



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



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## **EXECUTIVE SUMMARY**

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 analysis of court decisions on 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 asylum seekers' detention remains high: about a half of asylum seekers have spent some time in detention over the last recent years. Although the 2011 Immigration Law amendments have provided for the alternatives to detention, such as regular reporting and handing over documents, the very recent practice of their implementation is limited and has not been applied 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 (7 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 by the SBG and judges in the application of the detention grounds in practice.

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 entrance.

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

## **2. Alternatives to detention**

The national law does not impose the obligation to the authorities first to examine the possibility to apply alternatives to detention when taking 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. Moreover, there is a lack of awareness on real possibilities of application of alternatives to detention to asylum seekers among the SBG officials and other authorities. Some officials believe that the provisions on alternatives to detention for asylum seekers should be separately elaborated in the Asylum Law.

## **3. Procedural safeguards**

The national law includes provisions on the rights of detained asylum seekers and foreigners for access to information on the reasons of detention and their detention case. However, in practice 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 of many asylum seekers. Similarly to the detention cases, also the access to information on the asylum procedure is problematic, particularly in the detention centre.

The 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 the Daugavpils detention centre). The asylum seekers have limited contacts with the UNHCR and actually no contacts with other NGOs except the LCHR.

## **4. Conditions in detention centre**

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, furniture, heating etc.). However, some issues, e.g. language barrier in communication with the authorities, communication with the outside world, poor activities within the centre and a lack of psychologist, remain problematic.

### **Core recommendations to the Latvian Government:**

1. Make the amendments to 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 in 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 in the Asylum Law that detention of minors under 18 should be the measure of last resort, insert legal presumption against 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 in the Asylum Law that the authorities examine first the possibility to apply alternatives to detention when taking decision on detention and provide reasons if this are not the case.
6. Reduce the term of initial detention in the Immigration Law and in 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. Develop cooperation and a dialog with NGOs providing legal aid and social assistance to asylum seekers and irregular immigrants.
9. Ensure access to qualitative interpretation and information concerning the reasons of detention, the detention case and the asylum procedure for all asylum seekers.
10. 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.