



UNHCR

United Nations High Commissioner for Refugees
Haut Commissariat des Nations Unies pour les réfugiés

UNHCR Representation for the Nordic and Baltic Countries

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RE: UNHCR observations on the draft Amendments to the Foreigners Act (No IX-2206)

Dear Mr. Abramavicius,

The UNHCR Representation for the Nordic and Baltic Countries is grateful for the opportunity to provide observations to the draft amendments to the Law on the Legal Status of Foreigners in the Republic of Lithuania (the Foreigners Act), No IX-2206 concerning Articles 5, 125, 126, 140⁸, 140¹³ and 140¹⁴ (the draft Law).

As the Agency entrusted by the United Nations General Assembly with the responsibility for providing international protection to refugees and other persons within its mandate, and for assisting governments in seeking permanent solutions to the problem of refugees, UNHCR provides these observations to ensure that the proposed amendments will strengthen refugee protection, enhance procedural safeguards and improve the asylum system in Lithuania.

UNHCR notes with appreciation that the draft Law defines the Migration Department as the responsible authority for taking a decision on admission and temporary accommodation of persons in border procedures, including in times of emergency. Such a decision will be made within 48 hours on an individual basis and is subject to judicial review.

At the same time, UNHCR would like to reiterate the recommendations, which were provided in UNHCR's legal observations of 28 July 2021 (paragraphs 6-15, 21-25), 27 September 2021 (paragraphs 21-33) and 20 March 2023 (paragraphs 20-23).

In addition to the above-mentioned recommendations, UNHCR would like to bring the following aspects to your attention:

1. Proposed Articles 5(3¹) and 140⁸(3) of the Foreigners Act authorize the Migration Department to take a decision on the temporary accommodation of persons in border procedures at border check points, in transit zones or with the State Border Guards Service. The duration of accommodation at these sites is up to 28 days in a regular situation and up to 6 months in times of emergency. Asylum-seekers to whom these rules apply are those without specific needs, as well as unaccompanied children if there are "*reasonable doubts*" about their age. Considering limited infrastructure, remoteness, and restrictive access to the border areas, it is not always feasible to ensure *adequate reception and care arrangements* at these locations. In UNHCR's view, all asylum applicants fall under the jurisdiction of Member States and are entitled to the full range of rights under the EU acquis. Therefore, safe, accessible, and appropriate care arrangements need to be considered to ensure adequate reception of all arrivals.
2. The proposed amendments to Articles 5(3¹) and 140⁸(3) of the Foreigners Law reiterate the leading role and responsibility of the Migration Department to take a decision on *admission and temporary accommodation* of foreigners in border procedures. UNHCR emphasizes the importance of focus on in-merit, rather than admissibility procedures. Caseload analysis and

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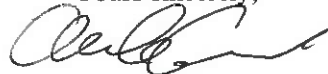
triaging for the effective use of accelerated and simplified procedures, including in case of well-founded cases, is the more efficient, effective and suitable approach. In this regard, it is essential to have a thorough analysis of existing capacities, allocate appropriate resources (human, technical and financial) and strengthen management at all stages of the process to ensure efficiencies and fairness of asylum procedures, and avoid bottlenecks.

3. Proposed Article 140¹⁴ of the Foreigners Act reiterates the use of accelerated asylum procedures in case of unaccompanied children and survivors of torture, rape or other forms of serious physical or sexual violence in times of emergency. While UNHCR, in general, supports accelerated asylum procedures, including in well-founded cases, accelerated border procedures for manifestly unfounded cases is not suitable for persons with specific needs.
4. Primary focus of the proposed Articles 5(3¹) and 140⁸(3) of the Foreigners Act is on *detention*, rather than *freedom of movement and alternatives to detention*. UNHCR's position is that even in border procedures, detention should be a matter of last resort and should never apply to children. Alternatives to detention with minimum necessary movement restrictions are generally preferable and possible in border procedures (e.g. accommodation in a designated open reception facility with curfew). Where detention is applied for a legitimate purpose, it needs to be provided for by law, based on an individual decision, be strictly necessary and proportional, timebound and regularly reviewed, as well as all due safeguards should be in place.
5. Proposed Articles 5(3¹) and 140⁸(3) of the Foreigners Act authorize the use of movement restrictions in case of "*reasonable doubts*" about the age of *unaccompanied children*. In such situation, movement restrictions can apply until the age is determined but not longer than 28 days from the date of submission of an asylum application. In Lithuania, unaccompanied or separated children without identity documents are often subject to medical examinations to determine their age. X-ray examinations are the main method used for this purpose. In UNHCR's view, (i) age assessments may be conducted only in cases when a child's age is in doubt and need to be part of a comprehensive assessment that takes into account both the physical appearance and the psychological maturity of the child; (ii) a young person claiming to be a minor should be assumed to be a child, while States should appoint a qualified legal representative as soon as possible on arrival; and (iii) States should refrain from only using medical methods based on bone and dental examination, which may be inaccurate, with wide margins of error.
6. While proposed Articles 5(3²) and 140⁸(5) of the Foreigners Act contain provisions regarding the right to appeal against a decision of the Migration Department on admission and temporary accommodation, it does not refer to relevant procedural safeguards. UNHCR would like to reiterate the recommendations concerning applicable safeguards for the implementation of border procedures, such as effective access to legal and psycho-social aid and effective remedy and with particular focus on the protection that should be made available for specific groups, namely unaccompanied children and survivors of trauma.

Furthermore, it is important to consider that UNHCR and other stakeholders, such as NGOs, lawyers and human rights institutions, should have unhindered access to the border reception and processing facilities to ensure the provision of independent legal aid and other services, and – for mandate holders – to conduct independent monitoring visits.

UNHCR stands ready to engage in consultations with your Ministry to provide necessary expertise. Mr. Vladimiras Siniovas, Associate Legal Officer (email: siniovas@unhcr.org; mobile: + 370 67472764) is at your disposal to assist with organizing a meeting.

Yours sincerely,



Annika Sandlund
Representative