



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

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## **Completed Practices Questionnaire for the project MADE REAL**

**Lithuania**

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# MADE-REAL: Practices Questionnaire

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The aim of this questionnaire is to collect data on practices in your national context with regards to alternatives to detention. It will be completed by the national NGO project partner. 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)

## Definitions<sup>1</sup>:

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


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<sup>1</sup> 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.

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**‘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.

**‘Returnee’:** Third country national subject to a return decision

 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’.

## Definitions used in this report:

AL - Aliens Law

FRC - Foreigners Registration Centre

LSAC - Lithuania’s Supreme Administrative Court

RRC - Refugee Reception Centre

SBGS - State Border Guards Service

## A. GENERAL

### 1. Are A/S detained in practice in your country? YES

Asylum seekers as well as irregular migrants are detained in the FRC on the grounds specified in AL<sup>2</sup>. It is important to mention that according to the Criminal Code, asylum seekers are excepted from the criminal liability of illegal entry, therefore the detention or imprisonment as a penalty for illegal entry cannot be applied to asylum seekers<sup>3</sup>. Therefore, if there exist grounds for detention specified in AL, asylum seekers may be detained in the FRC for a period exceeding 48 hours by decision of the court. According to an NGO lawyer, despite the fact that national legislation does not provide for exceptions allowing to detain asylum seekers at the regular prisons, in practice there may be situations when asylum seeker, who has entered the territory illegally and asked for asylum by explaining the reasons why

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<sup>2</sup> Under Art. 79 (3) AL, the FRC is „an institution intended for keeping aliens detained on the grounds specified in this Law and, on the decision of the court or the Migration Department, providing temporary accommodation to aliens, carrying out inquiries with regard to identity of the aliens, the circumstances of their entry into the Republic of Lithuania, keeping of records of aliens as well as carrying out the return and expulsion of aliens from the Republic of Lithuania”.

<sup>3</sup> Art. 291 (2) of Criminal Code provides that „an alien who unlawfully enters the Republic of Lithuania seeking to exercise the right of asylum shall be released from criminal liability under paragraph 1 of this Article”.

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he/she left his/her country of origin, may be detained in regular prison during the pre-trial investigation on his/her illegal entry, if the officer, who has interviewed asylum seeker, did not hold explanations given by asylum seeker as an asylum application/request (source: interview with an NGO lawyer).

2. Is detention foreseen for A/S in specific situations? YES

If so, please specify:

SITUATIONS	Comment
In border procedure	<p>This ground is not explicitly set in legislation. Yet, if an asylum applicant applies for asylum at a border crossing point, he/she is required to stay there until the Migration department takes <i>a decision on temporary territorial asylum</i>, i.e. a decision allowing the person to stay in the territory of Lithuania during the examination of his/her asylum application. Such a decision the Migration department takes within 48 hours following the lodging of the application.</p> <p>If the Department decides to examine the application in substance under the regular procedure, two scenarios are possible.</p> <p>Scenario 1</p> <p><i>The border guards do not initiate the detention proceedings in the court.</i> Then the Migration Department takes a decision to accommodate the asylum seeker in the FRC. No detention is applied.</p> <p>Scenario 2</p> <p>The border guards decide to initiate the detention proceedings i.e to detain the asylum seeker for more than 48 hours. Then the court may decide to detain the applicant in the FRC. The person would be transferred from the border to the FRC and placed there under the detention regime.</p> <p>In both cases no recourse to the border procedure would be taken, and therefore the issue of detention in the context of border procedures does not arise.</p>

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	<p>Scenario 3</p> <p>However, the Migration department has more options when it comes to applicable procedures. First, it can decide to consider the application inadmissible, based on the safe third country notion. Second, it can examine the application under the accelerated procedure and reject the application. The applicable time limit is 48 hours which can be further extended for 7 more days. <i>The Order on Examination of Asylum Claims approved by the Order No. 1V-361 of the Minister of Interior on 15 November 2004 (hereafter -The Examination Order)</i> obliges the applicant <i>to wait for a department decision</i> staying at the place where the application was submitted (<i>para. 14.1</i>), in the present case – at the border crossing point. As explained by a specialist of the State Border Guards Service (hereafter – the SBGS) consulted in the course of preparing this report (<i>source: interview with the Head of Migration Unit of the SBGS</i>), in practice, the applicable arrangement would depend on whether the given border crossing point is adequately equipped to keep the person there. If this is the case, the person may indeed be kept at the border until the Department takes a decision (i.e. for up to 9 days). In light of the ECtHR case law (Amuur), this situation amounts to detention. <i>Therefore, in practice, detention in the context of the border procedure is possible in Lithuania.</i></p> <p>Scenario 4</p> <p>If the reception conditions do not allow for keeping the person at the border crossing point, efforts are taken to transfer the person to the FRC. Previously, such a transfer was usually carried out on the basis of the Migration department decision to accommodate the person in the FRC. However, following the October 2013 amendments to the Aliens Law, the border guards may now initiate the detention procedures in the court on a number of grounds, and place the person in the FRC under the detention regime for the period of examination</p>
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	<p>of the application by the Migration Department. Legally speaking the person's presence on the Lithuanian territory is not authorised in such situation, since no decision on temporary territorial asylum is taken (although physically the person is already inside the Lithuanian territory on a considerable distance from the border). This situation would amount to detention in the context of a border procedure like situation (See <i>mutatis mutandis</i> Art. 35 (5) of the Asylum Procedures Directive 2005/85/EC).</p> <p>All in all, the answer to this question is that detention in the context of the border procedure is applicable in Lithuania.</p>
Subject to a Dublin transfer	<p>The relevant legal ground has been recently introduced in the legislation (The relevant amendment to the Aliens Law was passed by the Parliament in October 2013). Yet, since September 2012, the authorities and courts have made use of the provision of the Aliens Law originally aimed at implementing the Return Directive (hereafter – <b><i>the Return Directive clause</i></b>) (Art. 113 (2) AL) to detain asylum seekers who, in the opinion of the authorities and courts, might abscond. Before October 2013, Art. 113 (2) AL provided as follows:</p> <p><i>Where the issues of the alien's return to the foreign country, his expulsion from the Republic of Lithuania or an obligation to depart from the Republic of Lithuania are dealt with, the alien may be detained only in the case where <b>the detention is necessary for the adoption or implementation of the appropriate decision</b> (where the alien hinders the adoption or implementation of the decision or <b>may abscond to avoid expulsion, etc.</b>).</i></p> <p>With the adoption of the October 2013 amendment, the above provision was amended by introducing an explicit reference to <i>a decision to transfer an asylum applicant to a Member State of the EU responsible for examining the asylum application.</i></p> <p>Legal practitioners consulted in the course of preparing the present report confirmed that there</p>

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	<p>were cases of detention of Dublin returnees well before the adoption of the October 2013 amendment. The October 2013 amendment, therefore, has simply institutionalised the actual practices. It should be noted, however, that Lithuania only rarely returns asylum applicants to other Member States. Hence, 4 persons were transferred under the Dublin arrangements to other MS in 2013; 4 in 2012; 8 in 2001 (source: asylum statistics published by the Migration Department, available at <a href="http://www.migracija.lt/index.php?1284973430">http://www.migracija.lt/index.php?1284973430</a>).</p>
Subject to an accelerated procedure	<p>The relevant provisions have been in force since 24 October 2013. They allow for detention of an asylum applicant if (i) <i>he/she submits an application in which there is clearly no substance of the claim of fear of persecution in the country of origin or it is based on false representations</i>; (ii) <i>he/she has not been granted temporary territorial asylum and there are reasons for considering that he/she can abscond to escape return or expulsion from Lithuania</i>. Both provisions target asylum applicants whose applications are examined in an expedited way (The first one is more relevant for first instance procedures, while the second one addresses appeal stage situations).</p> <p>Before 24 October 2013, asylum applicants subject to accelerated procedures were also detained on a case by case basis. In authorising detention in such cases the courts relied on the Return Directive clause (Art. 113 (2) AL). Yet, in line with the Lithuania's Supreme Administrative Court case law it was necessary to establish <i>bad faith on the part of the asylum seeker (misuse of the procedure)</i> and related risk of absconding. The October amendments clearly open space for a wider use of detention at the same time potentially leading to a more frequent recourse to alternatives to detention. The first three months of application of these grounds do not allow for identifying any consistent practice, and several consulted practitioners indicated that more time is needed</p>

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	<p>for drawing relevant conclusions. In particular, as regards the first of the mentioned grounds it is not clear as to who should decide that the asylum application <i>has no substance</i>, given the fact that the Migration Department who is in charge of examining asylum applications and taking decisions <i>is not at all involved</i> in detention relevant procedures. As far as the second ground is concerned, its content is clearer, since the refusal to grant temporary territorial asylum is a formal decision ending the first instance accelerated procedure, and the criteria for establishing a risk of absconding have been articulated in the judicial practice.</p> <p>It is also clear that the court continues applying the Return Directive clause (Art. 113 (2) AL) to asylum seekers who in the opinion of the judge abuses the asylum procedure and are likely to abscond. Moreover, the consulted practitioners also tend to consider that another ground introduced from 24 October 2013, namely <i>the need to examine the elements of the application</i> can also be used to detain the asylum seeker right after the lodging of the application, including cases of accelerated examination. All in all, the current legal framework provides for a wide range of grounds targeting asylum seekers who are subject to accelerated procedures, and such applicants are indeed detained in practice, as confirmed by all practitioners consulted in the course of preparing this report.</p>
Other (please specify)	<p>First, there are general detention grounds applicable to all foreigners, including asylum seekers. The following provisions are of particular relevance:</p> <ul style="list-style-type: none"> <li>✓ <i>when it is attempted to return the alien who has been refused entry into Lithuania to the country from which he arrived</i> (Art. 113 (1) (4) AL)<sup>4</sup>;</li> </ul>

<sup>4</sup> This clause may be of relevance when applying the safe third country notion. Yet, in practice this procedural device has not been used. The safe third country notion is *law in books* only.



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	<ul style="list-style-type: none"> <li>✓ <i>when the alien is suspected of using forged documents (Art. 113 (1) (4) AL);</i></li> <li>✓ <i>in order to prevent the spread of dangerous and particularly dangerous contagious diseases (Art. 113 (1) (6) AL);</i></li> <li>✓ <i>when the alien's stay in Lithuania constitutes a threat to national security, public policy or public health (Art. 113 (1) (7) AL).</i></li> </ul> <p>In recent years, the national security and public order clause set in Art. 113 (1) (7) have been applied to asylum seekers only rarely. Asylum practitioners consulted in the course of preparing the present report could recall only few cases of its use in the context of asylum procedures. According to a judge of the Švenčionys district court, national security considerations as a detention ground were used in previous years, in particular following the September 11 events. This is not the case anymore. (source: <i>interview with a judge</i>). While the public order ground is likewise not frequently employed by the authorities, there have been cases of its application to asylum seekers, in particular as regards persons who have committed criminal offences in Lithuania.</p> <p>Public health related grounds (Art. 113 (1) (6) and Art. 113 (1) (7) AL) are applied to asylum seekers in practice from time to time. According to the FRC, it has been used to address situations when a person suffering from a dangerous contagious disease does not comply with the prescribed treatment (e.g. leaves the medical unit without an authorisation, gets in close contact with other persons etc.) (source: <i>interview with the head and deputy head of the FRC</i>). While confirming the fact of application of these grounds to asylum seekers, a judge referred to a situation whereby a person suffering from a dangerous contagious disease had also committed several criminal offences, and was detained on cumulative grounds encompassing public order and public health considerations (source: <i>interview with a judge</i>).</p>
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	<p><i>dealing with detention cases).</i></p> <p>Second, the October 2013 amendments have introduced additional detention grounds explicitly targeting asylum seekers <i>who have arrived to or is present in Lithuania illegally</i>:</p> <ul style="list-style-type: none"> <li>✓ <i>to establish and (or) verify his/her identity (nationality);</i></li> <li>✓ <i>to examine the elements of the application (lith. išsiaiškinti motyvus, kuriais grindžiamas jo prašymas suteikti prieglobstį) (Art. 113 (4) AL).</i></li> </ul> <p>Again, a short period of time passed from the entry into force of the amendments makes it difficult to assess the practice of application of the new grounds, and the opinions of the consulted practitioners vary. Some of them considered with reference to the post 2012 case law of the LSAC that a failure to provide passport or other ID documents is a sufficient ground for detaining an asylum seeker. E.g. an NGO lawyer has confirmed that judges do refer to the absence of ID documents and the fact that a decision on the asylum is not yet taken in decisions authorising detention (source: interview with an NGO lawyer). Other practitioners have claimed that application of these grounds needs to be assessed on a case by case basis taking into account the individual circumstances of the case. Hence, according to the representatives of the FRC, if an undocumented person cooperates with the officials and there are no indications of his/her possible absconding, the centre would refrain from initiating the detention procedure (source: interview with the commander and deputy commander of the FRC). To sum up, more time is needed to draw any definite conclusions as regards the interpretation of the new grounds. What is clear, however, is that asylum seekers are detained under the above mentioned provisions, and there are situations whereby several grounds</p>
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	<p>are applied to the same person.</p> <p>Third, <i>the Return Directive clause</i> (Art. 113 (2) AL), as interpreted by Lithuania's Supreme Administrative Court, allows for detention of any asylum applicant if there are grounds to consider that he/she <i>acts in bad faith</i> (i.e. applies for asylum in order to avoid or frustrate the implementation of return/expulsion order (see for more details the part on the risk of absconding). The provision has been frequently applied to asylum seekers, and this practice continues. In particular, as far as the practice is concerned, it clearly targets persons who have been transferred to Lithuania under the Dublin Regulation because the transfer to Lithuania from other EU states under Dublin Regulation is considered as a criterion of risk of absconding on the prospective return procedure. According to a lawyer representing asylum seekers in detention cases, Art. 113 (2) is a ground frequently applied to Dublin returnees, and a district court of Vilnius which has jurisdiction to examine such cases <i>ratione loci</i><sup>5</sup> usually authorises detention in such cases (<i>source: interview with a practicing lawyer</i>). This practice is likely to persist</p> <p>As regards non-Dublin situations, it is not yet clear as to what will be the role of this provision in view of the October 2013 amendments, which are also intended to address what is considered to be abusive cases.</p>
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## 3. Are specific categories of A/S generally exempt from detention?

### *Asylum seekers who have arrived legally to Lithuania*

Asylum seekers who have arrived legally to Lithuania are exempted from those grounds which are related to illegal entry or stay (Art. 113 (1) (2) and Art.113 (4) AL), i.e.: *identification of identity or nationality; examination of the elements of the application; submission of manifestly unfounded application or a risk of absconding in cases where temporary territorial asylum has been refused*. This category of asylum seekers may still be detained on general detention grounds (e.g. due to a threat to national security or public order).

<sup>5</sup> This is because the Vilnius international airport falls under its jurisdiction.

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## *Vulnerable individuals*

Furthermore, the Aliens Law provides that *vulnerable individuals and families having minor children* may be detained only in an extreme case taking into consideration also the interests of the child and of vulnerable individuals (Art. 114 (3), introduced as of 1 January 2013). The definition of vulnerable person is set in Art. 2 (18<sup>1</sup>) of Aliens Law, and reads as follows:

*"Vulnerable person" means a minor, a disabled person or a person who is over 75 years of age, a pregnant woman, a single father or mother raising minor children or a person who has been subjected to torture, rape or other serious forms of psychological, physical or sexual violence.*

Art. 114 (3) was introduced in the course of the transposition of the Return Directive, but due to its wording is of general application. An asylum seeker may therefore rely on this safeguard arguing that *the extreme necessity test* is not met in his/her case. There have been cases when judges refused to authorise detention of vulnerable asylum seekers. Hence, in its decision of 18 April 2013 to release an Afghan family having 4 minor children, the Švenčionys district court *inter alia* indicates that despite the fact that the family has been transferred to Lithuania under the Dublin arrangements, detention does not pursue any legitimate objective, is not necessary and moreover account should be taken of the fact that 4 minor children are involved and the female applicant is pregnant<sup>6</sup>. This decision seems to reflect an approach applied in this court. At least, in an interview conducted in the course of preparing this report a judge of the Švenčionys district court confirmed to the CSS representative that based on his practice families with children or UAMs are not detained.

Yet, detention of vulnerable asylum seekers is not unknown to the Lithuanian practice, and much depends on a judge in charge of the case. Hence, the consulted legal counsellor referred to a case in which a judge ignored all vulnerability related arguments placing a parent with a minor child in detention attaching a crucial weight to the fact that the family had been returned to Lithuania under the Dublin Regulation and therefore might abscond (*source: interview with a practicing lawyer*). According to an NGO lawyer, every case is a new battle, and there have recently been cases whereby judges ignored or rejected vulnerability related claims<sup>7</sup> (*source: interview with an NGO lawyer*).

Moreover, the fact that the police and border guards (i.e. bodies initiating detention procedures) are not provided with any guidelines or instructions as to how to deal with vulnerable asylum seekers in the context of detention does not contribute to

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<sup>6</sup> Švenčionys district court, decision of 18 April 2013, administrative case No A-540-617/2013 m.

<sup>7</sup> E.g. Vilnius district court, decision of 28 October 2011, administrative case No A-5072-655/2011; Varėna district court, decision of 24 July 2012, administrative case No A1.1-443-308/2012; Šakiai district court, decision of 16 July 2013, administrative case No A1.1-503-443/2013.

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developing country level practices which would ensure that vulnerable asylum seekers are indeed protected from detention as a matter of consistent approach. In this situation, the role of a judge becomes crucial, and much depends on his/her attitude and preparedness to handle a case of a vulnerable person leading to divergent practices. A lack of relevant and clearly articulated Lithuania's Supreme Administrative Court pronouncements on application of Art. 114 (3) AL is also among the causes of current inconsistent practices.

### *Unaccompanied minors*

Although legislation is not sufficiently clear, a combination of legal provisions and applicable arrangements allow for concluding that unaccompanied minors (UAMs) who have applied for asylum are exempted from detention. Indeed, the only place where detained asylum applicants may legally be kept is the Foreigners Registration Centre (FRC) which pursuant to the Aliens Law "*is an institution intended for keeping aliens detained on the grounds specified in this Law*" (Art. 79 (4)). ***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*** (hereafter – *The Order on Accommodation of Foreigners in the FRC*) explicitly provides that UAMs shall not be accommodated in the Centre (para. 3), while the statute of the Refugee Reception Centre (RRC) (an open reception facility) stipulates that the Centre provides accommodation for unaccompanied minors (para. 8.1.1), and ***the Order on Accommodation of Asylum Seeking Unaccompanied Minors*** stipulates that UAMs are accommodated in the RRC by the decision of the Migration Department (paras 2 and 3). The practice follows this arrangement, since the UAMs who have applied for asylum are indeed brought to and accommodated in the RRC without recourse to alternatives to detention related judicial procedures. It is therefore may be safely concluded that UAMs who have applied for asylum are exempted from detention. The consulted public authorities likewise confirmed that UAM asylum seekers who have applied for asylum during their first contact with the police or border guards are accommodated in the RRC by the Migration Department decision (i.e. by an administrative decision without recourse to any judicial procedure) (source: interview with the Head of Asylum Unit of the Migration Department; the RRC reply to the SSC inquiry).

The situation is however different when it comes to UAMs *who have not applied for asylum once they got in contact with (or were apprehended by) the police or border guards*. In such cases, the police or border guards approach the court requesting to impose an alternative to detention in the form of accommodating the UAM in the RRC. This is so because there is no other procedure provided for by law which would address accommodation of this group of UAMs. Yet, the end result is the same (accommodation in the RRC without recourse to detention). According to the RRC, the rights and obligations of this category of UAMs do differ from rights and obligations of UAMs who have not applied for asylum (source: the RRC reply to the SSC inquiry).

The may be one more scenario. This concerns a situation whereby border guards have doubts as regards the age of the person who claims to be an UAM. There have been two documented cases of application of the age assessment test on the initiative

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of border guards in respect of persons who claimed to be UAMs. Upon the receipt of the expert conclusion maintaining that the concerned persons were older than 18 year old, the two persons were arrested under the Criminal Procedure Code on the allegation of illegal border crossing and placed in a regular jail. They stayed for several months there until a court discharged them and ordered release. Importantly, the age assessment test was carried out on the basis of photos of bones only, and the expert had no possibility to see and talk to the concerned persons. No psychological assessment of their state of development was carried out (*source: interview with a lawyer*). The case shows that the above mentioned social and procedural arrangements aimed at providing UAMs with accommodation and related social services in the RRC in practice may not always be accessible for minors. Hence, much depends on the attitude and approaches taken by law enforcement officers who first come in contact with an UAM. It should be pointed out that the situation referred to above became possible also because there is not procedure described by law which would address the treatment and accommodation arrangements of persons who claim to be UAMs but *does not apply for asylum*. The requirement of the Aliens Law (Art. 32 (2) (1) AL) to set such a procedure has remained unimplemented since 2004. This makes the initial stage of dealing with the UAMs completely untransparent hence leaving space for administrative abuse or misinterpretation of applicable standards on dealing with UAMs.

4. 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	<p>There are two relevant provisions in the Aliens Law.</p> <p>Art. 113 (1) (4) AL: <i>when the alien is suspected of using forged documents</i></p> <p>Art. 113 (4) AL: <i>an asylum seeker may only be detained on the ground of illegal entry or stay in order to establish and/or verify his/her identity (nationality)</i></p> <p>Art. 113 (4) AL has been in force since 24 October 2013.</p> <p>Again, <i>as indicated above under point 2</i>, a short period of time passed from the entry into force of Art. 113 (4) AL makes it difficult to assess the practice of application of the new ground, and the opinions of the consulted</p>



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		<p>practitioners vary. Some of them considered with reference to the post 2012 case law of the LSAC that a failure to provide passport or other ID documents is a sufficient ground for detaining an asylum seeker. E.g. an NGO lawyer has confirmed that judges do refer to the absence of ID documents and the fact that a decision on the asylum is not yet taken in decisions authorising detention (source: interview with an NGO lawyer). Similarly, according to the SBGS specialist consulted in the course of preparing this report, if an asylum seeker arrives without valid documents, the border guards are likely to initiate the judicial procedure with a view to detaining him/her for more than 48 hours (source: interview with the Head of Migration Unit, SBGS). Other practitioners have claimed that application of these grounds needs to be assessed on a case by case basis taking into account the individual circumstances of the case. Hence, according to the representatives of the FRC, if an undocumented person cooperates with the officials and there are no indications of his/her possible absconding, the centre would refrain from initiating the detention procedure (source: interview with the commander and deputy commander of the FRC). To sum up, more time is needed to draw any definite conclusions as regards the interpretation of the new ground.</p>
Protection of public order or national security	Yes	<p>The relevant ground is set in Article 113 (1) (7) AL.</p> <p>As indicated above under point 2, in recent years, the national security and</p>

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		<p>public order clause have been applied to asylum seekers only rarely. Asylum practitioners consulted in the course of preparing the present report could recall only few cases of its use in the context of asylum procedures. According to a judge of the Švenčionys district court, national security considerations as a detention ground were used in previous years, in particular following the September 11 events (<i>source: interview with the judge</i>), but not now, at least as far as his practice is concerned. While the public order clause is likewise not frequently employed by the authorities, there have been few cases of its application to asylum seekers, in particular as regards persons who have committed criminal offences in Lithuania.</p> <p>Importantly, the Aliens Law prohibits application of alternatives to detention if there is a threat to <b><i>national security or public order</i></b> (Art. 115 (1) AL). According to a judge of the Švenčionys district court, this explicit requirement of the law make it difficult to apply the alternative to detention scheme where national security or public order are at stake (<i>source: interview with a judge of the Švenčionys district court</i>).</p>
Public health	Yes	<p>The relevant grounds read as follows:</p> <p><i>in order to prevent the spread of dangerous and particularly dangerous contagious diseases</i> (Art. 113 (1) (6) AL);</p> <p><i>when the alien's stay in Lithuania constitutes a threat to public health</i> (Art. 113 (1) (7) AL).</p> <p>As indicated above under point 2, public health related grounds (Art. 113 (1) (6) and Art. 113 (1) (6) AL) are applied to asylum seekers in practice from time to time. According to the FRC, it has been used to address</p>



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		<p>situations when a person suffering from a dangerous contagious disease does not comply with the prescribed treatment (e.g. leaves the medical unit without an authorisation, gets in close contact with other persons etc.) (source: interview with the head and deputy head of the FRC). While confirming the fact of application of these grounds to asylum seekers, a judge referred to a situation whereby a person suffering from a dangerous contagious disease had also committed several criminal offences, and was detained on cumulative grounds encompassing public order and public health considerations (source: interview with a judge dealing with detention cases).</p>
Risk of absconding	Yes	<p>Yes, yes and again yes. As far as the practice is concerned, since late 2012 this has been the most popular ground when it comes to detention of asylum seekers.</p> <p>First, a risk of absconding is referred to in Art. 113 (1) (2) AL (<i>the Return Directive clause</i>). Since late 2012, the LSAC has established a consistent practice under which the risk of absconding criterion set in Art. 113 (1) (2) AL may also be applied to asylum seekers as a separate detention ground, and relevant criteria for establishing such a risk have been developed in judicial practice (see below). The FRC referred to this ground (condition) as a key consideration as regards their institutional attitude with regard to detention of asylum seekers (source: interview with the commander and deputy commander of the FRC).</p> <p>In the October 2013 amendments, the Parliament inserted an additional element in Art. 113 (2) AL referring explicitly to asylum seekers who are subject to the Dublin procedure.</p>

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		<p>In the practice of the SBGS, the risk of absconding is a relevant criterion for initiating detention of asylum seekers who have been transferred to Lithuania under the Dublin Regulation, in particular in the case of repeat transfers (<i>source: interview with a SBGS representative</i>).</p> <p>Second, following the October 2013 amendments, the risk of absconding test is now applicable to asylum seekers who have been refused temporary territorial asylum. In practical terms, it means that if the asylum claim was rejected under the accelerated procedure, the person will be detained pending the results of the appeal if a risk of absconding is established.</p> <p>Third, it should be noted that a risk of absconding, in practice, works also in conjunction with other grounds. It is also a valid consideration for establishing whether an alternative to detention scheme may be applied.</p>
Other (please specify)	Yes	<p>The October 2013 amendments to the Aliens Law have introduced several more detention grounds explicitly targeting asylum seekers who have entered or stay in Lithuania illegally:</p> <ul style="list-style-type: none"> <li>- <i>to examine the elements of the application (lith. išsiaiškinti motyvus, kuriais grindžiamas jo prašymas suteikti prieglobstį);</i></li> <li>- <i>he/she submits an application in which there is clearly no substance of the claim of fear of persecution in the country of origin or it is based on false representations (Art. 113 (4) AL).</i></li> </ul> <p>Again, as indicated above under point 2, a short period of time passed from the entry into force of the amendments makes it difficult to assess the practice of application of</p>

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		<p>the new grounds, and the opinions of the consulted practitioners vary. Some of them considered with reference to the post 2012 case law of the LSAC that a failure to provide passport or other ID documents is a sufficient ground for detaining an asylum seeker. E.g. an NGO lawyer has confirmed that judges do refer to the absence of ID documents and the fact that a decision on the asylum is not yet taken in decisions authorising detention (source: interview with an NGO lawyer). Other practitioners have claimed that application of these grounds needs to be assessed on a case by case basis taking into account the individual circumstances of the case. Hence, according to the representatives of the FRC, if an undocumented person cooperates with the officials and there are no indications of his/her possible absconding, the centre would refrain from initiating the detention procedure (source: interview with the commander and deputy commander of the FRC). To sum up, more time is needed to draw any definite conclusions as regards the interpretation of the new grounds.</p> <p>It is also important to stress that a considerable number of asylum seekers are first apprehended and detained as illegal migrants (Art. 113 (1) (2) AL), but later apply for asylum. In such cases, they continue to stay at the FRC under the detention regime on the ground of illegal entry or stay (Art. 113 (1) (2) AL) unless <i>the review procedure</i><sup>8</sup> is initiated, and the local court orders their release or imposes an alternative to detention measure. In this respect, it is also important to</p>
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<sup>8</sup> Art. 118 (1) of AL provides that “*Upon the disappearance of the grounds for the alien’s detention, the alien shall be entitled to, whereas the institution which initiated the alien’s detention must immediately apply to the local court of the location of the alien’s residence with an application for review of the decision to detain the alien*”.

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		underline that in line with applicable law and practices where an asylum seeker is transferred to Lithuania under the Dublin Regulation and <i>the examination of his/her asylum application in the first instance has meanwhile been terminated</i> he/she is considered to be an illegal migrant hence falling under relevant detention grounds, primarily under Art. 113 (1) (2) ( <i>illegal entry or stay in Lithuania</i> ), unless he/she manages to lodge successfully an asylum application (then Art. 113 (2) and Art. 113 (4) come into play).
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5. How are these grounds assessed in practice? What screening /assessment method is used?

There are no guidelines or administrative instructions issued to guide the application of detention grounds. Several observations may be made in this respect.

First, a number of grounds, as they are worded in the law, are not clear-cut. This is in particular the case with *the Return directive clause* (the *Arslan* test). The October 2013 amendments have brought over new challenges, since the new grounds, namely *to examine the elements of the application (lith. išsiaiškinti motyvus, kuriais grindžiamas jo prašymas suteikti prieglobstį); the person has been refused temporary territorial asylum and there is a risk of absconding; there is clearly no substance in the applicant's claim of fear of persecution in the country of origin or it is based on false representations* leave room for divergent interpretations. In such situation, the judicial practice appears to be a key (if not the only one) source of reference when identifying applicable criteria. As regards *the Return directive clause*, the LSAC and local courts have developed a practice which allows for the identification of relevant indicators, in particular when it comes to a risk of absconding (See below). The October 2013 grounds are yet to be interpreted and applied consistently. Hence, no clear inferences may be drawn at this stage.

Second, where a ground is worded in a clear language, as this is notably the case with Art. 113 (1) (2) (*illegal entry or stay*), the law enforcement authorities would most probably attach a key consideration to the fact of exactly illegal entry or stay (lack of travel documents, visas, irregular border crossing etc.) at least when it comes to the initial stage following the apprehension of the person, and approach a court requesting to authorise longer detention. Hence, a representative of the SBGS has confirmed to the CSS that the border guards are likely to initiate judicial procedures where there is a ground to detain, and then it is up to a court to consider other options, including alternatives to detention measures (source: interview with the head of Migration Unit, SBGS). Other consulted stakeholders have maintained that much depends on individual circumstances. Hence, according to the FRC, the centre considers the person's behaviour, whether he/she cooperates with the officials and

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whether there are indications pointing to a risk of absconding (source: interview with the head and deputy head of the FRC). On the other hand, an NGO lawyer has indicated that based on her experience the applicant's country of origin is an important consideration for the authorities, in particular when it comes to countries perceived as producing irregular migrants. In such cases, authorities tend to be more suspicious as regards a possible risk of absconding (*source: interview with an NGO lawyers*). A lawyer representing asylum seekers in detention cases has submitted that every case is individual, and, by way of example, some persons awaiting the Dublin transfer were detained, while others not in her practice (source: interview with a private lawyer).

Third, since this is a judge who authorises longer than 48 hour detention, the judicial practice should be of relevance for identifying the relevant assessment method. Yet, as it stands now it is highly inconsistent, and different courts practice different approaches. Since late 2012, the LSAC has developed jurisprudence on the application of **the Return Directive** clause to asylum seekers, and for this reason the risk of absconding relevant criteria are at least clear. However, the same LSAC has underlined on many occasions that each case is individual, and much depends on the factual circumstances. This approach allows a judge to decide individually as to which set of circumstances (e.g. indications of a possible risk of absconding or vulnerability) attracts more weight. In such a system, the attitude of and approaches employed by judges become crucial for the result of the case. Hence, according to a practicing lawyer, the Švenčionys district court which mostly deals with detention cases in the framework of *the review procedure* and a district court of Vilnius which mostly considers detention cases of asylum seekers transferred to Lithuania under the Dublin Regulation clearly demonstrate different approaches (*source: interview with a private lawyer*). In response to a question posed by the CSS, a judge of the Švenčionys district court, based on his practice, has explained the process of application of a detention ground as follows:

First, it needs to be established whether a relevant ground is applicable;

Second, it is being checked whether there are indications that the person may abscond. The relevant criteria are articulated by the LSAC (see below).

Third, circumstances relevant for applying an alternative to detention measure and vulnerability related evidence are considered (*source: interview with a judge of the Švenčionys district court*).

6. Does the responsible authority conduct a risk assessment or use certain indicators in the assessment? If so please describe indicators and tools used.

In the practice of the State Border Guards service, the following criteria are used for establishing a risk of absconding<sup>9</sup>:

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<sup>9</sup> These criteria have been developed in the context of the return procedure, but they are also largely of relevance when it comes to detention of asylum applicants.

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- ✓ The person applies for asylum after the pre-trial investigation has been initiated against him/her on the ground of illegal border crossing (Art. 291 of the Criminal Code);
- ✓ The person is illegally in the country, and does not have (i) means to ensure self-sufficiency, (ii) place to stay (accommodation), (iii) social connections or relatives in Lithuania;
- ✓ The person has used Lithuania as a transit country (e. g. if during the initial interview the person has declared that his/her destination was another Schengen state);
- ✓ The person is not in possession of identity documents or has submitted to the border guards forged documents;
- ✓ The person has been returned / transferred to Lithuania from other EU states under readmission or Dublin arrangements;
- ✓ The person has not complied with the procedure for leaving temporarily the FRC;
- ✓ The person does not cooperate or in the past did not cooperate with the Lithuanian authorities (e.g. refused to provide information or used false representations);
- ✓ The person has not complied with the voluntary return order, and an alternative to detention is not applicable (*source: interview with the head of Migration Unit, SBGS*).

The above criteria to a large extent reflect the case law of the LSAC and district courts on the application of *the Return Directive clause*. More specifically, as indicated by a judge of the Švenčionys district court, attention is *inter alia* given to the report of the very first interview held after the apprehension of the person. If it is indicated that the person's destination was Western Europe or that he travelled to Europe to find work, in line with applicable case law, as it stands now, this is a sufficient indication of the risk of absconding. The same goes for the circumstance that the person has been transferred to Lithuania under the Dublin Regulation or that his/her fingerprints are recorded in the Eurodac (*source: interview with a judge of the Švenčionys district court*).

7. Is there a mechanism in place to identify vulnerable applicants? If so, it is used in the decision to place an applicant in detention or in an alternative to detention?

Such a mechanism has not yet been established at country level. The procedure for identifying vulnerable asylum seekers and their special needs however operates in the FRC. It is based on *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*. It *inter alia* 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);*



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- c. Asylum seekers shall be informed about the purpose of this procedure, participating persons and confidentiality (para. 8);
- d. 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);
- e. 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).

In practice, the conclusion on asylum seeker's vulnerability and special needs is a result of inputs of 3 main actors: (i) a doctor; (ii) a social worker; (iii) a psychologist. It is signed by the commander of the FRC. The system indeed operates in practice. However, it appears that it is not connected to the detention relevant decision making process. Indeed, neither a lawyer representing asylum seekers in judicial proceedings nor a judge dealing with detention cases have been aware of the existence of such conclusions (*source: interview with a judge; interview with a private lawyer*). Moreover, the current identification mechanism operates in the FRC only and therefore does not cover asylum applicants who are present at border guards units and police stations (under the Lithuanian legislation border guards and police are competent to receive asylum applications and to initiate detention (alternatives to detention) procedures).

In this respect, it should be noted that the methodology for identifying and dealing with vulnerable asylum applicants was prepared by the CSS under the service contract with the Migration Department at the Ministry of the Interior of the Republic of Lithuania within the ERF co-funded project titled "The improvement of asylum procedures in Lithuania" and officially presented on 21<sup>st</sup> of May, 2014<sup>10</sup>. It also addresses the issue of detention, and leads to the establishing of a country level mechanism on the identification of vulnerable asylum seekers.

As regards the current practices, several additional observations should be made.

As regards the approaches of the police and border guards, it should be first noted that the vulnerability related provisions of the Aliens Law have not yet been translated into clear administrative instructions, and applicable by-laws are simply ambiguous. Hence, although 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) (hereafter – the Examination Order) does contain the notion of *particularly vulnerable asylum applicants* describing them as applicants who are in need of particular attention from the side of public officials with a view to ensuring their special needs, namely a minor, a disabled person, an elderly person, a pregnant woman, a single father or mother raising minor children or a person who has been subjected to or there are reasons for considering that he/she has been subjected to torture, rape or other serious forms of psychological, physical or sexual violence with a special attention to be paid to the specific needs of women (para. 2), it does not explicitly require a border guard, a police officer or the FRC to consider refraining from detention or initiating the imposing of an alternative to detention measure. The order, in its para. 12, simply imposes an

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<sup>10</sup> Article about the event is available at: <http://www.migracija.lt/index.php?728245532> (only in Lithuanian language).

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obligation on the police or border guard unit which has received the asylum application within 48 hours from the moment of lodging of the application to approach a district court *requesting* to detain the person in the FRC *or to impose an alternative to detention measure*. It is therefore left for the law enforcement unit to decide as to which option should be picked up. The only exception is the UAMs, since the order indicates that the judicial procedures with a view to detaining a UAM may be initiated by the police, border guards or the FRC only as a measure of last resort. In this respect, it may be indicative that the UAMs applied for asylum is indeed the only group of vulnerable persons who, as a matter of consistent practice, are not detained. As regards other groups, the consulted lawyers have referred to situations whereby the initiated detention proceedings clearly concerned vulnerable persons (*source: interview with an NGO lawyer; interview with a private lawyer*). As referred to above, in such situations the border guards are likely to initiate the detention procedure leaving it to a judge to apply another option (e.g. to impose an alternative to detention measure). According to the FRC, vulnerable persons are detained if "there is a particularly high risk of absconding", and there have been cases in the FRC practice whereby the centre approached the court requesting the imposing of an alternative to detention measure based on the established vulnerability of the person (*source: interview with the Commander and Deputy Commander of the FRC*).

Turning to the judicial procedures, where it is obvious that the person belongs to a vulnerable group (e.g. a pregnant woman, a child etc.), a judge has in his/her disposal all the necessary legal instruments/provisions to either reject the detention request relying on the necessity test or impose an alternative to detention measure. Hence, according to a judge of the Švenčionys district court<sup>11</sup>, he normally does not authorise detention of families with minor children (*source: interview with a judge of the Švenčionys district court*). Yet, other judges/courts, in particularly those having less experience of dealing with asylum seekers/foreigners, do not necessarily follow this approach, and there have been many cases in which judges did not hesitate to authorise detention of vulnerable individuals. Again, the quality of legal assistance is of crucial importance. While an experienced/trained lawyer is likely to attack the detention request relying on vulnerability related provisions of the Aliens Law, judicial decisions available in the official database of the Lithuanian case law<sup>12</sup> provide examples of a different approach whereby a legal counsellor representing a person does not object against or even support the detention submission. This is particularly the case with detention procedures targeting illegally staying foreigners<sup>13</sup>, but it can also target *de facto* asylum seekers who did not manage to submit the asylum application before they have been brought to the courts by border guards/police. At the same time, even trained and experienced lawyers may face difficulties in employing vulnerability related provisions of the Aliens Law, since relevant evidence is not easily accessible. Hence, according to a lawyer dealing with detention cases, she has been confronted with obstacles trying to obtain a medical certificate from the FRC. (*source: interview with a private lawyer*).

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<sup>11</sup> Švenčionys district court deals with the overwhelming majority of detention cases, since its jurisdiction *ratione loci* covers the FRC.

<sup>12</sup> It is available at <http://liteko.teismai.lt/viesasprendimupaieska/detalipaieska.aspx?detali=2>

<sup>13</sup> In such cases legal aid is provided by lawyers who are not necessarily trained in refugee law.



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Similarly, if the signs of vulnerability are not obvious, as it may well be the case with victims of torture or other forms of ill-treatment, they will most probably be overlooked at least during the first hearing in the court (the first authorisation of detention following the lodging of the application). The established vulnerability may, however, be a valid ground for requesting the person's release or imposing an alternative to detention measure within the framework of *the review procedure*. However, given the fact that lawyers do not always enjoy access to asylum seekers detained in the FRC (source: *interview with an NGO lawyer; interview with a private lawyer*), this possibility is not always available to the person concerned, and again a relevant medical document may be not easily accessible. In this respect, a judge of the Švenčionys district court has not been able to recall a single case of applying vulnerability related provisions of the Aliens Law to a person with regard to whom there are reasons for considering that he/she *has been subjected to torture, rape or other serious forms of psychological, physical or sexual violence* (source: *interview with a judge of the Švenčionys district court*), and the analysis of decisions available in the national judicial database points to the same result when it comes to country level practices. The shortcomings of the mechanism on the identification of the vulnerability, as described above, are definitely among the causes of this situation.

8. Do the authorities examine alternatives to detention in each individual case before resorting to detention measures? Specify if necessary.
- ☐ Systematically
  - ☐ In most cases
  - ☐ Rarely
  - ☐ Never

It is difficult to provide a clear country level assessment, since the practices are divergent.

To start with, the Aliens Law stipulates that the court *may take a decision not to detain the alien and to impose a measure alternative to detention* subject to several conditions (Art. 115 (1)) and that an officer of the police or any other law enforcement institution shall apply to a court with a motion *to detain the alien or to impose against the alien a measure alternative to detention*, if there are grounds for detaining an alien (Art. 116 (1)). *The Examination Order* likewise provides in the context of initial steps to be taken after the lodging of the asylum application that once the grounds for detaining an asylum applicant are established, the relevant state institution shall without delay and in any case not later than within 48 hours after the lodging of the application to apply to a local court with a motion *to detain the alien or to impose against the alien a measure alternative to detention* (para. 12). No further guidelines are provided in either legislation or administrative instructions. According to a SBGS specialist, this is a judge who decides whether an alternative to detention should be imposed in an individual case, and even if the border guards request detention, the judge is free to ignore the request instead imposing an alternative to detention (source: *interview with the head of Migration Unit, SBGS*). In this respect, it is important to underline two principles articulated by the LSAC in the context of detention of asylum seekers and other foreigners, namely: (i) *detention is a measure ultima ratio*; (ii) *a court dealing with a detention request is not bound by its content, and should instead review the case in its entirety*. In line with this

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approach, a judge of the Švenčionys district court has indicated to the CSS that he always examines the applicability of an alternative to detention (unless no detention ground is established) irrespective of what is requested / articulated by the parties (source: interview with a judge of the Švenčionys district court). At the same time, the consulted lawyers are of the opinion that much depends on the competence of a given judge, and very often this is a lawyer who tries to attract the judge's attention to the fact that an alternative to detention is an option to be considered. Based on this experience, it would appear that alternatives to detention are not examined systematically, in particular in the district courts which are less experienced in dealing with detention cases of asylum seekers (source: interview with an NGO lawyer; interview with a private lawyer) .

9. Which alternatives to detention are currently used for asylum seekers in your country?

Types of alternative scheme applied	YES/NO	Please specify if it is applied only to a particular vulnerable group: unaccompanied or separated children, families with children, persons with disabilities, persons with (mental) health issues, victims of torture or trauma, victims of human trafficking, other.
Obligation to surrender passport and documents	No	The asylum seekers are required to surrender passport and documents, but this is not considered to be an alternative to detention. It is not linked with detention grounds.
Regular reporting to the authorities	YES	This measure is not applied to a particular group. Its application is rather based on/linked to the availability of accommodation and means of subsistence. Interestingly, for years this alternative was applied to illegally staying foreigners in the context of the return/expulsion procedure but in its recent judgement the LSAC confirmed its applicability to asylum seekers as well (See for more details below).
Deposit of adequate financial guarantee	No	-
Community release/supervision	No	By analogy with the above mentioned LSAC judgement on regular reporting, this measure may probably be applied to asylum seekers. However, the authors of this report are not aware of such practices as far as the current practice is concerned. This is rather a future option to be explored by lawyers. Potentially, it may be relevant for vulnerable groups.
Designated residence	Yes	Accommodation at the FRC without

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		restriction to the freedom of movement: applicable to all asylum seekers except UAMs.  Accommodation at the RRC: applicable to <b>UAMs only</b> .
Electronic monitoring	No	
Other (please specify)	-	

10. For each alternative scheme, please specify whether it is applied in practice to certain situations or to a specific group of A/S:

SITUATION	YES/NO	Please specify if it is applied only to a particular vulnerable group (see above)
Subject to a border procedure	No	<p>The application of an alternative to detention measure is hardly feasible within the first 48 hours, since alternative to detention measures are assigned by the court which deals with detention periods exceeding the 48 hour limit.</p> <p>As regards to other situations, where the person is kept at the border for an extra 7 days, the application of an alternative to detention measure is again problematic since the person is not formally detained. <i>The Examination Order</i> simply obliges the asylum seeker to stay at that location, and in practice he/she is not allowed to leave the border crossing point.</p> <p>The application of an alternative to detention scheme is however possible if the border guards decide to initiate detention procedures with a view to detaining the person in the FRC (basically, due to the lack of reception conditions at the border crossing point). Then an alternative to detention scheme may come into play,</p>

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		in particular if articulated by a lawyer.
Subject to a Dublin transfer	Yes	It is applicable to any asylum seeker, including vulnerable groups. However, a risk of absconding is definitely a competing consideration in such cases.
Subject to an accelerated procedure	Yes	It is applicable to any asylum seeker, including vulnerable groups. However, a risk of absconding is definitely a competing consideration in such cases.
Other (please specify)		

### 11. Alternatives to detention for other categories of migrants:

f. Are alternatives to detention applied for other categories of migrants?

YES

g. If so for which groups?

Please comment when necessary.

Group	Alternatives applied in practice?	Please specify if it is applied only to a particular vulnerable group
Individuals subject to a return procedure	YES	Application of alternatives to detention is not limited to a particular vulnerable group. However, vulnerability is a valid consideration in such cases. According to the FRC, as regards persons subject to a return procedure, the centre always considers the possibility of applying an alternative to detention in such cases looking for someone who might undertake a commitment to take care of the person. If no alternative arrangements are identified, then the centre has

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		recourse to detention ( <i>source: interview with the head and deputy head of the FRC</i> ). Yet, it should be noted that <i>de facto</i> non-availability of such arrangements in terms of accommodation and means for subsistence is exactly a factor reducing the effectiveness of the alternative to detention scheme in the context of the return procedure. <sup>14</sup>
Exclusively for failed asylum seekers <sup>15</sup>	Not exclusively, but failed asylum seekers are also covered. In fact they fall under the above notion "individuals subject to a return procedure."	The application of alternatives to detention is not limited to a particular vulnerable group. But the vulnerability of the person is a valid consideration in such cases. In terms of accessibility of such measure, the key issue is to find alternative accommodation arrangements and means for subsistence.
Persons who have entered or stay in Lithuania illegally with respect to whom a return decision is not yet taken.	Yes	The above considerations fully apply to this group.

h. Are they put in the same schemes as A/S?

Asylum seekers may be accommodated at the Foreigners' Registration Centre *without restricting their freedom of movement*. Other persons may not benefit from

<sup>14</sup> With reference to a study on the application of the Return Directive in Lithuania conducted by the Lithuanian Red Cross in 2012 -2013; unpublished.

<sup>15</sup> The first two categories may overlap as failed/ finally rejected asylum seekers are likely in a return procedure.

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this scheme. Other alternatives to detention provided for in the Aliens Law are applied to non-asylum seekers<sup>16</sup>.

## B. Functioning of the alternatives to detention

12. For each alternative to detention, please provide a description of the basic characteristics/nature of the scheme. Please specify what obligations they have to comply to.

- *Accommodation at the Foreigners' Registration Centre without restricting freedom of movement*

The alternative is imposed by a judicial decision. The asylum seekers are accommodated in the FRC which is a facility encompassing two areas:

- the area designated for asylum seekers who are not detained;
- the area designated for detained third country nationals, including rejected asylum seekers, and detained asylum seekers.

Asylum seekers with respect to whom the alternative to detention is applied stay in the former area, i.e. in the area designated for asylum seekers who are not detained. They share this area with another group of asylum seekers, i.e. asylum seekers who are accommodated in the FRC by a decision of the Migration Department.

As far as the applicable regime is concerned, the situation of these two groups of non-detained asylum seekers is identical. They are allowed to leave the FRC for a period not exceeding 24 hours. However, this right in practice can only be exercised from 6:00 until 23:00, and additional *de facto* obstacles to leave the Centre occurring from time to time have also been reported<sup>17</sup>. There is a special control system under which the asylum seeker is required to approach an officer on duty, who should register his/her departure from the centre (In fact, this registration amounts to the authorisation to leave the centre for 24 hours. A special mark is made in the written

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<sup>16</sup> In respect of other foreigners, the relevant alternatives to detention are provided in Art. 115 (2) of AL from paragraph 1 to 4: “1) the alien is required to regularly at the fixed time appear at the appropriate territorial police agency; 2) the alien is required to, by means of communication, at the fixed time inform the appropriate territorial police agency about his whereabouts; 3) entrusting the guardianship of an unaccompanied minor alien to a relevant social agency; 4) entrusting the guardianship of an alien, pending the resolution of the issue of his detention, to a citizen of the Republic of Lithuania or an alien lawfully residing in the Republic of Lithuania who is related to the alien, provided that the person undertakes to take care of and support the alien”.

<sup>17</sup> Biekša, L., Samuchovaitė, E., Priėmimo sąlygų 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. 24).

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form, the asylum seeker is provided with). The same mechanism applies to register the person's return.

The timely return to the centre is a crucial requirement, since delays may lead to the suspension of the examination of the application and other negative consequences (see below). Asylum seekers subject to the alternative to detention scheme alongside with other non-detained asylum seekers are also obliged to comply with other requirements stipulated in *the Order on Accommodation of Foreigners in the FRC* and the rules of internal order. In particular, they are obliged to *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 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 shall also declare their finances and property in Lithuania within 3 days of granting temporary territorial asylum, as well as possession of mobile phones (para. 22).*

- *The placement of an UAM at a social institution*

As far as UAMs who applied for asylum once they got in contact with the police or border guards are concerned, they are accommodated in (by the Migration Department decision) and stay in the RRC. In terms of the Aliens Law, this is not an alternative to detention scheme *stricto sensu*, since such a scheme may only be imposed by a court (Art. 115 AL). The alternative to detention scheme in the form of the placement of an UAM at a social institution is in practice entirely applied to UAMs who have not applied for asylum. Typically such minors are accommodated in the RRC by a court decision. Yet, there have cases of placement of UAMs in other social shelter institutions. Once accommodated in the RRC, some of them apply for asylum, and continue staying in the RRC as asylum seekers. As confirmed by the RRC, the applicable rights and obligations are identical for both groups (*source: the RRC reply to the CSS inquiry*). They are stipulated in the *Order of the Minister of Social Security and Labour on the Conditions and Procedure for Accommodating Foreigners in the Refugee Reception Centre, the Organisation of the Business of the Foreigners and the Procedure for Applying Disciplinary Sanctions to the Foreigners, the Procedure for Paying Monthly Allowance for Minor Expenses to Foreigners and the Procedure for Implementing the Right of the Foreigner to Obtain Compensation for the Use of Public Transportation* (Orders No 20, No A1-501, No A1-380).

In line with para. 14 of the Order, the UAMs are obliged to comply with the rules of internal order; allow the doctor to inspect the state of health; provide all documents in their possession and participate actively in / contribute to the examination of the asylum application; attend the Lithuanian language and professional orientation



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courses as well as courses aimed at providing them with information on the Lithuanian society; refrain from violating the rights of other inhabitants of the Centre; maintain the premises of common use and living space; comply with applicable laws.

According to the RRC, UAMs are allowed to leave the Centre with the permission of the Centre administration. For longer than 24 hour stay outside the centre they are required to get a written permission (*source: the RRC reply to the CSS inquiry*).

- *The foreigner is required to regularly appear, at a fixed time, at the appropriate territorial police agency (reporting requirement).*

This scheme was originally intended to cover irregular migrants only, since the wording of the Aliens Law quite clearly points to the reluctance of the legislator to allow asylum applicants to stay elsewhere outside the Foreigner Registration Centre. In the law, such a possibility is explicitly provided for asylum seekers who have arrived to Lithuania legally only, and this is the Migration Department who is competent to take a relevant decision (Art. 79 (2) AL). Other asylum seekers are clearly expected to stay in either the FRC under open or closed (detention) regime (Art. 71 (1, 2 and 4) AL) or the RRC. The latter option is applicable to UAMs only (Art. 79 (3) AL). The practice has essentially followed this arrangement for years. However, in its recent judgement, Lithuania's Supreme Administrative Court imposed an alternative to detention to an asylum applicant in the form of *an obligation to report periodically to police*<sup>18</sup>. In its judgement, the LSAC *inter alia* relies on the principles developed when applying this particular scheme to irregular migrants / persons subject to the return procedure. In particular, the LSAC underlines the fact that the asylum seeker's friend has committed to provide him with accommodation and means for subsistence. This precedent, if further developed, would seem to indicate the emerging new scheme available to asylum seekers who oppose to accommodation in the FRC (even under the open regime). Based on the principles developed in the case law on alternatives to detention applicable to irregular migrants, it would be essential to ensure the availability of a commitment by a resident of Lithuania in terms of accommodation and other means for subsistence. This requirement developed in the context of irregular migration control/return procedures (i.e. in the area where the state has no explicit obligations to act in terms of ensuring accommodation and reception conditions as far as positive law is concerned) sounds a bit abnormal. However, given the fact that in Lithuania reception conditions are provided to asylum applicants in the FRC (or the RRC as regards the UAMs) only, while persons allowed to stay in a place of their choice by a decision of the Migration Department are effectively deprived of any support, the transfer of burden of providing material support to a private person *in fact* illustrates

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<sup>18</sup> Lithuania's Supreme Administrative Court, Administrative Case No. N<sup>575</sup>-102/2013, Judgement of 4 December 2013.



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the current shortcomings of the Lithuanian reception system *vis a vis* the requirements of the Reception Conditions Directive.

As regards the obligations of the person who is subject to this alternative, they are essentially reduced to *the requirement to approach a local police office (e.g. every Thursday from 10.00 to 12.00 a.m.)*. In addition, the general obligations *to perform the duties prescribed for the asylum applicant by the decision of the Migration Department (Art. 71 (3) (2) AL) and to provide all the available documents and a full explanation of the motives for the asylum application corresponding to reality, the asylum applicant's personality as well as the circumstances of his entry and stay in the Republic of Lithuania (Art. 71 (3) (2) AL)* are definitely be of relevance, since the person concerned would be expected to attend an asylum interview on the date (at the time) indicated by the Migration Department and comply with the obligation to substantiate the application.

13. What happens in practice when A/S does not comply with the obligations they have in the framework of the alternative to detention? Please explain the procedure.

First of all, pursuant to the Aliens Law, if the alternative to detention measure is not complied with, the territorial police agency is required to apply to the court for detention of the foreigner (Art. 115 (3) AL). According to the FRC, the centre does not automatically rely on this procedure, if a person fails to comply with the rules of internal order, and since late 2013 there has been no a single case of application of Art. 115 (3) AL as far as the centre is concerned (*source: interview with the Commander and Deputy Commander of the Centre*). In this respect, it should be pointed out, that ***the Order on the Accommodation in the FRC*** provides the Centre administration with a wide range of alternative options which can be relied on when addressing the violation of internal order. Hence, in line with *para 26* of the Order the following disciplinary sanctions may be applied to asylum seekers:

- to carry out the duties of a cleaner out of turn (*lith. be eilės būti paskirtiems tvarkdariais*);
- to maintain the premises of common use and living space (*lith. tvarkyti bendro naudojimo patalpas ir gyvenamąją teritoriją*);
- to reduce or withdraw the financial allowance;
- the prohibition to leave the centre for the failure to carry out the cleaner's duties (the prohibition may not last more than 48 hours) (*lith. už tvarkdario pareigų neatlikimą laikinai, kol nebus atliktos šios pareigos, apribojamas prieglobsčio prašytojo išleidimas iš centro (ne ilgiau kaip 48 valandoms)*);
- isolation of the person from other inhabitants of the centre for not more than 24 hours for numerous violations of the internal order or a malignant violation of the internal order (*lith. už daugkartinį nustatytų reikalavimų nesilaikymą ar piktybinį vidaus tvarkos*

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taisyklių pažeidimą izoliavimas nuo kitų centre apgyvendintų asmenų ne ilgiau kaip 24 valandoms);

- isolation of the person from other inhabitants of the centre for not more than 48 hours or, if necessary, the transfer of the person to other relevant establishments, due the fact that the person poses a threat for himself/herself or for the inhabitants of the centre due to a mental or infectious disease or intoxication caused by alcohol, drugs or psychotropic materials (*lith.* izoliavimas nuo kitų centre apgyvendintų asmenų ne ilgiau kaip 48 valandoms, o prireikus asmenys gali būti siunčiami į atitinkamas įstaigas, kai tampa pavojingi sau ar kitiems dėl psichinės, infekcinės ligos arba apsvaigimo nuo alkoholio, narkotinių, psichotropinių medžiagų).

The above sanctions are applied on the basis of the protocol reporting the violation of the rules of internal order. Based on this report, a decision to apply a disciplinary measure is taken by the head of the centre or an officer who is delegated the powers to take such a decision. It is registered (paras 27 - 29). Based on the recent research on the implementation of the Reception Conditions Directive in Lithuania<sup>19</sup>, the disciplinary sanctions are frequently applied in practice; in particular this is the case with the reduction or withdrawal of the financial allowance. Hence, in 2009, a disciplinary sanction was applied to asylum seekers 141 times, in 2010 – 84 time, in 2011 – 71 times, in 9 months of 2012 – 201 times<sup>20</sup>. According to the asylum seekers consulted in the course of the above mentioned research, the withdrawal of financial allowance is typically applied for a failure to return back to the centre within 24 hours. At the same time, it should be noted that the referred data concerns all asylum seekers accommodated in the centre. In this respect, in the interview with the CSS representative, the Head and Deputy Head of the Centre maintained that asylum seekers who are subject to the alternative measure scheme tend to better respect the internal order, and that since late 2013<sup>21</sup> there have been no cases of the withdrawal of financial allowance with respect to asylum seekers under the alternative to detention measure. In the opinion of the centre administration, this is because the concerned asylum seekers are aware of the fact that the alternative measure may be replaced by detention if the internal order is not respected (*source: interview with the Head and Deputy Head of the FRC*).

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<sup>19</sup> The research was conducted within the project “**The implementation of the EU asylum acquis in Lithuania: legal and sociological aspects.**” The reports and other research materials are available in Lithuanian at <http://www.redcross.lt/lt/veikla/pabegeliai-prieglobscio-prasytojai/2-uncategorised/175-projektas-europos-sajungos-prieglobscio-teisyno-igyvendinimas-lietuvoje-teisinis-ir-sociologinis-aspektai>

<sup>20</sup> Biekša, L., Samuchovaitė, E., Priėmimo sąlygų 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. 34).

<sup>21</sup> Late 2013 is an important time frame, since following the October 2013 amendments to the Aliens Law, alternatives to detention have been applied more frequently.

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Apart from the disciplinary sanctions, delays to report back to the centre may also lead to the suspension or termination of the examination procedure. The decision to suspend the examination of the asylum application is taken by the Migration department on the basis of the FRC submission. If the person does not report back within 1 month, the examination of his/her application is terminated (*source: interview with the Head of Asylum Unit of the Migration department*). The termination also takes place if the person is not transferred to Lithuania under the Dublin Regulation within 1 month. In such cases, he/she is expected to lodge a new application for asylum failing do so he/she may be detained (and in practice such persons are detained) as an irregular migrant with a view to carrying out his/her forced return.

According the RRC, UAMs are not subjected to any disciplinary sanctions (*source: reply to the CSS inquiry*).

14. For each alternative to detention, please specify whether they apply to a certain category of A/S. If so how is this justified by the authorities?

The accommodation at the FRC under the open regime may be applied to any asylum seeker, provided the conditions explicitly set in Art. 115 (1) AL are met (identity is established; there is no threat to national security and public policy; the person provides assistance (cooperates) in determining his/her legal status, and there are no indications of possible risk of absconding (abuse of the asylum procedure). Hence, one may claim that a documented applicant who cooperates with the authorities and complies with all the applicable regulations is likely to benefit from the alternative to detention scheme. Yet, the current case law is evolving, and it seems to focus on particular circumstances of the case leading to relaxing the above mentioned test in individual cases. In this respect, the vulnerability of the person or other factual circumstances may lead to more flexible application of the preconditions for activating the alternative to detention scheme. It is indicative that both the NGO lawyer and the FRC have confirmed to the CSS that application of Art. 115 (1) AL very much depends in the individual circumstances. Hence, even persons lacking passports / identity documents may be imposed an alternative to detention measure (*source: interview with an NGO lawyer; interview with the Head and Deputy Head of the FRC*). The absence of a risk of absconding is a stricter requirement. Exactly for this reason, persons returned under the Dublin Regulation are generally excluded from the alternative to detention scheme. Yet, there have exceptions, and in a recent judgement the LSAC has imposed an alternative measure to an asylum seeker who has been returned to Lithuania under the Dublin arrangements several times<sup>22</sup>.

As regards UAMs, they are accommodated in the RRC as a matter of policy which is based on relevant provisions of the Aliens Law, as described above under point 3.

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<sup>22</sup> Lithuania's Supreme Administrative Court, Administrative Case No. N<sup>575</sup>-102/2013, Judgement of 4 December 2013.

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15. Which is the institution in charge of deciding which individuals should be submitted to these alternatives?

The Aliens Law stipulates that this is the police or other law enforcement body<sup>23</sup> who initiates the procedure for imposing an alternative to detention<sup>24</sup>. The decision making procedure is judicial by its nature. Hence, this is a local court (judge) or, in case of appeal, Lithuania's Supreme Administrative Court who decides as to whether an alternative to detention should be assigned in an individual case. However, it is important to underline that in practice the courts are not limited by the nature (content) of the request submitted by the authorities. Hence, even if the court receives a request to detain the asylum seeker in which an alternative to detention is even not mentioned, the judge is free to examine the issue as to whether an alternative to detention is applicable on his/her own motion, and the available case law demonstrates examples of imposing an alternative to detention in such cases. Surely, much depends on the quality of legal assistance available to the asylum seeker and the experience of the judge in a district court. In this respect, judges of the Švenčionys district court may be referred to as the most experienced ones and this may be indicative that this court in its judgements frequently refrains from detention of asylum seekers.

16. Which organization/entity/actor is responsible for implementing/running this scheme?

- *Periodical reporting to territorial police Office at certain time*

The implementation of this alternative is run by the territorial police. The requirements are specified in the court decision. E.g., it may be specified in the decision that the person is obliged to approach the specified police office every Thursday from 10.00-12.00 a.m. However, when imposing this measure, the courts frequently base their argumentation on the fact that a resident of Lithuania has committed to provide accommodation and take care of the foreigner.

- *Placing an unaccompanied minor at a social institution*

Typically, the RRC is appointed as a social institution in charge of the UAM. It is also assigned the functions of the temporary guardian.

- *Accommodating the alien at the Foreigners' Registration Centre without restricting his freedom of movement.*

This alternative is run by the FRC, which accommodates the asylum seekers subject to this measure in the building assigned for asylum seekers, who are not detained.

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<sup>23</sup> In practice, the relevant law enforcement bodies are regional border guards units or the FRC.

<sup>24</sup> In practice, the detained asylum applicant may also approach a local court at any time to ask for application of alternative measures.

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17. If different, which organisations/institutions are in charge of supervising the implementation of these mechanisms?

The bodies indicated under point 16 are responsible for implementing and supervising the relevant scheme. The territorial police unit is required by law to initiate the detention proceedings, if an alternative to detention measure is not implemented properly. The decision to replace an alternative to detention by detention is taken by court (Art. 115 (3) AL).

Moreover, the court is involved in supervising the alternative to detention scheme in one more way. Before the time limit imposed by court for applying the alternative to detention expires, the relevant body e.g. the FRC, should approach the court requesting the extension of the scheme for a new period, if necessary. Based on this submission, the court may set a new time limit taking into account the relevant circumstances, including the implementation of the measure in the previous period.

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

The above mentioned alternatives are implemented by public bodies / entities (the police, the FRC and the RRC). NGOs provide project based services in the RRC and the FRC. The intensity of this support/ NGOs role depends on the willingness of the centre to cooperate with a given NGO in a given period of time. The RRC which is an establishment under the supervision of the Ministry of Social Security and Labour is more accessible comparing to the FRC which is a structural unit of the State Border Guards Service and was initially established as a detention facility, while the asylum seekers' reception function was attached to the centre in 2004 only. Currently, the involvement of NGOs in providing services and support to asylum seekers in the FRC is to a large extent arranged in the form of a day centre located in the proximity to the FRC and run by *Caritas*. It offers social space and services to asylum seekers, including asylum seekers who are subject to the alternative to detention scheme. In the day centre, asylum seekers also receive legal assistance being provided by the Lithuanian Red Cross lawyers. Moreover, the Lithuanian Red Cross, mostly in the *Caritas* day centre, provides clothes, footwear and hygienic items to asylum seekers (source: interview with a staff member of the Lithuanian Red Cross). In addition, *Caritas* also organises sport activities for women and children inside the FRC.

According to the RRC, the Centre cooperates with the following organisations / bodies:

Organisation	Function / role
Child rights protection services	Taking decision on appointing the Centre to be a guardian of the minor.  Providing guidelines to the Centre relevant for carrying out

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	the duties of the guardian.
Health care services providers (hospitals and specialists)	Provision of health care services to UAMs
Local migration services	Dealing with legal / resident status issues
Migration Department	Tracing of family members
Lithuanian Red Cross	Provision of legal and material assistance to UAMs.
Law enforcement bodies	Addressing issues related to legal status.
Interpreters	Providing interpretation services
IOM	Preparing and carrying out voluntary return

Source: the RRC reply to the CSS inquiry.

19. Are NGOs/private companies in charge of implementing some of these alternatives? If so, how is that implemented in practice?

On several occasions, NGOs / religious communities undertook to take care of and support the irregular migrants within the framework of the reporting scheme in the context of the return procedure. Given the recent case law expanding *the reporting requirement scheme* to asylum seekers, the involvement of NGOs in terms of undertaking a commitment to take care and support asylum seekers in individual cases is feasible. However, much would depend on the capacity of NGOs to provide such support and availability of relevant funds.

## C. ACCESS TO RIGHTS

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

- a) to healthcare;

### *Asylum seekers accommodated in the FRC*

There is a medical unit in the FRC. It is located on the ground floor of the building assigned for asylum seekers. The unit provides the primary healthcare services and essential medical assistance. These services are provided by the general practitioner and other medical staff (nurses) of the unit. It has been claimed that these resources are insufficient, and moreover the medical staff work half time only<sup>25</sup>. If a case is more complicated, the person is sent to the hospital for appropriate consultations or

<sup>25</sup> Problems of Implementation of the Reception Conditions Directive in Lithuanian Legal System, p. 31 and p. 32.



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medical treatment.<sup>26</sup> Given the fact, that a by-law aimed at addressing the order for covering the costs related to the provision of medical services to asylum seekers has not been adopted for years, in practice the accessibility of relevant medical services depends on the attitude of a given service provider. According to a recent research study on the implementation of the Reception Conditions Directive in Lithuania, health care institutions frequently refuse to provide services to asylum seekers accommodated in the centre<sup>27</sup>. In the interview conducted in the course of preparing the present report, the FRC leadership indicated to the CSS representative that in each individual case efforts are taken to find a solution (*source: interview with the Head and Deputy Head of the FRC*). Relevant financial support to cover medical services outside the FRC is also provided by the Lithuanian Red Cross through the ERF funded projects (*source: interview with a staff member of the Lithuanian Red Cross*). Yet, this support is project based and depends on the availability of funds. It cannot therefore be considered a systemic solution.

### *UAMs accommodated in the RRC*

UAMs are fully integrated in the health insurance system of Lithuania, and are covered by the mandatory health insurance funded from the state budget. Their situations is therefore completely different from the one described above. There is a medical unit in the RRC which provides the primary healthcare services to UAMs (*source: the RRC reply to the CSS enquiry*). If a case is more complicated, the person is sent to the hospital / specialists for appropriate consultations or medical treatment. No obstacles have been reported in that respect.

### *Asylum seekers accommodated outside the FRC*

This group is completely excluded from any Government support scheme. They are expected to pay for medical services. As confirmed by the Lithuanian Red Cross, such asylum seekers approach from time to time the organisation asking to cover medical costs. The assistance is provided if project funds are available (*source: interview with a staff member of the Lithuanian Red Cross*).

b) to education;

Children accommodated in the FRC attend local schools in the town of Pabrade as a matter of regular practice (*source: interview with the head and deputy head of the FRC*).

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<sup>26</sup> Biekša, L., Bružaitė G., Samuchovaitė, E., *Detention of asylum seekers and alternatives to detention in Lithuania*, Lithuanian Red Cross Society, Vilnius, 2011, page 39, available at: [http://redcross.eu/en/upload/documents/pdf/2012/Migration/Lithuania\\_Study\\_on\\_detention%20pdf.pdf](http://redcross.eu/en/upload/documents/pdf/2012/Migration/Lithuania_Study_on_detention%20pdf.pdf)

<sup>27</sup> Problems of Implementation of the Reception Conditions Directive in Lithuanian Legal System, p. 32.

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UAMs accommodated in the RRC attend school, and are additionally offered the Lithuanian language and other training course organised in the Centre (*source: the RRC reply to the CSS inquiry*).

- c) access to the labour market;

Asylum seekers do not have a right to work pursuant to the Lithuanian legislation. They are effectively excluded *in corpore* from the labour market.

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

### *Asylum seekers accommodated in the FRC*

#### *(i) Accommodation*

Accommodation is provided in the building assigned for asylum seekers who are not detained. Its regular capacity is 88 persons<sup>28</sup>. Two accommodation levels are available in the building. One level is offered to families and single women, while the other one – to single men. The available accommodation and social space are clearly limited, require renovation and no alternative accommodation arrangements are available to ensure separate safe accommodation for single women and other asylum seekers with special needs. For these reasons any increase in arrivals inevitably leads to the deterioration of accommodation conditions.

#### *(ii) Food*

Food is provided to asylum seekers in kind in a centralised way. In line with *the Order on Accommodation in the FRC* adults are offered meals 3 times per day, while children – 4 times per day. A canteen is established and operates to implement this requirement. On many occasions, asylum seekers articulated their concerns that the meals did not respect their religious feelings, in particular because pork meat was regularly offered disregarding the fact that a considerable number of the centre inhabitants were Muslims. These concerns attracted the attention of the Equal Opportunity Ombudsman who, on 6 January 2014, issued a conclusion maintaining that the FRC failure to take into account the religion based preferences of Muslims and Buddhists when offering food to the centre inhabitants amounted to discrimination on religious grounds. The ombudsman inter alia relied on the obligation of Lithuania to apply the Reception Conditions Directive in conformity with the EU Fundamental Rights Charter which provides for the Freedom of Religion<sup>29</sup>. Following this intervention, *the Order on Accommodation in the FRC* has

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<sup>28</sup> The Report of the Legal Study on the Implementation of the EU asylum acquis in Lithuania, 2013, in Lithuanian, page 58, available at [http://www.redcross.lt/files/Teisinio\\_tyrimo\\_ataskaita\\_logo\\_fondui\\_1.pdf](http://www.redcross.lt/files/Teisinio_tyrimo_ataskaita_logo_fondui_1.pdf)

<sup>29</sup> See the Equal Opportunities Ombudsman certificate No 13 – SN -260, available in Lithuanian at [http://www.redcross.lt/files/Kontrolieriaus\\_tarnybos\\_sprendimas.pdf](http://www.redcross.lt/files/Kontrolieriaus_tarnybos_sprendimas.pdf)



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been amended. It now explicitly stipulates that the centre inhabitants who cannot consume the offered food for religious reasons are to be provided with an alternative menu (*para 42*, the amendment to the Order on Accommodation in the FRC of 31 January 2014).

### *(iii) Clothes and other necessities of life*

According to paragraph 43 of *the Order on Accommodation in the FRC*, the centre inhabitants, *if possible*, are provided free of charge with clothing and footwear. Therefore, the supply of this in kind support, in legal terms, is not a guarantee, and in practice asylum seekers often rely on support provided by NGOs<sup>30</sup>.

According to the FRC, asylum seekers accommodated in the centre are provided with hygienic items free of charge (*source: interview with the head and deputy head of the FRC*). However, the Lithuanian Red Cross confirmed to the CSS that the organisation likewise supplies hygienic items to the centre inhabitants. It was also indicated that the supply of clothes and footwear is among the priorities as far as the asylum seekers needs are concerned (*source: interview with a staff member of the Lithuanian Red Cross*).

### *(iv) Financial allowance*

Asylum seekers accommodated in the FRC are paid a financial allowance on a monthly basis. It is essentially *a daily expenses allowance* in the meaning of Art. 2 (j) of the Reception Conditions Directive. It makes 35 Lit (some 10 EUR). The allowance is very modest to say the least. Moreover, in *the Report on the Implementation of the EU Asylum Acquis in Lithuania* it is indicated that this allowance is paid only to asylum seekers who have been granted temporary territorial asylum, while other asylum seekers (i.e. the asylum seekers whose applications are channelled in the accelerated procedure) do not benefit from the financial support<sup>31</sup>.

## *Asylum seekers accommodated in the RRC*

### *(i) Accommodation*

UAMs are accommodated in the “Unit for Unaccompanied Minors” which is separated from the premises used for the accommodation of adults. A duty social worker is available in the unit around the clock (*source: the RRC reply to the CSS inquiry*). The Unit infrastructure includes 3 bedrooms, a social activity room, a kitchen, a dining room and a laundry. 14 UAMs can be accommodated in the Unit<sup>32</sup>.

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<sup>30</sup> The Report on the Legal Study on the Implementation of the EU asylum acquis in Lithuania, 2013, in Lithuanian, page 48, available at [http://www.redcross.lt/files/Teisinio\\_tyrimo\\_ataskaita\\_logo\\_fondui\\_1.pdf](http://www.redcross.lt/files/Teisinio_tyrimo_ataskaita_logo_fondui_1.pdf)

<sup>31</sup> The Report of the Legal Study on the Implementation of the EU asylum acquis in Lithuania, 2013, in Lithuanian, page 48, available at [http://www.redcross.lt/files/Teisinio\\_tyrimo\\_ataskaita\\_logo\\_fondui\\_1.pdf](http://www.redcross.lt/files/Teisinio_tyrimo_ataskaita_logo_fondui_1.pdf)

<sup>32</sup> Ibid, page 29

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## (ii) Food

The UAMs receive the allowance which is expected to be used for *buying food and covering minor expenses*. According to the RRC, the social worker in charge of the UAM supervises the use of allowance (spending process). The Centre representative indicated to the CSS that the amount of the payable monthly allowance is not sufficient to ensure the minimum health and psychological needs of the minors (source: the RRC reply to the CSS inquiry). Similar concerns have been articulated by other stakeholders. The report prepared in the context of the study on the implementation of the EU asylum *acquis* in Lithuania maintains that the monthly allowance being paid to the UAMs makes 245 Litas (210 Litas for food<sup>33</sup> and 35 Litas for minor expenses). This amount (some 68 EUR per month or 2 EUR per day) is more than modest. It is simply insufficient given the current rate of prices in Lithuania<sup>34</sup>.

## (iii) Clothes and other necessities of life

According to the RRC, UAMs are provided with hygienic items, clothes, and educational tools (source: the RRC reply to the CSS inquiry). There have been no reports which would point to any shortage or problems in this area.

### *Asylum seekers staying outside the reception centres*

This group of asylum seekers is completely excluded from any support scheme with the exception of compensation for use of public transport (see below). The Lithuanian Red Cross provides assistance to this group subject to the availability of relevant project funds (source: interview with a staff member of the Lithuanian Red Cross).

### *Other support*

Pursuant to Art. 71 (1) (4) of the Aliens Law, asylum seekers in the course of examination of an application for asylum are entitled to receive compensation for the use of means of public transport where such use of the means of public transport is linked to the examination of the asylum application. Based on the available information, this support is *de facto* provided to (i) asylum seekers accommodated in the FRC with the exception of asylum seekers who have not been granted temporary territorial asylum; (ii) UAMs accommodated in the RRC. In line with the ***Order of the Minister of Social Security and Labour on compensation for use of public transport*** asylum seekers who stay outside the reception centres may also apply for this support (paras. 5-6).

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<sup>33</sup> As Deputy Head of RRC explained, monthly allowance for food is paid directly to the UAM. Social worker of the RRC assists to the UAM in buying and cooking process taking into account the level of the self-dependence of the child.

<sup>34</sup> See the Report of the Legal Study on the Implementation of the EU asylum *acquis* in Lithuania, 2013, in *Lithuanian*, pages 48 and 50, available at [http://www.redcross.lt/files/Teisinio\\_tyrimo\\_ataskaita\\_logo\\_fondui\\_1.pdf](http://www.redcross.lt/files/Teisinio_tyrimo_ataskaita_logo_fondui_1.pdf)

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In the context of the practices described above, the role of refugee assisting NGOs, namely of the Lithuanian Red Cross and Caritas is vital when it comes to ensuring *de facto* availability of a number of crucial reception conditions for asylum seekers in Lithuania. Their interventions are mostly supported by the ERF. Hence, a joint project titled „Improvement of reception system and accommodation conditions for asylum seekers” which has been implemented since May 2013 ensures the continuous operation of the day centre for asylum seekers in *Pabrade*. This is the place where social services, legal assistance and humanitarian support (food packages, hygiene items and clothes) are offered to those in need.

If not please describe the gaps.

Right	Yes/No	Comment on the gaps
Healthcare	Partially	<p>Asylum seekers accommodated in the FRC have access to hospitals and specialists outside the centre only where:</p> <ul style="list-style-type: none"> <li>a) The service provider agrees to accept the person for treatment;</li> <li>b) NGOs through the ERF funded projects cover the costs.</li> </ul> <p>Reason: the procedure for covering costs of medical treatment of asylum seekers foreseen in the legislation has not been <i>de facto</i> adopted.</p> <p>Asylum seekers staying outside the reception centres are <i>in corpore</i> excluded from any health care arrangements (see above a full description of the health care relevant situation for more details).</p>
Education	Yes	No gaps identified.
Access to the labour market	No	Lithuanian legislation does not allow for employment of asylum applicants. The government relies on the argument that the Lithuanian asylum procedure delivers first instance asylum decisions (both <i>de jure</i> and <i>de facto</i> ) within the maximum 6 month period.
In kind/financial assistance	Partially	<p>There are several shortcomings:</p> <p>First, in the FRC, clothing and</p>

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		<p>footwear are provided only on a discretionary basis. The NGO support is crucial for meeting the relevant needs.</p> <p>Second, financial allowances payable to asylum seekers, including UAMs, are extremely low, and in the FRC practice, the withdrawal of financial allowance has been frequently applied.</p> <p>Third, no in kind assistance / financial allowance is available for asylum seekers staying outside the FRC except for the compensation of public transport costs.</p> <p>Moreover, until <b>31 January 2014</b>, religion based preferences of asylum seekers were not taken into account when providing them with meals in the FRC canteen. The situation has changed following the intervention by the Equal Opportunity Ombudsman (see above a full description of the relevant situation for more details).</p>
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21. a. Do A/S subject to an alternative to detention have access to social and psychological assistance?  
b. Is it provided systematically and is it adequate?

### *Asylum seekers staying in the FRC*

There is one full time social worker and one full time psychologist employed in the FRC. One more part time social worker is employed in the Centre on a project basis. They are expected to provide services to all persons staying in the centre under both open and detention regimes. In the interview with the CSS, the centre leadership acknowledged that the number of social workers should be increased. At the same time, it was indicated that asylum seekers who are not detained receive some of the social services in the Caritas run day centre located in the same town as the FRC, and that this arrangement encourages asylum seekers to go outside the centre and

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develop social skills and experiences (*source: interview with the head and deputy head of the FRC*).

Given the fact that the FRC infrastructure has been primarily developed to ensure the implementation of the detention function attached to the centre from the first day of its operation, and for this reason the centre has many features of a detention facility, the current social infrastructure and resources may not be described as sufficient. Moreover, as indicated in *the Report on the Implementation of the EU asylum acquis in Lithuania*, the centre full time social and psychological personnel speak Lithuanian and Russian languages only leading to communication obstacles.<sup>35</sup> More efforts are definitely needed to expand social space in the centre and strengthen the capacity of social personnel.

## *UAMs staying in the RRC*

2 social workers and 4 associate social workers are employed in the Unaccompanied Minors Unit of the RRC<sup>36</sup>. The work is organized in a way that makes it possible to ensure the presence of social personnel in the Unit around the clock. A professional psychologist is also employed in the centre, and provides relevant counselling to the UAMs (*source: the RRC reply to the CSS inquiry*). Given the fact that the numbers of UAMs accommodated in the centre are not high, the available resources should be described as sufficient, and the available assistance as systematic and adequate.

## *Asylum seekers staying outside the FRC*

No social or psychological assistance is available except for project based interventions / services offered by NGOs.

22. Are A/S subject to an alternative to detention provided with adequate material support, accommodation and other reception conditions, or access to means of self-sufficiency during their asylum procedure?

## *Asylum seekers staying in the FRC*

As described above, there are concerns as regards the supply of clothing and footwear, inadequate financial allowance and insufficient accessibility of health care services outside the centre. As regards accommodation, it should first be underlined that there is only one building in which asylum seekers are accommodated in the FRC. The ground floor of this building is assigned for logistics, while the rest two levels are used for accommodating asylum applicants. The building offers the total space of 1140 square metres, while 482 square metres are used for the accommodation area. In total, there are 22 rooms assigned for hosting asylum seekers. There are also 2 kitchens, the social activity room and the social worker's

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<sup>35</sup> The Report of the Legal Study on the Implementation of the EU asylum acquis in Lithuania, 2013, in Lithuanian, page 72

<sup>36</sup> Ibid, page 29

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office as well as a gym for women and children (set in a separate building)<sup>37</sup>. **This is the only in-country accommodation facility available for asylum seekers who are not UAMs**<sup>38</sup>. It was initially built to provide accommodation to asylum seekers at the initial stage of the asylum procedure only, but following the 2004 reform of the reception system it has become the principal accommodation arrangement the national asylum system may offer to persons seeking international protection in Lithuania. According to the leadership of the FRC, the optimal accommodation capacity of this building is 70 persons (*source: interview with the head and deputy head of the FRC*). While a bigger number of persons may be accommodated in the building (in *the Report on the Implementation of the asylum acquis in Lithuania* it is indicated that based on the information provided by the FRC it is possible to accommodate 88 asylum seekers in the building<sup>39</sup>), it is clear that any further (even slight) increase in arrivals inevitably leads to the deterioration of accommodation conditions. Moreover, this very poor infrastructure makes it very difficult if not impossible to ensure gender and trauma sensitive accommodation. To give an example, there is simply no physical possibility to ensure safe haven for single women, since they are expected to share the same floor with the male applicants. No separate accommodation arrangements are available for single women in the centre.

### *UAMs staying in the RRC*

The RRC offers to UAMs an appropriate social infrastructure, experienced social personnel and educational opportunities, as described above. Yet, the centre is located in a small town on a considerable distance from the meaningful social space and services. The town hosts a military base and has a high unemployment rate. The insufficient financial allowance paid to the UAMs which is a problem in itself makes the situation only more difficult. Moreover, since recently, the RRC has been also used to accommodate and provide social services to mentally handicapped residents of Lithuania and, in addition, given the status of a facility offering shelter for victims of human trafficking.

### *Asylum seekers staying outside the FRC*

This group can only rely on themselves, relatives, friends and NGOs. No accommodation or other material support is available for them from the state budget, except for ERF projects which are co-funded by the Government.

23.       a. Do these asylum seekers have access to information about the procedure with regards to the alternatives to detention they are subject to? In particular, are they informed about the reason why they were submitted to these alternatives in the first place?
- b. If so, do you consider it adequate and sufficient?

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<sup>37</sup> Ibid, page 58

<sup>38</sup> In practice, from time to time, the police also provide asylum seekers with hotel accommodation in the initial stage of the procedure (for 48 hours period).

<sup>39</sup> The Report on the Implementation of the EU asylum acquis in Lithuania, 2013, in Lithuanian, page 58



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### c. At what stage is it provided?

It depends on the stage of the asylum process. If an alternative to detention measure is imposed following the arrival / submitting of the application, the first source of information is a judge who by law has an obligation to inform the foreigner about the imposing of an alternative to detention indicating the reasons for applying the relevant measures.<sup>40</sup> According to a judge of the Švenčionys district court, when reading out to the asylum seeker the operative part of the decision on imposing an alternative to detention in the form of the accommodation in the FRC, he explains to him/her that the announced measure means that the person is required to stay in the centre where he should be provided with accommodation and have a possibility to leave the centre for not more than 24 hours. In addition, the attention of the asylum seeker is drawn to the fact that the applicable internal rules and order should be explained to him/her in the Centre (*source: interview with a judge of the Švenčionys district court*). In addition, a lawyer who is mandatory present in every such hearing is also expected to provide advice to his/her client. It is not feasible to assess the quality / intensity of such communication. As regards the information provided in the FRC, it should be first pointed out that *The Order on Accommodation in the FRC* specifies that *persons accommodated in the Centre are informed upon signature about their rights, obligations and internal rules of the Centre* and that information is to be provided in the language 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*. The above mentioned requirement to *inform the newly accommodated applicant of his/her rights, obligations and internal rules* is executed in the form of providing him/her with the information list (*lith. informacinis lapas*), which inter alia describes the internal order, rights and obligations, including the procedure for leaving and reporting back to the Centre. The asylum seeker puts down signature hence confirming the fact that the text has been communicated to him/her<sup>41</sup>. Moreover, every asylum seeker is assigned an officer in charge of his/her case, who is expected to familiarise the person with the decisions taken and provide other relevant information. It is not feasible to draw any definite conclusions as to whether that duty is carried out properly in all cases. Yet, a sociological research carried out in the framework of the above mentioned study on *the implementation of the asylum acquis in Lithuania* indicates that *insufficient information* about the procedure and relevant rights and obligations is a key concern articulated by asylum seekers (as well as

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<sup>40</sup> Under Art. 116 (3) AL, the court's decision to impose against the foreigner a measure alternative to detention must be forthwith announced to him/her in a language which he/she understands, indicating the reasons for imposing measures alternative to detention

<sup>41</sup> Concerns have, however, been expressed that asylum seekers are not provided with a copy of this text, and the number of available linguistic versions is limited. See *the Report on the Implementation of the EU asylum acquis in Lithuania, 2013, in Lithuanian*, pages 90-91, available at [http://www.redcross.lt/files/Teisinio\\_tyrimo\\_ataskaita\\_logo\\_fondui\\_1.pdf](http://www.redcross.lt/files/Teisinio_tyrimo_ataskaita_logo_fondui_1.pdf)



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former asylum seekers) consulted in the framework of that project. As stressed by some of the interviewed applicants, *counselling by fellow asylum seekers* is a *de facto* arrangement the asylum seekers frequently rely on.<sup>42</sup> A research carried out by the International Organisation for Migration came up with a similar observation *inter alia* pointing to insufficient explanation of the rights to asylum applicants and their limited access to legal assistance<sup>43</sup>.

Where the issue of an alternative to detention arises not in the initial stage of the asylum procedure (first hearing in the court) but rather later on during the asylum procedure, e.g. because the time limit of the imposed measure has expired and the authorities want to extend it or *the review procedure* has been initiated, the *de facto* arrangements relevant for informing the applicant about the imposed an alternative to detention are different. As indicated by the interviewed practitioners, in such court hearings asylum seekers usually do not participate instead being represented by a lawyer (yet, the presence of a lawyer is *a must* in all types of detention relevant proceedings) (*sources: interview with a private lawyer; interview with a judge of the Švenčionys district court*). In such a situation, at least one of the above mentioned principal sources of information, namely a judge is excluded, and the same very much goes for a lawyer unless he/she gets in contact with the client later on. The FRC officer in charge of the asylum seeker's case who is required by applicable rules to familiarise the asylum seeker with the decision then becomes a crucial actor when it come to explaining to the applicant the meaning and consequences of the decision. This arrangement, therefore, is less transparent comparing to the one whereby the asylum seeker is present in the court. Additional safeguards should therefore be introduced to make sure that the relevant information is explained properly. In this respect, it should also be noted that no written materials specifically aimed at providing the asylum seekers with information about the alternative to detention measures have been produced in Lithuania, while the available leaflets about the asylum procedure address the issue only indirectly and to a very limited extent.

Finally, if the asylum seeker is first detained (as an irregular migrant or as an asylum seeker), then he/she may be interested in initiating *the review procedure* which may result in imposing an alternative to detention or ordering the asylum seeker's release. However, according to the interviewed lawyers, access to the detained asylum seekers is often very problematic in practice, and much depends on the willingness of the FRC administration to grant access to a particular applicant (*source: interview with an NGO lawyer; interview with a private lawyer*).

24. a. Do asylum seekers subject to these measures have access to information about the asylum procedure?

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<sup>42</sup> (Iš)gyvenimas Lietuvoje: prieglobsčio ieškančių ir prieglobstį gavusių užsieniečių patirtis, in *Lithuanian*, (Survival in Lithuania: the experiences of asylum-seekers and foreigners granted asylum), Etniškumo studijos 2013/1 / Ethnicity Studies 2013/1, page 94, available at [http://www.ces.lt/wp-content/uploads/2013/05/EtSt\\_Aleknevi%C4%8Dien%C4%97\\_2013\\_1.pdf](http://www.ces.lt/wp-content/uploads/2013/05/EtSt_Aleknevi%C4%8Dien%C4%97_2013_1.pdf)

<sup>43</sup> See TMO, Prieglobsčio Lietuvos Respublikoje prašytojų, pateikusių apeliaciją, apklausa. Tyrimo ataskaita, 2012 (translation: IOM, Interview of asylum seekers who submitted appeal. Survey Report, 2012).

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- b. If so, do you consider it understood (language and content) and sufficient?
- c. At what stage is it provided?

Information about the asylum procedure and applicable rights and obligations is provided to asylum seekers in 5 ways:

First, the asylum seeker is familiarised with the rights and obligations in the beginning of the screening (initial) interview. This interview is conducted within the first 24 hours following the lodging of the asylum application (i.e. before the detention relevant judicial proceedings are launched). Hence, every single asylum applicant should in principle benefit from this communication. Yet, the content of information, as it appears on the first page of the official interview form is very limited, concerns only some of the applicable rights and obligations, does not describe the asylum procedure and worded in a very formalistic legal language, and moreover serious concerns have been expressed regarding the quality of the screening interviews<sup>44</sup>.

Second, information about the rights and obligations is also provided in the beginning of the interview on the substance of the applications. Such an interview in practice is not always conducted with the applicants who are subject to the accelerated procedure. The content of information is almost identical to the one described in the context of the screening interview.

Third, information about the asylum procedure and applicable rights and obligations is also provided in the leaflet prepared by the Lithuanian Red Cross. The leaflet is supplied to all border guards units and the FRC. While the content of this leaflet is indeed most comprehensive comparing to other forms of providing information available in Lithuania, the number of linguistic versions is limited, and much depends on the willingness of the border guards to provide the leaflet to a given applicant.

Forth, asylum seekers may benefit from legal counselling being provided by the Lithuanian Red Cross lawyers and private lawyers offering services with the state funded legal aid scheme. The Red Cross provides legal assistance in various forms, namely by phone (the telephone numbers are available in all the border guards units/crossing points), in the premises of the organisation and when visiting the FRC or the RRC. It should be noted however that currently the Lithuanian Red Cross does not provide counselling inside the FRC. Non-detained asylum applicants may, however, benefit from the Red Cross lawyer services / counselling in the Caritas day centre.

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<sup>44</sup> Laurynas Biekša and Vladimiras Siniovas, Searching for a fair and efficient asylum procedure: Lithuania's efforts to implement Council Directive 2005/85/EC, in *Lithuanian, Ethnicity Studies* 2013/1, pages 50 and 51, available at [http://www.ces.lt/wp-content/uploads/2013/05/EtSt\\_Biek%C5%A1a\\_Siniovas\\_2013\\_1.pdf](http://www.ces.lt/wp-content/uploads/2013/05/EtSt_Biek%C5%A1a_Siniovas_2013_1.pdf)

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Fifth, information about the asylum procedure is provided on the website of the Migration department ([www.migracija.lt](http://www.migracija.lt)). It is available in Lithuanian, Russian and English only.

Sixth, as indicated above, the FRC officer in charge of the case is also expected to regularly inform the asylum seeker about the developments in his/her case. Similarly, the RRC, which is the appointed guardian of the UAM, is expected to provide (through the responsible social worker) the child with all relevant information as regards the applicable procedure.

Despite the variety of forms as described in this section, asylum seekers remain insufficiently and inadequately informed about the asylum process, and the researches discussed under point 23 confirm this assessment.

## D. REMEDIES

25. a. In practice, what is the maximum period in which an A/S can be submitted to these measures?
- b. Does it correspond to the maximum period of detention?
- c. Please clarify if the initial period can be extended and if so what are the grounds for extension

The maximum period is not defined by law. In a decision imposing an alternative to detention measure the court is expected to indicate the time limit for its application. As confirmed by a judge of the Švenčionys district court, he always indicates a specific date in the decision on imposing an alternative to detention measure. Based on his experience, the alternative (accommodation in the FRC) is normally assigned for 2-3 months (*source: interview with a judge of the Švenčionys district court*). In this respect, it is important to underline that the initial duration of the regular first instance asylum procedure is 3 months. The imposed alternative to detention can further be extended or replaced by detention (if the person does not comply with the applicable obligations). Another option is a judicial order not to extend the alternative instead concluding that no detention ground is applicable in the asylum seeker's case. In the opinion of the author of the present report, the Lithuanian system of alternative to detention measures as it is applied now is not linked to the maximum duration of detention, given the fact that the asylum procedure in individual cases may easily take more than 18 months which is the maximum period of detention provided by law (the time limit was introduced in the course of the transposition of the Return Directive).

26. Is there, in practice, a right to appeal the decision to apply an alternative to detention? If so, how does it function in practice? More particularly, is it accessible?

A decision to apply an alternative to detention is generally perceived as a positive outcome for the concerned asylum seeker. From the point of view of lawyering strategies, it would indeed be safer not to continue the dispute with the law enforcement bodies in front of the LSAC, in particular given the fact that the case law of the LSAC is evolving, and it is sometimes difficult to predict as to how the Court

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would behave in a particular case. Yet, the appeal is possible, and a lawyer providing legal assistance within the state funded legal aid scheme would be able to prepare the necessary procedural document.

In practice, however, there have been a series of cases whereby the FRC approached the Švenčionys district court requesting the alternative to detention for asylum applicants (according to the FRC, more than 50 requests to apply the alternative were lodged with the court annually in 2012 and 2013), while the court instead ordered the release of the concerned asylum seekers. In such cases, the FRC challenged the decisions of the Švenčionys district court before the LSAC insisting on the need to apply the alternative to detention scheme (*source: interview with the head and deputy head of the FRC, interview with a private lawyer*).

27. Do they have access to legal counselling?
- b. Is it free of charge for the A/S or at his/her own expense?
  - c. Is free legal assistance provided in most cases?
  - d. Is it provided ex officio or should they apply for it?

The state funded legal aid scheme for asylum seekers has been operational for years. It *inter alia* covers provision of legal assistance, including representation, in the detention relevant judicial proceedings. The services are provided by law firms (members of the Bar Association) who have won public tenders on provision of legal assistance to asylum seekers. Contracts concluded between the law firms and the Migration Department *inter alia* describe types of services to be provided to asylum seekers. In the context of detention, they cover the preparation of relevant procedural documents and representation of asylum seekers in judicial proceedings. The assistance is generally provided systematically. Yet, obstacles have been reported as regards accessibility of legal services for detained asylum seekers who wish to initiate judicial proceedings with a view to reviewing the detention order on their own initiative, as described below.

Based on the consultations with legal practitioners and authorities, the following features of the applicable legal assistance scheme, as it works in practice, are identifiable:

### *Situation No 1*

A person who is not detained lodges the asylum application with the border guards, the police or the FRC.

If the border guards, the police or the FRC approach a court with a view to detaining the person for more than 48 hours, the participation of a legal counsellor is obligatory. Law firms providing services within the state funded legal aid scheme for asylum seekers would have to delegate a lawyer to take part in the proceedings. Currently 3 legal firms provide such services, based on the contracts concluded with the Migration Department.

### *Situation No 2*

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The person applies for asylum while staying in the detention area of the FRC.

In order to benefit from the services of the state funded lawyer, he/she should communicate the relevant request to the Migration Department in writing. Theoretically, it can be done by submitting the request to the administration of the FRC expecting that the document would be then directed to the Department. However, a more effective way to communicate the will to the Migration department is to write down the words “*I need lawyer’s services*” in the decision on granting temporary territorial asylum. This is because that decision is mandatory notified to the asylum seeker and then always sent back to the Migration Department, since the decision containing the person’s signature confirming the fact of notification should be put back in the asylum file. Once the Migration Department receives back the decision, its responsible personnel should order a relevant service form a legal service provider. This procedure is not addressed in any piece of legislation or by laws, and rather reflects administrative arrangements. It does not function smoothly in all cases, since the Department may need more information as regards the type and nature of service needed. Hence, it would be safer for the person to indicate “*I need lawyer’s services to challenge detention*” in the decision.

### *Situation No 3*

The person who has been detained following the lodging of the asylum application wishes to initiate *the judicial review procedure*. He/she would need to follow the path described in the situation No 2. There may, however, be obstacles to do so, since the decision on granting (refusing) temporary territorial asylum would have been most probably already taken. Hence, he would need to find ways to communicate his/her wish to the Migration Department.

### *Situation No 4*

The proceedings with a view to extending the detention period are examined by the Švenčionys district court.

The participation of a legal counsellor is obligatory, and the hearing would not take place if the lawyer were not present. In practice, it is often the court that approaches the Migration Department either directly or through the legal companies involved in providing the state funded legal aid requesting to arrange for lawyer’s services. The same arrangement would apply, if the FRC initiated the review procedure on its own initiative (source: interviews with a private lawyer, interview with an NGO lawyer; interview with the Head of the Asylum Unit of the Migration Department; interview with a judge of the Švenčionys district court).

28. 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)?

Asylum seekers are issued the Foreigners’ Registration Card within 48 hours from the moment of granting temporary territorial asylum (Art. 78(1) AL). This document



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is issued by the Migration Department. It confirms that the person is an asylum seeker and is allowed to stay on the territory pending the examination of his/her asylum application. Where asylum seeker's identity is established, the card also confirms the identity of the person (Art.2 (30) AL). The card is valid for 3 months and may be replaced by a new card once the previous one is expired. Delays in issuing the card have however been reported<sup>45</sup>. Moreover, pursuant to **Article 78 (1) of the Aliens law**, the card is issued only to those asylum applicants who have been granted temporary territorial asylum. This essentially means that asylum seekers subject to the accelerated procedure are excluded from the scope of this guarantee.

## E. COST EFFECTIVENESS AND EVALUATION MECHANISMS

29. How many asylum seekers are subjected to these alternatives to detention in a year or quarter (please specify if you are giving number of people OR number of cases – which counts a family as a unit)?

According to information provided by the Migration Yearbooks, in 2012, there were 10 persons accommodated at the FRC without restriction of movement, i.e. staying under the alternative to detention scheme<sup>46</sup> and in 2013, there were 5 persons accommodated at the FRC without restriction of movement, staying under the alternative to detention scheme<sup>47</sup>. According to the information provided by the officer of the FRC, in 2013, 156 asylum seekers were accommodated in the FRC without restrictions of movement (including asylum seekers accommodated in the FRC by decision of the court under the alternative to detention scheme and asylum seekers accommodated in the FRC by decision of the Migration Department)<sup>48</sup>. It should be noted, however, that the available statistics are highly unreliable, since the fact of imposing an alternative measure, which may be imposed by any district court of the country, needs to be entered into the Foreigners Registry to be visible in the statistics, and this is not always the case. Moreover, due to the dynamics of the detention relevant situation (the same person may easily move from the category of *detained irregular migrants* to the category of *detained asylum seekers* to the category of *non detained asylum seekers accommodated in the FRC by the Migration Department decision* to the category of *asylum seekers subject to an alternative to detention* and back to the category of *detained migrants/asylum seekers*), it is very difficult to trace the actual number of asylum seekers who were subject to the alternative to detention scheme in the FRC annually. However, according to the available judgements, in 2013, alternative to detention were applied to 10 asylum seekers: to 8 asylum seekers the court imposed alternative to detention – accommodation in the FRC not applying

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<sup>45</sup> See the Report of the Legal Study on the Implementation of the EU asylum acquis in Lithuania, Page, 12

<sup>46</sup> Migration Yearbook for 2012, available at: <http://www.migracija.lt/index.php?-1704151938> (in English language), Page 80.

<sup>47</sup> Migration Yearbook for 2013, available at: <http://www.migracija.lt/index.php?1357390560> (in Lithuanian language only), Page 75.

<sup>48</sup> Foreigners' Registration Centre of State Border Guard Service under the Ministry of the Interior of the Republic of Lithuania, e-mail communication, 15 May 2014.

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restrictions to freedom of movement<sup>49</sup>; one asylum seeker was obliged by the court to register at the police office<sup>50</sup> and in one case the court entrusted the guardianship of asylum seeker to a citizen of the Republic of Lithuania who was related to asylum seeker, provided that the person undertakes to take care of and support asylum seeker and in addition asylum seeker was obliged at the fixed time to inform, by means of communication, the appropriate territorial police office about his whereabouts<sup>51</sup>. To compare the statistics of imposition of alternatives to detention to asylum seekers and to other migrants, it should be noted that, in 2013, alternative to detention were imposed to 10 irregular migrants<sup>52</sup>.

The situation in the RRC is different, since they know how many children were brought to the centre per year. The following statistical information regarding UAMs was submitted in the course of preparing this report:

Year	2009	2010	2011	2012	2013
Number of UAMs accommodated in the RRC by the court decision	0	8	4	81	9

NB: It concerns UAMs who did not initially apply for asylum.

<sup>49</sup> Lithuania's Supreme Administrative Court, Administrative Case No. N<sup>575</sup>-79/2013, Judgement of 26 July 2013; Lithuania's Supreme Administrative Court, Administrative Case No. N<sup>575</sup>-78/2013, Judgement of 26 July 2013; Švenčionys district court, Decision of 7 November 2013, Administrative case No. A-1332-763/2013; Švenčionys district court, Decision of 13 August 2013, Administrative case No. A-998-763/2013; Švenčionys district court, Decision of 7 August 2013, Administrative case No. A-993-763/2013; Švenčionys district court, Decision of 10 December 2013, Administrative case No. A-1457-617/2013; Švenčionys district court, Decision of 4 November 2013, Administrative case No. A-1340-617/2013; Ignalina district court, Decision of 3 October 2013, Administrative case No. A-770-277/2013.

<sup>50</sup> Lithuania's Supreme Administrative Court, Administrative Case No. N<sup>575</sup>-102/2013, Judgement of 4 December 2013.

<sup>51</sup> Lithuania's Supreme Administrative Court, Administrative Case No. N<sup>575</sup>-52/2013, Judgement of 15 May 2013.

<sup>52</sup> Migration Yearbook for 2013, available at: <http://www.migracija.lt/index.php?1357390560> (in Lithuanian language only), Page 75.



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The Migration Department provided the statistics for UAMs who have applied for asylum:

Nationality	2008		2009		2010		2011		2012		2013
	M	F	M	F	M	F	M	F	M	F	M
Afghanistan			2		3		8		3		
Georgia					2		2				
India											1
Congo DR		1									
Nigeria											
Pakistan											
Russia			1								
Uzbekistan											
Vietnam					3	1				1	
		1	3		8	1	10		3	1	1
<b>Total:</b>	<b>1</b>		<b>3</b>		<b>9</b>		<b>10</b>		<b>4</b>		<b>1</b>

As mentioned above the UAMs who have applied for asylum are accommodated in the RRC by the decision of the Migration Department.

30. What are the proportion of asylum seekers being subjected to these alternatives in relation to the number of A/S detained and the number of A/S in general?

As it was mentioned, asylum seekers as well as irregular migrants are detained in the FRC on the grounds specified in AL<sup>53</sup>. Currently the FRC can accommodate in the detention part of the centre up to 76 persons<sup>54</sup>. The consulted state authorities (the FRC) referred to the dynamics of the detention relevant situation (as described under point 29) as an obstacle making it very difficult to assess the number of detained asylum seekers, and no such data is provided in the available statistical reports, which instead refer to the total number of foreigners detained in Lithuania per year. Hence, according to the Migration Yearbooks the total number of foreigners

<sup>53</sup> Under Art. 79 (3) AL, the FRC is „an institution intended for keeping aliens detained on the grounds specified in this Law and, on the decision of the court or the Migration Department, providing temporary accommodation to aliens, carrying out inquiries with regard to identity of the aliens, the circumstances of their entry into the Republic of Lithuania, keeping of records of aliens as well as carrying out the return and expulsion of aliens from the Republic of Lithuania”.

<sup>54</sup> Foreigners' Registration Centre of State Border Guard Service under the Ministry of the Interior of the Republic of Lithuania, e-mail communication, 8 May 2014.

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(including asylum seekers) who were detained in the FRC for over 48 hours for illegal entry to and (or) illegal stay in the territory of the Republic of Lithuania was 363 in 2013<sup>55</sup>; 375 persons were detained for over 48 hours in 2012<sup>56</sup>; 241 persons were detained for over 48 hours in 2011<sup>57</sup>.

Number of foreigners detained for over 48 hours for illegal entry to and (or) illegal stay in the territory of the Republic of Lithuania from 2011 to 2013, by country of origin:

Foreigner's country of origin	2011	2012	2013
European states, including:	189	281	236
- Belarusian	7	15	15
- Georgian	139	231	181
- Russian	24	27	27
African states	8	79	5
Asian states	37	10	120
Stateless (not identified)	7	5	2
<b>TOTAL</b>	<b>241</b>	<b>375</b>	<b>363</b>

Source: *Migration Yearbooks for 2013, 2012 and 2011*.

According to the information provided by the officer of the FRC, 106 asylum seekers were detained for over 48 hours in the FRC in 2013: 44 asylum seekers who applied for asylum before the court decision to detain them and 62 asylum seekers who applied for asylum already being detained in the FRC as irregular migrants<sup>58</sup>. To compare the number of asylum seekers detained and the number of asylum seekers in general, it should be noted that according to the information provided by Migration Yearbook for 2013, there were 399 applications for asylum in 2013 (262 first applications, 103 repeated applications and 34 taken back under Dublin II)<sup>59</sup>. It is also possible to assess the proportion of detained and non-detained applicants in a given time. Hence, on 20 January 2013, there were 85 asylum seekers staying in the FRC. Out of this number, 34 asylum applicants stayed in the detention section of the centre<sup>60</sup>.

<sup>55</sup> Migration Yearbook for 2013, available at: <http://www.migracija.lt/index.php?1357390560> (in Lithuanian language only), Page 75

<sup>56</sup> Migration Yearbook for 2012, available at: <http://www.migracija.lt/index.php?-1704151938> (in English language), Page 80

<sup>57</sup> Migration Yearbook for 2011, available at: <http://www.migracija.lt/index.php?-1704151938> (in English language), Page 79

<sup>58</sup> Foreigners' Registration Centre of State Border Guard Service under the Ministry of the Interior of the Republic of Lithuania, e-mail communication, 19 May 2014.

<sup>59</sup> Migration Yearbook for 2013, available at: <http://www.migracija.lt/index.php?1357390560> (in Lithuanian language only), Page 68

<sup>60</sup> Information submitted by the Lithuanian Red Cross.

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As regards UAMs more definite inferences may be drawn. Since already for a while the policies and practices were to avoid detention of UAMs, it may be safely concluded that up to 100 percents of UAMs are not detained. Reservations should however be made as regards UAMs who have not been properly identified as minors (see earlier in this report on the 2 documented cases of placing the presumed UAMs in a jail).

31. If different alternative mechanisms are applied, which alternatives are used more commonly and why?

Types of alternative scheme applied	Specify if this alternative is frequently/rarely/never applied <i>Please provide figures if possible</i>	Comment
Obligation to surrender passport and documents	N/A	
Regular reporting to the authorities	1 case of application to an asylum seeker is known	The alternative has typically been with regard to rejected asylum seekers and other persons subject to the return procedure.
Deposit of adequate financial guarantee	N/A	
Community release/supervision	Never	It has not been used to asylum seekers in practice
Designated residence	Frequently	It should be kept in mind that the situation is dynamic and evolves. Before the October 2013 amendments there was often no need for applying the alternatives due to liberal policies as reflected in the legislation. Following the October 2013 amendments the alternative in the form of obligatory stay in the FRC under open regime has become much more relevant and is used more frequently in

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		practice.
Electronic monitoring	N/A	
Other (please specify)		

32. What is the rate of disappearance among A/S submitted to one of these alternative measures? Please specify if you have figures per alternatives.

The FRC was able to provide statistics which reflect disappearances of asylum seekers in general. It therefore concerns both groups of non-detained asylum seekers (i.e. asylum seekers accommodated by the Migration department decision and asylum seekers under the alternative to detention scheme). Yet, it shows trends as regards asylum seekers who are not detained. When assessing these statistics, regard should be taken to the fact that in recent years Lithuania have experienced arrivals of asylum seekers, a considerable number of whom were eventually found not to be in need of international protection. Such applications were to a large extent rejected as manifestly unfounded. The situation however evolves, and the number of ill-founded / abusive claims has decreased. This should have impact on the future developments as was as the disappearances are concerned.

Year	Total number accommodated in the FRC	Number of applicants subject to the accelerated procedure	Number of absconded asylum seekers
1997	221	-	29
1998	198	-	16
1999	118	-	3
2000	167	9	-
2001	276	29	8
2002	348	19	26
2003	308	33	38
2004	141	21	30
2005	146	8	14
2006	165	8	7
2007	193	13	28
2008	269	9	39
2009	332	14	140
2010	433	94	279
2011	494	160	248
2012	656	240	395

*Source: information submitted by the FRC*

Numbers of UAMs absconded from the RRC:

Year	2009	2010	2011	2012	2013
Numbers	0	8	4	80	9

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*Source: information submitted by the RRC*

33. Have any other alternatives been operationalised in the past and have since been abandoned? If so please briefly describe the type of schemes operated and the reasons why they were discontinued.

No

34. What are the main difficulties/obstacles observed in the implementation of these alternatives (e.g. costs, administrative burden, non-compliance)? Please describe.

A limited reception capacity of the asylum system is definitely a key challenge which brings over negative implications as regards the standard of living available for asylum seekers subject to the alternative to detention scheme in the FRC. Poor reception conditions available for asylum seekers in the centre and lack of social personnel only further deteriorate the quality of assistance and support available for the concerned asylum seekers. Additional social staff and infrastructure in the FRC is *a must* requiring appropriate attention by the Government.

In this respect, the availability of alternative to detention schemes for asylum seekers outside the FRC, notably in the form of an obligation of the person to report to the police periodically based on the commitment undertaken by a third person to provide him/her with accommodation and support, might be an alternative arrangement capable to decrease the pressure on the accommodation system of the FRC and to enable the applicant to avoid detention like atmosphere and environment dominating in the centre. The FRC has likewise confirmed their interest in making such option available for asylum seekers in particular when the accommodation capacity of the centre is exhausted (*source: interview with the head and deputy head of the FRC*). Yet, in practice it is often difficult for asylum seekers to find a person or an NGO who might undertake a commitment to take care of the person, while the state currently provide no reception support for asylum seekers staying outside the centres.

Furthermore, the authorities consulted in the course of preparing this report referred to a high rate of absconding as a challenge, and expressed an opinion that a case by case approach assessing carefully the risk is needed to decide as to who should be detained and who may be subjected to an alternative to detention. In their opinion, the fact that Lithuania has joined the Schengen area is a pull factor attracting arrivals with a view to proceeding further to other Schengen countries (*source: interview with the head and deputy head of the FRC*). The RRC has expressed a similar opinion underlying that, for many UAMs, Lithuania is a transit country and that many UAMs or persons who claim to be UAMs simply abscond. According to the centre, financial allowances payable to UAMs, including the allowance for food, are not sufficient and need to be reconsidered / increased (the RRC reply to the CSS inquiry).

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35. Why do you think alternatives to detention are not more widely applied by your government? Please provide any relevant feedback from government officials.

First, it is essential to underline that the intensity and frequency of relying on alternatives to detention is directly linked to *the applicable grounds of detention* and other legislative provisions relevant for assessing as to whether detention as an option should be considered at all. Hence, in Lithuania, one may single out several stages when it comes to application of alternatives.

- The period of 2004 – 2007: since the Aliens Law allowed for detention of all asylum seekers on the ground of illegal entry or stay without taking into account any individual circumstances or needs, application of the alternative to detention (accommodation in the FRC without restricting freedom of movement) was in fact the only legal possibility to avoid detention. Hence, lawyers fought for every single asylum seeker in the courts, and the alternative to detention scheme was applied frequently. Importantly, the majority of those concerned asylum seekers were Chechens almost *prima facie* in need of international protection.
- The period of 2007 – late 2012: following the amendment to the Aliens Law lobbied by the UNHCR, the ground of *illegal entry or stay* was not applicable to asylum seekers. Consequently, instead of imposing alternatives to detention, the judges simply rejected any detention submission on this ground. Exactly for this reason, the absolute majority of asylum seekers were accommodated in the FRC by the Migration Department decision, while alternatives were rarely in use.
- The period of late 2012 – October 2012: following the precedent setting decision of the LSAC, the Return Directive clause became applicable to asylum seekers, and the need to detain the person with a view to securing his/her future expulsion based on the established risk of absconding was used as a separate detention ground. Accordingly, once the risk was established in an individual case the concerned person was placed in detention. If not, the detention was not authorised by courts. Again, in this situation there was little room for alternatives.
- The period of October 2013 – up to now: with the inserting of new detention grounds (conditions) for asylum seekers who arrived to or stay in Lithuania illegally (see earlier in this report the discussion on detention grounds), alternatives to detention have regained their weight and importance. They are now again applied in practice.

As regards the authorities, a risk of absconding and Schengen area related considerations, as described above under point 34, appear to be a key consideration for them when deciding whether an applicant should be

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subjected to an alternative scheme (*source: interview with the head and deputy head of the FRC; interview with a judge of the Švenčionys district court*). Moreover, the operation of alternatives to detention outside the FRC is limited by non-availability of financial support and accommodation arrangements for the concerned persons.

36. Please provide available data or an objectively based evaluation on how much does the implementation of such a scheme cost? If possible please give figures regarding the cost of these alternatives per individual (comparing it to the cost of detention if information on this point is available).

### *Accommodation in the FRC*

According to the leadership of the FRC, based on their calculations, the accommodation of one applicant in the centre under the open regime costs **50 Litas per day**, provided an optimal number of asylum seekers is accommodated in the centre. The optimal number is 70 persons. The costs required to accommodate a person under the detention regime is **62 Litas per day**.

The above numbers covers all the necessary costs, including the supply of water and other utilities, laundry services, meals etc. It should however be noted that asylum seekers under the open regime receive some services (which are not included in the calculation) in the Caritas day centre (legal assistance, Lithuanian language training, activities with children, use of computer<sup>61</sup>) (*source: interview with the head and deputy head of the FRC*).

### *Accommodation in the RRC*

As regards accommodation of UAMs, the RRC provided the following information:

Supply of water and other utilities: some 135 Litas per month

Meals: 245 Litas per month (financial allowance)

Hygienic items: 20 Litas per month

Clothes and food wear: some 200 Litas (lump sum)

Health care: some 200 Litas per year

Provision of social services: some 1 000 Litas per month

Educational costs: some 900 Litas per month

Bed clothes and other necessary items: some 300 Litas (lump sum) (*source: the RRC reply to the CSS inquiry; information provided by the RRC in the framework of preparing a study in the implementation of the EU asylum acquis in Lithuania*).

37. Please provide any quantitative data available regarding the resources put into each of these schemes (Human Resources, Logistics, Financial).

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<sup>61</sup> According to the information provided by the Caritas, services in the Caritas day centre are funded by the State (25 per cent) and by the EU funds (75 per cent).



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## *Accommodation in the FRC*

According to the Centre leadership, the following resources and infrastructure are needed to ensure the operation of the scheme: free accommodation space; nutrition facilities (canteen); laundry services; inventories (bed clothes, furniture etc.); hygienic items, allowance payment arrangements; social and psychological services; arrangements (mechanism) for controlling the process of leaving and reporting back to the centre; supply of water and other utility services; medical facility; officers (inspectors) in charge of asylum seekers individual cases who are inter alia in charge of providing them with information and acquainting with the decision taken; and transport. Yet, it is not feasible to single out resources related to the operation of the alternative to detention scheme only, since the majority of services and logistical arrangements service both the detention and open regimes of the Centre (source: interview with the head and deputy head of the FRC). 86 staff members are employed in the centre.<sup>62</sup> In the report on the implementation of the EU asylum *acquis* in Lithuania, it is indicated that 52 staff members of the Centre are involved in dealing with both detained and non-detained asylum seekers<sup>63</sup>.

## *Accommodation in the RRC*

To provide support and services to an UAM in line with the applicable rules the following resources are allocated:

- ✓ A representative who provide social services to the minor and represent his/her legal interests (performs the guardian function);
- ✓ Head of the Refugee Reception centre takes accommodation and support relevant decisions
- ✓ Head of the Social Integration Unit takes education relevant decisions;
- ✓ A social worker and 4 associate social workers ensures care and security around the clock;
- ✓ A psychologist provides psychological counselling;
- ✓ A general practitioner and a nurse provide health care services (source: the RRC reply to the CSS inquiry).

All in all, 10 persons are involved in providing services to UAMs.

38. a. Are these schemes evaluated regularly?
- b. Who conducts these evaluations?
- c. Is this information public? If so please provide source of information.

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<sup>62</sup> The Organisation of Reception Facilities for Asylum Seekers in different Member States, National Contribution from Lithuania, EMN FOCUSSED STUDY 2013, page 13, available at [http://ec.europa.eu/dgs/home-affairs/what-we-do/networks/european\\_migration\\_network/reports/docs/emn-studies/16a.lithuania\\_national\\_report\\_reception\\_facilities\\_en\\_final\\_en.pdf](http://ec.europa.eu/dgs/home-affairs/what-we-do/networks/european_migration_network/reports/docs/emn-studies/16a.lithuania_national_report_reception_facilities_en_final_en.pdf)

<sup>63</sup> Report on the implementation of the EU asylum *acquis* in Lithuania, page 79, available at [http://www.redcross.lt/files/Teisinio\\_tyrimo\\_ataskaita\\_logo\\_fondui\\_1.pdf](http://www.redcross.lt/files/Teisinio_tyrimo_ataskaita_logo_fondui_1.pdf)

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d. Please highlight some of the main conclusions of any publically available evaluations.

There have been no evaluations carried out which would specifically target the alternative to detention schemes. A general evaluation of the implementation of the EU asylum acquis in Lithuania was conducted in 2012 and 2013<sup>64</sup>. A study on detention of asylum seekers in Lithuania was also carried out by the Lithuanian Red Cross in 2011<sup>65</sup>. The present report *inter alia* relies on these sources, and relevant findings were quoted, where appropriate.

## E. OTHER

39. What are your recommendations for a better application of these schemes with regards to:

The following recommendation may be made:

- Effectiveness:

In a considerable number of cases, asylum applicants are detained when are brought to a district court for the first time, but later on (e.g. several weeks later) are released or subjected to an alternative to detention through *the review procedure*. This gives rise to concerns as to whether all the necessary circumstances and options are considered during the initial procedure. Naturally, *the review procedure* requires additional administrative and financial costs. In terms of effectiveness, it would be advisable to frontload the expertise and services so that a right decision is delivered already in the very initial stage of the asylum process. The development of guidelines for border guards, the country level mechanism for identifying vulnerable persons connected to detention relevant decision making and training interventions targeting judges in *all* district courts may be singled out as priority measures. Furthermore, the expansion of social space, services and infrastructure in and outside the FRC might address a potential push factor possibly leading, at least partially, to secondary movements of applicants.

- Fairness:

It appears that in *the review procedure* much depends on the initiative of the applicant, while the attitude of the authorities might have been much more proactive. The burden of taking the initiative and making the case currently heavily rests with the asylum seeker, who (i) detained; (ii) situated on a remote distance from a lawyer based in Vilnius. Moreover, the interviewed lawyers referred to situations

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<sup>64</sup> See the Lithuanian Red Cross and Centre for Sustainable Society Report of the Legal Study on the Implementation of the EU asylum acquis in Lithuania, in Lithuanian, available at [http://www.redcross.lt/files/Teisinio\\_tyrimo\\_ataskaita\\_logo\\_fondui\\_1.pdf](http://www.redcross.lt/files/Teisinio_tyrimo_ataskaita_logo_fondui_1.pdf)

<sup>65</sup> Biekša, L., Bružaitė G., Samuchovaitė, E., *Detention of asylum seekers and alternatives to detention in Lithuania*, Lithuanian Red Cross Society, Vilnius, 2011, available at: [http://redcross.eu/en/upload/documents/pdf/2012/Migration/Lithuania\\_Study\\_on\\_detention%20pdf.pdf](http://redcross.eu/en/upload/documents/pdf/2012/Migration/Lithuania_Study_on_detention%20pdf.pdf)

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whereby crucial evidence (e.g. medical documents) which could be obtained from the FRC only was not made available to them. In line with this argument, it should also be pointed out that the improved and more transparent access to detained asylum seekers in the FRC for lawyers (and *vice versa*) might significantly increase the level of procedural fairness in the alternatives to detention relevant decision making procedure. It is therefore highly recommended that clear guidelines on the periodical reconsideration of the situation of the detained person *at the administrative level* are developed, and lawyer' access to their clients is ensured in all cases.

### - Transparency:

The initial stage of the asylum process is to a large extent untransparent. While the Lithuanian Red Cross efforts to monitor the situation within the framework of the Border Monitoring Project<sup>66</sup> should be acknowledged, much more should be done in terms of accountability and transparency. In particular, it remains unclear as to whether asylum seekers are in all cases properly identified / have a possibility to lodge the asylum application with the responsible authorities. In this respect, a failure to identify and record the protection claim may have fatal consequences as far as detention relevant procedures are concerned. In particular, it may, *firstly*, lead to a situation whereby a person is brought to a court and detained as an illegal migrant, *secondly*, a pre-trial investigation for the illegal border crossing may be initiated, and the person may be placed in a regular jail, and, *thirdly*, the fact that he/she did not request asylum when apprehended by the authorities is an indication of a risk of absconding, based on the current practices. Accessibility of the detention section of the FRC for NGOs and lawyers is another issue requiring improvements. In this respect, it is highly advisable to make arrangements aimed at ensuring regular access for NGOs to the above mentioned areas with a view to providing advice and counselling to the detained / apprehended third country nationals as a matter of legal commitment and established administrative practices in line with Art. 8 (2) of the second generation Asylum Procedures Directive.

### - Adequacy (link between objectives of policy and results):

While the official policy as reflected in Art. 114 (3) AL is to avoid detention of vulnerable persons, vulnerability considerations often lose the battle with a perceived risk of absconding. The guidelines for the police and border guards, the country level mechanism for establishing vulnerability and training of judges and legal practitioners might make a change.

It should also be noted that a high rate of absconding discussed earlier in this report does not necessarily reflect a bad faith on the part of the applicants. Poor, insufficient and vulnerability/trauma blind reception conditions in the FRC and lack of reception arrangements outside the centre are also among the causes / push factors leading to secondary movements. Once returned back to Lithuania under the Dublin Regulation many of these persons end up in detention. In this respect, systemic

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<sup>66</sup> Within the border monitoring project a Red Cross representative *inter alia* monitors how asylum requests are submitted and dealt with at border guards units, the description of this initiative is available at <http://redcross.lt/en/activity/refugees-asylum-seekers>

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efforts are needed to bring the reception system of the country at the level which ensures a dignified standard of living. The upcoming transposition of the second generation Reception Conditions Directive gives an opportunity to discuss and carry out a structural reform of the reception system.

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

First, alternatives to detention, namely the accommodation in the FRC and the RRC, have definitely played a role in limiting the recourse to detention in Lithuania. Hence, potentially harsh detention grounds very much appreciated by politicians have been compensated by a mechanism run by lawyers, first of all by judges. The duty of securing individual liberty, thanks to this mechanism, has generally been fulfilled by the national legal system.

Second, Lithuania has generally avoided detention of UAMs, and the role of the alternative to detention mechanism was again instrumental for achieving this result.

Third, the mandatory involvement of legal counsellors in the decision making process allows for articulating Human Rights based considerations and drawing the attention of the judge to the individual circumstances such as vulnerability or absence of any legitimate objective for detention. While it is true that there are situations whereby lawyers meet their clients for the first time just before the hearing and follow up interventions may not always be secured, the culture of listening to both sides contributes towards ensuring respect of the equality of arms in the detention relevant judicial proceedings.

Fourth, the state funded legal aid scheme ensuring the availability of *free* legal assistance to asylum seekers has been operational for already 10 years. While, as discussed earlier, certain elements of this scheme definitely require improvements, it remains a central element of the Lithuanian alternatives to detention scheme which otherwise would simply not deliver the positive results discussed above.

Fifth, *ex officio* involvement of a judge in the decision making process limits space for administrative abuse.

Sixth, *the review procedure* which can *inter alia* be initiated on the asylum seeker's initiative with the assistance of a legal counsellor, has proved to be an effective procedural tool capable of delivering a positive result (the person's release or application of an alternative to detention) within a very short period of time (some 10 days) hence avoiding lengthy appeal proceedings before the LSAC.

Seventh, impressive case law has been developed, and some Lithuanian judges, notably those working in the Švenčionys district court have gained a solid experience of applying alternatives to detention. Indeed several judges of this court dealing with detention cases have been applying and interpreting the relevant provisions of the Aliens Law since 2004. The level of legal discussion usually taking place in this court reflects that experience.

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

Firstly, the free legal aid mechanism requires improvement, in particular when it comes to the procedure for applying for legal assistance for persons detained in the FRC. It is also necessary to ensure that the legal assistance also covers counselling before, and, where relevant, after, the court session where detention/alternatives for detention are being decided.

Secondly, absence of support structures/alternative accommodation arrangements to the ones provided in the FRC hampers the accessibility of **the reporting requirement alternative** and possibly of other general alternatives provided for in Art. 115 (1) AL to asylum seekers. Moreover, even if an asylum seeker is allowed to stay outside the FRC by either the Migration Department decision or the court order, he/she is not provided with any material and other reception conditions. These particularities of the Lithuanian system show the potential of Art. 7 (4) of the Reception Conditions Directive (Art. 7 (3) of the second generation Reception Conditions Directive) to negatively impact on the operation of alternatives to detention outside the reception centres system.

Fourthly, the criteria for establishing a risk of absconding are very broad and interpreted in an extensive way hence making it very difficult in certain cases to benefit from the scheme. In this respect, asylum seekers returned to Lithuania under the Dublin Regulation are particularly vulnerable, and often end up in the detention section of the FRC.

Fifth, the reception conditions in the FRC which is a key location for the operation of the scheme are poor and depressing. In a number of respects they are simply inappropriate, and an arguable claim that they fall short of complying even with the first generation EU asylum standards may be made. As regards vulnerable applicants, the applicable arrangements are simply not acceptable.

Sixth, the official title of FRC related alternative, namely *accommodation in the FRC without restricting freedom of movement* is clearly misleading, since the freedom of movement is restricted both *de jure* and *de facto*, given the fact that the asylum seekers are required to report back to the centre within 24 hours, and any delay may easily lead to the application of disciplinary sanctions, notably the withdrawal of financial allowance. This very short period available for asylum seekers clearly limits their social connections and experiences as well as accessibility of relevant services. Moreover, additional *de facto* obstacles to leave the centre have been reported (e.g. it is not possible to leave the centre from 23:00 until 6:00).

42. Please present an example of good practice and explain why you consider it as such.

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Good practices are largely discussed under point 40. It may be repeated that the *ex officio* involvement of judges, mandatory presence of lawyers in the court rooms, and the operation of the *review procedure* securing a smooth reconsideration of the case should definitely be considered good practices.

43. Please present an example of bad practice and explain why you consider it as such.

Again, point 41 provides a picture illustrating the relevant bad practices. In addition, the practices whereby border guards tend to refer cases of asylum seekers to a court requesting detention leaving it to a judge to identify another option, e.g. an alternative to detention, and related lack of administrative guidelines which would encourage a consideration of alternatives may be mentioned as a weakness of the present mechanism. A lack of connection between the mechanism for establishing vulnerability and special needs and the detention relevant decision making process is another issue to be addressed when trying to improve the current system.

44. Do you think that these alternatives should/could be expanded to more AS - currently detained?

Yes, the potential is there, in particular, if the support arrangements outside the FRC are made available to asylum seekers. The involvement of NGOs, in particular if properly backed up by administrative and financial support, might expand the available reception (accommodation) space, hence making it easier for the courts and authorities to look for solutions in individual cases. Furthermore, the criteria for establishing a risk of absconding is too broad, hence at least some asylum seekers may be prevented from getting access to an alternative scheme, in particular this is the case with the persons returned to Lithuania under the Dublin arrangements. Finally, properly and timely established vulnerability might open the doors of the detention section of the FRC or even prevent recourse to detention in the first place for vulnerable asylum seekers who currently may be overlooked by the authorities.

45. 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.

All the relevant issues have been discussed comprehensively.

46. 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 sąlygų 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](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



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*Reception Conditions Directive in Lithuanian Legal System, Ethnicity Studies, 2013/1, Vilnius, 2013, p. 19-39);*

- b. Biekša, L., Samuchovaitė, E., Prieglobsčio prašytojų 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., Bružaitė G., Samuchovaitė, E., *Detention of asylum seekers and alternatives to detention in Lithuania*, Lithuanian Red Cross Society, Vilnius, 2011, available at: [http://redcross.eu/en/upload/documents/pdf/2012/Migration/Lithuania\\_Study\\_on\\_detention%20pdf.pdf](http://redcross.eu/en/upload/documents/pdf/2012/Migration/Lithuania_Study_on_detention%20pdf.pdf)
- d. Europos Sąjungos prieglobsčio teisyno įgyvendinimas Lietuvoje: teisinis ir sociologinis aspektai. Teisinio tyrimo ataskaita (Translation: The Implementation of the EU Asylum Acquis in Lithuania: legal and sociological aspects. Report of the Legal Study), available at [http://www.redcross.lt/files/Teisinio\\_tyrimo\\_ataskaita\\_logo\\_fondui\\_1.pdf](http://www.redcross.lt/files/Teisinio_tyrimo_ataskaita_logo_fondui_1.pdf)

47. 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 answer.

A draft amendment to the Aliens Law is pending in the Parliament. It *inter alia* provides for criteria for establishing a risk of absconding.

48. 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:

<b>Name of the organisation/institution</b>	Foreigners Registration Centre
<b>Name of individual contacted</b>	Remigijus Volikas
<b>Position/function of the individual</b>	Head of the Foreigners Registration Centre
<b>Email address</b>	<a href="mailto:remigijus.volikas@vsat.vrm.lt">remigijus.volikas@vsat.vrm.lt</a>

<b>Name of the organisation/institution</b>	Foreigners Registration Centre
<b>Name of individual contacted</b>	Aleksandras Kislovas
<b>Position/function of the individual</b>	Deputy Head of the Foreigners Registration Centre
<b>Email address</b>	<a href="mailto:aleksandras.kislovas@vsat.vrm.lt">aleksandras.kislovas@vsat.vrm.lt</a>

<b>Name of the organisation/institution</b>	Migration Department at the Ministry of the Interior of the Republic of Lithuania
<b>Name of individual contacted</b>	Viktor Ostrovnoj
<b>Position/function of the individual</b>	Head of Asylum Unit
<b>Email address</b>	<a href="mailto:viktor.ostrovnoj@vrm.lt">viktor.ostrovnoj@vrm.lt</a>



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<b>Name of the organisation/institution</b>	State Border Guards Service
<b>Name of individual contacted</b>	Ramunė Kazakauskienė
<b>Position/function of the individual</b>	Head of Migration Unit
<b>Email address</b>	<a href="mailto:ramune.kazakauskiene@vsat.vrm.lt">ramune.kazakauskiene@vsat.vrm.lt</a>

<b>Name of the organisation/institution</b>	Švenčionys district court
<b>Name of individual contacted</b>	Anatolij Januševskij
<b>Position/function of the individual</b>	Judge
<b>Email address</b>	<a href="mailto:anatolij.janusevskij@teismas.lt">anatolij.janusevskij@teismas.lt</a>

<b>Name of the organisation/institution</b>	Lithuanian Red Cross
<b>Name of individual contacted</b>	Eglė Samuchovaitė
<b>Position/function of the individual</b>	Lawyer
<b>Email address</b>	<a href="mailto:egle.samuchovaitė@gmail.com">egle.samuchovaitė@gmail.com</a>

<b>Name of the organisation/institution</b>	Lithuanian Red Cross
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<b>Position/function of the individual</b>	Lawyer
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