

UNHCR legal observations on the amendments to the Law of the Republic of Lithuania on Legal Status of Aliens (No XIV-506)

I. Introduction

1. These observations are submitted by the Representation of the United Nations High Commissioner for Refugees (“UNHCR”) for the Nordic and Baltic Countries in relation to amendments to the Law of the Republic of Lithuania on Legal Status of Aliens (the Aliens Law) adopted by the Parliament on 13 July 2021, in a fast track procedure. UNHCR has shared its initial observations with the Lithuanian authorities on the legislative draft, most notably on provisions regarding the use of detention during border procedures, and access to effective remedy.
2. UNHCR has a direct interest in law proposals in the field of asylum, as the agency entrusted by the United Nations General Assembly with the mandate to provide international protection to refugees and, together with Governments, seek permanent solutions to the problems of refugees.¹ Paragraph 8 of UNHCR’s Statute confers responsibility on UNHCR for supervising international conventions for the protection of refugees,² whereas the 1951 Convention relating to the Status of Refugees³ and its 1967 Protocol relating to the Status of Refugees (hereafter collectively referred to as “1951 Geneva Convention”) oblige States to cooperate with UNHCR in the exercise of its mandate, in particular facilitating UNHCR’s duty of supervising the application of the provisions of the 1951 Geneva Convention and 1967 Protocol (Article 35 of the 1951 Geneva Convention and Article II of the 1967 Protocol).⁴
3. UNHCR’s supervisory responsibility is exercised in part by the issuance of interpretative guidelines on the meaning of provisions and terms contained in international refugee instruments, in particular the 1951 Geneva Convention. Such guidelines are included in the UNHCR Handbook on Procedures and Criteria for Determining Refugee Status and subsequent Guidelines on International Protection (“UNHCR Handbook”).⁵ UNHCR also fulfils its supervisory responsibility by providing comments on legislative and policy proposals impacting on the protection and durable solutions of its persons of concern.

¹ UN General Assembly, Statute of the Office of the United Nations High Commissioner for Refugees, 14 December 1950, A/RES/428(V), available at: <https://www.refworld.org/docid/3ae6b3628.html> (“the Statute”).

² Ibid, para. 8(a). According to para. 8(a) of the Statute, UNHCR is competent to supervise international conventions for the protection of refugees. The wording is open and flexible and does not restrict the scope of applicability of the UNHCR’s supervisory function to one or other specific international refugee convention. UNHCR is therefore competent qua its Statute to supervise all conventions relevant to refugee protection, UNHCR’s supervisory responsibility, October 2002, available at: <http://www.refworld.org/docid/4fe405ef2.html>, pp. 7–8.

³ UN General Assembly, Convention Relating to the Status of Refugees, 28 July 1951, United Nations Treaty Series, No. 2545, vol. 189, available at: <http://www.unhcr.org/refworld/docid/3be01b964.html>. According to Article 35 (1) of the 1951 Geneva Convention, UNHCR has the “duty of supervising the application of the provisions of the Convention”.

⁴ UNHCR’s supervisory responsibility has also been reflected in EU law, including by way of general reference to the 1951 Convention in Article 78 (1) of the Treaty on the Functioning of the EU.

⁵ UNHCR, Handbook on Procedures and Criteria for Determining Refugee Status and Guidelines on International Protection Under the 1951 Convention and the 1967 Protocol Relating to the Status of Refugees, April 2019, HCR/1P/4/ENG/REV. 4, available at: <https://www.refworld.org/docid/5cb474b27.html>.

II. General remarks

4. UNHCR acknowledges that the sudden increase in the number of asylum-seekers arriving from Belarus puts great pressure on reception and asylum processing capacity in Lithuania. In UNHCR's view, efficient border procedures that maintain safeguards and adhere to international and EU law, including the principle of non-refoulement, are possible.⁶
5. Guaranteeing the effective participation of the applicant in all the stages of the asylum procedure and ensuring access to effective remedy remains central to refugee protection.⁷ Substantial modifications in the asylum procedure to adapt it to emerging needs requires a thorough analysis of existing capacities, gaps and required resources (human, technical and financial) to ensure efficiencies, and avoid creating additional bottlenecks.⁸

III. Specific observations

Detention safeguards during border procedures (Article 5)

6. Prior to the recently adopted amendments, foreigners applying for asylum at border crossing points (BCPs) or transit zones had been required to stay at those locations pending the decision of the Migration Department on the applicable examination procedure (i.e. inadmissibility, accelerated or regular procedure). With respect to those referred to the regular procedure, the Migration Department took a decision to allow entry into the territory. Where the application was considered inadmissible or channelled into the accelerated procedure, the asylum-seekers concerned were required to stay at BCPs, transit zones or State Border Guard Service (SBGS) units. During the period of stay at the above locations, the persons concerned were considered being outside the territory of Lithuania.
7. UNHCR had raised concerns about this provision and recommended to provide for requisite procedural guarantees, such as a written detention order, an assessment of proportionality and necessity of detention and judicial review with respect to asylum-seekers who stay at border crossing points, transit zones or the State Border Guard Service (i.e. the Foreigners Registration Centre) in the context of the border procedure.⁹
8. The adopted amendments introduce several changes to the existing border procedures, including i) the scope of its application, which now covers persons who have applied for asylum within the territory *shortly after the irregular border crossing*, ii) the locations where asylum-seekers can be accommodated in the event of a declaration of martial law, a state of emergency, or an emergency due to a mass influx of aliens, which includes *temporary accommodation designated for that purpose*, and iii) the time limits for detention of asylum-seekers.

⁶ UN High Commissioner for Refugees (UNHCR), *Practical considerations for fair and fast border procedures and solidarity in the European Union*, 15 October 2020, available at: <https://www.refworld.org/docid/5f8838974.html>.

⁷ UNHCR, *UNHCR Discussion Paper Fair and Fast - Accelerated and Simplified Procedures in the European Union*, 25 July 2018, Chapter 5, available at: <https://www.refworld.org/docid/5b589eef4.html>.

⁸ UNHCR, *UNHCR Discussion Paper Fair and Fast - Accelerated and Simplified Procedures in the European Union*, 25 July 2018, Chapter 4, <https://www.refworld.org/docid/5b589eef4.html>.

⁹ UN High Commissioner for Refugees (UNHCR), *UNHCR Comments on the Draft Law Amending the Law of the Republic of Lithuania on the Legal Status of Aliens (Reg. No. XIII P- 5109)*, September 2020, available at: <https://www.refworld.org/docid/605e06a84.html>.

9. It is explicitly stipulated that while staying at the places of temporary accommodation¹⁰ the asylum-seekers concerned, shall not enjoy freedom of movement within the territory of Lithuania. Moreover, the maximum 28-day period of the mandatory stay at these locations is extended for the duration of the martial law, state of emergency, or emergency due to a mass influx of aliens, with a maximum limit of 6 months and without administrative or judicial review during this period. Even if the asylum-seeker is eventually admitted into the territory of Lithuania, s/he would be accommodated in the places of temporary accommodation by a decision of the State Border Guard Service, until a decision of the Migration Department on the substance of her/his asylum application comes into force.
10. In UNHCR's view, detention of asylum-seekers should not be used by default or mandatorily for all arrivals, but rather remain the exception. Minimal periods in detention are permissible at the outset to carry out initial identity and security checks in cases where identity is undetermined or disputed, or there are indications of security risks. It is also permissible for a limited initial period for the purpose of recording, within the context of a preliminary interview, the elements of their claim to international protection to facilitate effective triaging as a basis for channeling cases into the different processing streams. For cases triaged as manifestly unfounded, detention beyond this period may be legitimate for up to four weeks from the lodging of the asylum claim with the applicable safeguards as established by the EU Court of Justice and the European Court of Human Rights.¹¹
11. 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. Detention should never apply to children and alternatives to detention, are generally preferable and possible in border procedures.¹² In the current amended law, the authorities are not required to issue formal detention orders based on individual circumstances, assess the necessity and proportionality of detention or ensure access to a judicial remedy and no exemptions are foreseen for vulnerable persons.
12. The established jurisprudence of the two regional European Courts – the European Court on Human Rights (ECtHR) and the Court of Justice of the European Union (CJEU) – affirms that the difference between detention and mere restrictions on movement is one of degree.¹³ To determine the degree, the Courts established parameters for a lawful resort to movement restrictions and detention respectively, including when applied in asylum procedures, at borders or otherwise. Disregard for these parameters could undermine the fairness of asylum procedures as adequate reception conditions are an essential precondition to ensure applicants' access to asylum procedures and to guarantee that they can effectively exercise their rights.

¹⁰ This could include BCPs, transit zones, border guard units or newly established temporary accommodation sites

¹¹ UNHCR, *Practical considerations for fair and fast border procedures and solidarity in the European Union*, 15 October 2020, page 2-3, <https://www.refworld.org/docid/5f8838974.html>.

¹² UNHCR, *Practical considerations for fair and fast border procedures and solidarity in the European Union*, 15 October 2020, page 2, <https://www.refworld.org/docid/5f8838974.html>.

UN High Commissioner for Refugees (UNHCR), *Guidelines on the Applicable Criteria and Standards relating to the Detention of Asylum-Seekers and Alternatives to Detention*, 2012, available at: <https://www.refworld.org/docid/503489533b8.html>.

¹³ *Ilias and Ahmed v. Hungary* [GC] (Application no. 47287/15), para 212, CJEU, Cases C-924/19 PPU and C-925/19 PPU, *FMS and Others v Országos Idegenrendészeti Főigazgatóság Dél-alföldi Regionális Igazgatóság* paras 220-225.

13. In UNHCR’s view, the intensity and length of the movement restrictions foreseen in the amendments, coupled with the limited safeguards available would deem the use of detention likely at variance with international law, and would create unnecessary inefficiencies and hurdles in the asylum procedures.
14. In addition, the amendments raise serious concerns under Articles 8 and 9 of the Reception Conditions Directive,¹⁴ which provide *inter alia* that any detention measure must be necessary and proportionate, based on an individual assessment of each case, be ordered in writing by a reasoned decision of judicial or administrative authorities, and may be resorted to only where other less coercive alternative measures cannot be applied effectively. Where detention is ordered by administrative authorities, Member States are required to provide for a speedy judicial review to be conducted *ex officio* and/or at the request of the applicant.
15. In joined cases *C-924/19 PPU and C-925/19 PPU*, the CJEU confirmed the application of these guarantees with respect to asylum-seekers detained in the context of the border procedure. Furthermore, Article 26 (1) of the Asylum Procedures Directive, which prohibits to “*hold a person in detention for the sole reason that he or she is an applicant [for asylum]*” is also relevant, as the amendments link the application of the envisaged restrictions on the freedom of movement with the fact of making an application for asylum.

UNHCR recommends Lithuania to ensure that detention of asylum-seekers is used as last resort and the required safeguards are foreseen; and encourages the use of alternatives to detention in border procedures. If restrictions on movement are applied in the initial phases of the asylum procedure, all due safeguards should be in place¹⁵.

Derogation and limitation of asylum-seekers’ rights (Article 71 (1¹))

16. The adopted amendments introduce Article 71 (1¹) which provides that access to information, interpreters, social and psychological services, UNHCR and other refugee assisting organizations and access to employment may be temporarily and proportionally restricted, if such rights cannot be guaranteed for objective and justified reasons in the event of a declaration of martial law, a state of emergency, a state of emergency or an emergency due to a mass influx of aliens.
17. Restrictions on the essential guarantees, based on a declared state of emergency, may make it excessively difficult, if not impossible, for asylum-seekers to effectively access and participate in the asylum procedure. In UNHCR’s view, acceleration and simplification procedures need to comply with fundamental procedural safeguards provided for under international and EU law from the outset

¹⁴ European Union: Council of the European Union, *Directive 2013/33/EU of the European Parliament and Council of 26 June 2013 laying down standards for the reception of applicants for international protection (recast)*, 29 June 2013, OJ L. 180/96 -105/32; 29.6.2013, 2013/33/EU, available at: <https://www.refworld.org/docid/51d29db54.html>

¹⁵ UNHCR, *Practical considerations for fair and fast border procedures and solidarity in the European Union*, 15 October 2020, page 2, <https://www.refworld.org/docid/5f8838974.html>.
UN High Commissioner for Refugees (UNHCR), *Guidelines on the Applicable Criteria and Standards relating to the Detention of Asylum-Seekers and Alternatives to Detention*, 2012, available at: <https://www.refworld.org/docid/503489533b8.html>.

of the process, namely, i) the right of the applicant to information on the nature of the procedure and on her/his rights and obligations, ii) the right to prepare the application and seek legal advice and representation; iii) the right to an interpreter; iv) the right to be heard; and v) the right to access an effective remedy.¹⁶

18. Furthermore, States are required to allow UNHCR access to applicants, including those in detention at the border and in transit zones; to grant UNHCR access to information on individual applications for international protection, subject to the applicant's consent; and to allow UNHCR to present its views to competent authorities regarding individual applications for international protection at any stage of the procedure.¹⁷ The denial of the opportunity to communicate with UNHCR is generally at variance with Article 35 of the 1951 Geneva Convention.¹⁸
19. The Asylum Procedures (APD) and Reception Conditions Directives (RCD) permit restrictions on certain rights and guarantees only in narrowly defined circumstances. However, some safeguards provided for in the directives may not be subject to any restrictions, even where a large number of asylum applications makes it objectively difficult to comply with the applicable standards. These include the right to information about applicable procedures, rights and obligations, and reception conditions (Article 12 (1) (a) of the APD and Article 5 of the RCD), the right to communicate with UNHCR or with any other organization providing legal advice or other counselling to applicants (Article 12 (1) (c) of the APD)¹⁹, the right to receive the services of an interpreter (Article 12 (1) (b) of the APD), and access to employment where the applicable conditions are satisfied (Article 15 of the RCD)²⁰.
20. As regards social and psychological services, restrictions on this assistance, if imposed, may lead, in practice, to unavailability of a range of essential guarantees provided for in the directives, such as: (i) vulnerability assessments (Article 22 of the RCD and Article 24 (1) and (2) of the APD); (ii) provision of support and reception conditions tailored to special needs of vulnerable persons (Article 24 (3) and (4) of the APD and Articles 21, 23, 24 and 25 of the RCD); (iii) prevention of assault and gender-based violence in accommodation facilities (Article 18 (4) of the RCD), and (iv) regular monitoring and adequate support to vulnerable persons in detention (Article 11 (1) of the RCD).

UNHCR recommends ensuring that asylum-seekers have effective access to information and counselling on asylum procedures, interpretation services, psychosocial support, in particular for survivors of torture and trauma, and unhindered

¹⁶ UN High Commissioner for Refugees (UNHCR), *UNHCR Discussion Paper Fair and Fast - Accelerated and Simplified Procedures in the European Union*, 25 July 2018, Chapter 5, <https://www.refworld.org/docid/5b589eef4.html>.

¹⁷ UNHCR Executive Committee General Conclusion on International Protection No. 108 (2008), UN Doc. A/AC.96/1063, <http://www.unhcr.org/excom/exconc/49086bfd2/general-conclusion-internationalprotection.html> para. (d).

¹⁸ Cambridge University Press, *Supervising the 1951 Convention Relating to the Status of Refugees: Article 35 and Beyond*, June 2003, available at: <https://www.refworld.org/docid/470a33c00.html>; UN High Commissioner for Refugees (UNHCR), *UNHCR's supervisory responsibility*, October 2002, ISSN 1020-7473, available at: <https://www.refworld.org/docid/4fe405ef2.html>.

¹⁹ CJEU, *LH v Bevándorlási és Menekültügyi Hivatal*, C-564/18, para 70.

²⁰ Discussed in detail in CJEU Case- *KS, MHK v International Protection Appeals Tribunal*, from para 61.

access to UNHCR and other refugee organizations. This should also apply in case of emergency situation and/or martial law²¹.

Safeguards applicable to accelerated procedures (Article 76 (6))

21. Article 76 (6) of the previous version of the Aliens Law exempted unaccompanied minors and survivors of torture, rape or other forms of serious physical or sexual violence from the accelerated procedure. Accordingly, their applications were always channelled into the regular examination procedure; they were referred to in-land reception facilities.
22. The adopted amendment provides that this exemption is not applied in the event of a declaration of martial law, a state of emergency, a state of emergency or an emergency due to a mass influx of aliens. This implies that asylum applications of unaccompanied minors and survivors of torture, rape or other forms of serious physical or sexual violence may now be examined under the accelerated procedure, including the accelerated border procedure, within 10 working days from the lodging of the asylum application. Read in conjunction with revised Article 5 of the Aliens Law, the provision also allows mandatory stay of these applicants at BCPs, transit zones, border guard units or newly established temporary accommodation sites for the entire period of the asylum procedure, including during the appeal stage.
23. In UNHCR's view, initial vulnerability screening carried out by competent personnel (medical/psycho-social) are key to identify more complex specific needs that bear relevance for the asylum procedure, such as in the case of unaccompanied children, victims of trauma or trafficking and person with mental disabilities, for whom the use of accelerated procedures in manifestly unfounded cases at the border would not be suitable. They should therefore be exempted from these procedures. For minors, age assessments should only be conducted exceptionally when serious doubts over the self-reported minority exist.²²
24. In addition, this provision is likely at variance with Article 24 of the APD (Applicants in need of special procedural guarantees) taken in conjunction with recital 29 to the APD, which requires Member States to provide vulnerable asylum-seekers with adequate support, including sufficient time, in order to create the conditions necessary for presenting the elements needed to substantiate their asylum application.
25. Lack of sufficient time available for the applicant to substantiate the asylum claim and for the asylum authority to conduct an adequate and complete examination in cases involving torture, rape or other forms of serious psychological, physical or sexual violence may lead, in practice, to serious administrative errors resulting in a

²¹ UNHCR, *UNHCR Discussion Paper Fair and Fast - Accelerated and Simplified Procedures in the European Union*, 25 July 2018, Chapter 4 <https://www.refworld.org/docid/5b589eef4.html>. Cambridge University Press, *Supervising the 1951 Convention Relating to the Status of Refugees: Article 35 and Beyond*, June 2003, available at: <https://www.refworld.org/docid/470a33c00.html>; UN High Commissioner for Refugees (UNHCR), *UNHCR's supervisory responsibility*, October 2002, ISSN 1020-7473, available at: <https://www.refworld.org/docid/4fe405ef2.html>

²² UNHCR, *Practical considerations for fair and fast border procedures and solidarity in the European Union*, 15 October 2020, page 3, <https://www.refworld.org/docid/5f8838974.html>.

violation of the principle of non-refoulement, as enshrined in Article 33 of the 1951 Geneva Convention and Article 3 of the ECHR.

UNHCR recommends maintaining the exceptions specified in Article 76(6) of the current Aliens Law, which exempts unaccompanied minors, survivors of torture, rape or other forms of serious physical or sexual violence from the accelerated procedures and ensuring that this provision is not subject to derogation in case of emergency²³.

Non-penalization for irregular border crossing (Article 113 (4) (1¹))

26. According to newly introduced Article 113 (4) (1¹) of the Aliens Law, an asylum-seeker may be detained “*when he/she entered the territory of the Republic of Lithuania illegally by crossing the state border of the Republic of Lithuania during a state of war, a state of emergency, a state of emergency declared due to a mass influx of aliens, or an emergency*”. The proposed provision allows to detain asylum-seekers who have arrived irregularly, for a period of up to 6 months (with the possible extension to 12 more months) and based on a mere fact of irregular entry in the period of a declared emergency situation.
27. Article 31(1) of the 1951 Geneva Convention prohibits the imposition of penalties (including but not restricted to detention) on refugees who have come directly from territories where their life or freedom is threatened, present themselves without delay to authorities and show good cause for their unauthorized entry or presence.²⁴
28. Refugees who have not “come directly” from their countries of origin may accordingly be liable to penalties. The term “directly” is to be interpreted broadly and not in a literal temporal or geographical sense, meaning that refugees who have crossed through, stopped over or stayed in other countries *en route* may still be exempt from penalties. There is no defined time limit for a delay, stopover or stay, and the reasons for doing so will be relevant to determining whether penalties may be applied.²⁵
29. Article 8 of the Reception Conditions Directive foresees an exhaustive list of detention grounds, namely verification of identity and determination of the elements of the claim, national security and public order, Dublin transfers or if the application is deemed abusive. Irregular border crossing is not listed under this provision, and therefore its application would likely be at variance with EU law.

UNHCR recommends that asylum-seekers are not detained solely for their irregular border crossing, in line with Article 31 of the 1951 Geneva Convention, and restrictions on asylum-seekers’ freedom of movement are applied with due safeguards²⁶.

²³ UNHCR, *Practical considerations for fair and fast border procedures and solidarity in the European Union*, 15 October 2020, page 3, <https://www.refworld.org/docid/5f8838974.html>.

²⁴ *Article 31 of the 1951 Convention Relating to the Status of Refugees*, July 2017, PPLA/2017/01, pp. 7-8, www.refworld.org/docid/59ad55c24.html (Costello et al). G S Goodwin-Gill, *Article 31 of the 1951 Convention Relating to the Status of Refugees: Non-Penalization, Detention, and Protection*, June 2003, www.refworld.org/docid/470a33b10.html.

²⁵ UN High Commissioner for Refugees (UNHCR), *Guidance on Responding to Irregular Onward Movement of Refugees and Asylum-Seekers*, September 2019, <https://www.refworld.org/docid/5d8a255d4.html>.

²⁶ *Article 31 of the 1951 Convention Relating to the Status of Refugees*, July 2017, PPLA/2017/01, pp. 7-8, www.refworld.org/docid/59ad55c24.html (Costello et al). G S Goodwin-Gill, *Article 31 of the 1951 Convention*

Access to effective remedy: suspensive effect and time limits (Chapter IX-1 and Article 138 (2))

30. The adopted amendments introduce an administrative appeal stage against decisions of the Migration Department. The appeal should be lodged within 7 days from the date of the asylum-seeker's acquaintance with the decision and the Migration Department is required to examine the appeal and take a decision within 7 days from the receipt of the appeal.
31. The second instance appeal before the Court shall not suspend the enforcement of the initial decision of the Migration Department. While the asylum-seekers concerned will still be entitled to lodge an appeal with the Vilnius Regional Administrative Court and request an interim measure on ad hoc basis, no automatic suspensive effect is envisaged even for cases of asylum-seekers whose applications were examined under the regular procedure.
32. The lack of automatic suspensive effect of the appeal, notably after an expedited administrative review, and considering the existing challenges related to provision of information, counselling, legal representation and interpretation, may undermine access to an effective remedy and lead to a violation of the principle of non-refoulement contrary to Article 33 of the 1951 Geneva Convention, Article 4, 19 and 47 of the EU Charter of Fundamental Rights and Article 3 and 13 of the ECHR.
33. The CJEU established in its jurisprudence that an asylum appeal must always ensure an automatic suspensive effect. To illustrate, the Court clarified in case C-181/16 (*Sadikou Gnandi v Belgium*)²⁷ that “*the protection inherent in the right to an effective remedy and in the principle of non-refoulement must be guaranteed by affording the applicant for international protection the right to an effective remedy enabling automatic suspensory effect, before at least one judicial body*”.

UNHCR recommends that automatic suspensive effect is granted during the judicial review as a general rule, with derogations only on exceptional basis for subsequent applications, or in the case of manifestly unfounded or abusive claims. In those cases, guarantees for the applicant to request suspensive effect before a Court should be foreseen.²⁸

34. Prior the recently adopted amendments, the Aliens Law provided for two timeframes for appeal against negative decisions on asylum-applications issued by the Migration Department, namely 14 days for decisions taken in the regular procedure and 7 days in the accelerated procedure, including the border procedure. According to amended Article 138 (2), the second instance appeal may be lodged with a regional administrative court within 7 days from the date of service of the decision.
35. UNHCR emphasizes that the applicant must have sufficient time and facilities to exercise the right of appeal. Adequate time limits for lodging appeals are required

Relating to the Status of Refugees: Non-Penalization, Detention, and Protection, June 2003, www.refworld.org/docid/470a33b10.html.

²⁷ *Sadikou Gnandi v Belgium*, para 58, available at: [CURIA - List of results \(europa.eu\)](http://eur-lex.europa.eu/curia/doclist/curia/doclist.do?method=detailDoc&docid=62016CJ0181&docidlang=fr).

²⁸ UN High Commissioner for Refugees (UNHCR), *UNHCR Comments on the European Commission's Proposal for an Asylum Procedures Regulation*, April 2019, COM (2016) 67, <https://www.refworld.org/docid/5cb597a27.html>

to render a remedy effective. Further, the right to an effective remedy and fair trial must allow the applicant to undertake all the required procedural steps in order to submit the appeal, including access to legal assistance and interpretation. Applicants will need time to understand the decision of the determining authority and any information provided on how to challenge the decision; secure legal assistance; request and/or be given access to her/his case file; consult a legal adviser and discuss the grounds for the appeal; draft the appeal; and, where there is no automatic suspensive effect, to apply for an interim measure to prevent imminent expulsion.²⁹

36. Asylum-seekers are currently required to formally request legal representation, with limited services available. In addition, the availability of interpreters/translators remains a challenge, in particular, in case of rare languages. The imposition of a 7 days' time limit, if combined with the lack of suspensive effect of the judicial review, raises reasonable concerns about the possibility to effectively implement this new provision in line with international standards with due respect to the right to access effective remedy and the protection against refoulement.

UNHCR recommends reviewing the timeframes for appeal to ensure that they are reasonable in practice (minimum 15 days) to guarantee the right to effective remedy.³⁰

Conclusion

UNHCR hopes that the relevant Lithuanian authorities will give due consideration to these observations, despite the entry into force of the amendments. UNHCR is available to provide all the necessary technical support and expertise and ensure that the adopted adjustments to the national asylum would help the asylum authorities manage the current situation through a fair and efficient asylum process.

UNHCR
28 July 2021

²⁹ Ibid 28

³⁰ Ibid 29, UNHCR, *UNHCR Discussion Paper Fair and Fast - Accelerated and Simplified Procedures in the European Union*, 25 July 2018, Chapter 4 <https://www.refworld.org/docid/5b589eef4.html>.