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# Key findings on detention and alternatives in Latvia, Lithuania and Slovakia

*Project “Developing good practices on implementation of the  
Return Directive”*

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# Objectives & Content

**Objective** – to provide a snapshot of the situation on the implementation of the EU Return Directive in Latvia, Lithuania and Slovakia and point out the main areas in need of improvement with regard to detention and alternatives to detention of TCNs. Presentation is based on the data provided by the national reports of the three countries

## Outline:

- Statistical trends following transposition
- Grounds for detention
- Safeguards against arbitrary detention (necessity, proportionality, periodic review)
- Duration of detention
- Detention conditions
- Detention of minors and families with minors
- Alternatives to detention

# Statistical trends

- Following transposition of the Directive, numbers of detained persons generally decreased in **Latvia** and **Slovakia** (followed by general decrease in irregular migrants)
- Transposition improved the situation in **Latvia**, being an irregular immigrant no longer sufficient to justify detention
- **Lithuania** - increasing numbers
- Highest numbers for 2014 in **Slovakia** (414 decisions), lowest - in **Latvia** (196 pers.), **Lithuania** (292 pers.)

# Grounds for detention

- The grounds for detention in two of the countries reflect the safeguards provided for in Art. 15 (1) of the Directive: relate detention for removal to the situations mentioned in the Directive;
- However, grounds of detention in **Lithuania** and **Latvia** extend beyond permissible ones in law or in practice (e.g. persons irregularly in the territory but without a return decision yet).
- **Slovakia** opted not to transpose paras. a) and b) of Art. 15 (1) of the Directive. Current legal regulation does not contain sufficient safeguards to limit authorization of detention. Existence of enforceable decision on administrative expulsion is sufficient.

# Grounds of detention: absconding criteria

- **Latvia** and **Lithuania** (from 1 March 2015) introduced the list of criteria to determine the risk of absconding or hampering return procedures
- Criteria that exist on the basis of national legislation in **Slovakia** are rather vague and not closely related to risk of absconding.
- Considerations of national security, public order or safety and criminal offence in **Latvia** and **Lithuania** could be questionable in view of the requirements of the Directive and the CJEU interpretation (*Kadzoev* (2009), *El Dridi* (2011)).

# Safeguards against arbitrary detention (1)

- The principle of proportionality and necessity is recognised in **Lithuania** and **Slovakia** either in legislation or case-law.
- In **Latvia**, the laws do not refer to it and do not include a list of criteria for balancing the interest of the state and the individual when assessing the necessity of detention.
- Detention seems to be automatic in case of a lack of identification; which may raise concern of compliance with these principles in each individual case (CJEU, *Mahdi*, 2014)

## Safeguards against arbitrary detention (2)

- In all the **three countries** detention is ordered by the police, border guards or other law enforcement officers and followed by a court decision, the obligation to inform about detention decision and possibilities of appeal do exist in line with Art. 15(2) RD.
- **Issues of concerns:**
  - ✓ right to challenge detention in **Latvia** (e.g., written procedures in appeal courts),
  - ✓ the practice of police to release a foreigner only after receipt of a written judgment and tendency that in some police departments TCNs give up the right of appeal (**Slovakia**),
  - ✓ Art. 15 (2) of the Directive is not fully implemented in the law due to lack of legal assistance (**Lithuania**).

# Periodic review

- **All three countries** have a number of **elements of periodic review of lawfulness of detention** as required by Art. 15 (3) of the RD, but not yet firmly established in legislation or practice.
- Detention review procedure in **Lithuania** is conditioned by disappearance of grounds for detention, no time limit for review is established. **In practice review is every 3 months** on initiative of institution or the foreigner.
- **On the basis of the Constitutional Court decision only**, but not in the law (**Slovakia**)
- In **Latvia**, not envisaged by the law apart from the general appeal to challenge the lawfulness of detention & application for extension of detention on border guard initiative.



# Duration of Detention (1)

- All **three countries** comply with the time limits for detention established by Art. 15 (5)&(6) of RD.
- In **Latvia** and **Lithuania**, the time periods were introduced by virtue of transposition of RD (e.g., reducing the term in **Latvia** from 20 months to 6; Slovakia from max. 180 days to 6 months + 12 months of extension).
- More favourable standard in **Slovakia** - extension of detention period not possible in case of families with minors or other vulnerable persons.

## Duration of Detention (2)

- From 1 March 2015 **Lithuania** introduced requirement that:
  - a) detention should last as short as possible, no longer than necessary to take decision or execute it;
  - b) foreigner's detention should be reviewed when no legal or other objective reasons for reasonable probability to expel him/her.

Before that, these requirements existed in the case law (detention proportionate only if expulsion is executed during reasonable terms).

- This requirement still not part of **Latvian** law, while in **Slovakia** it stems from the judicial practice.

## Duration of Detention (3)

- Detention is calculated from the day of actual detention in **Slovakia** and **Lithuania**.
- **Lithuanian** courts – term to be calculated not only from authorisation of detention by court, but also include 48 initial hours.
- In **Latvia**, the term of pre-court detention (10 days) could be considered as too long and is normally applied in cases when a person's identity is not ascertained.
- Such a practice raises concerns about the risk of arbitrariness of detention and limits the possibility of a speedy judicial review considering the limited access to legal assistance.

# Detention Conditions

- All **three countries** in principle comply with the requirements of RD that TCNs detained for immigration purposes are kept separately from other detained persons (Art. 16 (1)). Each country has specialised detention centres.
- Some concerns over detention conditions:
  - ✓ **Lithuania:** housing conditions in FRC unsatisfactory and do not ensure dignified and humane living, minimal space requirements not met, hygiene conditions inappropriate, etc. Improvements are ongoing
  - ✓ **Latvia:** lack of useful activities during prolonged residence in detention centre and the use of special suppression measures is not sufficiently regulated.
- **Slovakia:** housing conditions satisfactory, meeting international and regional requirements, in some issues even raising the standard above necessary.

# Detention Conditions: treatment of vulnerable persons & medical services

- Treatment of vulnerable persons does not fully meet the standards of RD in **Latvia** and **Lithuania**.
- ✓ In **Lithuania**: the FRC not adjusted to accommodation of vulnerable persons, not a social institution, environment might be damaging for victims and children.
- In **Slovakia** vulnerable persons are usually placed in Sečovce, where housing conditions and regime are adjusted to their special needs, but not satisfactorily due to lack of personnel capacities. Medvedov centre not really adjusted to accommodate vulnerable detainees.
- Art. 16(3) of the Directive in relation to provision of medical services has been implemented in all countries.

# Detention Conditions: information in detention

- Information in detention is available in **Latvia & Slovakia**
  - ✓ E.g. in **Slovakia**, internal rules of the detention center are accessible in more than 20 languages and also by means of NGO materials at disposal of detainees.
- Obligation of Art. 16 (5) of RD not appropriately ensured in **Lithuania**: no obligation in legislation to systematically provide information to detainees on their rights, obligations and internal regulations of the centre; in practice not available at the FRC.

## Detention Conditions: contacts in detention

- The obligation to allow contacts for detained TCNs (Art. 16 (2) and (4)) is complied with in the three countries at legislative level, but constrained in practice.
- **Main concerns:**
  - ✓ lack of access to lawyers (**Latvia** and **Lithuania**),
  - ✓ lack of means of communication (**Latvia**)
  - ✓ The right to meet visitors established in legislation not fully implemented in practice; legal regulation on possibility to obtain authorisation for visits not publicly available in **Lithuania**.

## Detention of children and families with children

- Special rules on detention of children and families with children exist in all **three countries**
- Lithuania provides for a more favorable standard also covering families and all other vulnerable persons.
- However in practice, the treatment of vulnerable persons is not fully guaranteed as required by Art. 17 (1) RD:
  - ✓ Minors above 14 can be detained without an explicit legislative guarantee of measure of last resort and for shortest appropriate period in **Latvia**;
  - ✓ age assessment does not respect standards, adult age presumed in **Slovakia**; although UAMs not detained
  - ✓ conditions do not respect the international and European standards in the FRC for families with children in **Lithuania**;
  - ✓ right to leisure and recreational activities for children is not fully guaranteed in **Lithuania** and limited education opportunities in **Latvia**



# Alternatives to detention (1)

- Alternatives to detention exist in all the **three countries** in legislation and in practice.
- In **Latvia** and **Slovakia** - introduced as a result of transposition, but choice still very limited.
- **Lithuanian** and **Latvian** legislation - no explicit obligation to examine alternatives first, but establishes measures alternative to detention in the law; compensated by case-law in **Lithuania**.
- Use of alternatives remains largely unutilized or a number of conditions are imposed on its use, which reduces the effectiveness of access to it in the **three countries**.

## Alternatives to detention: main concerns (1)

- Key concerns in assigning alternatives to detention in practice of the **three countries**:
  - ✓ lack of accommodation - most frequent obstacle to alternatives
  - ✓ lack of social relations in the country and financial resources for living
  - ✓ In **Slovakia** alternatives are the discretion of the police and cannot be appealed
  - ✓ In **Latvia** application is limited to humanitarian reasons, no detailed rules governing the application, no possibility of appeal
  - ✓ Alternatives in **Lithuania** are subject to certain conditions before it can be applied, not easy for TCNs to meet

## Alternatives to detention: main concerns (2)

- Other concerns:
  - ✓ poor reasoning of decisions on alternatives;
  - ✓ alternatives cannot be applied after decision on detention has been already taken in **Slovakia** (partially remedied by Supreme Court since 2014: police is always obliged to evaluate less restrictive measures);
  - ✓ persons are not informed by the police about the conditions of use of alternatives.

## Alternatives to detention: current discussions

- Increasing awareness in **Latvia** and **Lithuania** of a need for alternative places of residence besides the detention centre during the return procedure, in particular, for vulnerable groups (families with children, etc.);
- Such places could be provided in the accommodation centre for asylum seekers, by municipalities or NGOs.