuanian Red Cross identify this alternative as a good practice in Lithuania, because due to this alternative, many asylum seekers are not detained (in particular families with children), but accommodated at the FRC.⁴⁷ The courts are relying on alternatives to detention even when the authorities are of the opinion that the person needs to be detained. The court practice is very clear towards refusal to apply alternatives when no ground for detention exists or ceased to exist.

Secondly, the situation of unaccompanied minors in Lithuania could be considered as a good practice, because they all, irrespective of their legal status, are accommodated at a social institution (Refugee Reception Centre), thus in much better conditions than in FRC. This is not exactly an alternative to detention, but due to legislation and such practice, there is low risk of detention of unaccompanied minors.

⁴⁶ As reproduced from the report *Detention of asylum seekers and alternatives to detention in Lithuania*, p. 26.

⁴⁷ *Ibid*, *Detention of asylum seekers and alternatives to detention in Lithuania*, p. 27.

Thirdly, the courts have developed the concept of social connections in the context of application of alternatives to detention (the jurisprudence clearly stresses the existence of social connections, place of residence, sources of income as important aspects to consider for application of alternatives). This is a very important principle for the institute of alternatives to detention, the only problem is that this principle is still not well understood by a number of administrative bodies.

Fourthly, in the court practice, alternatives to detention are also applied to rejected asylum seekers awaiting expulsion. The lawyers report that they were allowed to stay in the FRC without restricting their freedom of movement instead of applying for their detention, and thus it is also an example of good practice.⁴⁸ This is especially good in cases when the implementation of the expulsion decision takes several months.⁴⁹

Last, but not least, there are several recent district court decisions stating that detention grounds related to illegal entry or stay in the country or preparation of return procedure are not applicable to asylum seekers, because they have legal status in Lithuania by virtue of granting temporary territorial asylum (decisions of Svencionys district court of: 10 January 2013 in administrative case No. A-73-405/2013; 4 January 2013, No. A-80-405/2013). Previously, asylum seekers were subject to extensive detention in the context of return procedures, in particular, due to transposition of the EU Return Directive, which Lithuania applies to asylum seekers. In 2013, the SAC adopted new decisions on this issue, which seems to depart from the previous practice of the court. However, the impact of this decision is still not clear and is too early to evaluate it.

32. What are, in your view, the weaknesses of the system of alternatives to detention in your Member State?

The main weaknesses are mostly related to: practical barriers of applying the alternatives (e.g. foreigners lack private space to live outside the FRC, lack of access to socio-economic rights while staying outside the FRC), exhaustive list of alternatives, lack of legal representation and information to asylum seekers.

Firstly, the problem is that a lawyer often meets a person for the first time in the court room only. It means that he/she has no time to prepare/get documents needed to ask for an alternative to detention. Free legal aid provided by the state does not cover consultations to the applicant before the court session where detention/alternatives for detention are being decided.

Secondly, the problem is that there are no support structures/alternative accommodation arrangements to the one provided in the FRC, where asylum seekers could stay. This hampers the application of alternatives to detention. There have been few cases when accommodation arrangements were identified and the person was placed there instead of being detained in the FRC. This concerns accommodation in the Caritas Shelter in Vilnius and the orthodox monastery of the Holy Spirit. In the later case, the FRC approached the court with the

⁴⁸ Ibid, p. 5.

⁴⁹ Ibid, p. 27.

monastery letter confirming its readiness to receive the person concerned⁵⁰. These cases concerned irregular migrant, but asylum seekers area also affected by this general policy. This may also raise an issue of necessity of detention, because subjecting a person to detention is largely based on him/her having no place of residence. The lack of alternative accommodation is particularly relevant, because one of the usual alternative measures to detention – defining an alternative place of residence and requiring the person to regularly appear at the territorial police agency – can only be applied if the person has a place to stay. This proved to be a barrier for applying alternatives to detention in several cases before district courts. In one of the judgments the court stated that the rejected asylum seekers identity was established, he was assisting the court in determining his legal status, and other circumstances required by the Aliens' Law were present; however, the rejected asylum seeker did not have a place of residence in Lithuania or anyone to sustain him, thus the court ordered his detention. In another case the district court also based the decision to detain a rejected asylum seeker on the fact that he did not have a place of residence and a source of income in Lithuania.⁵¹ Thus this raises concerns that foreigners who comply with all the conditions for the application of alternatives to detention set in the Aliens' Law may be precluded from benefiting from the alternative measures for purely practical reasons.⁵² There was a proposal by NGOs to the Lithuanian Parliament to extend the alternative of accommodating the alien in the FRC without restricting his freedom of movement from only asylum seekers to other groups of aliens,⁵³ but the Law has not been amended in this respect so far.

Thirdly, asylum seekers who enjoy alternatives to detention (e.g. alternative of accommodation in private) are not provided with material reception conditions in the same manner as other asylum seekers who stay in the reception centres, because there is no appropriate legal framework concerning the coverage of health care services, monthly allowances and alike. Also, reception standards are not at all regulated by the legislation when asylum seekers are at the border or at local police office, except a few articles in the Aliens' Law.⁵⁴ Thus mainly reception conditions are ensured only to those asylum seekers who stay at the FRC or RRC.

Fourthly, according to the lawyer representing foreigners, there are difficulties to prove in practice that there is no risk of absconding, which is a pre-requisite of applying alternative to detention. A connection with Lithuania is needed. If there is no connection, it is difficult to have the case for an alternative to detention measure. Also, according to the FRC, in addition to the lack of alternative accommodation, the identity of the person is often not established, thus it hampers the application of alternatives.

Last, but not least, situation of vulnerable persons is of some concern. According to the lawyer working with foreigners, it happens sometimes in practice that UAMs and families

⁵⁰ Interview for the Return Directive Study, FRC and Migration Unit, SBGS, 2013.

⁵¹ Svencionys District Court, judgments of 23 June 2011 and 13 August 2010, quoted from *Detention of asylum seekers and alternatives to detention in Lithuania*, p. 26-27.

⁵² *Ibid*, *Detention of asylum seekers and alternatives to detention in Lithuania*, p. 45.

⁵³ *Ibid*, p. 27.

⁵⁴ *Ibid*, p. 23, 27.

with children are detained. There are some systemic flaws that create conditions for such cases. First, the guardianship system for UAMs is not clearly articulated. It is not sufficiently clear for officials what to do with the UAM once he/she is identified on the territory. Second, there is a lack of understanding/common approach as to what to do with children accompanied by parents. The options are: a) to separate from parents or b) to detain the entire family with adults. The problem is that there is a lack of infrastructure at the FRC, which would allow for accommodating families and would be adapted for family/children needs.

33. Please add here any other interesting element about alternatives to detention in your Member State/commentary which you did not have the occasion to mention in your previous answers.

According to information provided by the Migration Yearbooks, the following statistics of using alternative measures to detention vs. detention orders could be mentioned: out of all 304 foreigners at the FRC there were 3 cases of alternatives, 10 persons accommodated at the FRC without restrictions of movement, number of detained persons for over 48 hours – 375 (Migration Yearbook for 2012); 6 cases of alternatives, number of detained persons for over 48 hours – 241 (Migration Yearbook for 2011).

A few general comments as to implementation of alternatives to detention in practice: from the previous years (before 2008), two important principles were articulated by the SAC:

- 1) Refusal to fill in the return documents is not a ground to conclude that there is a lack of cooperation from the side of the person (cooperation is a precondition for applying alternatives) (Cases N62-5293/2008, N16-1274/2006, N6-1556/2005);
- 2) Non-established identity is not a ground for refusing alternatives: a court may take a decision to apply an alternative to detention giving due regard to other relevant circumstances (Case N143-3565/2008).

34. Please quote recent scientific books, articles, reports, substantive online commentaries that have been published about alternatives to detention in your Member State (answer even if this literature is only available in your national language and provide the complete title in your language (without translating it) with all references; indicate author, title, in case name of periodical, year and place of publication as well as publisher).

- a) Biekša, L., Samuchovaitė, E., Priėmimo silygė direktyvos įgyvendinimo Lietuvos teisinėje sistemoje problemos, Etniškumo studijos, 2013/1, Vilnius, In Flexum, 2013, p. 19-39, available at: http://www.ces.lt/wp-content/uploads/2013/05/EtSt_Biek%C5%A1a_Samuchovait%C4%97_2013_1.pdf (translation: Biekša, L., Samuchovaitė, E., Problems of Implementation of the Reception Conditions Directive in Lithuanian Legal System, Ethnicity Studies, 2013/1, Vilnius, 2013, p. 19-39);
- b) Biekša, L., Samuchovaitė, E., Priėglobsio praėytojė sulaikymo taikymo problemos Lietuvos Vyriausiojo administracinio teismo praktikoje, Jurisprudencija, 2012, 19(4), p. 1407-1422 (translation: Biekša, L., Samuchovaitė, E., Problems of application of detention of asylum seekers in the practice of the Supreme Administrative Court of Lithuania, Jurisprudence, 2012, 19(4), p. 1407-1422);
- c) Biekša, L., Bruėaitė G., Samuchovaitė, E., Detention of asylum seekers and alternatives to detention in Lithuania, Lithuanian Red Cross Society, Vilnius, 2011, available at:

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http://redcross.eu/en/upload/documents/pdf/2012/Migration/Lithuania_Study_on_detention%20pdf.pdf

35. In case you have conducted interviews/consulted other experts/organisations in order to conclude this research please provide us with the following elements for each of them:

Name of the organisation/institution	Private lawyer
Name of individual contacted	Mr. Laurynas Biekša
Position/function of the individual	Advocate
Email address	



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