

# **Detention of asylum seekers and alternatives to detention in Latvia**

Riga, 2011



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## **LIST OF ABBREVIATIONS**

AAD – Asylum Affairs Division

CJEU – Court of Justice of the European Union

ECHR – European Convention on Human Rights

ECtHR – European Court of Human Rights

ERF – European Refugee Fund

EU – European Union

FRA – Fundamental Rights Agency

ICCPR – International Covenant on Civil and Political Rights

LCHR – Latvian Centre for Human Rights

NGO – non-governmental organisation

OCMA – Office of the Citizenship and Migration Affairs

SBG – State Border Guard

UNHCR – United Nations High Commissioner for Refugees

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# EXECUTIVE SUMMARY

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Increasing attention is being paid to the issues related to the immigration detention generally and the detention of asylum seekers in particular, at national, European and global level. This report addresses the situation concerning the detention of asylum seekers in Latvia from the perspective of the national, the European Union (hereinafter – EU) and international standards. The report provides an independent assessment of the situation both in law and in practice and is based on legal analysis, including the analysis of court decisions on the detention of asylum seekers, monitoring visits, case work of the Latvian Centre for Human Rights (hereinafter – LCHR) and other sources of information.

Over the last years, Latvia has made progressive steps in transposing the EU Directives concerning the rights of asylum seekers and irregular immigrants (including failed asylum seekers whose application for asylum was rejected by the final court instance) into national legislation. However, the overall rate of the detention of asylum seekers remains high: during recent years about half of the asylum seekers have spent some time in detention. The 2011 Immigration Law amendments now provide for the alternatives to detention applicable to foreigners, such as regular reporting and handing over documents. Therefore, the implementation of the above alternatives has also started to develop only since the second half of 2011. The alternatives to detention have not been applied in the case of asylum seekers due to the fact that the Asylum Law does not provide for such alternative measures in respect of persons seeking international protection and the authorities believe that, although the asylum seekers are currently detained according to the procedure of the Immigration Law, the alternatives to detention provided by the Immigration Law are not applicable to asylum seekers.

The report provides several conclusions and a list of recommendations to the relevant national authorities and the civil society in four areas included into analysis.

## **1. Application of detention measures, including permissible grounds of detention and release from detention**

The Asylum Law (2009) introduced exceptional grounds of the detention of asylum seekers as provided by the international and the EU standards. However, the

vague formulations of the grounds, the long (seven day) term of initial detention by the State Border Guard (hereinafter – SBG) and the rules on detention procedure in the framework of the Immigration Law applicable to all foreigners give a larger margin of interpretation to the SBG and judges in the application of the detention grounds.

In practice almost any asylum seeker arriving without a valid passport and/or travel document has initially been automatically detained. Asylum seekers being able to demonstrate their identity have been often released from detention, if other detention grounds also ceased to exist. Nevertheless, such detention practice contradicts the spirit of international standards providing that asylum seekers should not be penalized for illegal entry.

Although children and some other vulnerable groups, such as women with minors, have in practice been released after initial detention, the Immigration Law allows for the detention of minors, and there are no special provisions concerning the detention of other vulnerable groups.

## **2. Alternatives to detention**

The national law does not impose the obligation upon the authorities to first examine the possibility of applying alternatives to detention when taking a decision on detention. Moreover, the provision of the Immigration Law includes a clause that alternatives to detention are applied only “due to the reasons of humanitarian nature”. The Asylum Law does not include provisions on the alternatives to detention. Therefore the authorities responsible for the implementation of the Asylum Law believe that it is not within their competence to apply alternatives to detention to asylum seekers.

## **3. Procedural safeguards**

The national law includes provisions on the rights of detained asylum seekers and foreigners to information on the reasons of detention and their detention case. However, the asylum seekers often claim that they do not receive full information on the reasons of their detention. Language barrier and insufficient interpretation services hamper effective access to information of many asylum seekers. Similarly to the detention cases, access to information on the asylum procedure is also problematic, particularly while in detention.

Access to legal aid in detention cases is limited due to the lack of provisions on free legal aid in detention cases and other barriers (lack of information on lawyers, lack of financial means and limited availability of lawyers in the Daugavpils detention centre). The asylum seekers have limited contacts with the UNHCR and the Ombudsmen’s Office; there are no contacts with other NGOs except for the LCHR.

#### 4. Conditions in detention centre

With the transfer of the detention centre from Olaine to Daugavpils, the living conditions of the detained asylum seekers and irregular immigrants have significantly improved. The material conditions and access to basic necessities generally meet basic standards (food, sanitation, heating, furniture etc.). However, some aspects, e.g. language barrier in communication with the authorities, communication with the outside world, poor activities within the centre and lack of a psychologist, remain problematic.

#### Core recommendations to the Latvian Government:

1. Amend the Asylum Law by including provisions concerning the procedure of detention of asylum seekers and alternatives to detention; ensure that there is a legal presumption against detention of asylum seekers and that detention is used only as a measure of last resort.
2. Review the formulation of the grounds of detention in the Asylum Law and the Immigration Law and ensure that they are exhaustively listed and formulated in a clear manner in line with the international and the EU standards.
3. Include the clause in the Immigration Law and the Asylum Law that the detention of minors under 18 should be the measure of last resort, insert legal presumption against the detention of children for the shortest possible period of time and taking into account the best interest of the child as a primary consideration.
4. Develop adequate identification mechanisms with regards to vulnerable persons.
5. Include a clause in the Immigration Law and the Asylum Law that the authorities examine first the possibility of applying alternatives to detention when taking a decision on detention and provide reasons if this is not the case.
6. Reduce the term of initial detention by the State Border Guard in the Immigration Law and the Asylum Law to 48 hours.
7. Prevent automatic detention (including the initial detention before the court decision) of asylum seekers who arrive without documents and/or without valid travel documents.
8. Ensure access to qualitative interpretation and information concerning the reasons of detention, the detention case and the asylum procedure for all asylum seekers.
9. After making the necessary legislative amendments, develop the practice of application of alternatives to detention for asylum seekers during the asylum procedure. Develop the practice of the application of the alternatives also to failed asylum seekers during the deportation procedure.
10. Develop cooperation and promote dialogue with NGOs providing legal aid and social assistance to asylum seekers and irregular migrants.

# 1. INTRODUCTION

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## Definition of the problem

Over the last years, Latvia has made progressive steps in transposing the EU Directives concerning the rights of asylum seekers and irregular migrants into national legislation. The average length of detention<sup>1</sup> of many asylum seekers has decreased from 88 days in 2008 to 59 days in 2010.<sup>2</sup> However, the overall rate of asylum seekers' detention remains high: of 61 asylum seekers, 32 were in detention in 2010.<sup>3</sup>

The 2011 Immigration Law amendments providing for the alternatives to detention,<sup>4</sup> such as regular reporting and handing over documents were not implemented in practice until September 2011.<sup>5</sup> Although the practice of the application of the alternatives to detention in respect to foreigners has recently started to develop,<sup>6</sup> there is a need to initiate discussions among the relevant stakeholders on both how to improve the detention policy in line with the human rights standards and to introduce an effective

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<sup>1</sup> The definition of „detention” by the UNHCR is as follows: „confinement within a narrowly bounded or restricted location, including prisons, closed camps, detention facilities or airport tranzit zones, where freedom of movement is substantially curtailed, and where the only opportunity to leave this limited area is to leave the territory” (*UNHCR, Guidelines on Detention of Asylum-Seekers and Refugees, 1999*).

<sup>2</sup> Data of the State Border Guard on 14.09.2011. See Section 3.5. in more detail.

<sup>3</sup> Ibid.

<sup>4</sup> For the purpose of this project, the term “alternatives to detention” is drawn from the UNHCR study on alternatives to detention: “practical arrangements that minimise or avoid the need to deprive asylum seekers of their liberty while at the same time appropriately addressing concerns of States, including in particular, that of reducing the incidence of asylum seekers who abscond and ensuring their compliance with asylum procedures.” O. Field, UNHCR, *Alternatives to Detention of Asylum Seekers and Refugees*, Legal and Protection Policy Research Studies, POLAS/2006/03, April 2006, available at: <http://www.unhcr.org/refworld/pdfid/4472e8b84.pdf>

<sup>5</sup> Data of the State Border Guard on 14.09.2011.

<sup>6</sup> Conclusions from the national seminar “Detention of asylum seekers and alternatives to detention” organised by the LCHR in cooperation with the UNHCR on 21.10.2011.



system of alternatives to detention. In order to initiate such a discussion, this report provides an independent assessment of the situation both in law and in practice with recommendations to the relevant national authorities and the civil society.<sup>7</sup>

Due to the rights-based approach to all aspects of asylum, this project addresses the situation of asylum seekers (all persons who are awaiting final adjudication of their appeals), and also “failed asylum seekers”, whose claims to international protection have been rejected in the final court instance.

## Current debate at global, European and national level

Increasing attention is being paid to the issues related to the immigration detention generally and the detention of asylum seekers in particular, at national, European and global level. There are two major aspects discussed in this context. The first core issue concerns the widespread and growing use of immigration detention in the world and the obligation of the states to avoid unlawful or arbitrary detention.<sup>8</sup> Several international documents<sup>9</sup> and the case law of the European Court of Human Rights (hereinafter – ECtHR)<sup>10</sup> and the Court of Justice of the European Union (hereinafter – CJEU)<sup>11</sup> point to the duty of the states to ensure that detention is only applied after a careful examination of its necessity in each individual case, as a proportional response and for the shortest possible time; the states should first consider less invasive or coercive measures to achieve the objectives posed by detention.<sup>12</sup> The development of an effective system of alternatives to detention – the second major point for debate – is the necessary precondition to ensure that immigration and asylum policy meet basic

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<sup>7</sup> See Annex I – Description of methodology.

<sup>8</sup> UNHCR, OHCHR, *Global Roundtable on Alternatives to Detention of Asylum-Seekers, Refugees, Migrants and Stateless Persons*, Geneva, Switzerland, 11-12 May, 2011, Summary Conclusions

<sup>9</sup> See for instance, Human Rights Council, 13<sup>th</sup> session, *Report of the Working Group on Arbitrary Detention*, para 64, UN General Assembly, A/HRC/13/30, 18 January 2010

<sup>10</sup> See for instance the judgments of the ECtHR, *Amuur v. France*, application n° 19776/92, 25 June 1996; *Saadi v. UK*, application n° 13229/03, 29 January 2008; *S.D. v. Greece*, application n° 53541/07, 21 June 2009; *Shamsa v. Poland*, application n° 45355/99 and 45357/99, 27 November 2003; *Mikolenko v. Estonia*, application n° 10664/05, 8 January 2010; *A and Others v. the UK*, application n° 3455/05, 19 February 2009

<sup>11</sup> CJEU, *Kadzoev C-357/09*, judgment of 30 November 2009; CJEU, *Hassen El Dridi C-61/11*, judgment of 28 April 2011

<sup>12</sup> See the analysis of standards in: A. Edwards, *Back to Basics: The Rights to Liberty and Security of Person and ‘Alternatives to Detention’ of Refugees, Asylum-Seekers, Stateless Persons and Other Migrants, Legal and Protection Policy Research Series*, UNHCR, Division of International Protection, PPLA/2011/01.Rev.1, April 2011. See also the list of the EU and international standards in Appendix III.

human rights standards set within the international and the EU framework (see Types of alternatives to detention and good practices in Appendix II).<sup>13</sup>

According to the Article 9.1 of the International Covenant on Civil and Political Rights (hereinafter – ICCPR) and Article 5.1 of the European Convention on Human Rights (hereinafter – ECHR), the grounds for any deprivation of liberty must be set forth in law in a clear and exhaustive manner. The grounds must not only be exhaustively listed, they must fully comply with the exhaustive list included under Article 5.1 of the ECHR, in particular (f) on prevention of irregular entry and in view of deportation/extradition. In order to comply with the ECHR, it must be possible to subsume the grounds foreseen in national law and to justify pre-entry or pre-removal detention under one of the two limbs of Article 5.1 (f). In the EU law, deprivation of liberty falling under the scope of Article 5.1 (f) is regulated in key instruments defining common European asylum and immigration regimes.<sup>14</sup> Moreover, the international standards provide a general principle that asylum seekers should not be detained and penalized for illegal entrance (see below).<sup>15</sup>

### **ICCPR: Article 9.1**

1. Everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law.

### **ECHR: Article 5.1**

1. Everyone has the right to liberty and security of person.

No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law:

(a) the lawful detention of a person after conviction by a competent court;

(b) the lawful arrest or detention of a person for non-compliance with the lawful order of a court or in order to secure the fulfilment of any obligation prescribed by law;

(c) the lawful arrest or detention of a person effected for the purpose of bringing

<sup>13</sup> A. Edwards, *Back to Basics* ..., pp.25-26.

<sup>14</sup> Above all, Article 18 of the Council Directive 2005/85/EC of 1 December 2005 on minimum standards on procedures in Member States for granting and withdrawing refugee status; Article 6.2, 13.2 and 14.6 of the Council Directive 2003/9/EC of 27 January 2003 laying down minimum standards for the reception of asylum seekers; Article 15 of the Directive 2008/115/EC of the European Parliament and of the Council of 16 December 2008 on common standards and procedures in Member States for returning illegally staying third-country nationals.

<sup>15</sup> *UNHCR Guidelines on Detention of Asylum-Seekers and Refugees*, 1999, p.3. Article 31 of the UN Convention relation to the Status of Refugee provide that the states “shall not impose penalties, on account of their illegal entry or presence, on refugees who, coming directly from a territory where their life or freedom was threatened [...], enter or are present in their territory without authorization, provided they present themselves without delay to the authorities and show good cause for their illegal entry or presence.”

him before the competent legal authority of reasonable suspicion of having committed an offence or when it is reasonably considered necessary to prevent his committing an offence or fleeing after having done so;

(d) the detention of a minor by lawful order for the purpose of educational supervision or his lawful detention for the purpose of bringing him before the competent legal authority;

(e) the lawful detention of persons for the prevention of the spreading of infectious diseases, of persons of unsound mind, alcoholics or drug addicts, or vagrants;

(f) the lawful arrest or detention of a person to prevent his effecting an unauthorized entry into the country or of a person against whom action is being taken with a view to deportation or extradition.

### **Convention relating to the Status of Refugees: Article 31. – Refugees unlawfully in the country of refuge**

1. The Contracting States shall not impose penalties, on account of their illegal entry or presence, on refugees who, coming directly from a territory where their life or freedom was threatened in the sense of article 1, enter or are present in their territory without authorization, provided they present themselves without delay to the authorities and show good cause for their illegal entry or presence.

2. The Contracting States shall not apply to the movements of such refugees restrictions other than those which are necessary and such restrictions shall only be applied until their status in the country is regularized or they obtain admission into another country. The Contracting States shall allow such refugees a reasonable period and all the necessary facilities to obtain admission into another country.

### **Council Directive 2005/85/EC: Article 18 (Detention)**

1. Member States shall not hold a person in detention for the sole reason that he/she is an applicant for asylum.

2. Where an applicant for asylum is held in detention, Member States shall ensure that there is a possibility of speedy judicial review.

### **Exceptional grounds for detention of asylum seekers – the measure of last resort**

(i) to verify identity

(ii) to determine the elements on which the claim for refugee status or asylum is based.

(iii) in cases where asylum-seekers have destroyed their travel and /or identity documents or have used fraudulent documents in order to mislead the authorities of the State, in which they intend to claim asylum.

(iv) to protect national security and public order

(UNHCR Guidelines on Detention of Asylum-Seekers and Refugees, 1999)

However, there are significant disparities among the states with regards to the application of the grounds of detention and the availability of alternatives to detention.<sup>16</sup> The situation in Central and Eastern Europe requires particular attention due to the widespread view that alternatives to detention may not work effectively in so called ‘transit states’. Although more research is needed in this area, preferred destination country of the individual is just one factor which should be taken into account when assessing the need of detention – it should be balanced with other factors.<sup>17</sup> The individual motivations as concerns the country destination must not exempt the state from the duty to review the applications for asylum and to ensure that the implementation of the rights of asylum seekers during the asylum procedure as well as the return process, in case when the international protection has been finally rejected, comply with the applicable human rights norms and standards.

In 2011 several states, including Latvia, have been in the process of the transposition of the EU Returns Directive providing for the alternatives to detention.<sup>18</sup> In 2010, most (2/3) of the EU countries provided for the possibility to impose alternatives to detention during the return procedure.<sup>19</sup> Many states prohibit the pre-removal detention of unaccompanied minors; there is also increasing number of states not detaining families with children.<sup>20</sup>

The new EU legislative proposals set an explicit obligation of the states to provide alternatives to detention during the asylum procedure; they also include several regulations concerning conditions in detention. Therefore, the discussion on the alternatives to detention is also important in the context of the second stage of the EU common asylum system. Such a system is based on common improved standards of protection, as highlighted by the Policy Plan on Asylum,<sup>21</sup> Stockholm programme<sup>22</sup> and the EC proposals of new Directives. In particular, the European Commission’s

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<sup>16</sup> European Union Agency for Fundamental Rights (EU-FRA), *Detention of Third-Country Nationals in Return Procedures*, Thematic Report, September 2010.

<sup>17</sup> A. Edwards, *Back to Basics...*, p. 84. See also: “A deprivation of liberty must not be inappropriate and disproportional in view of the circumstances of the individual case” in: UN Human Rights Committee, communication n305/1988, *van Alphen v The Netherlands*, 23 July 1990, para 58.

<sup>18</sup> In practice, provisions set by the Returns Directive are applicable not only to illegally staying third-country nationals, but also to persons whose status is undetermined, even if formally they do not have a legal basis for staying the country, such as those still awaiting a final decision of their appeals on asylum decisions or applied for international protection in detention.

<sup>19</sup> EU – FRA, *Detention of Third-Country Nationals in Return Procedures...*, p.73.

<sup>20</sup> *Ibid*, p.90.

<sup>21</sup> Commission of the European Communities, Communication from the Commission to the European Parliament, the Council, the Economic and Social Committee and the Committee of Regions, *Policy Plan on Asylum. An integrated approach to protection across the EU*, Brussels, 17.06.2008, COM (2008) 360 final

<sup>22</sup> *The Stockholm Programme – An open and secure Europe serving and protecting citizens 2010/C 115/01*

Proposal on the new Directive laying down minimum standards for the reception of asylum seekers provides for the duty of the Member States to ensure that rules dealing with alternatives to detention, such as regular reporting to the authorities, the deposit of a financial guarantee, or an obligation to stay at a designated place, are laid down in national legislation.<sup>23</sup>

## Benefits of alternatives to detention

In fact, no empirical evidence has been found to prove that detention prevent claiming asylum or deters irregular migration.<sup>24</sup> The most recent research commissioned by the UNHCR shows that over 90 per cent of persons who are released to proper supervision and well-managed assistance do not abscond.<sup>25</sup> Moreover, the costs of certain types of alternatives to detention are significantly smaller than the costs occurring from keeping a person in detention.<sup>26</sup> Several studies point to the damaging effects of the immigration detention on the mental health of the detainees.<sup>27</sup> The survey of detainees in 23 EU member states concludes that the situation in detention, including inability to get sufficient information on their case, aggravates vulnerability of asylum seekers; it creates vulnerabilities in persons who do not otherwise present such vulnerabilities.<sup>28</sup> Such evidence provides an additional argument why safeguarding the fundamental right to liberty is crucial in a democratic society.

## The objective and structure of the report

This report addresses the situation concerning the detention of asylum seekers in Latvia from the perspective of national, the EU and international standards. More generally, the report aims to initiate the discussion on possibilities and appropriate models to promote alternatives to detention in Latvia among the national authorities,

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<sup>23</sup> Commission of the European Communities, *Proposal of a Directive of the European Parliament and the Council laying down minimum standards for the reception of asylum seekers* (Recast), Brussels, 3.12.2008, COM (2008) 815 final, 2008/0244 (COD), article 10, para 3.

<sup>24</sup> UNHCR, OHCHR, *Global Roundtable on Alternatives to Detention of Asylum-Seekers, Refugees, Migrants and Stateless Persons...*, p.1.

<sup>25</sup> A. Edwards, *Back to Basics...*, p. 82.

<sup>26</sup> *Ibid*, p.85.

<sup>27</sup> International Detention Coalition (IDC), La Trobe Refugee Research Centre, *There are Alternatives. A handbook for preventing unnecessary immigration detention*, 2011, pp.011 – 012.

<sup>28</sup> Jesuit Refugee Service-Europe (JRS-E), *Becoming Vulnerable in Detention*, Civil Society Report on the Detention of Vulnerable Asylum Seekers and Irregular Migrants in the European Union (The DEVAS Project), June 2010.

judges, legal practitioners, representatives of NGOs and other experts. More specifically, the report aims to assess the situation and provide recommendations to the relevant authorities and broader society in the four main areas:

- Application of the asylum seekers' detention (Section 3);
- Alternatives to detention (Section 4);
- Procedural safeguards (Section 5);
- Conditions in detention centre and reception centre (Section 6).

## 2. OVERVIEW OF THE ASYLUM SYSTEM IN LATVIA

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### 2.1. Background: legislative developments

In 1997, Latvia joined the 1951 Convention relating to the Status of Refugees and its 1967 Protocol. The first Latvian asylum-related law was adopted in 1997.<sup>29</sup> Until that time, all potential asylum seekers were treated as illegal immigrants.<sup>30</sup> The asylum applications began to be processed from 1998. In 2002, a new Asylum Law was adopted with a view to transpose the EU norms into the Latvian legislation.<sup>31</sup>

In June 2009, the parliament adopted the new Asylum Law.<sup>32</sup> The Law was aimed at transposing several EU directives related to asylum, above all, Council Directive 2005/85/EC (Procedures Directive) and Council Directive 2004/83/EK (Qualification Directive).<sup>33</sup>

The 2009 Asylum Law extended the term of appeal of all decisions on asylum made by the Asylum Affairs Division (hereinafter – AAD) of the Office of Citizenship and Migration Affairs (hereinafter – OCMA), including decisions in the accelerated procedure – an issue of earlier criticism by international organizations – to ten working days.<sup>34</sup>

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<sup>29</sup> The Law on Asylum Seekers and Refugees, adopted on 19.06.1997., not in force since 14.07.2009. Available at <http://www.likumi.lv/doc.php?id=44221>

<sup>30</sup> See the Law on Entry and Residence of Aliens and Stateless Persons, adopted on 09.06.1992., not in force since 01.05.2003. Available at <http://www.likumi.lv/doc.php?id=73092>

<sup>31</sup> See the Asylum Law, adopted on 07.03.2002., not in force since 14.07.2009). Available at <http://www.likumi.lv/doc.php?id=60721&mode=KDOC>

<sup>32</sup> Asylum Law, adopted on 15.06.2009., in force from 14.07.2009. Available at <http://www.likumi.lv/doc.php?id=194029>

<sup>33</sup> Draft Asylum Law Annotation, available at <http://titania.saeima.lv/LIVS/SaeimaLIVS.nsf/0/E6A48815C1D5BBACC22574640035521B?OpenDocument>

<sup>34</sup> Asylum Law, Section 30, para 2.

However, contrary to the opinion of the UNHCR and the LCHR,<sup>35</sup> the Asylum Law foresees that detention takes place in the order foreseen in the Immigration Law (applicable to foreigners, not asylum seekers).<sup>36</sup> Although the term of initial detention by the SBG (before the court) was reduced from ten to seven days, the new law did not incorporate the recommendation of the UNHCR not to exceed the 48-hours term provided by the Criminal Procedure Law in the case of criminal suspects.<sup>37</sup>

Both the institutions dealing with asylum affairs – the SBG and the OCMA – are under the supervision of the Ministry of Interior of the Republic of Latvia. The SBG is in charge of the places of detention, including the Daugavpils Facility for Illegal Foreigners and Asylum Seekers situated approximately 230 km from the capital Riga (hereinafter – the Daugavpils detention centre).<sup>38</sup> Both asylum seekers and irregular migrants (accommodated separately) are placed in the detention centre. Before the opening of the new detention centre in Daugavpils in end of May 2011, detained asylum seekers were accommodated in the Olaine detention facility for foreigners (25 km from Riga) (hereinafter – the Olaine detention centre). Before being transferred to the detention centre, the asylum seekers can be held for up to seven days in other SBG's premises, e.g. at the airport, regional branches and in the SBG headquarters in Riga as well as up to three hours – before the transfer to the SBG – in ordinary police stations. The OCMA is responsible for the supervision of the Reception Centre for Asylum Seekers “Mucenieki” (hereinafter – the Reception Centre) (17 km from Riga).

In June 2011, the amendments to the Immigration Law aiming to transpose of Directive 2008/115 EC (Return Directive) came into force.<sup>39</sup> Apart from various categories of illegally staying third-country nationals, the Law's provisions are applicable to persons whose application for asylum has been rejected by the Administrative District Court and who have lost the status of asylum seekers and are in the process of deportation.

## 2.2. Asylum Procedure

The asylum procedure begins with the submission of an asylum application by the individual at the border to the SBG or at the territorial unit of the SBG if a person is

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<sup>35</sup> ANO Augstā komisāra bēgļu lietās biroja (UNHCR) paziņojums attiecībā uz Patvēruma likuma projektu, ar kuru Latvijas likumos tiek ieviesti ES patvēruma tiesību akti, Hans ten Feld – ANO augstā komisāra bēgļu lietās pārstāvja Baltijas valstīs un Ziemeļvalstīs – runa Latvijas Republikas Saeimas Cilvēktiesību un sabiedrisko lietu komisijas sēdē, Rīga, Latvija. 2009.gada 12.maijā, p.2.

<sup>36</sup> Asylum Law, Section 9.

<sup>37</sup> UNHCR, Draft Law with detailed preliminary comments. Asylum Law, 2008, p.8.

<sup>38</sup> Until 23.05.2011 – the Olaine Detention Facility for Illegal Immigrants.

<sup>39</sup> Immigration Law amendments, adopted on 26.05.2011., in force from 16.06.2011. Available at <http://www.likumi.lv/doc.php?id=231630>



in the Republic of Latvia. The SBG is not dealing with the eligibility of the asylum case. However, the SBG is responsible for the identification of asylum seekers, conducting personal interviews, collecting and sending all information concerning an asylum seeker to the OCMA.<sup>40</sup>

The AAD of the OCMA within the time period prescribed by the Asylum Law (see below) takes a decision regarding:

- 1) the acceptance of an application for examination or leaving thereof without examination;
- 2) the granting or refusal to grant refugee or alternative status (subsidiary protection);
- 3) the loss or withdrawal of refugee or alternative status;
- 4) the responsible Member State which will examine an application in accordance with Council Regulation (EC) No 343/2003 (Dublin II);
- 5) the granting or extension of temporary protection.<sup>41</sup>

**Table 1. The terms of making decisions by the AAD**

Type of decision	Duration
The acceptance of an application for examination or leaving without examination	5 working days
Accelerated procedure	10 working days
Regular procedure	3 months, with possibility of extension up to 12 months

The negative decisions by the AAD may be appealed by an asylum seeker or his or her authorized person to the Administrative District Court in Riga during ten working days. The adjudication of the court is final without the possibility of appeal.<sup>42</sup> During the adjudication of the application a person is regarded as an asylum seeker, except the case when the AAD left repeated application for asylum without examination.<sup>43</sup>

In Latvia, most asylum cases have proceeded in regular or Dublin procedure, and the total period of identification of an asylum seeker and the asylum procedure (without the period of appeal of the AAD's decision) takes on average five-six months.<sup>44</sup>

<sup>40</sup> Asylum Law, Section 6.

<sup>41</sup> Asylum Law, Section 12.

<sup>42</sup> Asylum Law, Section 31, para 4.

<sup>43</sup> Asylum Law, Section 30.

<sup>44</sup> Information obtained from the case work of the LCHR in 2009 – 2011.

If the Administrative District Court has taken a negative decision, the return procedure based on the return decision or decision on forced return begins (see more on the return procedure in Section 3).

The personal and the property interests of unaccompanied minors<sup>45</sup> during the asylum procedure and the return procedure are represented by the child custody court or a guardian appointed by the child custody court or the head of a child care institution.<sup>46</sup>

With the transfer of asylum seekers to the newly opened detention centre in Daugavpils, decisions on detention of asylum seekers now fall under the jurisdiction of the Daugavpils Court (until the end of May 2011 – the Riga District Court). The Latgale Regional Court in Rezekne reviews the appeals of decisions (until recently – the Riga Regional Court).

### 2.3. Statistics and trends

Since 1998 when Latvia began reviewing asylum applications until the first half of 2011, 580 persons have applied for asylum in Latvia.<sup>47</sup> Of those, 213 persons have applied for asylum in the first half of 2011. Such a trend is to a large extent attributed to the arrival of Georgian asylum seekers including families with children.

Most of the asylum seekers have been adult men (see Figure 2). However, the number of minor asylum seekers has increased over the last years. The number of unaccompanied minors has been quite small (four in 2008 and five – in 2010). The diversity of countries of origin has also increased over the recent years. In 2010, the largest numbers of asylum seekers came from Afghanistan, Kirgystan and Russia; in 2011, most of asylum seekers came from Georgia, the Democratic Republic of Congo and Cameroon.<sup>48</sup>

Most asylum seekers have arrived in Latvia through the Riga airport, the Latvian-Russian and the Latvian-Belorussian border (during the first eight months of 2011, 148 asylum applications were submitted to the Daugavpils branch of the SBG at Latvian-Belorussian border<sup>49</sup>).

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<sup>45</sup> According to the Asylum Law, unaccompanied minor is a third country national or a stateless person who is less than 18 years old and has arrived in the Republic of Latvia without the accompaniment of such adults who are responsible for him or her in accordance with law or custom, also a minor who has remained without accompaniment after arrival in the Republic of Latvia (Section 1, para 5).

<sup>46</sup> Asylum Law, Section 6, para 5; Immigration Law, adopted on 31.10.2002., in force from 01.05.2003., with amendments until 16.06.2011, Section 508, para 2. Available at <http://www.likumi.lv/doc.php?id=68522>

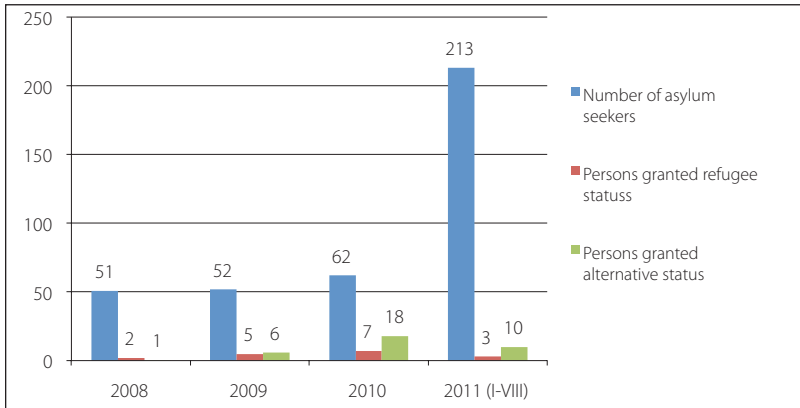
<sup>47</sup> Data obtained from the OCMA on 15.09.2011.

<sup>48</sup> There were also asylum application from Russia, Ukraine, Azerbaijan, Bangladesh, Pakistan, Algeria, Afghanistan, Iraq, Syria and Turkey.

<sup>49</sup> Information obtained from the LCHR monitoring visit to the Daugavpils Detention centre on 07.09.2011.

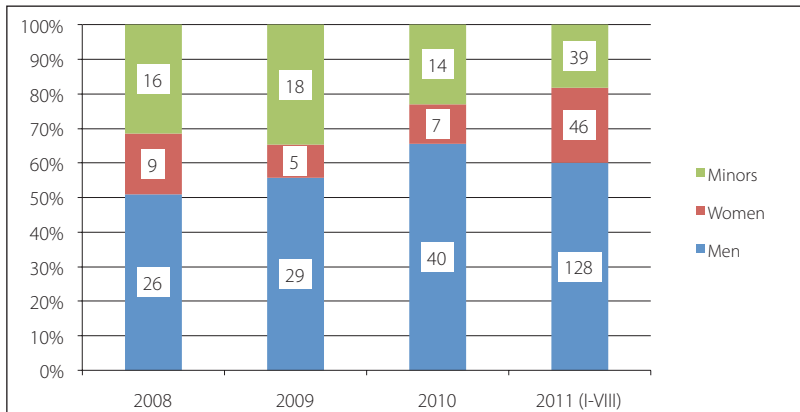
The recognition rate has been quite low: from 1998 – during the first eight months of 2011 – 32 persons have been granted the status of a refugee, and 55 asylum seekers – alternative status (subsidiary protection) (see also Figure 1 on the recent trends). In 2010, the refugee status was granted to persons from Uzbekistan and Turkey, and the alternative status – to asylum seekers from Afghanistan, Iran and Palestine.<sup>50</sup>

**Figure 1. Asylum seekers, refugees and persons with alternative status in Latvia (2008 –2011)**



Source: Data provided by OCMA.

**Figure 2. Asylum seekers by age and gender (2008-2011)**



Source: Data provided by OCMA.

<sup>50</sup> Data obtained from the OCMA on 29.03.2011.

## 3. APPLICATION OF THE ASYLUM SEEKERS' DETENTION

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### 3.1. Grounds for asylum seekers' detention and release

The 2009 Asylum Law provides that the SBG has the right to detain an asylum seeker if at least one of the following grounds exists:<sup>51</sup>

1. The identity of the asylum seeker has not been established;
2. There is reason to believe that the asylum seeker is attempting to use the asylum procedure in bad faith;
3. Competent state authorities, including the SBG, have a reason to believe that the asylum seeker represents a threat to national security or public order and safety.

The previous 2002 Asylum Law's included a provision „there is a reason to believe that the asylum seeker will not have a legal basis to reside in the Republic of Latvia according to this Law's provisions”, which was removed from the draft Asylum Law due to the criticism of several actors.<sup>52</sup> The formulation “a reason to believe”, not “a serious reason to believe” as provided for in the international documents has also been an object of criticism.<sup>53</sup>

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<sup>51</sup> Asylum Law, Section 10, para 1.

<sup>52</sup> The UNHCR and national human rights observers (LCHR and the Ombudsman's Office) participating in the debate on the adoption of the Asylum Law with MPs pointed to the fact that such provision in practice may be potentially applied to a broad scope of asylum seekers, or the sole reason of detention may be that a person is an applicant for asylum. UNHCR, Draft Law with detailed preliminary comments. Asylum Law, 2008, p.8. LCHR comments on the Draft Asylum Law submitted to the Parliamentary Commission on Human Rights and Public Affairs on 16.02.2009, p.1.

<sup>53</sup> Universal Periodic Review: Latvia, Stakeholder Report. By Latvian Centre for Human Rights (NGO), 2010-11-08, p.2.

Some grounds of detention are formulated in a vague manner. As concerns the unestablished identity, the law does distinguish between lack of identification due to a lack of cooperation and cases falling outside the sphere of responsibility of migrant (e.g. statelessness, lack of identity documents and/or inability to obtain any documents in the country of origin or communication problems).<sup>54</sup>

The Asylum Law provides a list of circumstances when the AAD of the OCMA may take a decision to refuse the international protection in the accelerated procedure during ten working days.<sup>55</sup> However, the ground of detention “attempting to use the asylum procedure in bad faith” is not defined in the law and, therefore, can be potentially a subject of a broad interpretation by the SBG and the courts taking decisions on detention. There are no specific criteria or clarifications in the law for the application of such ground in practice, e.g. the reference to using fraudulent documents or travelling without documents at all with the intention to mislead the authorities or refusal to cooperate with the authorities as mentioned in the UNHCR’s Guidelines on Applicable Criteria and Standards relating to the Detention of Asylum-Seekers.<sup>56</sup>

There is also no definition of the threat to national security or public order and safety either in the Immigration law or in the Asylum Law. Therefore, there is not the guarantee that such provision is limited to cases when “there is evidence to show that the asylum seeker has criminal antecedents and/or affiliations”<sup>57</sup> or “a conviction for committing a serious crime”.<sup>58</sup>

According to the Asylum Law, the SBG detains asylum seekers and a judge takes a decision regarding the detention of the asylum seeker in accordance with the procedures specified by the Immigration Law.<sup>59</sup> According to the Immigration Law, a foreigner may be released, 1) if detention period has expired or a judge has decided not to postpone the term of detention; 2) after forced return; 3) according to the decision by the SBG authority to release a foreigner, if the circumstances serving as grounds of his or her detention do not exist anymore, or there is no possibility to obtain documents

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<sup>54</sup> The necessity of such differentiation is highlighted in the study of the EU Fundamental Rights Agency. See: EU – FRA, *Detention of Third-Country Nationals in Return Procedures...*, p.19.

<sup>55</sup> An asylum seeker is from a safe country of origin; an asylum seeker has entered the Republic of Latvia, crossing a country which is not a Member State and is regarded as a safe third country in relation to the asylum seeker; an asylum seeker has submitted another application, indicating other personal data; an asylum seeker, without justified reason, has not submitted an application earlier, although he or she had such opportunity, including in order to delay or prevent his or her return from the Republic of Latvia; or an asylum seeker poses a threat to national security or public order and safety. Asylum Law, Section 19, para 1.

<sup>56</sup> UNHCR *Guidelines on Detention of Asylum-Seekers and Refugees*, 1999, p.4.

<sup>57</sup> Ibid.

<sup>58</sup> Council Directive 2005/85/EC of 1 December 2005 on minimum standards on procedures in Member States for granting and withdrawing refugee status, Preamble, Section 12.

<sup>59</sup> Asylum Law, Section 9, para 2.

which are necessary to fulfil the return procedure of a foreigner.<sup>60</sup> However, the national law does not provide for the grounds of release of asylum seekers from detention due to the specific circumstances of the asylum seekers' detention (e.g. established identity).

### 3.2. Grounds of detention during return procedure

Until the new 2011 amendments entered into force, the Immigration Law did not require that the person concerned be served with an order to leave the territory for the detention to be available.<sup>61</sup> In fact, being illegal immigrant per se was sufficient for the justification of detention of various categories of foreigners, including those residing on the territory of Latvia for decades, but who have failed to regularize their status, e.g. change their Soviet passports in the 1990s.<sup>62</sup> In some cases, persons were not detained e.g. due to the age or health status.<sup>63</sup>

The 2011 Immigration Law amendments include a clause that the SBG may detain a foreigner for the implementation of a decision on forced return or return order.<sup>64</sup> The return order issued by the OCMA or by the SBG prescribes the obligation of a person to leave the Republic of Latvia during the time period from seven to 30 days, with a possibility to postpone the term of leaving the country up to one year upon a person's request.<sup>65</sup> The new amendments provided, that return order is granted, *inter alia*, to persons whose application for international protection has been rejected.<sup>66</sup>

The SBG or OCMA authority issues the decision of forced return and the SBG has the right to detain a foreigner if there is a reason to believe that a foreigner will hamper or avoid the return procedure or when a risk of absconding exists and such assumptions

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<sup>60</sup> Immigration Law, Section 59.4.

<sup>61</sup> The SBG had the right to detain a alien, except a minor alien who has not reached the age of 14 years: 1) if he has illegally crossed the State border of the Republic of Latvia or otherwise violated the procedures prescribed by regulatory enactments for the entry and residence of aliens into the Republic of Latvia; 2) if the competent State authorities including the State Border Guard have reason to believe that the alien causes a threat to national security or public order and safety; 3) in order to implement a decision regarding the forced removal; 4) in order to implement an additional punishment – expulsion from the Republic of Latvia (Immigration Law, in force until 16.06.2011, Section 51, para 1)

<sup>62</sup> Latvian Centre for Human Rights, *Human Rights in Latvia in 2005*, p. 256

<sup>63</sup> Information obtained from the LCHR case work in December 2008- 2011.

<sup>64</sup> Immigration Law, Section 51, para 1,(5)

<sup>65</sup> Immigration Law, Section 43, para 1,(2)

<sup>66</sup> Immigration Law, Section 41, para 2 (e)

are based on at least one circumstance listed in the Immigration Law.<sup>67</sup> In its comments to the draft law amendments addressed to the responsible Parliamentary Committee, the LCHR highlighted that some of the detention grounds (e.g. “a foreigner hides his or her identity, provides false information or otherwise refuses to cooperate”) may appear too broadly interpreted by the authorities in practice. Another ground “a foreigner has illegally crossed the border, avoided border control as well as used a false travel document, visa or residence permit” does not provide reservation on the exception of crossing the border illegally was made with the purpose to seek asylum.<sup>68</sup> The application of such a clause may potentially violate Article 31 of the 1951 Convention relating to the Status of Refugees providing that asylum seekers should not be penalized for illegal entrance.

The considerations of national security and public order are also listed as a ground of detention, which in the recent case law of the CJEU cannot be based on the Return Directive.<sup>69</sup> According to the FRA’s opinion, “Member states should ensure that grounds for detention established at a national level, do not extend beyond the exhaustive list of legitimate grounds foreseen in Article 5.1 ECHR. Deprivation of liberty based on crime prevention [...] should be governed by the same rules, regardless of the legal status of the person concerned has in the host country. These grounds should therefore not be regulated by alien or immigration law, but in other pieces of legislation.”<sup>70</sup>

Apart from several grounds of detention mentioned above, e.g. a foreigner has not fulfilled the duty to report to the SBG or a foreigner has previously absconded the premises of the reception centre or the place of detention (see footnote 67), there are no exhaustive criteria for the existence of the risk of absconding in each individual case defined by law, as provided by the Return Directive:<sup>71</sup>

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<sup>67</sup> 1) [a] foreigner hides his or her identity, provides false information or otherwise refuses to cooperate; 2) a foreigner has illegally crossed the border, avoided border control as well as used a false travel document, visa or residence permit; 3) a foreigner cannot indicate a place where he will reside until the end of the return procedure; 4) competent state authorities or the authorities of another state, have provided information which constitutes the reason to believe that the asylum seeker represents a threat to national security or public order and safety; 5) a foreigner is engaged in promoting illegal immigration; 6) a foreigner is charged for criminal offence, which foresees the deprivation of liberty at least for one year; 7) a foreigner has previously attempted to avoid the return procedure in the Republic of Latvia or in another the member state of the European Union; 8) a foreigner without sufficient justification has not fulfilled the return order; 9) a foreigner has not fulfilled the duty to report to the SBG; 10) a foreigner has previously absconded the premises of the reception centre or the place of detention; 11) a foreigner, when entered to the Republic of Latvia, has violated the decision on inclusion into the ban or a decision on prohibition to enter to the Schengen area (unofficial translation). Immigration Law (adopted 31.10.2002 with amendments 26.05.2011), Section 51, para 2.

<sup>68</sup> LCHR comments to the Draft Immigration Law amendments submitted to the Parliamentary Commission on Defence, Interior Affairs and Anti-Corruption on 21.02.2011.

<sup>69</sup> CJEU, *Kadzoev* C-357/09, 30 November 2009; CJEU, *Hassen El Dridi* C-61/11, 28 April 2011, para 70.

<sup>70</sup> EU – FRA, *Detention of Third-Country Nationals in Return Procedures...*, p. 24.

<sup>71</sup> Directive 2008/115/EC of the European Parliament and of the Council of 16 December 2008 on common standards and procedures in Member States for returning illegally staying third-country nationals.

“[r]isk of absconding” means the existence of reasons in an individual case which are based on objective criteria defined by law to believe that a third-country national who is the subject of return procedures may abscond” (Article 3.7 of the Return Directive).

### 3.3. Safeguards against arbitrary detention

The Asylum Law prescribes that the period of detention of an asylum seeker may be extended, however, the total duration of detention shall not exceed the time period of the asylum procedure.<sup>72</sup> This provision of the Asylum Law was criticized by the UNHCR stating that this is a question which should be determined by the AAD, not by the SBG, and that it allows the SBG to apply to court for the detention of asylum-seekers for the entire duration of the asylum procedure, which could take many months and even years.<sup>73</sup> However, since the detention of asylum seekers proceeds in the order provided by the Immigration Law, the maximum length of detention should not exceed 18 months (see below).<sup>74</sup> In practice, failed asylum seekers in detention in the return procedure are repeatedly detained on the grounds of the Immigration Law; therefore, there have been cases when the actual time spent by a person in detention has exceeded the maximum term of detention provided by the law (see Section 3.5.5).

Until 2011 the Immigration Law’s provisions did not include guarantee that detention measures are only applied after a careful examination of their necessity in each individual case, as a proportional response and for the shortest possible time. The Immigration Law included a list of the criteria to be evaluated by the judge deciding on an extension of detention or refusal to detain an alien, e.g. an alien fails to disclose his identity or refuses to co-operate with the officials with the SBG; has no financial means to stay in the State; competent state institutions have reason to believe that an alien has committed or planning to commit a grave or particularly grave crime, etc.<sup>75</sup> The judge had also to motivate his or her decision. There were no provisions on taking into account conditions favourable to the alien, e.g. family ties in Latvia, health condition etc.<sup>76</sup>

In June 2011, a clause was added to the Immigration Law that a judge deciding on detention, extending the term of detention or refusing to extend the term of detention,

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<sup>72</sup> Asylum Law, Section 9, para 3.

<sup>73</sup> UNHCR, Draft Law with detailed preliminary comments. Asylum Law, 2008, p.8.

<sup>74</sup> Immigration Law, Section 54, para 7.

<sup>75</sup> Immigration Law (in force until 16.06.2011), Section 54<sup>1</sup>, para 1.

<sup>76</sup> I.Pūce un L.Grāvere, Detention Facility for Illegal Immigrants Olaine and Reception Centre for Asylum Seekers Mucenieki, in: Latvian Centres for Human Rights *Monitoring Report on Closed Institutions in Latvia*, 2006, p. 90



takes into consideration circumstances clarified during the return procedure as well as whether the circumstances which served as grounds of detention are still in force.<sup>77</sup> The law does not refer to the necessity and proportionality test and does not include the list of criteria for balancing the interest of the state and the individual when assessing the necessity of detention.<sup>78</sup> However, the additional clause strengthens the safeguards against arbitrary detention.

The maximum term of detention has also been reduced from 20 months to six months, with a possibility for extension up to additionally 12 months (as provided by the EU Return Directive) “in case if a foreigner refuses to cooperate or obtaining documents from the third states is delayed”.<sup>79</sup>

As mentioned in Section 3.1, the SBG takes a decision to release a foreigner, *inter alia*, if there is no possibility to obtain documents which are necessary to fulfil the return procedure.<sup>80</sup> Such a clause in law may limit the cases of prolonged detention of foreigners whose identity cannot be established due to inability to obtain a response from the states of return over the recent years.<sup>81</sup> However, the Immigration Law does not include a provision on the regularization of a legal status in cases when the return is not possible. Therefore, a risk of repeated detention, theoretically, continues to exist, similarly like in the previous years<sup>82</sup> (see more on repeated detention in Section 3.5.5).

### 3.4. Detention of minors and other vulnerable groups

According to the Asylum Law, unaccompanied minor asylum seeker has to be placed in the reception centre for asylum seekers, with a guardian appointed by the Child Custody court or in a child care institution; if possible, the minor is placed with his relatives while the siblings should not be separated unless it is in the interests of the child.<sup>83</sup>

However, the Immigration Law allows for the detention of children who have reached the age of 14. There are no explicit provisions stipulating that detention of children is applied only as the measure of last resort and for the shortest period of time, as provided by the Return Directive.<sup>84</sup> The legislation raises concerns as to its compatibility

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<sup>77</sup> Immigration Law, Section 54<sup>1</sup>, para 1.

<sup>78</sup> See the analysis of the practices in the EU in: EU – FRA, *Detention of Third-Country Nationals in Return Procedures...*, p.25.

<sup>79</sup> Immigration Law, Section 54, para 7.

<sup>80</sup> Immigration Law, Section 59<sup>4</sup>.

<sup>81</sup> Information from the LCHR’s case work in 2009 – 2010.

<sup>82</sup> I.Pūce, *Legal norms of detention and legal rights of detainees in Latvia*, Latvian Centre for Human Rights, 2005, p.3. at: <http://www.humanrights.org.lv/html/news/28289.html?yr=2005>

<sup>83</sup> Asylum Law, Section 8, para 3.

<sup>84</sup> Article 17, para 1.

with Articles 1 (minors are defined as persons below the age of 18) and Article 37 of the UN Convention on the Rights of the Child,<sup>85</sup> Article 17.5 of the Return Directive (best interest of the child principle)<sup>86</sup> and Guideline 11 of Council of Europe Twenty Guidelines on Forced Return (Children and families).<sup>87</sup> The Latvian legislation falls short of the EU action plan on unaccompanied minors (2010-2014), which envisages that where detention is exceptionally justified, it is to be used as a measure of last resort, for the shortest appropriate period of time, and taking into account the best interest of the child as a primary consideration.<sup>88</sup>

The Immigration Law includes a clause that if a minor who is not accompanied by parents or his or her legal representative and is staying in the Republic of Latvia illegally, the OCMA or the SBG official shall without delay inform the State Police and the Child Custody Court and shall act so as to ensure the rights and interests of the child in accordance with regulatory enactments regulating the protection of children's rights during all the return procedure.<sup>89</sup>

The Immigration Law includes provisions concerning the detention of unaccompanied minors up to the end of the period of detention in the relevant state Police structural unit;<sup>90</sup> “[i]f the SBG in co-operation with the Consular Department until the end of the time period of detention have not been able to ascertain the identity and citizenship or country of residence of the minor, the State Police shall ensure the accommodation of the minor alien in a child care institution.”<sup>91</sup>

The Immigration Law also provides that detained minor aliens shall be accommodated together with detained parents or his or her legal representative;<sup>92</sup> “[i]f the detained alien has a child who has not been detained, on the basis of a request of the detained alien, in order to preserve family unity, the child may be accommodated in the accommodation centre together with the detained alien.”<sup>93</sup>

There are no special provisions on detention of other vulnerable groups in law.

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<sup>85</sup> Convention on the Rights of the Child, 1989 (GA Res 44/25)

<sup>86</sup> Directive 2008/115/EC of the European Parliament and of the Council of 16 December 2008 on common standards and procedures in Member States for returning illegally staying third-country nationals.

<sup>87</sup> Ad hoc Committee of Experts on the Legal Aspects of Territorial Asylum, Refugees and Stateless persons (CAHAR) – *Twenty Guidelines on forced return* (CM(2005)40 final)

<sup>88</sup> European Commission *Communication from the European Commission from the Commission to the European Parliament and the Council Action Plan on Unaccompanied Minors (2010 – 2014)*, Brussels, 6.5.2010, COM (2010) 213 final, 6 May 2010, p. 9

<sup>89</sup> Immigration Law, Section 50<sup>8</sup>, para 1.

<sup>90</sup> Immigration Law, Section 59<sup>5</sup>, para 1.

<sup>91</sup> Immigration Law, Section 59<sup>5</sup>, para 2.

<sup>92</sup> Immigration Law, Section 59<sup>1</sup>, para 3 (2).

<sup>93</sup> Immigration Law, Section 59<sup>1</sup>, para 5.

## 3.5. Detention measures in practice

International organisations have expressed their concerns on the detention practice of asylum seekers in Latvia and called upon the national authorities to ensure that the detention of asylum seekers is used only in exceptional circumstances or as a last resort, and only for the shortest possible time.<sup>94</sup>

### 3.5.1. Data on asylum seekers in detention

The statistics provided by the SBG shows that the rate of detained asylum seekers as compared to the total number of asylum applications has been increasing over the last years with a slight decrease of in 2011 (Figure 3). In fact almost half of asylum seekers have spent some time in detention. The decrease in the number of detained asylum seekers could be explained with the release of a large number (115) of persons claiming asylum in June, July and August 2011.<sup>95</sup> The release of several asylum seekers from detention at the relevant time period could be explained with the early period of work of the new detention centre as well as the representation of the detainees by the LCHR contesting unnecessary detention. The average time spent in detention during the asylum procedure has also been decreasing reaching one month compared to three in 2008<sup>96</sup> (Figure 4). The decrease in the average length of detention is the result of the increasing practice to release asylum seekers from detention once the grounds of detention have ceased to exist (most often if an asylum seeker could demonstrate some documents proving his or her identity) (see more in Section 3.5.4).

Asylum seekers who arrive in Riga with valid personal identification (a passport recognized within the EU) and travel documents have usually not been detained and have been directly transferred to the Reception centre “Mucenieki”.<sup>97</sup> However, all asylum seekers who cross the eastern border (Latvia-Belarus), including minors of different age, have allegedly been initially detained since the opening of the new detention centre in Daugavpils.<sup>98</sup> The SBG officials in Daugavpils detain asylum seekers allegedly in order

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<sup>94</sup> United Nations, Committee Against Torture, *Conclusions and Recommendations of the Committee against Torture, Latvia*, CAT/C/LVA/CO/2, 19 February 2008. UNCHR, Comments by the UNHCR Regional Office for the Baltic and Nordic Countries on the Draft Asylum Law of the Republic of Latvia, ROBNC/005/08, 21 January 2008, p. 2.

<sup>95</sup> Data provided by the SBG on 14.09.2011. For comparison, in April and May, only 6 persons were released.

<sup>96</sup> The time spent in detention during deportation procedure is not included in these figures.

<sup>97</sup> Information obtained during case work of the LCHR in 2010 – 2011.

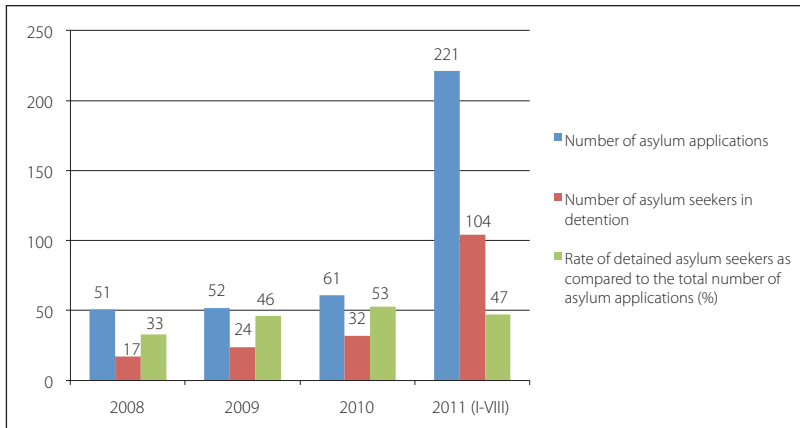
<sup>98</sup> Information obtained during the LCHR monitoring visit to the Daugavpils Detention centre on 07.09.2011.

to undertake all initial asylum proceedings in Daugavpils (to verify identity, to make expertise of documents, to conduct asylum interview etc.) before sending all relevant documents to the AAD; if no grounds for detention are found, asylum seekers are released to Muceniki after five-seven days.<sup>99</sup> Several categories of asylum seekers spend longer time in the detention centre (see more on application of detention in Section 3.5.2).

The number of detained children has been rather small: e.g. in 2008, there were totally four children with their families in the Olaine detention centre.<sup>100</sup> During the first eight months of 2011, nine minors, 24 women and 80 men had been held in detention.<sup>101</sup>

Unaccompanied minors (more than 14 years old) who arrived to Latvia without documents have also been initially detained. In 2010, three unaccompanied minors were detained, and then transferred to Muceniki. Some minors reported having spent totally 15 days in the initial (pre court) detention as they claimed asylum after spending eight days in the SBG’s cells on the grounds of the Immigration Law. After submitting application for asylum, they were repeatedly detained on the grounds of the Asylum Law provisions until the court took decision on their release.<sup>102</sup>

**Figure 3. Asylum seekers in detention.**



Source: Data provided by the SBG. The data of asylum applications in 2011 provided by the SBG (221) could differ from the data of the OCMA (213) due to the fact that some persons withdraw their asylum applications shortly after claiming asylum.

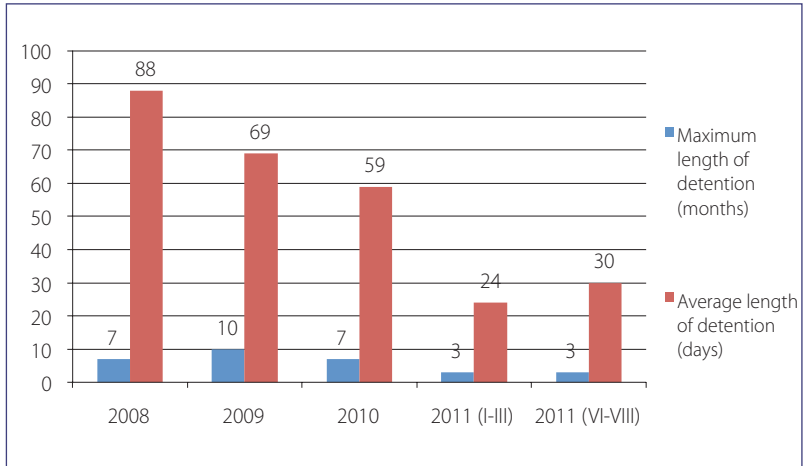
<sup>99</sup> Information obtained during the LCHR monitoring visit to the Daugavpils Detention centre on 07.09.2011.

<sup>100</sup> Information provided a representative of the SBG on 26.06.2009.

<sup>101</sup> Information provided by the SBG on 14.09.2011.

<sup>102</sup> Information obtained during case work of the LCHR in 2010-2011; Information obtained from the LCHR monitoring visit Reception centre for asylum seekers “Muceniki” on 31.03.2011.

Figure 4. Average length of detention of asylum seekers.



Source: Data provided by the SBG.

### 3.5.2. Application of the grounds of detention by the SBG and the courts

The LCHR analyzed 66 court decisions on detention and extension of the term of detention during the period from December 2008 until August 2011. Most of the decisions concerned the LCHR’s clients (2008 – the first quarter 2011). Other decisions (June – August 2011) were provided by the Daugavpils Court and the Latgale Regional Court<sup>103</sup> (see more on analyzed decisions below the Table 2 and the List of court decisions in Bibliography).

#### December 2008 – 14 July 2009

From the end of 2008 until July 2009, before the entering into force of the 2009 Asylum Law, the SBG detained asylum seekers primarily on the grounds provided by the Immigration Law<sup>104</sup> and applicable to irregular immigrants, not asylum seekers (e.g. *“the person has no valid travel documents, visa or residence permit”*, *“the person has*

<sup>103</sup> The courts were asked to observe to the following criteria in selecting the decisions: participation of different judges in the court hearing; gender of asylum seekers; different countries of origin of asylum seekers; decisions ruling on detention or extension of detention; decisions on release of asylum seekers from detention.

<sup>104</sup> Immigration Law (in force until 16.06.2011), Section 54<sup>1</sup>.

*no financial means in order to maintain himself*”, “*the person cannot gain legal means of existence through employment*”, “*the person has no permanent residence place, no shelter and relatives who could help to maintain the person*”) <sup>105</sup> (see Table 2). The Riga District Court (first instance) generally accepted the SBG’s arguments. The decisions of the Riga District Court on extending detention for two months were very short without argumentation part. Therefore, there was no guarantee that detention measures in respect of asylum seekers were only applied after a careful examination of their necessity in each individual case, as a proportional response and for the shortest possible time.

### **2010 – the first quarter 2011**

In 2010 and early 2011, the SBG detained asylum seekers on the grounds provided by the new Asylum Law (usually on more than one ground and in most cases when identity was not established). However, additional grounds, e.g. the “lack of financial means” have also been mentioned among the grounds of detention by the SBG and the courts. <sup>106</sup> The interpretation by the SBG of the “ground to believe” that the person is attempting to use the asylum procedure in bad faith, or that the person may pose a national security risk, has been overly broad and has in several instances been accepted by courts. For example, “*illegally crossing the border*”, “*submitting asylum application while in detention*” or other reasons without sufficient justification were interpreted as an attempt to abuse the asylum procedure or a threat to national security or public order (see Table 3 and Table 4). <sup>107</sup> In fact, almost all persons seeking asylum at the border without proper identity documentation, or seeking asylum when the border has already been crossed (without identity documents or required visas and thus staying illegally in the state) were automatically placed in the detention centre. <sup>108</sup> However, in several decisions examined by the LCHR, the Riga District Court did not find the proof of the SBG’s arguments concerning a threat to national security or public order or safety. The

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<sup>105</sup> Decision of the Riga District Court of 5 November 2008; Nr. 6-3/97; Decision of the Riga District Court of 30 December 2008; Nr. 6-3/97; Decision of the Riga District Court of 30 December 2008; Nr. 6-3/110; Decision of the Riga District Court of 3 February 2009; Nr. 6-3/3; Decision of the Riga District Court of 7 July 2009; Nr. 6-3/27

<sup>106</sup> Decision of the Riga District Court of 29 April 2010; Nr. 6-3/30; Decision of the Riga District Court of 18 May 2010; Nr. 6-3/33; Decision of the Riga District Court of 22 June 2010; Nr. 6-3/40; Decision of the Riga District Court of 22 June 2010; Nr. 6-3/30; Decision of the Riga District Court of 20 August 2010; Nr. 6-3/40; Decision of the Riga District Court of 19 October 2010; Nr. 6-3/65; Decision of the Riga District Court of 19 October 2010; Nr. 6-3/40; Decision of the Riga District Court of 28 October 2010; Nr. 6-3/55; Decision of the Riga District Court of 29 October 2010; Nr. 6-3/68; Decision of the Riga District Court of 22 December 2010; Nr. 6-3/78

<sup>107</sup> See, for example, the Decision of the Riga District Court of 29 April 2010; Nr. 6-3/30, Decision of the Riga District Court of 19 October 2010; Nr. 6-3/40

<sup>108</sup> Universal Periodic Review: Latvia, Stakeholder Report. By the Latvian Centre for Human Rights (NGO), 2010-11-08, p.2.

court referred to the Security Police which did not find that a person could constitute a threat to national security or public order.<sup>109</sup>

### **End of May – August 2011**

Apart from the grounds of detention listed in the Asylum Law, the SBG and the Daugavpils court mentioned the grounds established by the Immigration Law, e.g. a lack of financial means or forging of travel documents. In one decision, both the courts referred to provisions of the Immigration Law, not Asylum Law on the grounds of detention. The interpretation of the grounds of detention remains broad and inconsistent, although some positive examples can be noted.

The courts have considered that the person “*is attempting to use the asylum procedure in bad faith*”, for example, if an asylum seeker used false documents, submitted an asylum application after crossing the border, and submitted repeated asylum application among other reasons. However, the Daugavpils Court has not supported some of the SBG’s arguments in favour of detention. For example, it was stated that “*not observing asylum claiming procedure [...] should not be considered as an attempt to abuse the asylum procedure*”.<sup>110</sup>

Two judges of the Daugavpils Court differently interpreted “*a threat to national security or public order and safety*” in a case when an asylum seeker used false documents<sup>111</sup> – one of them declined such argument by the SBG and expressed an opinion that an asylum seeker could pose such a threat if he or she has been recognized, by a judgment of the court which is legally in force, as guilty of committing such crime which, in accordance with regulatory enactments of Latvia, is recognized as an especially serious crime. Another judge in respect to the same asylum seeker indicated that using false document poses a threat to national security and public order.

In one decision, the Latgale Regional Court did not find the justification for the attempting to abuse the asylum procedure. The court also pointed to the fact that a lack of financial means mentioned as an additional ground of detention in the first instance decisions is not applicable to asylum seekers.<sup>112</sup>

Several decisions did not have sufficient argumentation of the grounds of detention and in several cases the grounds for detention were not even indicated, particularly when the Daugavpils Court started to examine the asylum seekers’ detention cases (May 2011). The courts did not refer to international human rights documents, except to Article 5 (f) of the ECHR in cases of justification of detention of immigrants during

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<sup>109</sup> Decision of the Riga District Court of 19 October 2010; Nr. 6-3/40

<sup>110</sup> Decision of the Daugavpils District Court of 17 June 2011; Nr. KPL 12-049211

<sup>111</sup> Decision of the Daugavpils District Court of 15 June 2011; Nr. KPL 12-048711 and Decision of the Daugavpils District Court of 12 August 2011; Nr. KPL 12-048711

<sup>112</sup> Decision of the Latgale Regional Court (in Rezekne) of 14 July 2011; Nr. 12040311

deportation (provision not applicable to asylum seekers). Contrary to the widespread practice of automatic extension of detention for two months, in several instances the Daugavpils Court has indicated a specific date and time.<sup>113</sup>

**Table 2. Grounds and additional arguments for detention of asylum seekers in 2008 – 2011.**<sup>114</sup>

<b>Time period</b>	<b>SBG</b>	<b>First instance court</b>	<b>Second instance court</b>
<b>December 2008 – 14.07.2009*</b>	Unestablished identity; Lack of valid travel document, visa or residence permit; Lack of financial means; The person cannot gain legal means of existence through employment; Attempting to use the asylum procedure in bad faith; The asylum seeker will not have a legal basis to reside in the Republic of Latvia; The person is residing illegally; The criminal proceedings were initiated for illegal crossing the border	Unestablished identity; Lack of valid travel document, visa or residence permit; Lack of financial means; The person cannot gain legal means of existence through employment; The person has no permanent residence place, no shelter and relatives who could help to maintain the person; Attempting to use the asylum procedure in bad faith; The asylum seeker will not have a legal basis to reside in the Republic of Latvia	Unestablished identity; Lack of financial means

<sup>113</sup> Decision of the Daugavpils District Court of 30 May 2011, No. KPL 12-039911; Decision of the Daugavpils District Court of 31 May 2011, No. KPL 12-040311; Decision of the Daugavpils District Court of 31 May 2011, No. KPL 12-040011; Decision of the Daugavpils District Court of 6 June 2011, No. KPL 12-041511

<sup>114</sup> Information obtained through the analysis of court decisions on detention of asylum seekers.



<p style="text-align: center;"><b>2010**</b></p>	<p>Unestablished identity;          Attempting to use the asylum procedure in bad faith;          A threat to national security or public order and safety;          The state of origin of the person is included into the list of state whose citizens should be additionally checked before issuing visa or residence permit;          The person for a long time lived in another third state;          Lack of financial means and inability to be employed;          Administrative and/or criminal offence (illegal crossing of the border)</p>	<p>Attempting to use the asylum procedure in bad faith;          A threat to national security or public order and safety;          Lack of financial means;          Maximum term of detention – 20 months – has not been expired</p>	<p>Unestablished identity;          Attempting to use the asylum procedure in bad faith;          Lack of financial means;          The state of origin of the person is included into the list of state whose citizens should be additionally checked before issuing visa or residence permit</p>
<p style="text-align: center;"><b>January – March 2011***</b></p>	<p>Unestablished identity;          Attempting to use the asylum procedure in bad faith;          A threat to national security or public order and safety</p>	<p>Unestablished identity;          Attempting to use the asylum procedure in bad faith;          A person provided contradictory information;          A person absconded the Reception centre for asylum seekers, has left or tried to leave Latvia illegally</p>	<p>Unestablished identity;          Attempting to use the asylum procedure in bad faith;          Lack of financial means and employment</p>

<b>End of May – August 2011*****</b>	<p>Unestablished identity;          Attempting to use the asylum procedure in bad faith;          A threat to national security or public order and safety;          Lack of financial means;          Criminal process initiated against an asylum seeker for falsification of documents;          A person does not have a visa or residence permit to enter the EU;          The initial objective of an asylum seeker was to travel to another state and to use Latvia as a transit state;          There is the need to check whether a person is in international search;          A person claimed asylum in another state</p>	<p>Unestablished identity;          Attempting to use the asylum procedure in bad faith;          A threat to national security or public order and safety;          Asylum-seeker crossed the border with falsified documents;          A person is banned from entering the the Shengen territory;          A person has claimed asylum in another state;          Maximum term of detention – 20 months – has not been expired</p>	<p>Unestablished identity;          Attempting to use the asylum procedure in bad faith;          A threat to national security or public order and safety</p>
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\* 5 decisions of the Riga District Court and 2 decisions of the Riga Regional Court were analysed.

\*\* 11 decisions of the Riga District Court and 5 decisions of the Riga Regional Court were analysed.

\*\*\* 4 decisions of the Riga District Court and 3 decisions of the Riga Regional Court were analysed.

\*\*\*\* 21 decision of the Daugavpils Court and 4 decisions of the Latgale Regional Court were analysed.

Note: The table does not include excerpts from the decisions taken by the Riga District Court and the Riga Regional Court in 2009 (starting from 16.06.2009).

**Table 3. Examples of interpretations of “attempting to use the asylum procedure in bad faith” by the courts**

2010	<p>The attempt to avoid responsibility for illegally crossing the border; the attempt to escape deportation; not submitting asylum application at the border; providing false information on identity; the true reason for submitting asylum claim is different than the person mentioned; the asylum seeker does not fulfil the duties listed in the Asylum Law (cooperation with the SBG etc.) (Riga District court)</p>
January – March 2011	<p>The asylum seeker has left the reception centre; the attempt to leave Latvia during the asylum procedure (Riga District court)</p>
End of May – August 2011	<p>The asylum seeker has claimed asylum in another state; repeated application for asylum; hiding information about previous asylum proceedings; submitting application for asylum after being detained; criminal proceedings for the use of a false document (Daugavpils Court)</p> <p>The asylum seeker illegally crossed the border; using Latvia as a transit state; the asylum seeker has unlawfully left the reception centre; the asylum seeker submitted asylum application after crossing the border; the asylum seeker submitted a repeated asylum application (Latgale Regional Court)</p>

**Table 4. Examples of interpretations of the “a treat to national security or public order and safety” by the courts**

2010	<p>Invalid travel documents; possible criminal offences; arguments which in other decisions are considered as an attempt to use the asylum procedure in bad faith (Riga District Court)</p>
End of May – August 2011	<p>The asylum seeker was charged with criminal offence for the use of a false document; the asylum seeker submitted application for asylum in two months after arrival to Latvia (Daugavpils Court)</p> <p>The person was charged with criminal offence for the use of a false document with the additional punishment – deportation (Latgale Regional Court)</p>

### 3.5.3. Asylum seekers' mentioned reasons of their arrival to Latvia and detention

For the purposes of the project, asylum seekers, including failed asylum seekers or persons during the process of their deportation, were interviewed.<sup>115</sup> The asylum seekers in Daugavpils had different stories why they asked asylum in Latvia. Some of them wanted to be granted asylum in Latvia, others came to Latvia in transit to claim asylum in another state. Some asylum seekers alleged they had been detained solely due to the invalid documents or allegations by the SBG of having submitted false documents.

### 3.5.4. Practice of release from detention

The practice of the release of asylum seekers from detention has developed to a large extent due to the legal representation of asylum seekers by the LCHR before the court in detention cases as well as the involvement of the UNHCR since 2009. Yet, the courts and the SBG have often taken decisions to release asylum seekers from detention once they could demonstrate some documents proving their identity.<sup>116</sup> According to the Riga SBG official, the asylum seekers were released if also other grounds of detention ceased to exist.<sup>117</sup> The Riga District Court has indicated in several decisions that it should not be assumed that an asylum seeker could abuse the asylum procedure once the OCMA's AAD took the asylum application for examination in ordinary procedure.<sup>118</sup>

According to the Daugavpils SBG authorities, the following categories of asylum seekers have usually not been released from the detention centre: persons who have committed a criminal offence; persons without identity documents and whose identity cannot be established; persons with false documents; persons banned from entry in the Shengen state (not applied recently); persons who have previously absconded the Reception centre "Mucenieki".<sup>119</sup>

Vulnerable groups (families with children, minors, pregnant women and persons with serious special needs, e.g. mental illness) were also usually released from the initial detention.<sup>120</sup>

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<sup>115</sup> In-depth interviews were conducted with 18 persons in the Olaine detention centre, the Daugavpils detention centre and the Reception centre "Mucenieki".

<sup>116</sup> Information obtained from the LCHR case work in 2009 – 2011.

<sup>117</sup> Information obtained during the LCHR monitoring visit to the Olaine detention centre on 29.03.2011.

<sup>118</sup> Information obtained from the LCHR case work in 2010 – 2011.

<sup>119</sup> Information obtained during the LCHR monitoring visit to the Daugavpils detention centre on 07.09.2011.

<sup>120</sup> Information obtained from the LCHR case work in 2009 – 2011.

In all 66 reviewed court decisions, there were only three decisions, when the court decided not to extend detention. These figures reveal the general practice of the courts to detain asylum seekers.

### 3.5.5. Detention of failed asylum seekers

With respect to failed asylum seekers, the OCMA has, with some exceptions (e.g. women with children) usually taken a decision on their forcible return, even if they were placed in the Reception centre “Mucenieki”.<sup>121</sup> Failed asylum seekers have not been granted the possibility for voluntary return, and in fact have had to be detained after receiving the negative decision in their asylum case. It remains to be seen how the practice will develop in respect to the implementation of the 2011 Immigration Law’s provisions granting a possibility for failed asylum seekers to be served with return decision (see Section 3.2).

There were a few cases when the overall term of detention has exceeded the maximum length of detention provided by the Immigration Law (20 months) if deportation could not be possible due to the failure of authorities to establish a person’s identity.<sup>122</sup> Rejected asylum seekers in detention have been repeatedly detained on the basis of the Immigration Law. The SBG and judges have calculated the time spent in detention from the moment of repeated detention. When released, rejected asylum seekers are provided only with the decision on release without any legal status and social guaranties, such as food and housing.

There has been a case when a failed asylum seeker has been repeatedly detained by the SBG, released by the court several times, and in the end the Riga Regional Court found repeated detention of the person concerned as contravening the Immigration Law and the Directive 2008/115/EC, and he was released.<sup>123</sup>

## 3.6. Conclusions

The Asylum Law (2009) introduced exceptional grounds of the detention of asylum seekers as provided by the international and the EU standards. However, the vague formulations of the grounds, the long (seven day) term of initial detention by the SBG and the rules on detention procedure in the framework of the Immigration Law applicable to all foreigners still give a larger margin of interpretation by the SBG and judges in the application of the detention grounds in practice.

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<sup>121</sup> Information obtained from the LCHR case work in 2010 – 2011.

<sup>122</sup> Information obtained from the LCHR case work in December 2008 – June 2009.

<sup>123</sup> Information obtained from the LCHR case work in October 2009 – August 2010.

As a rule, almost any asylum seeker arriving without a valid passport and/or travel document has initially been automatically detained. Asylum seekers being able to demonstrate their identity have been often released from detention, if other detention grounds also ceased to exist. Nevertheless, such detention practice contradicts the spirit of international standards providing that asylum seekers should not be penalized for illegal entrance. The detention of all asylum seekers crossing the eastern border in the Daugavpils detention centre may amount to arbitrary detention if applied automatically and without justification.<sup>124</sup>

Although children and some other vulnerable groups, such as women with minors, have in practice been released after initial detention, the Immigration Law allows for the detention of minors (aged from 14 till 18), and there are actually no special provisions on the detention of other vulnerable groups.

Detention of failed asylum seekers has been the usual practice, and the grounds of the detention provided by the Immigration Law continue to raise concern in terms of their broad interpretation by the authorities taking decision on forced return. While some important improvements, e.g. guarantees for the release from detention and voluntary return, were recently incorporated in the Immigration Law, there are neither provisions on the regularization of a legal status nor social support in case the return is not possible.

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<sup>124</sup> A. Edwards, *Back to Basics...*, p.12-13.

## 4. ALTERNATIVES TO DETENTION

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### 4.1. Alternatives to detention in law

There were no alternatives to immigration detention before the 2011 Immigration Law amendments, which provide that if the SBG official making decision on detention of a foreigner, can apply one of the following “due to reasons of humanitarian nature”:

1) Regular reporting to the determined unit of the SBG.

2) Hand over of travel document and other identity identification documents possessed by a foreigner to the SBG official.<sup>125</sup> In the decision on alternatives to detention, the SBG official indicates data on a foreigner, his or her duty and the rules of its fulfilment, together with a photo.<sup>126</sup>

However, there are several gaps in the provisions in light of the Return Directive. Firstly, the law does not guarantee that detention is imposed only “unless other sufficient but less coercive measures can be applied in a specific case” as provided by the Return Directive.<sup>127</sup> The clause “due to reasons of humanitarian nature” suggests that the alternatives may be applied mainly to vulnerable persons, not to potentially all persons concerned.

Secondly, the provision on regular reporting does not include the maximum frequency of registration (e.g. not more than three times per week, as provided, in the Criminal Procedure Law<sup>128</sup>). Therefore, this provision could be potentially a subject of a broad interpretation by the authorities and could lead to unequal conditions in

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<sup>125</sup> Immigration Law, Section 51, para 3.

<sup>126</sup> Immigration Law, Section 51, para 4.

<sup>127</sup> Directive 2008/115/EC of the European Parliament and of the Council of 16 December 2008 on common standards and procedures in Member States for returning illegally staying third-country nationals, Article 15, para 1.

<sup>128</sup> Criminal Procedure Law, adopted on 21.04.2005, in force from 01.10.2005., with amendments until 11.08.2011. Section 261, para 1.

application.<sup>129</sup> It is also not mentioned that the decision on alternatives should include the consequences of not fulfilling the imposed duties (forced return if a foreigner has not fulfilled the duty to report to the SBG without sufficient ground as provided by the Immigration Law).<sup>130</sup>

Third, the law does not provide for detailed rules governing the application of the alternatives (e.g. a judge considered such rules as necessary<sup>131</sup>); there are also no guidelines or criteria governing each alternative. The provisions for the appeal to court of the decision on alternatives to detention are also not provided in the Immigration Law. However, the decision on the alternatives to detention may be appealed in the order fixed by the Administrative Procedure Law providing for the right of individuals to appeal the decisions of the state authorities.<sup>132</sup>

It remains unclear if the Immigration Law provisions on the alternatives to detention are also applicable to asylum seekers during the asylum procedure (due to the fact that the Asylum Law foresees that detention takes place in the order fixed by the Immigration Law), or only to foreigners in the process of return, including failed asylum seekers, as emphasized by the SBG authorities.<sup>133</sup> Officials of the SBG and the OCMA have highlighted the need for amendments to the Asylum Law providing for more extensive norms concerning the detention of asylum seekers and alternatives to detention.<sup>134</sup>

## 4.2. Prospects of alternatives to detention

According to the information provided by the SBG, as of September 2011, no alternatives to detention have been implemented in practice.<sup>135</sup> However, in October 2011, representatives of the SBG's Riga Regional Branch mentioned some cases when alternatives to detention (reporting) were applied for foreigners (not asylum seekers)

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<sup>129</sup> LCHR comments to the Draft Immigration Law amendments submitted to the Parliamentary Commission on Defence, Interior Affairs and Anti-Corruption on 21.02.2011.

<sup>130</sup> Immigration Law, Section 51, para 2 (9).

<sup>131</sup> Conclusions from the national seminar "Detention of asylum seekers and alternatives to detention" organised by the LCHR in cooperation with the UNHCR on 21.10.2011.

<sup>132</sup> Administrative Procedure Law, adopted on 25.10.2001, in force from 01.02.2004., with amendments until 01.01.2009. Available at <http://www.likumi.lv/doc.php?id=55567>

<sup>133</sup> Conclusions from the national seminar "Detention of asylum seekers and alternatives to detention" organised by the LCHR in cooperation with the UNHCR on 21.10.2011; Information obtained during the LCHR monitoring visit to the Daugavpils detention centre on 07.09.2011.

<sup>134</sup> Conclusions from the national seminar "Detention of asylum seekers and alternatives to detention" organised by the LCHR in cooperation with the UNHCR on 21.10.2011.

<sup>135</sup> Information provided by the SBG on 14.09.2011.



during the return procedure; the persons concerned had a residence place and means of subsistence in Latvia.<sup>136</sup>

The application of the alternatives to detention has not been broadly discussed. Although the SBG's officials believe that asylum seekers should not be detained unnecessarily, they have generally voiced scepticism on the possibilities to implement effective alternatives to detention. According to the SBG officials, Latvia is a transit state for many asylum seekers, and they often decide to claim asylum after being detained.<sup>137</sup> The officials believe that most asylum seekers are willing to use the asylum procedure in unfair manner.<sup>138</sup>

The LCHR has proposed that the Immigration Law should provide for other forms of alternatives to detention, in particular, bail (financial deposit) and a designated place of residence.<sup>139</sup> Handing over documents, in fact, is not an alternative to detention of asylum seekers since they already have the duty to hand over their documents to the SBG.<sup>140</sup> The SBG's official doubted also the feasibility of applying financial deposit to many foreigners due to their lack of financial means.<sup>141</sup> The effective application of the alternatives to detention was doubted due to the lack of a place of residence for most foreigners and lack of NGOs providing social assistance.<sup>142</sup> The Daugavpils SBG authorities considered the Reception centre "Mucenieki" as the only alternative to detention and did not see the possibility of applying alternatives to detention in Daugavpils.<sup>143</sup> At the same time, the OCMA's official was concerned about the limited holding capacity of the reception centre (100 persons) and the potential need to search for additional places of the asylum seekers' reception facilities in the context of increasing number of asylum seekers.<sup>144</sup>

The interviewed SBG officials in Riga have also pointed to the high rate of

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<sup>136</sup> Conclusions from the national seminar "Detention of asylum seekers and alternatives to detention" organised by the LCHR in cooperation with the UNHCR on 21.10.2011.

<sup>137</sup> Information obtained from the LCHR monitoring visit to the Olaine detention centre on 29.03.2011 and to the Daugavpils detention centre on 07.09.2011; Conclusions from the national seminar "Detention of asylum seekers and alternatives to detention" organised by the LCHR in cooperation with the UNHCR on 21.10.2011.

<sup>138</sup> Ibid.

<sup>139</sup> LCHR comments to the Draft Immigration Law amendments submitted to the Parliamentary Commission on Defence, Interior Affairs and Anti-Corruption on 21.02.2011.

<sup>140</sup> Asylum Law, Article 7, para 1.

<sup>141</sup> Conclusions from the national seminar "Detention of asylum seekers and alternatives to detention" organised by the LCHR in cooperation with the UNHCR on 21.10.2011.

<sup>142</sup> Ibid.

<sup>143</sup> Information obtained from the LCHR monitoring visit to the Daugavpils detention centre on 07.09.2011.

<sup>144</sup> Conclusions from the national seminar "Detention of asylum seekers and alternatives to detention" organised by the LCHR in cooperation with the UNHCR on 21.10.2011.

absconding from the Reception centre Mucenieki<sup>145</sup> and difficulties to ensure strict monitoring if reporting to the SBG is applied. However, according to a practicing lawyer, a threat of the negative decision on asylum, forced deportation and detention may partly explain the cases of absconding from the reception centre; asylum seekers are also afraid about the lack of social guarantees if the international protection is granted.<sup>146</sup>

The interviewed detainees were not informed about the provision on alternatives to detention. One detainee with valid ID who was waiting for documents necessary for his return for a whole month, said: *“I would prefer to [...] wait for my deportation, but not here, in closed space”*.

### 4.3. Conclusions

The development of the application of the alternatives to detention to irregular migrants provided by the Immigration Law in practice, including regular reporting, is at its early stage. The national law does not impose an obligation upon the authorities first to examine the possibility of applying alternatives to detention when taking a decision on detention. Moreover, the provision of the Immigration Law includes a clause that alternatives to detention are applied only “due to the reasons of humanitarian nature”.

No alternatives to detention have been applied to asylum seekers, and the law does not clearly stipulate if the alternatives to detention are applicable to persons seeking asylum. According to some key officials, the provisions on alternatives to detention for asylum seekers should be elaborated in the Asylum Law.

Some experts suggest that more detailed guidelines on the implementation of the alternatives to detention are needed; other forms of alternatives, such as bail and the designated place, should also be introduced in law and in practice. However, the implementation of alternatives to detention has a risk to be problematic due to the lack of place of residence for many foreigners and asylum seekers. More should be done to improve the reception conditions and the return procedure of asylum seekers in order to promote effective measures of alternatives to detention. The involvement of NGOs in social assistance to asylum seekers and promotion of alternatives to detention is very important.

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<sup>145</sup> Information obtained from the LCHR monitoring visit to the Olaine detention centre on 29.03.2011. According to data provided by the OCMA, in 2009, there were 21, in 2010 – 10, and during the first eight months of 2011 – 100 cases of asylum seekers’ absconding from the reception centre.

<sup>146</sup> Information obtained from a lawyer of the LCHR Džena Andersone on 16.09.2011.

## 5. PROCEDURAL SAFEGUARDS

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### 5.1. Access to information on detention

The asylum seeker and the foreigner who has been detained, is required to sign a detention report, including the motives of detention, drawn up by the SBG.<sup>147</sup> The Immigration Law also obliges the authorities to inform the detainees on the right to appeal decisions on detention, contact the consular institution of his or her country and receive legal assistance; the right of the detainee to become acquainted with the materials related to his or her detention; the right to communicate in the language he or she understands, or which he or she is reasonably expected to understand if necessary by utilizing the services of an interpreter.<sup>148</sup>

In practice, the detention report is written in Latvian, and asylum seekers and foreigners are usually orally informed by the SBG. The court decision on detention is also given to a detainee in Latvian, although the oral translation is provided in court.

However, several interviewed asylum seekers claimed that they received poor information on the reasons of detention, while claimed they were very generally informed about such reasons (e.g. “*illegal stay*”).<sup>149</sup> Some asylum seekers first heard about the reasons of detention in the court.<sup>150</sup> The asylum seekers in the Daugavpils detention centre did not understand the reasons of their detention if their identity had already been established. There were allegations of psychological pressure on asylum seekers by the SBG to sign papers which they did not understand.<sup>151</sup> Lack of interpreters in some languages spoken by many asylum seekers (e.g. Dari, Farsi and Arabic)

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<sup>147</sup> Asylum Law, Section 9; Immigration Law, Section 52.

<sup>148</sup> Immigration Law, Section 56.

<sup>149</sup> Information obtained from the LCHR monitoring visit to the Olaine detention centre on 29.03.2011 and to the Daugavpils detention centre on 07.09.2011.

<sup>150</sup> Information obtained from the LCHR monitoring visit to the Olaine detention centre on 29.03.2011.

<sup>151</sup> Information obtained from the LCHR monitoring visit to the Daugavpils detention centre on 07.09.2011.

became a problem in Daugavpils, although the authorities have already made efforts to find solutions through agreements with some translation services from Riga.<sup>152</sup> The information obtained from asylum seekers in Daugavpils and the LCHR's case work confirms such problems, including insufficient provision of information and cases of poor interpreting in certain languages in court.<sup>153</sup> Language barrier is not unusual in communication with the authorities in detention centre.

## **5.2. Access to remedies and legal assistance in detention case**

The detained foreigner (including asylum seeker in detention) or his/her representative can appeal the decision of the judge on detention within 48 hours after the decision has been received by the person detained.<sup>154</sup> The 2011 Immigration Law amendments provide for the possibility to appeal the return decision and the decision on forced return issued by the authority (OCMA or the SBG) to the court within seven days, including the Supreme Court as the highest instance.<sup>155</sup> The previous law did not provide for the possibility for appeal of decisions on forced return. However, the submission of an appeal does not suspend these decisions.<sup>156</sup> The OCMA may not issue a return order or a decision on forced return and to allow a foreigner to reside in the Republic of Latvia for a period up to one year due to the reasons of humanitarian nature.<sup>157</sup> The OCMA and the SBG may suspend the return decision or the decision on forced return if the circumstances which served as the ground of the relevant decision have changed or due to the reasons of humanitarian nature.<sup>158</sup>

There are no legal provisions concerning the state provided legal aid to asylum seekers and foreigners to appeal the decisions on detention or extension of detention. In August 2011, the Saeima adopted the amendments to the State Ensured Legal Aid Law providing for free legal assistance to foreigners in case of appeal of the decisions on return order and forced return.<sup>159</sup> The amendments will enter into force on 23 December 2011.

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<sup>152</sup> Information obtained from the LCHR monitoring visit to the Daugavpils detention centre on 07.09.2011.

<sup>153</sup> See the results of the project "Legal assistance to asylum seekers in Latvia" co-funded under the ERF at <http://www.humanrights.org.lv/html/30456.html>

<sup>154</sup> Immigration Law, Section 55, para 6.

<sup>155</sup> Immigration Law, Section 50, para 1.

<sup>156</sup> Immigration Law, Section 50, para 2, 3.

<sup>157</sup> Immigration Law, Section 42, para 3.

<sup>158</sup> Immigration Law, Section 49.

<sup>159</sup> Amendments to the State Ensured Legal Aid Law, adopted on 04.08.2011., in force from 07.09.2011. Available at <http://www.likumi.lv/doc.php?id=234863>

In practice, many detainees face several barriers as to effective remedies in detention cases. Asylum seekers often do not have sufficient financial means for hiring a private lawyer; they also do not have information on lawyers/advocates (except the LCHR).<sup>160</sup> In all 21 decisions of the Daugavpils Court analyzed by the LCHR, only one asylum seeker was represented by an advocate in 2011; due to the distance from the capital, none were represented by the LCHR. In 2009 and 2010, in most decisions examined by the LCHR, the asylum seekers were represented by the LCHR lawyer.

In 2009 and 2010, almost all decisions of the Riga Regional court examined by the LCHR, mentioned a legal representative. There were only four appeal detention cases in the Latgale Regional court until the end of August 2011, and no asylum seekers in the above cases were represented by the LCHR. The Latgale Regional court reviews the appeals in written procedure, and in some cases the LCHR lawyer provided a written opinion to the court.

Most asylum seekers in detention have requested legal assistance from the LCHR. However, the possibilities of representation before the court by the LCHR lawyer became limited in Daugavpils due to the significant distance and limited resources mostly coming from the European Refugee Fund's (hereinafter – ERF) projects on periodic basis. Legal assistance to asylum seekers in Daugavpils has become problematic also due to the increasing need of interpretation. Additionally, the asylum seekers have usually been shortly informed about the forthcoming court session (one day or even a few hours before the detention hearing, although some improvements were identified in the Daugavpils detention centre during the recent time).<sup>161</sup>

## 5.3. Access to asylum procedure

### 5.3.1. Information on the asylum procedure

The Asylum Law provides for the right of the asylum seeker to receive information from the SBG and the OCMA on the asylum procedure and the rights of asylum seekers in a language which he or she should understand and in which he or she is able to communicate.<sup>162</sup> An asylum seeker has the right to receive an explanation of a decision on asylum issued by the OCMA and the appeal procedure in a language which he or she should understand and in which he or she is able to communicate, except in case

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<sup>160</sup> Information obtained from the LCHR monitoring visit to the Olaine detention centre on 29.03.2011 and to the Daugavpils detention centre on 07.09.2011. See also the results of the project "Legal assistance to asylum seekers in Latvia" co-funded under the ERF at <http://www.humanrights.org.lv/html/30456.html>

<sup>161</sup> Information obtained from the LCHR case work in 2009-2011.

<sup>162</sup> Asylum Law, Section 10, para 2.

where the asylum seeker is represented by an authorised person or he or she is provided with legal aid free of charge.<sup>163</sup>

According to the information provided by the SBG, a list of the rights of asylum seekers (excerpts from the Asylum Law) is available in several languages to all asylum seekers upon arrival to Latvia.<sup>164</sup> The information leaflet on the asylum procedure issued by OCMA is available in the reception centre and is allegedly given to all asylum seekers in Daugavpils. Nevertheless, asylum seekers in all facilities where monitoring visits were conducted, claimed that they had poor or no information on the asylum procedure and their rights as asylum seekers; many of them did not know about the leaflet or did not find it useful.<sup>165</sup> There are no major differences between the situation in the Daugavpils detention centre and the Reception centre in Mucenieki in respect to the access to information in the asylum procedure. However, in the Reception centre, asylum seekers are more often assisted by the staff in the translation of documents written in Latvian and providing information individually than in the detention centre.<sup>166</sup>

There were only a few cases when asylum seekers were granted a refugee or alternative status (subsidiary protection) while in detention (nine persons during the period from 2008 till August 2011).<sup>167</sup> Most asylum seekers await the outcome of their case while in the Reception centre.

### 5.3.2. Access to effective remedy and legal assistance in negative asylum decisions

The Asylum Law refers to the Law on the State Legal Aid<sup>168</sup> providing for the right of asylum seekers to the state legal aid only during the appeal procedure concerning decisions on asylum which are made by the AAD.<sup>169</sup> The proposal of the UNHCR to provide the right to free and qualitative legal assistance to asylum seekers from

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<sup>163</sup> Asylum Law, Section 10, Section 30.

<sup>164</sup> Information obtained from the LCHR monitoring visit to the Olaine detention centre on 29.03.2011 and to the Daugavpils detention centre on 07.09.2011.

<sup>165</sup> Information obtained from the LCHR monitoring visit to the Olaine detention centre on 29.03.2011; to the Daugavpils detention centre on 07.09.2011 and to Reception centre for asylum seekers “Mucenieki” on 31.03.2011.

<sup>166</sup> See the results of the project “Legal assistance to asylum seekers in Latvia” co-funded under the ERF at <http://www.humanrights.org.lv/html/30456.html>

<sup>167</sup> Information obtained from the SBG on 13.04.2011 and 14.09.2011.

<sup>168</sup> State Ensured Legal Aid Law, adopted on 17.03.2005., in force from 01.06.2005., with amendments until 07.09.2011.), Article 5, para 2.

<sup>169</sup> Asylum Law, Article 10, para 3.

the moment when application for asylum was submitted<sup>170</sup> was not incorporated into the Law.

Only nine asylum seekers have received state-funded legal aid in 2009-2010.<sup>171</sup> In comparison, the LCHR in the framework of various projects provided legal aid at different stages of the asylum procedure in 59 cases (some of them included several family members) in the same time period. The LCHR remains core provider of legal assistance in asylum cases. Many asylum seekers do not believe in the positive outcome of their case if legal aid is provided by the state advocate.<sup>172</sup> Similarly to detention cases, asylum cases became more problematic to assist in Daugavpils as compared to Mucenieki (see above).

## **5.4. Access to UNHCR, the Ombudsman's Office and NGOs**

In law, asylum seekers in detention and reception centre have the right to contact NGOs, the UNHCR as well as other international organisations.<sup>173</sup> The information on the UNHCR and the LCHR is available in the Daugavpils detention centre. However, most interviewed asylum seekers have limited contacts with organizations, except the LCHR; most of them did not have contacts with the UNHCR and are neither aware about the Ombudsman's Office nor other NGOs. In Daugavpils, however, the staff and some asylum seekers mentioned the visits of UNHCR and the Ombudsman's Office.

There was one visit of the Ombudsman's Office to the Olaine detention facility in 2008; three monitoring visits were conducted in 2009, one – in 2010.<sup>174</sup> The Ombudsman's Office did not find serious violations in the detention centre except for language barriers of the staff.<sup>175</sup> There were also seven Ombudsman Office's visits to the Reception centre "Mucenieki" during the period from 2008 till October 2011.<sup>176</sup> There was one visit of the Ombudsman's Office to the Daugavpils detention centre during the period from January until the end of September 2011.<sup>177</sup>

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<sup>170</sup> ANO Augstā komisāra bēgļu lietās biroja (UNHCR) paziņojums attiecībā uz Patvēruma likuma projektu, ar kuru Latvijas likumos tiek ieviesti ES patvēruma tiesību akti, Hans ten Feld – ANO Augstā komisāra bēgļu lietās pārstāvja Baltijas valstīs un Ziemeļvalstīs – runa Latvijas Republikas Saeimas Cilvēktiesību un sabiedrisko lietu komisijas sēdē, Rīga, Latvija. 2009.gada 12.maijā, p.3.

<sup>171</sup> Information obtained from the Legal Aid Administration on 30 November 2011.

<sup>172</sup> See the results of the project "Legal assistance to asylum seekers in Latvia" co-funded under the ERF at <http://www.humanrights.org.lv/html/30456.html>

<sup>173</sup> Asylum Law, Section 4, para 1; section 10 para 7; Immigration Law, Section 59.2, para 2 (4).

<sup>174</sup> Information obtained from the Ombudsman's Office on 29.09.2011.

<sup>175</sup> Tiesībsarga 2010.gada ziņojums, 2011, section 52.

<sup>176</sup> Information obtained from the Ombudsman's Office on 29.09.2011.

<sup>177</sup> Information obtained from the Ombudsman's Office on 29.09.2011.

No statistics are available on the legal assistance provided to asylum seekers and irregular migrants by the Ombudsman's Office.<sup>178</sup> The Office has received 20 written complaints from various categories of foreigners and ten – from refugees and asylum seekers during the time period from 2008 until October 2011; 79 oral consultations to foreigners and 51 – to refugees and asylum seekers were provided during the relevant period.<sup>179</sup>

In line with 2011 Immigration Law amendments, the Ombudsman's Office was designated as the independent body monitoring forced return according to the provisions of the Return Directive.<sup>180</sup> Although the Office visited the Daugavpils centre in 2011, the project on monitoring of forced return is at the initial stage of its elaboration. After its testing, the cooperation with NGOs could be considered.<sup>181</sup>

## 5.5. Conclusions

The national law includes provisions on the rights of detained asylum seekers and foreigners for access to information on the reasons of their detention and their detention case. However, the asylum seekers are generally poorly and inconsistently informed on the reasons of their detention. Language barrier and insufficient interpretation services hampers the efficient access to information by many asylum seekers.

Access to legal aid in detention cases is limited due to the lack of provisions on free legal aid in detention cases and barriers in practice (lack of information on lawyers, lack of financial means and limited availability of lawyers in Daugavpils to serve the detention facility). Representation of detainees before the court by the LCHR has become problematic due to significant distance from the capital Riga.

Similarly to the detention cases, access to information on the asylum procedure is also problematic, particularly in the detention centre. The LCHR remains the core provider of legal aid to asylum seekers in asylum cases, although it has also become more problematic in respect to asylum seekers in detention. The asylum seekers have limited contacts with the UNHCR and the Ombudsman's Office; there are no contacts with and NGOs except for the LCHR.

More should be done to ensure the availability of information on detention case and the asylum procedure, interpretation, free legal assistance and contacts with NGOs and the Ombudsman's Office in the detention centre. Access to information on the asylum procedure in the reception centre should also be improved.

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<sup>178</sup> Information obtained from a representative of the Ombudsman's Office on 29.09.2011.

<sup>179</sup> Information obtained from the Ombudsman's Office on 29.09.2011.

<sup>180</sup> Immigration Law, Section 50<sup>7</sup>.

<sup>181</sup> Information obtained from a representative of the Ombudsman's Office by e-mail on 28.09.2011.



## 6. CONDITIONS IN DETENTION CENTRE AND RECEPTION CENTRE

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### 6.1. Detention centre – the move from Olaine to Daugavpils

#### 6.1.1. Background

Until 2007, there were no law-based normative acts concerning the immigration detention facility; the Olaine Detention centre was regulated by internal regulations of the SBG, and the rules of internal order were approved by an order of the SBG.<sup>182</sup> In 2007 the amendments to the Immigration Law broadened the scope of rights of the detainees, including children.<sup>183</sup> Following the amendments to the Immigration Law, the Cabinet of Ministers Regulations provided for rules governing the regime of the detention facility in 2008.<sup>184</sup>

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<sup>182</sup> I.Pūce un L.Grāvere 'Detention Facility for Illegal Immigrants Olaine and Reception Centre for Asylum Seekers Mucenieki' in: Latvian Centres for Human Rights *Monitoring Report on Closed Institutions in Latvia*, 2006, p. 93, available at [http://www.humanrights.org.lv/upload\\_file/Final\\_monitoring\\_reportEN.pdf](http://www.humanrights.org.lv/upload_file/Final_monitoring_reportEN.pdf)

<sup>183</sup> Amendments to the Immigration Law (adopted 21.06.2007), Section 7.

<sup>184</sup> The Regulations on internal rules of the detention centre Nr. 742 (adopted 15.09.2008); the Regulations on norms regulating the holding of foreigners placed in the detention centre and the extent and procedure of receiving guaranteed health care services Nr. 434 (adopted 17.06.2008); the Regulations on the rules for equipping of the detention centre Nr. 435 (adopted 17.06.2008).

Following the provisions of the 2009 Asylum Law, the Cabinet of Ministers adopted several regulations providing for the detention conditions of asylum seekers in 2010.<sup>185</sup>

Poor conditions in the Olaine detention centre (with a capacity of 50 detainees) approximating to those in prisons systematically raised concerns of human rights organisations.<sup>186</sup> The conditions of detention fell short of meeting the standards elaborated in the Cabinet of Ministers Regulations on the rules for equipping of the detention centre.<sup>187</sup> According to the SBG, the project on the reconstruction of the detention centre was initiated in 2002 in order to meet human rights standards; however, the government did not allocate funds for its realisation.<sup>188</sup> On 31 May 2011, the Olaine detention centre was closed down allegedly until the solution for its reconstruction is found.<sup>189</sup>

### **The Olaine Detention facility (1999 – May 2011): core problems**

- Old building with poor material conditions
- Prison-like environment
- Lack of special conditions for vulnerable persons with special needs, including minors
- Stress, insomnia and depression experienced by detainees
- Poor contacts with outside world (lack of paper, free envelopes and stamps, limited access to free telephone)
- Limited activities within the centre
- Language barriers in communication with the staff

Source: Information obtained from the LCHR-monitoring visit on 26.06.2009; Information obtained from the LCHR monitoring visit on 29.03.2011.

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<sup>185</sup> The Regulations of the Cabinet of Ministers No.73 regarding the Amount of Expenses for the Purchase of Subsistence, Hygiene and Basic Necessities for Asylum Seekers in the Accommodation Centre for Asylum Seekers of the State Border Guard (adopted 26.01.2010); The Regulations of the Cabinet of Ministers No. 276 on the Rules of accommodation premises and furnishing for detained asylum seekers of the State Border Guard (adopted 23.03.2010); The Regulations of the Cabinet of Ministers No. 222 on the Internal Rules of Procedure of Accommodation Premises for Asylum Seekers (adopted 09.03.2010).

<sup>186</sup> Report to the Latvian Government on the visit to Latvia carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 25 September to 4 October 2002, CPT/Inf (2005) 8; I.Pūce un L.Grāvere, *Detention Facility for Illegal Immigrants Olaine ...*, p. 94-95.

<sup>187</sup> Information provided by a representative of the SBG on 26.06.2009.

<sup>188</sup> See the website of the SBG at <http://www.rs.gov.lv/index.php?id=1031&sa=&top=1031&rel=1781>.

<sup>189</sup> See the website of the SBG at <http://www.rs.gov.lv/index.php?id=1031&sa=&top=1031&rel=1677>

## 6.1.2. The Daugavpils detention centre: description of the facility



The renovation work of the SBG's premises in Daugavpils (the building was constructed in 1870) started in 2004,<sup>190</sup> but the detention conditions of asylum seekers were improved with the support of the European Refugee Fund in 2010 – 2011.<sup>191</sup>

The detention centre with a holding capacity of 73 detainees<sup>192</sup> is a two-floor building located on the territory of the Daugavpils SBG's branch. The territory of the centre is surrounded by a fence, and access to the building is possible only with special magnetic cards. The entrance for visitors is from another side of the detention centre.

The asylum seekers are held separately from other foreigners. At the time of the visit, there were 40 asylum seekers and one foreigner in the return process. There are separate blocks for women, men and families with children. There are special blocks for unaccompanied minors. As of September 2011, no unaccompanied minors had been placed in the detention centre.<sup>193</sup>

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<sup>190</sup> Information obtained from the LCHR monitoring visit on 29.03.2011.

<sup>191</sup> Valsts Robežsardzes 2010.gada publiskais pārskats, p.21.

<sup>192</sup> See information at [http://www.iem.gov.lv/lat/aktualitates/informacija\\_medijiem/?doc=22800](http://www.iem.gov.lv/lat/aktualitates/informacija_medijiem/?doc=22800)

<sup>193</sup> Information obtained from the LCHR monitoring visit to the Daugavpils detention centre on 07.09.2011.



The internal rules of procedures of the detention centre are available in English, French, Russian and German. The Immigration Law provides for cases when a detainee can be placed in a specially equipped room (isolation room or a disciplinary cell) if a person has violated internal rules; if there is a reason to believe that a person can violate the rules; if a person can pose a threat to the security of other detainees.<sup>194</sup> According to the Cabinet of Ministers' Regulations, a person can be placed in the specially equipped room for up to ten days by the order issued by the head of the centre.<sup>195</sup> There are two isolation rooms for persons violating the rules in the centre. There was a case when persons who had demolished their rooms and furniture in protest of their detention were placed into the isolation rooms. However, the police were called immediately after the incident.<sup>196</sup>



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<sup>194</sup> Immigration Law, Section 59<sup>1</sup>, para 3 (4).

<sup>195</sup> The Regulations on internal rules of the detention centre Nr. 742, adopted on 15.09.2008, in force from 20.09.2008. Available at <http://www.likumi.lv/doc.php?id=181286>. Section 37, 38.

<sup>196</sup> Information obtained from the LCHR's monitoring visit to the Daugavpils detention centre on 07.09.2011.

The detainees' rooms which are double occupancy are furnished and equipped with shower and toilet facilities. The windows are barred. Communal areas include a visitors' room, a kitchen, a room for religious rituals (equipped solely with a bench), a library with a computer (without internet connection and books), a recreation room with a television set, a sofa and a table, a gym (accessible upon a permit), a room with laundry machines, a smoking room with ventilation. There are CCTVs in the communal areas. The premises are equipped for persons with disabilities. There is a room for children in the family block. The walking area at the centre's territory is surrounded by a metal fence.

In contrast with the Olaine detention facility where the detainees received food products and had to prepare food themselves, the Daugavpils detention centre in cooperation with a catering enterprise provides meals three times a day for all detainees. The cost for food per person is six euros per day.<sup>197</sup> The detainees can also ask the staff to buy food at their own cost and prepare the food themselves in the kitchen located in each block of the detention centre. There is no shop or kiosk on the territory of the detention centre.

The detainees can submit complaints on detention conditions to the head of the centre. Complaints are registered in a special register.<sup>198</sup>

### 6.1.3. Medical issues

The detainees have the right to receive state ensured emergency medical assistance and primary medical care.<sup>199</sup> The Regulations of the Cabinet of Ministers under the Immigration Law also provide for the right of the detainees to secondary health care services.<sup>200</sup> There is a medical centre including a room for medical staff, medical treatment room and two inpatient wards with a toilet and a shower inside. There is no doctor in the detention centre. A doctor's assistant and a nurse work at the centre from 9:00 until 21:00. The SBG has agreements with the regional hospital and a dental clinic. In case of necessity the detainees can be sent to specialists for free consultations. Although there is a psychologist's consulting room in the centre, no psychologist had worked in the centre as of September 2011.<sup>201</sup>

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<sup>197</sup> Information obtained from the LCHR monitoring visit to the Daugavpils detention centre on 07.09.2011.

<sup>198</sup> Ibid.

<sup>199</sup> Asylum Law, Section 10, para 6, Immigration Law, Section 59<sup>2</sup> para 2 (7, 8).

<sup>200</sup> The Regulations of the Cabinet of Ministers No. 434 Regarding the Residence Norms of Third-country Nationals Placed in an Accommodation Centre, as well as the Amount and Procedures for Receipt of Guaranteed Health Care Services, adopted on 17.06.2008, in force from 20.06.2008. Section 16. Available at <http://www.likumi.lv/doc.php?id=177015>

<sup>201</sup> Information obtained from the LCHR monitoring visit to the Daugavpils detention centre on 07.09.2011.

## 6.1.4. Contact with outside world



The detainees have access to a public pay phone and can make collect calls. The detainees are prohibited from keeping mobile phones in the rooms.<sup>202</sup> The mobile phones are kept by the staff and detainees are allowed to make a call once a day.<sup>203</sup>

The law does not provide for the opportunities of the detained foreigners and asylum seekers to send correspondence free of charge. The detainees are allowed to use fax and e-mail of the chief inspector of the centre in special cases (e.g. sending a court decision). There is no opportunity to purchase phone cards, stamps and envelopes in the centre; the detainees may ask the staff to buy them. There is no mail box in the detention centre, and all correspondence is sent through the staff members.

All meetings of the detainees with visitors should be agreed on with the head of the centre.<sup>204</sup> The detainees may meet visitors between 10:00 and 19:00 for up to two hours.

## 6.1.5. Staff



The relationships of the detainees with the staff are generally formal. The chief inspector keeps close communication and regular meetings with the detainees. The staff members speak English, French, Russian and German. The staff members have attended language courses. The managing staff of the centre believes that courses of on cultural diversity would be useful for the staff.<sup>205</sup>

<sup>202</sup> The Regulations of the Cabinet of Ministers No. 222 on the Internal Rules of Procedure of Accommodation Premises for Asylum Seekers, adopted on 09.03.2010, in force from 13.03.2010, Annex 5. Available at <http://www.likumi.lv/doc.php?id=206465>

<sup>203</sup> Information obtained from the LCHR monitoring visit to the Daugavpils detention centre on 07.09.2011.

<sup>204</sup> The Regulations of the Cabinet of Ministers No. 222 on the Internal Rules of Procedure of Accommodation Premises for Asylum Seekers, Section 11.

<sup>205</sup> Information obtained from the LCHR monitoring visit to the Daugavpils detention centre on 07.09.2011.

## 6.2. Reception centre for asylum seekers “Mucenieki”

The first asylum seekers were placed in the Reception centre “Mucenieki” in 1998. The centre was officially opened in 1999. The reception centre is located in Mucenieki, in Ropaži parish, formerly a Soviet army military base. The centre was renovated with the assistance of the ERF projects implemented by the OCMA. The holding capacity of the centre is 100 persons. The centre is a three storey building. The asylum seekers are kept separately from persons who have been granted refugee or alternative status (such persons are allowed to rent a room for up to three months). There are double rooms and family rooms. However, there are no separate accommodation areas for men, women and families.<sup>206</sup>

Unaccompanied minors (17 years old) are also placed at the Reception centre. There is no specialised staff working with the minors in the centre. The Child Custody Court assigns a legal guardian to each unaccompanied minor. According to the staff officials, the guardians visit the centre each week.<sup>207</sup> However, the interviewed minor claimed that he kept rare contacts with the guardian, did not receive any special help, and did not understand her due to the language barrier.



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<sup>206</sup> Information obtained from the LCHR monitoring visit to the Reception centre for asylum seekers “Mucenieki” on 31.03.2011.

<sup>207</sup> Ibid.

The staff of the Reception centre consists of six persons – four senior experts working in 24-hour shifts; there are also two police officers. The staff provides various kinds of information and translation related to the asylum cases. Some interviewed asylum seekers, including minors, alleged negative attitudes by some experts and police officers.

The asylum seekers are informed on the internal rules of the centre upon their arrival to the centre. The rules in Latvian and English are also available at the stand in the hall. The asylum seekers are not allowed to leave the Reception centre after 23:00. Persons have to inform about cases when they do not return until 23:00. It is prohibited to use alcohol and to smoke in the centre. All the residents of the centre are obliged to clean their rooms and common areas themselves. No sanctions for breaking the rules are provided by the law.

There have been some casual conflicts, some of them were on cultural grounds. In case of violent conflicts, the police must be called. In a case in March 2011, the police were not called, however, an adult who had threatened a teenager was not allowed to extend his rent contract in the centre.<sup>208</sup>

The rooms are furnished with beds, shelves, tables and chairs. The toilet and the shower is outside the rooms. There is a kitchen, a laundry, a TV room, a gym, a library, a computer room, and a children's room. No newspapers or journals are subscribed in the Reception centre. Visitors may visit the centre from 09:00 to 21:00 hours in a specially equipped room –the guest room.<sup>209</sup> Although linguistic diversity of asylum seekers has increased, the books in the library are mainly in Russian and English. Some asylum seekers have attended the Latvian language courses provided by the company "Datorzinību centrs" in the framework of the ERF project. Underaged asylum seekers attended a separate preparatory class in a school in Riga.<sup>210</sup>

According to the head of the Reception centre, there is limited access to state medical assistance and specific medicines; the law includes the provisions only in respect of state-funded emergency and primary medical assistance.<sup>211</sup> The funding for medical services, medicines, and doctor's visits is provided through the ERF projects implemented by the OCMA. The hygiene products are also mainly purchased from the project money (each asylum seeker received a starting package each month). Since 2010, psychological assistance has become available to asylum seekers in the framework of the OCMA's project.

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<sup>208</sup> Ibid.

<sup>209</sup> Regulations of the Cabinet of Ministers No. 173 Internal Procedure Rules of an Accommodation Centre for Asylum Seekers, adopted 23.02.2010, in force from 27.02.2010, Section 22. Available at <http://www.likumi.lv/doc.php?id=205790>

<sup>210</sup> Latvian Centre for Human Rights, "*Pētījums par patvēruma meklētāju, bēgļu un personu, kurām piešķirts alternatīvais statuss, piekļuvi izglītībai Latvijā*", 2011, available <http://www.humanrights.org.lv/html/lv/aktual/publ/30459.html?yr=2011> (with summary in English)

<sup>211</sup> Information obtained from the LCHR monitoring visit to the Reception centre for asylum seekers "Mucenieki" on 31.03.2011.



The OCMA is obliged to provide the objects necessary for ensuring special needs.<sup>212</sup> However the term “special needs” is not defined in the legal acts.

The asylum seekers receive some money (1.50 lats – 2.13 euro per day) for the purchase of food, hygiene products and other basic necessities.<sup>213</sup> The electronic tickets for public transport are provided to some asylum seekers, e.g. minors, through the OCMA’s project funding. No food for asylum seekers is provided in the reception centre.

### **Reception centre “Mucenieki”: asylum seekers’ complaints**

- Poor or monotonous food
- Sense of isolation, insecurity and absence of freedom
- Impolite or aggressive attitudes of some guards
- Language barriers in communication with the staff
- Limited psychological assistance (language barrier)
- Access to education of minors: language barrier at school
- Poor contacts, language barrier in communication with legal representatives (child custody court)
- Specific medical needs are not addressed

Source: Interviews with asylum seekers.

## **6.3. Conclusions**

With the transfer of the detention centre from Olaine to Daugavpils, the living conditions of detained asylum seekers and irregular immigrants have significantly improved. The material conditions and access to basic necessities generally meet basic standards (food, sanitation, heating, furniture etc.). However, some issues, such as language barrier in communication with the authorities, remain problematic. Communication with the outside world, including the access to legal aid has several limitations (lack of opportunity for free correspondence, free telephone calls). The activities within the centre are also rather poor, e.g. without access to library, internet, education and work activities. There is no psychologist at the centre, although such kind of assistance is much needed for many detainees.

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<sup>212</sup> Regulations of the Cabinet of Ministers No. 173 Internal Procedure Rules of the Reception Centre for Asylum Seekers, Section 8.2.

<sup>213</sup> The Regulations of the Cabinet of Ministers No. 24 Regarding the Amount of Expenses for the Purchase of Subsistence, Hygiene and Basic Necessities for Asylum Seekers and the Procedures for Covering of these Expenses, adopted on 12.01.2010., in force from 16.01.2010, Section 2. Available at <http://www.likumi.lv/doc.php?id=203681>

The Reception centre “Mucenieki” provides generally good living conditions. However, the access to medical services and psychological assistance is provided on project basis and therefore there is no guarantee on the availability of such services during the time period when projects are not implemented. The daily social support to asylum seekers is also poor to ensure the basic needs. There are no special staff members to deal with unaccompanied minors in the centre. The residents of the Reception centre “Mucenieki” as problems often mention language barrier, sense of insecurity and isolation.

## 7. RECOMMENDATIONS

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### To the Government:

#### 1. Make the following amendments to the Asylum Law:

- 1.1. Include the provisions concerning the detention procedure for asylum seekers; ensure that there is a legal presumption against the detention of asylum seekers and that detention is used only as a measure of last resort;
- 1.2. Include the provision that the initial term of the asylum seekers' detention does not exceed 48 hours;
- 1.3. Review the formulation of the grounds of the asylum seekers' detention and ensure that they are exhaustively listed and formulated in a clear manner; in particular:
  - 1.3.1. Include the provision that the detention of asylum seekers may take place solely if the identity cannot be established due to a lack of cooperation, but not in cases falling outside the sphere of responsibility of migrant (e.g. statelessness or inability to obtain any documents etc.);
  - 1.3.2. Provide that the definition of "attempting to use the asylum procedure in bad faith" is in line with the international and the EU standards;
  - 1.3.3. Provide that the definition of "the threat to national security or public order and safety" is in line with the international and the EU standards;
  - 1.3.4. Provide that the detention could be possible if only "there is the serious reason to believe" that the asylum seeker is attempting to use the asylum procedure in bad faith or he or she may pose a threat to national security or public order and safety";
- 1.4. Include the provisions on alternatives to detention obligating the authorities to first examine the possibility to apply alternatives to detention when taking decision on detention of an asylum seeker;
- 1.5. Elaborate the criteria of assessing the risk of absconding;
- 1.6. Include the clause that detention of minors under 18 should be the measure of last resort, insert legal presumption against the detention of children; for the

shortest possible period of time and taking into account the best interest of the child as a primary consideration.

- 1.7. Develop adequate identification mechanisms of vulnerable persons.
- 1.8. Include the provisions that individual characteristics such as vulnerability or family ties etc. are considered before taking a decision on detention;
- 1.9. Include the grounds for release of asylum seekers from detention;
- 1.10. Include the right of asylum seekers to state funded legal aid from the beginning of the asylum procedure;
- 1.11. Provide the guarantees for secondary medical care and access to medicines for asylum seekers.

## **2. Make the following amendments to the Immigration Law:**

- 2.1. Review the formulation of the grounds of detention included in the law and ensure that they are exhaustively listed and formulated in a clear manner in line with the international and the EU standards;
- 2.2. Reduce the term of the initial detention from ten days to 48 hours;
- 2.3. Include a clause that the authorities examine first the possibility to apply alternatives to detention when taking a decision on detention and provide reasons if this is not the case;
- 2.4. Elaborate the criteria of assessing the risk of absconding;
- 2.5. Include the clause that the detention of minors under 18 should be the measure of last resort, for the shortest possible period of time and taking into account the best interest of the child as a primary consideration;
- 2.6. Include the provisions that individual characteristics such as vulnerability or family ties etc. are considered before taking decision on detention;
- 2.7. Include the provisions on regularization of status of foreigners in case when return is not possible;
- 2.8. Exclude from Section 51 para 3 the clause that alternatives to detention are applied “due the reasons of humanitarian reasons”;
- 2.9. Include the maximum frequency of registration to the SBG;
- 2.10. Examine the opportunity to include other forms of alternatives to detention, including bail/bond, designated residence in the accommodation centre etc.;
- 2.11. Adopt the Cabinet of Minister’s regulations on the application of alternatives to detention;
- 2.12. Include the provision in the Law that the authorities have the obligation to provide translation of the detention order and the decision on detention, which includes the right to appeal the decision, in the language which a foreigner understands;
- 2.13. Provide access to free legal aid in the appeal of decisions on detention;
- 2.14. Extend the term of appeal of the decision on detention from 48 hours for up to ten working days.

## **To the State Border Guard**

1. Prevent automatic detention (including the initial detention before the court decision) of asylum seekers who arrive without documents and/or without valid travel documents;
2. Develop the practice of application of alternatives to detention for both asylum seekers during the asylum procedure and failed asylum seekers during the deportation procedure.
3. Promote cooperation and dialogue with NGOs providing legal aid and social assistance to asylum seekers and irregular immigrants;
4. Ensure access to qualitative interpretation as concerns the reasons of detention, the detention case and the asylum procedure in a language which the person understands;
5. Employ a psychologist at the Daugavpils detention centre;
6. Ensure free correspondence (stamps, envelopes) and install a mail box) in the Daugavpils detention centre;
7. Provide books and access to internet in the library;
8. Provide information on the legal counsels at the detention centre and other places of detention.

## **To the Office of Migration and Citizenship Affairs**

1. Provide information on the asylum procedure to asylum seekers upon their arrival to the reception centre;
2. Establish an accommodation facility and employ specialised staff to work with unaccompanied minors;
3. Provide qualitative interpretation services to asylum seekers accommodated in the Reception centre “Mucenieki”;
4. Promote cooperation and dialogue with NGOs in providing legal aid and social assistance to asylum seekers;
5. Consider the opportunity of accommodating asylum seekers and irregular immigrants, in whose case alternatives to detention (reporting, handing over documents) have been applied, at the Reception centre “Mucenieki” and other places of accommodation which could be established in the future.

## **To the Legal Aid Administration**

1. Raise capacity of lawyers in work with asylum seekers and irregular immigrants;
2. Develop cooperation with the Ombudsman’s Office and NGOs providing legal assistance to asylum seekers and irregular immigrants.

## **To the Ombudsman's Office**

1. Conduct regular monitoring visits to the Daugavpils detention centre and the Reception centre "Mucenieki";
2. Facilitate co-operation with NGOs concerning the implementation of the monitoring of forced return and consider possible establishment of a consultative council with the participation of NGOs.
3. Provide legal assistance to asylum seekers and irregular immigrants.

## **To NGOs and lawyers**

1. Develop capacity of human rights work in the area of asylum and irregular immigration;
2. Conduct independent detention monitoring in the area of immigration detention;
3. Provide legal assistance to asylum seekers and irregular immigrants;
4. Elaborate good models of the alternatives to detention for asylum seekers and irregular immigrants which would be based on cooperation between the relevant authorities and NGOs;
5. Develop cooperation between NGOs and lawyers' organisation from different Latvian regions, in particular between those from Riga, Daugavpils and Rēzekne.

# Annex I.

## DESCRIPTION OF METHODOLOGY

The report is based on the methodology elaborated by the project “Steps to Freedom. Monitoring detention and promoting alternatives to detention of asylum seekers in Latvia, Lithuania, Estonia, Slovakia and the Czech Republic” partners during the first coordination meeting in Riga in September 2010. The partners’ organisations agreed on the methods used for assessing detention as well as a list of questions for analysis.

### 1. Legal analysis

The legal analysis involved an analysis of the existing legal acts and judicial practice. Current legal discussions on relevant topics were also taken into consideration. See the principles of selection of the decisions in Section 3.5.2 and list of the analysed court decisions in the Bibliography.

### 2. Monitoring visits

In 2011, the LCHR’s staff<sup>214</sup> visited the Olaine detention centre (29.03), the Reception centre “Mucenieki” (31.03) and the Daugavpils detention centre (07.09). The methodology of monitoring visits was to a large extent based on the handbook published by the Association of the Prevention of Torture “Monitoring places of detention: a practical guide for NGOs”<sup>215</sup> and materials published by the LCHR.

The LCHR sent a letter to the chief of the SBG with a view to informing about the project and soliciting support in its implementation. Separate letters were sent to the Riga Branch of the SBG (for a visit to the Olaine detention centre) and to the Daugavpils Branch of the SBG (for a visit to the Daugavpils detention centre). The cooperation with the SBG officials from Daugavpils was generally good. While the attitude of the

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<sup>214</sup> The monitoring team consisted of the project manager and researcher Svetlana Djačkova, a lawyer Kristīne Laganovska and the research assistant Jekaterina Kirjuhina. The LCHR Acting Director Anhelita Kamenska also participated in the monitoring visit to the Olaine detention centre.

<sup>215</sup> See at: [http://idcoalition.org/wp-content/uploads/2009/06/mpd\\_guide\\_ngo\\_en.pdf](http://idcoalition.org/wp-content/uploads/2009/06/mpd_guide_ngo_en.pdf).

Daugavpils SBG's officials was very helpful, access to the Olaine detention centre required additional efforts. Access by the LCHR staff to the Olaine detention centre was refused twice before the final permission. The authorities of the Riga Branch of the SBG insisted on the allegedly inappropriate time for monitoring as well as doubted the legal grounds of an independent NGO to monitor the state body. The LCHR needed to negotiate and provide several explanations as concerns the project and the nature of the monitoring visit to the authorities. The attitude of the staff of the Reception centre "Muceniki" can be described as helpful and accommodating.

### **The monitoring visits included the following methods:**

1. *Interviews with the staff* (at least two staff members, including the head and administrative/security officials, medical personal in each centre/monitoring place).

At the Olaine detention centre the following persons were interviewed: the head of the Head of the Detention Centre Raimonds Paļčevskis and Deputy Head Aigars Jefimovs.

During the visit to the Reception centre "Muceniki", the LCHR's staff interviewed the head of the centre Edīte Pavlova and an expert.

At the Daugavpils detention centre, the following staff members of the detention centre were interviewed: the deputy head of the Daugavpils Branch of the SBG and the Acting Director of the detention centre Gunārs Liepiņš, the senior inspector Inese Vārna, a nurse and a guardian.

2. *Interviews with asylum seekers*

The LCHR staff interviewed five asylum seekers in the Olaine detention centre (all of the them were adult men under 30), six asylum seekers in the Reception centre "Muceniki" (including two men under 30, two women over 30 and two 17 year old unaccompanied minors) and six asylum seekers in the Daugavpils detention centre (one of them was a woman). Diversity of interviewed asylum seekers (gender, age, vulnerability, nationality) was facilitated as much as possible

The interviews with the asylum seekers were conducted in the atmosphere of confidentiality after their voluntary and informed consent.

3. *Observations*

The LCHR staff made observations of all the premises of the detention centres and the reception centre. A staff member guiding the LCHR team answered additional questions.



### **3. Interviews with other authorities and NGOs**

Several SBG's officials (Inspector of the Asylum Affairs Division of the SBG Māris Krūmiņš and the Head of the Daugavpils Branch of the SBG Oļegs Jemašovs) were also interviewed during the monitoring visits to the Olaine detention centre and the Daugavpils detention centre. Additionally, the lawyer of the LCHR Džena Andersone was interviewed for the purposes of the project.

### **4. Other information**

The information from the LCHR's case work from providing legal aid to asylum seekers during 2009-2011 has also been used in the national policy paper.<sup>216</sup> Additional information was also gained from the previous studies and reports, official sources as well as from the conclusions from the national seminar "Detention of asylum seekers and alternatives to detention in Latvia" organised by the LCHR in Riga, 21 October 2011.

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<sup>216</sup> The LCHR case work included, *inter alia*, information from the ERF projects (Ministry of Interior – national point) implemented in 2009 (Legal assistance to asylum seekers in Latvia – the precondition for the improvement of the quality of the asylum procedure in Latvia") and in 2011 (Legal assistance for asylum seekers in Latvia) (see description of the projects at the LCHR website [www.humanrights.org.lv](http://www.humanrights.org.lv)).

## Annex II.

### TYPES OF ALTERNATIVES TO DETENTION AND GOOD PRACTICES

#### 1. Types of alternatives to detention<sup>217</sup>

- 1.1. No detention or release without condition or on own recognizance
- 1.2. Release on conditions (registration and/or deposit of documents)
- 1.3. Release on bail, bond, surety/guarantee
- 1.4. Community-based supervised release or case management
  - 1.4.1. NGO-run models
  - 1.4.2. Hybrid government-NGO cooperation or partnership models
  - 1.4.3. Government-run models
- 1.5. Designated residence at a particular accommodation centre
- 1.6. Electronic tagging, or satellite tracking
- 1.7. Home curfews
- 1.8. Complementary measures

#### 2. Examples of good practices

##### 2.1. Sweden: supervision as an alternative to detention

In Sweden, asylum seekers are usually not detained.<sup>218</sup> About 90 per cent of asylum seekers arrive without any identity documents.<sup>219</sup> Upon arrival the asylum seekers

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<sup>217</sup> The list of alternatives to detention is based on typology provided in: A. Edwards, *Back to Basics...*, pp. 51-81.

<sup>218</sup> Information obtained from the Swedish Migration Board and NGOs during the study visit to Sweden in the framework of the project “Steps to Freedom” on 19-21 January 2011.

<sup>219</sup> *Ibid.*

are placed for a week in an initial transit centre for government checks before they are moved into the reception program.<sup>220</sup>

Detention may be used for people in the return procedure if they have not complied with a final negative decision that requires them to depart the country.<sup>221</sup> In such cases the risk of absconding is the main criteria for assessing the necessity of detention.<sup>222</sup>

Supervision or release on conditions (reporting obligation on a regular basis; release upon surrender on one's passport can also be applied) is applied as an alternative to detention in Sweden. In 2010, there were 3071 cases of immigration detention in Sweden; 299 persons were ruled supervision as an alternative measure.<sup>223</sup>

A case worker is attached to both asylum seekers and persons during the deportation procedure. The case worker arranges accommodation and activities for the asylum seeker from the beginning of the process as well as works with them from the beginning of the asylum procedure to prepare for either a negative or positive outcome to their case. The persons with a negative final outcome in their asylum case are supported by the case worker two months to leave voluntary.<sup>224</sup> Based on an individual assessment, the case worker advises the authorities on the need to detain and when to apply alternatives.<sup>225</sup>

The cost of detention – 320 euro per bed per day – is considerably higher than the costs in the accommodation centre – 40 euro per bed per day.<sup>226</sup> According to a representative of the Swedish Migration Board, some unofficial estimation reveals that absconding happens in about 50 per cent of cases when supervision is applied.<sup>227</sup>

## 2.2. Belgium: “Return Houses” for families

Since 2008, families with children in the return procedure are not detained, but are placed to open centre (two “return houses”) and provided with a coach preparing them for return.<sup>228</sup> Since 2009, the programme was expanded to include asylum-seeker

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<sup>220</sup> International Detention Coalition (IDC), La Trobe Refugee Research Centre, *There are alternatives. A handbook for preventing unnecessary immigration detention*, 2011, p.035.

<sup>221</sup> Ibid, p. 049.

<sup>222</sup> Information obtained from the Swedish Migration Board during the study visit to Sweden in the framework of the project “Steps to Freedom” on 19-21 January 2011.

<sup>223</sup> Ibid.

<sup>224</sup> International Detention Coalition (IDC), La Trobe Refugee Research Centre, *There are alternatives. A handbook for preventing unnecessary immigration detention*, 2011, p. 035.

<sup>225</sup> EU – FRA, *Detention of Third-Country Nationals in Return Procedures...*, p. 27.

<sup>226</sup> Information provided by a representative of the Swedish Migration Board Niclas Axelsson at the Global Roundtable on Alternatives to Detention of Asylum Seekers, Refugees, Migrants and Stateless Persons, Geneva, 11-12 May 2011.

<sup>227</sup> Ibid.

<sup>228</sup> A. Edwards, *Back to Basics...*, p.69.

families with children arriving at the border. Persons applied for asylum at the border in most cases are initially detained in a transit centre throughout the asylum procedure.<sup>229</sup>

There are three “return houses” provided and serviced by the state in Belgium: in Zulte (3 houses), Tubize (6 units in an apartment block) and Sint-Gillis Waas (5 houses). The families staying in the “return houses” are free to come and go as they please. There is a 10 p.m. to 8 a.m. curfew, although there is no 24-hour presence at the return houses; one worker (a coach) is “on call” by phone each evening.<sup>230</sup>

Each family is assigned a coach with a view to preparing families for all possible immigration outcomes.<sup>231</sup> The coaches are assigned to families to explain them the removal process and to look into any potential legal options to stay, to oversee the houses, to distribute goods, to make appointments with lawyers and other actors including the immigration authorities and medical practitioners.<sup>232</sup>

The costs of the alternative to detention (community reception and intensive case management) – 90 euro per day/per person – are much lower than the costs of detention – 185 euro per day/per person.<sup>233</sup> The absconding rate constitutes in average 20 per cent cases.<sup>234</sup>

The recent research published by the UNHCR critically assessed some points related to the “return houses”.<sup>235</sup> In particular, there is a question whether the “return houses” operate as an alternative to detention for families seeking asylum. Another question is whether all the families should have such kind of control instead of being housed in open accommodation centres.

### **2.3. Hungary: a shelter house for unaccompanied minors**

The Hungarian national law<sup>236</sup> provides that unaccompanied minors cannot be detained. Unaccompanied 14-18 year old minors are placed in a shelter house. This project is run by a national NGO and funded by the European Refugee Fund and the Hungarian government. Legal support is available through a specialist legal aid organisation. The shelter has developed cooperation with the local schools to create appropriate education opportunities for unaccompanied minors.<sup>237</sup>

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<sup>229</sup> Ibid., p.70.

<sup>230</sup> Ibid.

<sup>231</sup> Ibid, p.71.

<sup>232</sup> Ibid, pp. 71-72.

<sup>233</sup> P. Stockmans, *Alternatives to detention and case management in the return context, Experiences from Belgium, Presentation at the Global Roundtable on Alternatives to Detention of Asylum Seekers, Refugees, Migrants and Stateless Persons*, Geneva, 11-12 May 2011.

<sup>234</sup> Ibid.

<sup>235</sup> A. Edwards, *Back to Basics...*, p. 71

<sup>236</sup> Section 56 of Act II of 2007 on the Admission and Rights of Residence of Third-Country Nationals.

<sup>237</sup> International Detention Coalition (IDC), La Trobe Refugee Research Centre, *There are alternatives. A handbook for preventing unnecessary immigration detention*, 2011, p. 023.

## 2.4. Australia: community-based supervised release

There are two state programs based on partnership with NGOs which developed for work with irregular migrants during the recent years in Australia: the Community Status Resolution Service and the Community Assistance Support Program.

*The Community Assistance Support Program* deals with “highly vulnerable clients in exceptional circumstances”.<sup>238</sup> The program covers the clients with the vulnerabilities, e.g. living with the effects of torture and trauma; experiencing significant mental health issues; living with serious medical conditions; incapable of independently supporting themselves in the community (if elderly, disabled etc.); facing serious family difficulties, including child abuse and domestic violence.<sup>239</sup> The case resolution service provides case manager arranged by the Department of Immigration and Citizenship (DIAC) for each individual case who is responsible for support and preparation for all immigration outcomes.<sup>240</sup> The case manager is also responsible for the person’s file and welfare issues, including referrals the Australian Red Cross responsible for health and welfare, a legal counsel and/or IOM for counselling and assisted voluntary return.<sup>241</sup> The statistics from the period from March 2006 until January 2009 show a compliance rate of 93 per cent. The program costs a minimum AU\$38 per day compared with a minimum of AU\$125 for detention. Both the Australian government and the Refugee Council of Australia concluded that the services encourage the persons to return home voluntarily.<sup>242</sup>

*The Community Status Resolution Service* deals with non-vulnerable persons. Under this program, the individuals are living in the community on a ‘Bridging Visa E’ while awaiting a final decision on a migration matter or who are preparing for departure.<sup>243</sup> The individuals are released with a number of conditions attached, e.g. reporting conditions, actively taking steps to leave Australia or bond. According to the Australian government, early intervention means release from detention and their status is resolved more quickly.<sup>244</sup>

There are also NGO-run models of community-based supervised released, e.g. *Asylum-Seeker Assistance Scheme* delivered above all by the Australian Red Cross. Referrals to the programme are made by the DIAC, from other organisations, or self-referrals. The programme is targeted at vulnerable asylum seekers who have been granted a bridging visa to live in the community. The programme foresees a living allowance,

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<sup>238</sup> A. Edwards, *Back to Basics...*, p. 67.

<sup>239</sup> *Ibid.*

<sup>240</sup> International Detention Coalition (IDC), La Trobe Refugee Research Centre, *There are alternatives. A handbook for preventing unnecessary immigration detention*, 2011, p. 040.

<sup>241</sup> *Ibid.*

<sup>242</sup> *Ibid.*

<sup>243</sup> *Ibid.*

<sup>244</sup> A. Edwards, *Back to Basics...*, p.79.

basic health care, pharmaceutical subsidies, and torture and trauma counselling. The programme is means-tested and starts only after six-month delay in an initial asylum determination with the exception of unaccompanied minors, elderly persons or families with children under 18 years, or persons unable to work owing to disability, illness or effects of torture and/or trauma. The number of persons absconding from the programme has been very small.<sup>245</sup>

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<sup>245</sup> Ibid., pp. 63-64.

## Annex III.

### LIST OF CORE EU AND INTERNATIONAL LAW DOCUMENTS CONCERNING DETENTION OF ASYLUM SEEKERS

*EU Law/proposals for the legislation ([http://ec.europa.eu/home-affairs/doc\\_centre/asylum/asylum\\_intro\\_en.htm](http://ec.europa.eu/home-affairs/doc_centre/asylum/asylum_intro_en.htm))*

1. Council Directive 2003/9/EC of 27 January 2003 laying down minimum standards for the reception of asylum seekers. Available at <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2003:031:0018:0025:EN:PDF>
2. Council Directive 2005/85/EC of 1 December 2005 on minimum standards on procedures in Member States for granting and withdrawing refugee status. Available at <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2005:326:0013:0034:EN:PDF>
3. Council Directive 2004/83/EC of 29 April 2004 on minimum standards for the qualification and status of third country nationals or stateless persons as refugees or as persons who otherwise need international protection and the content of the protection granted. Available at <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32004L0083:EN:HTML>
4. Directive 2008/115/EC of the European Parliament and of the Council of 16 December 2008 on common standards and procedures in Member States for returning illegally staying third-country nationals. Available at <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2008:348:0098:0107:EN:PDF>
5. European Parliament resolution of 5 February 2009 on the implementation in the European Union of Directive 2003/9/EC laying down minimum standards for the reception of asylum seekers and refugees: visits by the Committee on Civil Liberties 2005-2008 (2008/2235(INI)). Available at <http://www.europarl.europa.eu/sides/getDoc.do?type=TA&reference=P6-TA-2009-0047&language=EN>

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6. Commission of the European Communities, Communication from the Commission to the European Parliament, the Council, the Economic and Social Committee and the Committee of Regions, *Policy Plan on Asylum. An integrated approach to protection across the EU*, Brussels, 17.06.2008, COM (2008) 360 final. Available at [http://europa.eu/legislation\\_summaries/justice\\_freedom\\_security/free\\_movement\\_of\\_persons\\_asylum\\_immigration/jl0002\\_en.htm](http://europa.eu/legislation_summaries/justice_freedom_security/free_movement_of_persons_asylum_immigration/jl0002_en.htm)
7. *The Stockholm Programme – An open and secure Europe serving and protecting citizens*, 2010/C 115/01. Available at <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:2010:115:0001:0038:en:PDF>
8. European Commission *Communication from the European Commission from the Commission to the European Parliament and the Council Action Plan on Unaccompanied Minors (2010 – 2014)*, Brussels, 6.5.2010, COM (2010) 213 final, 6 May 2010. Available at <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2010:0213:FIN:EN:PDF>

## UN documents

9. The Universal Declaration of Human Rights, 1948 (GA Res 217A(III)). Available at <http://www.un.org/en/documents/udhr/>
10. Convention Relating to the Status of Refugees, 1951 (GA Res 429 (V)). Available at <http://www2.ohchr.org/english/law/refugees.htm>
11. International Covenant on Civil and Political Rights, 1966 (GA Res 2200 A (XXI))
  - a. General Comment No. 3
  - b. General Comment No. 8

Available at <http://www.unhcr.org/refworld/docid/4538838e10.html>, <http://www.unhcr.ch/tbs/doc.nsf/0/f4253f9572cd4700c12563ed00483bec?Opendocument>

12. International Covenant on Economic, Social and Cultural Rights, 1966 (GA Res 2200 A (XXI)). Available at <http://www2.ohchr.org/english/law/cescr.htm>
13. Convention against Torture and other forms of cruel, inhuman or degrading Treatment or Punishment, 1984 (GA Res 39/46). Available at <http://www2.ohchr.org/english/law/cat.htm>
14. Convention on the Rights of the Child, 1989 (GA Res 44/25). Available at <http://www2.ohchr.org/english/law/crc.htm>
15. UN General Assembly Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, 1988 (A/RES/43/173). Available at <http://www2.ohchr.org/english/law/bodyprinciples.htm>
16. UNHCR ExCom Conclusion No. 44, 1986. Available at <http://www.unhcr.org/refworld/docid/3ae68c43c0.html>



17. UNHCR's Revised Guidelines on Applicable Criteria and Standards relating to the Detention of Asylum-Seekers, February 1999 (to be revised in 2011). Available at <http://www.unhcr.org/refworld/pdfid/3c2b3f844.pdf>
18. UNHCR ExCom Conclusion No. 97, 2002. Available at <http://www.unhcr.org/refworld/docid/3f93b2894.html>
19. United Nations High Commissioner For Human Rights Principles and Guidelines on Human Rights and Trafficking, 2002 (E/2002/68/Add.1). Available at <http://www.unhcr.org/refworld/docid/3f1fc60f4.html>

### *Council of Europe documents*

20. Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights, ECHR), 1950. Available at <http://conventions.coe.int/treaty/en/treaties/html/005.htm>
21. European Convention for the Prevention of Torture and Other Inhuman or Degrading Treatment or Punishment, 1987. Available at <http://www.cpt.coe.int/en/documents/ecpt.htm>
22. The CPT standards – “Substantive” sections of the CPT’s General Reports, „Foreign nationals detained under aliens legislation” (2006). Available at <http://www.cpt.coe.int/en/hudoc-cpt.htm>
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## Annex IV.

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2. Law on Entry and Residence of Aliens and Stateless Persons, adopted on 09.06.1992., not in force since 01.05.2003. Available at <http://www.likumi.lv/doc.php?id=73092>
3. Asylum Law, adopted on 07.03.2002., not in force since 14.07.2009. Available at <http://www.likumi.lv/doc.php?id=60721&mode=KDOC>
4. Asylum Law, adopted on 15.06.2009., in force from 14.07.2009. Available at <http://www.likumi.lv/doc.php?id=194029>
5. Administrative Procedure Law, adopted on 25.10.2001, in force from 01.02.2004., with amendments until 01.01.2009. Available at <http://www.likumi.lv/doc.php?id=55567>
6. Immigration Law, adopted on 31.10.2002., in force from 01.05.2003., with amendments until 16.06.2011. Available at <http://www.likumi.lv/doc.php?id=68522>
7. Immigration Law amendments, adopted on 26.05.2011., in force from 16.06.2011. Available at <http://www.likumi.lv/doc.php?id=231630>
8. Criminal Procedure Law, adopted on 21.04.2005., in force from 01.10.2005., with amendments until 11.08.2011. Available at <http://www.likumi.lv/doc.php?id=107820> .
9. Amendments to the State Ensured Legal Aid Law, adopted on 04.08.2011, in force from 07.09.2011. Available at <http://www.likumi.lv/doc.php?id=234863>
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