

International
Organization
for Migration

European
Migration
Network

Returning Rejected Asylum Seekers: challenges and good practices

2016/1

EMN STUDY



Co-funded by
the European Union



This publication was conducted under the European Migration Network (EMN) 2015 – 2016 Work Programme.

EMN is a network composed of the European Commission and National Contact Points (EMN NCPs) in each Member State, and in Norway, which aims to collect, analyse and provide up-to-date, objective, reliable and comparable information on migration and asylum. By the decree of the Government of Republic of Lithuania International organization for Migration Vilnius Office acts as the national coordinator for the EMN activities in Lithuania.

More information about EMN activities in Lithuania: www.emn.lt.

Contact:

European Migration Network National Contact Point

A. Jakšto str. 12, 4 floor

LT-01105, Vilnius

Tel.: +370 5 2624897

Fax: +370 5 2611326

Email: emn@iom.lt

© International Organization for Migration (IOM), European Migration Network (EMN)

Information provided in this publication do not necessarily reflect the opinions and views of the Republic of Lithuania, the European Commission and International Organization for Migration or its Member States, nor are they bound by its conclusions. All rights reserved. No part of this publication may be reproduced or used for commercial purposes without a written permission of IOM Vilnius office.

**Returning Rejected Asylum
Seekers: challenges and
good practices**

2016/1

EMN STUDY

Content

SUMMARY.....	5
1. OVERVIEW OF THE NATIONAL SITUATION.....	7
2. LITHUANIA'S POLICIES AND MEASURES VIS-À-VIS REJECTED ASYLUM SEEKERS AT THE POINT OF REJECTION.....	11
2.1. How asylum decisions trigger the issuance of the return decision.....	12
2.2. Immediate consequences for rejected asylum seekers required to return.....	13
2.3. Possibilities for appealing the return decision.....	16
2.4. Possibilities for lodging subsequent asylum application.....	16
3. CHALLENGES TO THE RETURN OF REJECTED ASYLUM SEEKERS AND LITHUANIA'S POLICIES TO MANAGE THESE.....	17
4. WHAT HAPPENS WHEN RETURN IS NOT IMMEDIATELY POSSIBLE.....	22
5. LINKING RETURN POLICY TO THE ASYLUM PROCEDURE: MEMBER STATES' POLICIES AND MEASURES TO ENSURE THAT UNFOUNDED CLAIMS LEAD TO SWIFT REMOVAL AND TO PREPARE ASYLUM SEEKERS FOR RETURN.....	26
5.1. Accelerated procedures.....	27
5.2. Preparing asylum seekers for return.....	28
CONCLUSIONS.....	29
ANNEX.....	31

Summary

Overview of the situation. Lithuania receives on average approximately 350-400 applications for asylum per year. The majority of the applications are lodged by citizens of Georgia, Ukraine, Russia, Afghanistan and Iraq. The share of positive decisions accounts for approximately 30-35 per cent. The vast majority of aliens whose applications for asylum are not satisfied must depart from Lithuania voluntarily or are expelled. In 2015, 291 applications for asylum were lodged, 17 persons were granted refugee status and 69 persons were granted subsidiary protection, 97 decisions were taken not to grant asylum and 133 decisions were taken to expel and to return to the country of origin the aliens who had not been granted asylum.

Legal regulation. Upon taking a negative decision on asylum and finding that there are no grounds for non-return of an alien as provided for in the Law, one administrative decision to refuse asylum and to return or expel the alien is taken. The decision takes effect from the date of its adoption. Until the enforcement of expulsion, the alien may be detained by a court decision in the cases when detention is necessary to take and/or to enforce an appropriate decision (if the alien hampers the taking and/or enforcement of the decision, may abscond in order to avoid return, expulsion or transfer). Where it is stated that the expulsion decision cannot be enforced immediately on the grounds that a foreign state has refused to accept the alien, the alien is in need of basic medical aid or cannot be expelled due to objective reasons (the alien is not in possession of a valid travel document, there are no possibilities to obtain travel tickets, etc.), a decision to suspend the enforcement of expulsion is taken. It is only one year after the taking of the decision to suspend the enforcement of expulsion and if the mentioned grounds have not disappeared that the alien is issued a temporary residence permit valid for a period of one year. One year later, when the alien applies for renewal of a temporary residence permit, it is re-assessed whether it is possible to expel the alien.

Appeal against a return decision. In practice, the majority of decisions to refuse asylum and to expel are appealed against. In 2015, 72 appeals were lodged against a decision of the Migration Department to refuse asylum and to expel an alien. As few as 2 appeals

were satisfied and the Migration Department was placed under the obligation to reconsider the applications. However, the lodging of an appeal does not help a person to avoid expulsion, but only prolongs the stay in the country.

Legal status. If an alien cannot be expelled on the grounds provided for in the Law, a decision is taken to suspend the enforcement of expulsion. During the period of suspension of the enforcement of the decision, the alien is accommodated at the Foreigners' Registration Centre (if there is a risk of absconding, the alien may be detained at the Centre by a court decision). Such an alien is not entitled to employment or to social benefits. He is provided only basic medical aid. If the circumstances due to which the alien cannot be returned have not disappeared one year after the taking of the decision to suspend expulsion, he is issued a temporary residence permit valid for a period of one year. Having been issued the temporary residence permit, the alien may undertake employment and receive the social guarantees and medical services to which he is entitled.

Abuse. In some cases, representations of foreign countries do not identify a person as their citizen based on the particulars provided by the alien and do not issue return documents. There are indications that the aliens may indicate incorrect data in order to avoid expulsion and thus abuse the asylum procedure. In Lithuania, such cases are most frequently related to the aliens who enter from African states (Congo, Angola).

Key challenges related to return. Lithuania is not facing systemic issues in expelling aliens. The vast majority of aliens who receive a return decision comply with it voluntarily or are expelled. The majority of negative decisions on asylum and return decisions are taken in respect of citizens of Georgia, Ukraine, the Russian Federation and Belarus. The Republic of Lithuania has carried out returns to these states for a number of years, good contacts have been established with institutions of the states, Lithuania has embassies of all of these states, hence the aliens' return mechanism runs quite smoothly. Due to the lack of experience and prior work, a more complicated task is to return aliens to the states from which the number of asylum applicants is statistically rather small and there are no experience in cooperating with these states. Moreover, the states do not always have their embassies in Lithuania, which also complicates cooperation and obtaining of return documents. The number of the aliens who cannot be returned or expelled is very small and amounts to several cases per year (1-5 cases per year). The main reason is the impossibility of obtaining return documents from the country of origin, because there is no diplomatic representation of the country in Lithuania. It is usually the case of citizens of African states (the Democratic Republic of the Congo, the Republic of Angola), as well as Cuba. Currently, Lithuania is facing the issue of establishing a person's identity and obtaining of return documents for the citizens of Vietnam who unlawfully enter Lithuania.

1.

Overview of the national
situation

Question (further – Q) 1. To what extent is the non-return of rejected asylum seekers considered a major issue in your Member State? Is the return of rejected asylum seekers a national policy priority?

The Republic of Lithuania has not faced a mass influx of asylum applicants. Although the number of applications for asylum in Lithuania varies, on average approximately 400 applications for asylum are lodged in Lithuania per year (during the 2010-2015 period, the largest number of applications for asylum was received in 2012 – 628 applications, while the smallest number of asylum applications was received in 2015 – 291 applications). Most applications are lodged by citizens of Georgia, Ukraine, Russia, Afghanistan and Iraq. The share of positive decisions amounts on average to 30-35 per cent.

In 2015, the majority of applications for asylum were lodged by citizens of Ukraine – 65 applications (22.3 per cent), Georgia – 48 applications (16.5 per cent), the Russian Federation – 42 applications (14 per cent), Afghanistan – 31 applications (11 per cent) and Iraq – 25 applications (9 per cent), while the share of positive decisions accounted for 30 per cent. In 2015, 97 decisions were taken to refuse asylum and 133 decisions to expel and to return to the country of origin the aliens who were not granted asylum. The majority of negative decisions were taken in respect of citizens of Georgia, Ukraine, the Russian Federation and Belarus. The Republic of Lithuania has carried out returns to these states for a number of years, good contacts have been established with institutions of the states, Lithuania has embassies of all of these states, hence the aliens' return mechanism runs quite smoothly. Due to the lack of experience and prior work, a more complicated task is to return aliens to the states from which the number of asylum applicants is statistically rather small. Moreover, the states do not always have their embassies in Lithuania, which also complicates cooperation and obtaining of return documents. The number of the aliens who cannot be returned or expelled is very small and amounts to several cases per year. Most of them are citizens of African states (the Democratic Republic of the Congo, the Republic of Angola), as well as Cuba.

It is necessary to mention that in 2014-2015, the Republic of Lithuania faced the issue of returning the citizens of Vietnam illegally staying in the country. It is very difficult to obtain return documents for these persons, because there is no embassy of Vietnam in Lithuania, and cooperation with the embassy of Vietnam in Warsaw is not always successful. Citizens of Vietnam usually do not lodge applications for asylum.

However, experts claim that, despite the difficulties encountered and individuals who cannot be returned, this is not a systemic issue. The asylum applicants who cannot be expelled after the completion of the asylum procedure are not numerous, the majority of such cases are specific situations in which the country of origin does not issue return documents (because the country of origin fails to identify a person).

On the political level, the state has clearly declared its position on the return issue. The Lithuanian Migration Policy Guidelines approved by Resolution No 29 of the Government of the Republic of Lithuania of 22 January 2014 on the approval of the Lithuanian Migration Policy Guidelines list the key priorities of migration policy. One of them is 'to ensure the implementation of the effective return of aliens to their countries of origin or to the foreign states which they are entitled to enter and the readmission of illegally staying third-country nationals in full respect for fundamental human rights and giving them the opportunity to depart with dignity, to promote voluntary return thus saving public funds' (sub-point 22.3.4)

Q2. Please complete the Excel document in Annex 1 (providing information also on the metadata) if you have national statistics available on:

- The total number of rejected asylum seekers who were issued an enforceable return decision in 2011-2015 disaggregated by sex;
- The number of rejected asylum seekers who were effectively returned from your Member State to third countries in 2011-2015 (if possible disaggregated by sex and by type of return (voluntary / assisted voluntary / forced).

Q3. Please provide national estimates, disaggregated by sex, of (a) the share of rejected asylum seekers out of the total number of TCNs issued a return decision in 2011-2015 and (b) the share of rejected asylum seekers issued a return decision who were effectively returned, by completing the table below and indicating whether the share is:

- Between 90 to 100%
- Between 51 to 90%
- Between 31 to 50%
- Less than 30%

These estimates may be made available through national studies, or may be identified through consultation with relevant national authorities for the purpose of this study. For every estimate, please indicate in the final column the source of the estimate and – where possible – the method used.

Year	% rejected asylum seekers out of total no. TCNs issued a return decision			% rejected asylum seekers out of total no. TCNs effectively returned			Source / method of the estimate
	Male	Female	Total	Male	Female	Total	
2011			Less than 30 %			N/A	Data are accumulated in the Register of Aliens; due to its specific capacity, there is no possibility of filling out all sections of the table
2012			Less than 30 %			N/A	
2013			Less than 30 %			N/A	
2014			Less than 30 %			N/A	
2015			Less than 30 %			N/A	

Q4a. If available, please provide any national estimates on the total number of rejected asylum seekers disaggregated by sex who, despite having been imposed a return decision, continue to reside in your Member State during the period 2011-2015 because they could not be returned (see also sections 3 and 4)?

The table below presents temporary residence permits issued for the first time (in brackets – renewed temporary residence permits) to the persons whose expulsion has been suspended in accordance of Articles 132 and 128 of the Law of the Republic of Lithuania on the Legal Status of Aliens (LLSA), provided that these circumstances have not disappeared within one year after suspension of the enforcement of the decision to expel an alien from the Republic of Lithuania and the alien is not detained.

The grounds on which expulsion is suspended and, after one year, an alien is issued a temporary residence permit are as follows:

- 1) The foreign state to which the alien may be expelled refuses to accept him;
- 2) The alien is in need of basic medical aid the necessity of which is confirmed by a medical advisory committee of a health care institution;
- 3) The alien cannot be expelled due to objective reasons (the alien is not in possession of a valid travel document, there are no possibilities to obtain travel tickets, etc.).

Year	# rejected asylum seekers imposed an enforceable return decision who continue to reside in the Member State			Source / method of the estimate
	Male	Female	Total	
2011	4 (7)	2(1)	6 (8)	Temporary residence permits issued for the first time (in brackets – renewed temporary residence permits) to persons whose expulsion is suspended. Source: Register of Aliens
2012	0 (6)	0 (3)	0 (9)	
2013	4 (5)	1 (5)	5 (10)	
2014	0 (4)	1 (6)	1(10)	
2015	1 (5)	0 (4)	1 (9)	

Temporary residence permits may be renewed upon the expiry of their period of validity, provided that the circumstances due to which they have been issued have not disappeared. In practice, the most common are the cases when, in the event of a failure to expel an alien immediately after taking an expulsion decision, the probability that he will be expelled later is low. In this case, upon the expiry of the period of validity of a temporary residence permit (that is, after a year), a temporary residence permit is either renewed, if so requested by the alien, or the alien himself departs from the Republic of Lithuania. Moreover, despite the fact that the alien has not been expelled from the Republic of Lithuania on the ground that his identity could not be established also by authorities of his country of origin, a temporary residence permit is issued to the person based on the personal data which he provided during the asylum procedure (because other data are not known).

Q4b. Please provide, if possible, a breakdown of the statistics described in 4a by reason for non-return. If statistics are not available disaggregated by reason, please describe any qualitative evidence of the main reasons in your Member State for the non-return of rejected asylum seekers described in 4a.

The main reason impeding the enforcement of an expulsion decision is the fact that there are no possibilities of obtaining return documents from the country of origin. The vast majority of aliens enter the Republic of Lithuania unlawfully and do not possess identity documents. In order to determine their identity, the information provided by them is relied upon. Unfortunately, the diplomatic representations of their states sometimes do not issue return documents according to the particulars and the country of origin indicated by these persons, because the states do not identify a person as their citizen according to such particulars. There are indications that in some cases, the aliens indicate a state other than their country of origin, but it is not possible to determine the actual country of origin. Thus, by introducing themselves as citizens of another state from the very beginning of the asylum procedure, they abuse the procedure and hope to avoid expulsion to their country of origin. Such cases are usually associated with the persons who enter from African states (the Democratic Republic of the Congo, the Republic of Angola, the Socialist Republic of Vietnam). Moreover, the persons who cannot be returned to their country of origin include a citizen of the Republic of Cuba who left his country more than two years ago and is unable to return to the Republic of Cuba due to legislative restrictions. Lithuania experiences difficulties in obtaining return documents for citizens of Vietnam, but as it has been mentioned above, these persons most often do not seek asylum.

2.

Lithuania's policies and measures vis-à-vis rejected asylum seekers at the point of rejection

2.1: HOW ASYLUM DECISIONS TRIGGER THE ISSUANCE OF THE RETURN DECISION

Q5. At what stage in the asylum decision-making procedure can an enforceable return decision (i.e. one that can lead to the return of the asylum seeker) be issued? Please select one of the following options:

- a) after the first instance decision (all applications for international protection);
- b) after the first instance decision (only for applications for international protection considered unfounded – e.g. if they are lodged by an applicant from a safe country of origin);
- c) after some appeals on the asylum decision have been lodged, but before all possibilities for appeal on the asylum decision have been exhausted;
- d) only after all asylum appeals have been exhausted;
- e) under other circumstances (please describe).

Option (b) – the Migration Department may examine an application for asylum as to substance as a matter of urgency where an asylum applicant enters Lithuania from a safe country of origin. Where, upon examining such an application, a negative decision is taken, the alien has the right to appeal against it to court. In this case, the decision of the Migration Department is enforced, except for the cases when the enforcement of a decision appealed against is suspended by a resolution of a relevant administrative court on enforcement measures.

Option (d) – the Migration Department takes a decision to refuse asylum. The decision resolves not only the issue of the granting of asylum, but also the issue of the further legal status of an alien in the Republic of Lithuania (expulsion to the country of origin). The decision of the Migration Department may be appealed against to court and, in compliance with provisions of the LLSA (Article 139), the enforcement of the decision is suspended. In this case, the decision of the Migration Department may be enforced only after the decision enters into force, that is, if within a specified time limit it is not appealed against or the options of appeal provided for in legal acts have been exhausted.

Q6. If the return decision can enter into force before all asylum appeals have been exhausted, how often, in practice does this lead to the applicant being returned? (e.g., in all cases, most cases, some cases, rarely, never)?

A return decision enters into force if a person does not file with the court an appeal against the decision within the time limits specified by legal acts (14 days). After the return decision enters into force, it must be enforced. In practice, the vast majority of the persons in respect of whom expulsion decisions are taken appeal against them to court. According to the LLSA, every person has the right to appeal against a decision taken in his respect. Asylum applicants are entitled to receive free state-guaranteed legal aid and they exercise this right.

Q7a. Is the authority responsible for issuing the return decision in your Member State the same as the authority who is responsible for making decisions on the application for asylum?

Yes.

Q7b. When a decision on an asylum application triggers a return decision, how soon after the rejection is the return decision issued? Please select among the following options:

- The return decision is issued at the same time the decision rejecting the asylum application enters into force/becomes executable.
- The return decision is issued within 24 hours of the rejection decision entering into force/becoming executable.
- The return decision is issued within a week of the rejection decision entering into force/becoming executable.
- The return decision is issued within a month of the rejection decision entering into force/becoming executable.

If, in the course of examination of an asylum case, it is determined that there are no specified grounds for non-return of an alien and the alien must be expelled to his country of origin, a single decision is taken both refusing asylum and expelling the person. Therefore, in this case the expulsion decision enters into force at the same time as the decision to reject an application for asylum.

Q8. In Lithuania, is it possible to use the information that is obtained from the applicant in the course of the asylum procedure for the purposes of facilitating return?

Yes. If an asylum decision is effective, the information obtained from an asylum applicant in the course of the asylum procedure may be used for the purposes of facilitating the person's return.

2.2: IMMEDIATE CONSEQUENCES FOR REJECTED ASYLUM SEEKERS REQUIRED TO RETURN

Q9. What are the immediate consequences for the rejected asylum seeker of the return decision entering into force?

Table 2.1: The immediate consequences for the rejected asylum seeker of the return decision entering into force

Questions	... according to law	... as carried out in practice	Provide here evidence to suggesting this contributes to encouraging or deterring return
Accommodation			
Can the applicant stay in reception centres once rejected? Yes/no	Yes	Yes	No evidence encouraging or deterring return
If you stated yes above, please indicate for how long after receiving the return decision they can stay in the reception centre (e.g. X days or 'until the return decision is enforced and the individual returns')	In the case of forced return – until the return decision is enforced and the individual returns	In the case of forced return – until the return decision is enforced and the individual returns; in the case of voluntary return, after familiarising with the decision an alien usually must depart from the Foreigners' Registration Centre, but, if necessary, may remain at the Centre by a decision of the head of the Centre in order to complete formalities related to return; in the case of assisted return (the agreement on cooperation in implementing assisted voluntary return of third-country nationals concluded on 29-05-2015 between the State Border Guard Service under the Ministry of the Interior (SBGS) and IOM) - if necessary, the SBGS ensures the continuity of the alien's accommodation for a short term.	

If you stated no above, are they accommodated elsewhere (e.g. special open return centres) or elsewhere? Yes/no and – for yes, briefly describe accommodation service provided			
Employment			
Are rejected applicants entitled to access / continue accessing the labour market? Yes/No	No The right to employment arises when a decision to suspend expulsion is taken, one year passes and a temporary residence permit is issued.	No The right to employment arises when a decision to suspend expulsion is taken, one year passes and a temporary residence permit is issued.	In the course of the asylum procedure, an asylum applicant is not entitled to employment in the Republic of Lithuania. The same applies when the procedure is completed. This is believed to encourage return.
If yes, please indicate for how long after receiving the return decision they can continue to work (e.g. X days or 'until the return decision is enforced and the individual returns')			As long as the enforcement of an expulsion decision is suspended (that is, until the circumstances have disappeared).
If yes, please describe any specific conditions attached to their employment			Work permit is not required.
Welfare			
Are rejected applicants entitled to receive any social benefits?	No. Social benefits may be paid only to an alien in whose respect a decision to suspend expulsion is taken, provided that one year passes after the taking of the decision and the person is issued a temporary residence permit.	No. Social benefits may be paid only to an alien in whose respect a decision to suspend expulsion is taken, provided that one year passes after the taking of the decision and the person is issued a temporary residence permit.	No evidence encouraging or deterring return
If yes, please briefly describe what these benefits are			
If yes, please indicate for how long after receiving the return decision they can continue to receive the benefits (e.g. X days or 'until the return decision is enforced and the individual returns')			

Healthcare			
Are rejected applicants still entitled to healthcare? Yes /no	Yes, only emergency medical aid. Healthcare services may be provided only to an alien in whose respect a decision to suspend expulsion is taken, provided that one year passes after the taking of the decision and the person is issued a temporary residence permit.	Yes, only emergency medical aid. Healthcare services may be provided only to an alien in whose respect a decision to suspend expulsion is taken, provided that one year passes after the taking of the decision and the person is issued a temporary residence permit.	No evidence encouraging or deterring return
Does it include all healthcare or only emergency healthcare?	Only emergency medical aid	Only emergency medical aid	
Education			
Are rejected applicants still entitled to participate in educational programmes and/or training? Yes / no	No. Only an alien in whose respect a decision to suspend expulsion is taken is entitled to participate in educational programmes, provided that one year passes after the taking of the decision and the person is issued a temporary residence permit.	No. Only an alien in whose respect a decision to suspend expulsion is taken is entitled to participate in educational programmes, provided that one year passes after the taking of the decision and the person is issued a temporary residence permit.	No evidence encouraging or deterring return
If yes, please indicate for how long after receiving the return decision they can continue to participate in educational activities (e.g. X days or 'until the return decision is enforced and the individual returns')			
Other			
Are any other measures taken which are relevant to mention here? Please describe	No	No	

Q10. When a rejected asylum seeker receives an enforceable return decision, what measures does the Member State take to enforce the return decision and prevent absconding (e.g. regular reporting)?

When a decision is taken to expel an alien from the Republic of Lithuania, he may be detained by a court decision, but only if detention is necessary to take the appropriate decision and/or to enforce it, that is, if the alien hampers the taking and/or enforcement of the decision and may abscond to avoid return, expulsion or transfer.

It should be noted that, until 1 February 2012, the asylum applicants who had unlawfully entered the country and had submitted an application for asylum could not be detained in the course of examination of the application for asylum, because there was no legal basis. The asylum applicants then used to be accommodated at the Foreigners' Registration Centre without restricting their freedom of movement. Approximately 70 per cent of the asylum applicants used to depart pending an asylum decision in violation of the internal rules of the Centre and not return thus abusing the asylum procedure, which used to render their return impossible. Upon the entry into force on 1 February 2012 of the supplementation of Article 113 of the Law with paragraph 2, the Supreme Administrative Court of Lithuania has developed the case-law that, in line with this provision of the Law, asylum applicants may be detained if grounds for detention are met. The Court has stated that in the Republic of Lithuania, the issue of granting or refusing to grant asylum to an alien and his expulsion or non-expulsion from the Republic of Lithuania is decided in the course of a single administrative procedure (which conforms to the provision of Article 6(6) of Directive 2008/115 /EC allowing Member States to adopt a decision on the ending of a legal stay together with a return decision and/or a decision on a removal and/or entry ban in a single administrative or judicial decision or act). It follows that Article 113(2) may be applied at any stage of this procedure provided that there exist the necessary preconditions, that is, when an alien hampers the taking or enforcement of a decision, may abscond to avoid expulsion, etc. The amendments to the Law adopted on 10 October 2013 stipulate conditions for detention of asylum applicants. These amendments have allowed to control abuse of the asylum procedure and to ensure the return of the persons whose applications for asylum are not satisfied.

2.3 POSSIBILITIES FOR APPEALING THE RETURN DECISION

Q11. Are asylum seekers who have received an enforceable return decision able to lodge an appeal on the decision, before being returned?

Yes. All decisions taken under the LLSA may be appealed against to court in accordance with the procedure laid down by the Law and the Law on Administrative Proceedings, that is, an appeal is to be lodged with a relevant administrative court within 14 days from the service of a decision.

Q12. How frequently does an appeal on the return decision prevent the return of rejected asylum seekers (e.g. in all cases, most cases, some cases, rarely, never)? Do rejected asylum seekers appealing their return have a better chance of a positive decision on their return appeal than other third-country nationals required to return appealing the return decision?

The lodging of an appeal against a decision does not help a person to avoid expulsion, but only prolongs the stay in the country.

In 2015, courts (of both instances) examined 72 appeals against decisions of the Migration Department to refuse asylum. It is only in two cases that the courts ruled to annul a decision of the Migration Department to refuse asylum and the Migration Department was placed under the obligation to reconsider the applications from new.

In examining an appeal, the court decides whether account has been taken of the conditions prohibiting, in compliance with the Law, expulsion or return of an alien to a country where his life or freedom is in danger or he may be subjected to persecution on grounds of race, religion, nationality, membership of a certain social group or political opinion or to a country from which he can later be sent to such country. Moreover, the alien is not expelled from the Republic of Lithuania or is not returned to a country where there are serious grounds for believing that in that country the alien will be tortured, subjected to cruel, inhumane or degrading treatment or punishment. The fact that the person was or was not an asylum

applicant does not increase the probability of taking a favourable decision in his respect, because the asylum decision has already become final by then.

2.4 POSSIBILITIES FOR LODGING SUBSEQUENT ASYLUM APPLICATIONS

Q13. Are asylum seekers who have received an enforceable return decision able to lodge a subsequent application in your Member State, before being returned?

Yes, a person may lodge a subsequent application for asylum. It may be lodged after a final decision is taken in respect of the previous application. The LLSA provides that an alien may lodge an application for asylum: at border crossing points of the Republic of Lithuania or within the territory of the Republic of Lithuania wherein the border legal regime is valid – with the State Border Guard Service, with a territorial police agency and with the Foreigners' Registration Centre.

Q14. Is the fact that the application was lodged after a return decision was issued taken into account in assessing the credibility of the subsequent application?

The LLSA provides that, if an asylum applicant lodges a subsequent application for asylum which has no new essential information demonstrating that the asylum applicant may meet the criteria set for the granting of asylum, the application for asylum is examined as to substance as a matter of urgency by a decision of the Migration Department (Article 76(4)(4)) or, where the subsequent application does not present new essential considerations, the application is not examined by a decision of the Migration Department (Article 77(1)(3)).

3.

Challenges to the return of
rejected asylum seekers and
Lithuania's policies to
manage these

Main challenges to return

Member States were requested to provide information on the main challenges to return as under the Return Directive. National responses indicate that Member States consider the main challenges to both voluntary and forced return to include:

- **Resistance** of the **third-country national** to return, which can take the form of:

- Physical resistance and restraint
- Self-injury (including hunger striking)

- Absconding

Note that third-country nationals may resist return for a variety of reasons including poor employment prospects on return, poverty and poor infrastructure in the country of return, levels of corruption in the country of return etc. and it may be relevant to address these drivers in trying to mitigate the challenge, as well as trying to address the challenge itself;

- **Refusal** by the **authorities** in **countries of return** to readmit their citizens, particularly when they have been returned forcibly (*inter alia* Afghanistan, Eritrea, Ethiopia, Rwanda and South-Central Somalia refuse to accept their nationals returned forcibly against their will);
- **Refusal** by the **authorities** in **countries of return** to issue travel documents;
- **Refusal** by the **authorities** in **countries of return** to issue identity documents;
- Problems in the **acquisition of travel documents** – especially when no copies of the originals are available (and e.g. identification can only be verified through fingerprints) or when citizenship is complex (e.g. involving married couples from different countries or citizens who were born in another country);
- **Administrative and organisational challenges** due to e.g. a lack of Member State diplomatic representation in the country of return, which can slow down administrative procedures (e.g. make any obligatory consular interviews costly and challenging to arrange) and make negotiations more difficult.
- **Medical reasons** – i.e. If the returnee has a medical problem rendering travel difficult or impossible.

Lithuania is facing all the challenges referred to in the box above.

Q15. Are there any other challenges to return that your Member State experiences which are not mentioned in the box above?

Challenge	Description of how this impedes return in your Member State	State whether the challenge is: general to return / more common to the return of rejected asylum seekers / exclusive to the return of asylum seekers
Administrative/organisational	Absence of the diplomatic representation of Vietnam in the Republic of Lithuania	This challenge applies to citizens of Vietnam. They enter Lithuania unlawfully, are not in possession of travel or other identity documents, though usually do not lodge applications for asylum in Lithuania.

Q16. In general, Member States undertake a broad range of measures to manage challenges to implementing return. Examples of measures that are undertaken, matched to the challenges, are mapped in the table below.

Challenges to return	Measures to manage challenges	Implemented?	Does the measure specifically target the return of rejected asylum seekers?
Resistance of the returnee to return	Development AVRR programmes	Yes	No
	Detaining rejected asylum seekers to prevent absconding	Yes	No
	Physical force	No	No
	Surprise raids to enforce removal	No	No
	Delay or cancellation of the return procedure	No	No
	Other		
Refusal of authorities in countries of return to readmit citizens Refusal by the authorities in countries of return to issue travel documents Refusal by the authorities in countries of return to issue identity documents	Readmission Agreements (EU and/or national)	Yes	No
	Bilateral cooperation with third countries/ establishment of diplomatic relations	Yes	No
	Establishment of representations in third countries	No	No
	Offering positive incentives, e.g. aid packages, to third countries' authorities	No	No
	Applying political pressure on third countries' authorities	Yes	No
	Delay or cancellation of the return procedure	Yes	No
	Other		
Problems in the acquisition of travel docs	Repeating fingerprint capture attempts/using special software to capture damaged fingerprints	No	No

	Using interpreters to detect cases of assumed nationalities	Yes	No
	Detention	Yes	No
	Offering positive incentives, e.g. aid packages to third countries' authorities	No	No
	Applying political pressure on third countries' authorities	Yes	No
	Delay or cancellation of the return procedure	Yes	No
	Other		
Administrative/organisational challenges	Budget flexibility	No	No
	Coordination arrangements between authorities	Yes	No
	Designation of a Service Provider in third countries	No	No
	Establishment of a diplomatic representation in third countries	No	No
	Delay or cancellation of the return procedure	No	No
	Other		
Medical reasons	Organising medical transfer	No	No
	Facilitating medical support in the country of destination	No	No
	Medical supervision during travel	Yes	No
	Delay or cancellation of the return procedure	Yes	No
	Other	n/a	n/a
Other challenges	n/a	n/a	n/a

Q17. From your experience, can you indicate if there are any challenges which affect the return of rejected asylum seekers more greatly than third-country nationals in general?

No.

Q18. Has Lithuania recently introduced any new measures/policies to ensure the return of third-country nationals (e.g. following the exceptional flows of asylum seekers arriving in the EU since 2014)?

No.

Q19. Are you able to identify, from the measures as set out in the table above, any good practices, i.e. measures that have proven particularly effective in overcoming challenges to return of rejected asylum seekers specifically?

Measure	Evidence of effectiveness / why the measure can be considered a 'good practice'	State whether the measure is effective in supporting the return of rejected asylum seekers
Participation in FRONTEX joint return flights	All planned returns have been effected	Effective in the cases when returns cannot be carried out by commercial flights.

Q20. Are there any challenges to return which Lithuania has so far been unable to address effectively through any counter-measures?

So far, the issue of determining a person's identity and obtaining return documents for citizens of Vietnam has not been resolved, especially in the cases when they do not cooperate with officers. In Lithuania, there is no embassy of Vietnam, hence return documents for citizens of Vietnam need to be requested from the embassy in Warsaw (Republic of Poland). The issue of return documents sometimes takes longer than six months, there have also been cases of the embassy failing to provide official responses to enquiries regarding the persons who introduced themselves as citizens of Vietnam, but were not in possession of identity documents. Under such circumstances, those aliens, after having been detained for the maximum term of detention (18 months), have been released from the Foreigners' Registration Centre.

In order to address this issue, the Ministry of the Interior has initiated the conclusion of an agreement on the readmission of persons with the Socialist Republic of Vietnam. This year, representatives of the Ministry of the Interior and the State Border Guard Service attended a meeting held at the Ministry of Foreign Affairs with the Ambassador of Vietnam residing in Poland. During the meeting, the issues related to identification of citizens of Vietnam and obtaining of return documents were raised. The Ministry of Foreign Affairs was also requested to assist in resolving the issue of obtaining of return documents for the citizens of Vietnam. Moreover, on 5 November 2015 the SBGS signed a declaration of partnership for participation in the EURINT project. The main goal of participation in the EURINT project is the signing of a memorandum of understanding between the Republic of Lithuania and the Socialist Republic of Vietnam.

4.

What happens when return is not immediately possible?

Q21. If it becomes clear that a rejected asylum seeker cannot return / be returned, does a national authority official acknowledge this? Can the rejected asylum seeker continue to be issued return orders even though it has been established that they cannot be immediately returned, or is it communicated to the police / enforcement authorities that the person should be left to remain temporarily?

Yes. If there are the grounds stipulated in the LLSA1, a decision to return an alien to a foreign state is taken or the alien is imposed an obligation to leave from the Republic of Lithuania. If it transpires that a person failed to comply with the obligation to leave from the Republic of Lithuania within the specified time limit and failed to voluntarily leave from the Republic of Lithuania within the time limit stipulated in a decision to return him to the foreign state (or within an extended time limit), a decision is taken on his expulsion from the Republic of Lithuania. The decision to expel the alien from the Republic of Lithuania must be enforced without delay. Where it is stated that expulsion cannot be immediately enforced for the reasons provided for in the LLSA (the foreign state to which the alien may be expelled refuses to accept him, the alien is in need of basic medical aid; the alien cannot be expelled due to objective reasons, namely, the alien is not in possession of a valid travel document, there are no possibilities to obtain travel tickets, etc.), a decision is taken to suspend the enforcement of expulsion and, only one year after the taking of the decision to suspend expulsion and provided that the circumstances due to which this decision has been taken have not disappeared, a temporary residence permit in the Republic of Lithuania may be issued in compliance with Article 40(1)(8) of the LLSA.

Q22a. If it is formally acknowledged that a person cannot be (immediately) returned, who makes this formal decision? On the basis of which criteria is the decision made?

If there transpire the circumstances, as stipulated in the LLSA, due to which the enforcement of a decision to expel an alien is suspended and such circumstances have not disappeared within ten days from the day on which they transpire, the authority in charge of the enforcement of the decision to expel the alien immediately informs in writing the Migration Department, which has decided on expulsion, and the latter immediately takes a decision to suspend the enforcement of the decision on the alien until the disappearance of the circumstances due to which the enforcement of the decision has been suspended.

Q22b. Is an official status granted to individuals who cannot be (immediately) returned? In what circumstances may this be granted?

Where the enforcement of a decision to expel an alien from the Republic of Lithuania is suspended for the reason that the foreign state to which the alien may be expelled refuses to accept him; the alien is in need of basic medical aid, the necessity of which is confirmed by a medical advisory committee of a health care institution; the alien cannot be expelled due to objective reasons (the alien is not in possession of a valid travel document, there are no possibilities to obtain travel tickets, etc.) and where these circumstances do not disappear within one year after suspension of the enforcement of the decision to expel the alien from the Republic of Lithuania and the alien is not detained, he is issued a temporary residence permit.

Q22c. If a status is granted, what advantages and disadvantages does the granting of such status to those who cannot return / be returned bring to the authorities of Lithuania?

1. A decision to return an alien to a foreign state shall be taken where:

- 1) the alien's visa has been annulled;
- 2) the alien's temporary residence permit or permanent residence permit has been withdrawn;
- 3) the alien stays in the Republic of Lithuania after the expiry of the period of validity of his visa;
- 4) the alien stays in the Republic of Lithuania after the expiry of the period of validity of his temporary residence permit;
- 5) the alien entered the Republic of Lithuania legally, but stays in the Republic of Lithuania without possessing a temporary or permanent residence permit, where he is obliged to possess one;
- 6) the alien has stayed in the Republic of Lithuania for a period exceeding the period of stay established for aliens in Article 11(2) to (5) and Article 11(7) of this Law;
- 7) The alien has unlawfully entered the Republic of Lithuania or is illegally staying in it, however he is a vulnerable person, an asylum applicant or an alien who has been refused asylum and who agrees to voluntarily return to a foreign state assisted by an international or non-governmental organisation.

[...]

Advantages: an alien is entitled to employment during the period of validity of a permit, and the state does not have to support him, it is possible to maintain contact with the person in the event that enforcement of a return decision becomes viable in the future; disadvantages: the issue of the legal status of the alien remains unresolved (a temporary residence permit is issued for a period of one year), administrative resources need to be allocated to further attempts to enforce the decision regarding the alien's departure from the country.

Q23. What rights are available to rejected asylum seekers who are not able to return immediately?

Table 2.1: Rights and services available to rejected asylum seekers who cannot be immediately returned

Questions	... according to law	... as carried out in practice	Provide here evidence to suggesting this contributes to encouraging or deterring return
Accommodation			
Is the rejected asylum seekers who cannot be immediately returned provided with accommodation? Yes/no	No	No	No evidence
If you stated yes above, please describe the circumstances under which the accommodation can be provided			
Employment			
Are rejected asylum seekers who cannot be immediately returned authorised to access the labour market? Yes/No	Yes (upon issuing a temporary residence permit (Q22b))	Yes	No evidence
If you stated yes above, please describe the circumstances under which they can access the labour market	Temporary residence permit entitles to employment during the period of validity of the permit	Temporary residence permit entitles to employment during the period of validity of the permit	No evidence
Welfare			
Are rejected asylum seekers who cannot be immediately returned entitled to receive any social benefits? Yes / no	No, until they become entitled to employment and take up employment	No	No evidence
If you stated yes above, please briefly describe what these benefits are			
If you stated yes above, please briefly describe under what conditions these benefits can be provided			
Healthcare			
Are rejected asylum seekers who cannot be immediately returned entitled to healthcare?	Yes	Yes	No evidence

Yes /no			
Does it include all healthcare or only emergency healthcare?	Basic medical aid, until a person becomes entitled to employment and takes up employment. Health insurance after a person is issued a temporary residence permit.	Basic medical aid, until a person becomes entitled to employment and takes up employment. Health insurance after a person is issued a temporary residence permit.	No evidence
Education			
Are rejected asylum seekers who cannot be immediately returned still entitled to participate in educational programmes and/or training? Yes / no	No	No	No evidence
If you stated yes above, please briefly describe under what conditions they can participate in educational programmes and training			
Other			
Are any other measures taken which are relevant to mention here?	No	No	

Q24. In terms of status and/or rights, does Lithuania make a difference between those who cannot return / be returned through no fault of their own and those who are considered to have hampered their own return?

No.

Q25. Can persons who are not immediately returnable also be eligible for regularisations?

No.

Q26. Does your Member State regularly assess the possibilities of return for rejected asylum seekers who could not immediately return / be returned? If so:

- What are the mechanisms for this assessment?
- How regularly is it undertaken?
- Which types of persons does it cover (i.e. does it cover all persons who cannot return / be returned or only those not granted a status)?
- Is there a point at which an alternative to return (e.g. regularisation) becomes possible? If so, on what criteria is it decided that the alternative to return should apply?

A temporary residence permit is valid for one year. In practice, it is usually re-assessed whether a decision to expel a person still cannot be enforced when the person applies for renewal of the permit.

The common practice is that permits for these persons are renewed, because the circumstances due to which a person cannot be expelled disappear very rarely.

Q27. Do you have any evidence that rejected asylum seekers who could not be immediately returned were eventually returned during the period 2011-2015?

No.

5.

Linking return policy to the asylum procedure:
Lithuania's policies and measures to ensure that unfounded claims lead to swift removal and to prepare

5.1 ACCELERATED PROCEDURES

Q28. Did Lithuania make use of accelerated asylum procedures, as stipulated in Art. 31 (8) of the recast Asylum Procedures Directive 2011-2015?

Yes.

Grounds for accelerating the examination procedure	Is it policy accelerate the examination procedure when the application presents these characteristics? Yes/No	If policy, is the policy applied in practice to date? Yes/No	How often does this happen in practice? <i>in all cases, most cases, some cases, rarely, never</i>	What was the Member State experience of accelerating the examination procedure in these circumstances – has it helped to ensure swift removal?
Applicant only raised issues not relevant to the examination	Yes	Yes	According to circumstances outlined in an application for asylum	No acceleration of the return procedure has been observed (the same applies in the Table below)
Applicant is from a safe country of origin	Yes	Yes	According to circumstances outlined in an application for asylum	
Applicant can return / be returned to a safe third country in line with Art. 38 of the Asylum Procedures Directive or equivalent national law	Yes	Yes	According to circumstances outlined in an application for asylum	
Applicant misled the authorities by presenting false documents/information, withholding of info/docs	Yes	Yes	According to circumstances outlined in an application for asylum	
Applicant destroyed documents intentionally to make assessment difficult	Yes	Yes	According to circumstances outlined in an application for asylum	
Applicant made inconsistent, contradictory, false representations which contradict country of origin information (COI)	Yes	Yes	According to circumstances outlined in an application for asylum	
Applicant lodged an inadmissible subsequent application	Yes	Yes	According to circumstances outlined in an application for asylum	
Applicant lodged an application to delay or frustrate	Yes	Yes	According to circumstances outlined	

enforcement of removal

in an application for
asylum

Applicant irregularly entered the territory and did not present him/herself to the authorities	No	No	No	
Applicant refuses to comply with the obligation to have his/her fingerprints taken	Yes	Yes	According to circumstances outlined in an application for asylum	
Applicant poses danger to national security or public order	Yes	Yes	According to circumstances outlined in an application for asylum	

Other

Q29. Does Lithuania have a list of safe countries of origin / safe third countries?

No.

Q30. Does Lithuania implement any other measures to ensure that unfounded claims lead to the swift removal of concerned persons?

No.

Q31. Have there been any recent changes to policy or practice to ensure that claims considered unfounded lead to swift removal (e.g. these may include changes to policy or practices with regard to accelerated procedures and the use of a list of safe countries of origin and/or other measures)?

The amendments to the LLSA adopted on 26 November 2015 stipulate that a subsequent application for asylum is not examined as to substance unless new information is provided.

5.2 PREPARING ASYLUM SEEKERS FOR RETURN

Q32. Is it part of Lithuania policy on return to, early on and throughout different stages in the asylum procedure, prepare asylum seekers for return should their application be rejected? If yes, is this policy formalised in:

- official communications,
- soft law
- standard practice of the authorities?

No.

Q33. Have any recent changes taken place in Lithuania policies with regard to the preparation of asylum seekers for return during the asylum procedure (notably following the exceptional flows of asylum seekers arriving in the EU since 2014)?

No.

Q34. If no specific approaches/measures are currently implemented, is Lithuania planning to introduce a specific approach/measures to prepare asylum seekers for return whilst they are still in the asylum procedure?

No.

Conclusions

Q35. Based on your answers provided, does Lithuania tailor its return policies to rejected asylum seekers, and if so, how?

Although in the majority of the EU Member States the number of asylum applicants has considerably increased, in 2015 Lithuania saw a decrease in the number of such persons. Lithuania is not the country of destination for refugees entering the EU. The vast majority of asylum applicants entering Lithuania come from neighbouring or nearby countries with which there has been established sound cooperation in the area of return, hence it can be claimed that so far, the Republic of Lithuania has not faced the issue of the influx of asylum applicants or the lack of possibilities of returning them to their country of origin (except for individual cases). However, following an increase in the flow of asylum applicants from countries with no diplomatic missions in Lithuania and no established cooperation practice, the number of the aliens who cannot be returned is likely to grow, which could become a topical issue.

Q36. Based on the evidence provided, which practices or policies in Lithuania can be described as good practice approaches to return rejected asylum seekers?

As the Republic of Lithuania does not have a long-standing experience in returning rejected asylum applicants and the majority of returns are carried out to the countries with which good contacts have been established and which have their consular posts in Lithuania, it is complicated to determine which practice can be considered as a good approach.

Annex

Q37. With reference to Question 2, please provide national statistics on the (estimated) number of rejected asylum seekers, if available by nationality, sex, etc.

Taking into account the fact that Lithuania's statistics are automatically collected in the Register of Aliens in line with its current capacity, it is not possible to provide all the requested statistical data. Due to the fact that, according to the legislation of the Republic of Lithuania, the issue of asylum must be resolved together with the further issue of the legal status of an alien, in most cases one decision (both refusing asylum and expelling the alien) is taken, thus detailed data on the total number of rejected asylum applicants who are subject to return are not automatically collected, that is, general statistics on return decisions do not distinguish between the return of asylum applicants and that of the persons not seeking asylum.

The same applies to enforced decisions – automated collection is possible in respect of data on all enforced decisions regarding voluntary, assisted or forced return, however it is not distinguished whether those decisions have been taken in respect of asylum applicants or the persons not seeking asylum. In this context, it is not possible to fill out a part of the statistical table. Moreover, the study provides only the total number of the rejected asylum applicants who are subject to return, because there are no technical possibilities of providing an automated breakdown by country of origin and sex.

European Migration Network (EMN) is a network composed of migration and asylum experts from EU Member States, Norway and the European Commission. Its main objective is to collect, analyse and provide up-to-date, objective, reliable and comparable information on migration and asylum to policy makers at EU and Member State level and the general public.

The EMN National Contact Point (NCP) in Lithuania is composed of representatives from the Ministry of the Interior, the Migration Department, the State border guard service as well as the International Organization for Migration (IOM) Vilnius office which acts the national co-ordinator for the EMN activities in Lithuania. EMN NCP in Lithuania also collaborates with other entities from governmental as well as non-governmental institutions working in the area of migration. .
