



SEIMAS OMBUDSMEN'S OFFICE OF THE REPUBLIC OF LITHUANIA

REPORT ON ENSURING HUMAN RIGHTS AND FREEDOMS IN PLACES OF TEMPORARY ACCOMMODATION OF FOREIGNERS HAVING CROSSED THE BORDER OF THE REPUBLIC OF LITHUANIA WITH THE REPUBLIC OF BELARUS

7 October 2021 No. NKP-2021/1-3

Vilnius

I. NATIONAL PREVENTION OF TORTURE AND GENERAL INFORMATION ON THE CONDUCTED INSPECTION

1. In accordance with Article 2 (1) of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment of the United Nations, the Republic of Lithuania has undertaken to take effective legislative, administrative, judicial or other measures to prevent acts of torture in any territory under its jurisdiction. In accordance with Article 16(1) of this Convention, the Republic of Lithuania has also committed to prevent other acts of cruel, inhuman or degrading treatment or punishment activities that are different from torture in any territory under its jurisdiction, when such acts are committed by a public official or another person holding an official position, or when such acts are committed with his/ her incitement, agreement or his/ her tacit consent.

In performing the functions of national prevention of torture in places of detention in accordance with the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT), pursuant to Article 3(3) and clauses 1 and 2 of Article 19¹ of the Law on Seimas Ombudsmen of the Republic of Lithuania, and in order to prevent torture and other cruel, inhuman or degrading treatment or punishment, Seimas Ombudsmen have regularly visited places of detention to check how human rights and freedoms of persons in places of detention are ensured. Pursuant to Article 19¹(3) of the Law on the Seimas Ombudsmen, a place of detention is any place under the jurisdiction of the Republic of Lithuania where the liberty of persons is or may be restricted by a decision or invitation of a public authority, or with its agreement or consent.

Pursuant to clause 9 of Article 19¹(4) of the Law on Seimas Ombudsmen, Seimas Ombudsmen have the right to instruct civil servants and other employees of the Seimas Ombudsmen's Office of the Republic of Lithuania (hereinafter – the Office) to receive all information on the treatment of persons deprived of their liberty, conditions of their detention, also the number of such persons, the number and location of places of detention, regular inspections of the treatment of persons deprived of their liberty in places of detention, to access all places of detention and all the premises therein, to get familiar with their facilities and infrastructure, to interrogate persons deprived of their liberty and any other persons who could provide the necessary information without any witnesses.

By his Order No. 11P(e)-9 of 29 July 2021, the Head of the Office delegated Vytautas Valentinavičius, Head of Human Rights Division, and the advisor Fausta Viktorija Osičnaitė to conduct inspections of foreigners accommodated in border guard stations of Varėna border team of the State Border Guard Service (hereinafter – SBGS) under the Ministry of the Interior of the Republic of Lithuania, and those in other territories of Lazdijai district municipality and Varėna district

municipality, who are not considered to have entered the territory of the Republic of Lithuania and who are accommodated without the right of movement in the Republic of Lithuania (hereinafter - foreigners) in places of detention in accordance with the Law on the Legal Status of Aliens (hereinafter – the Law), on 2-6 of August. Order No. 11P(e)-11 of the Head of the Institution of 23 August 2021 delegated the Head of Human Rights Division Vytautas Valentinavičius to conduct inspections for torture prevention purposes at the Vilnius border team of the State Border Guard Service and other places of detention in the territory of Vilnius district municipality and Ignalina district municipality. Order No. 11P-13 of the Head of the Institution of 15 September 2021 delegated Vytautas Valentinavičius, Head of Human Rights Division, and the advisor Fausta Viktorija Osičnaitė to conduct inspections for torture prevention at Pūškos border guard station of Vilnius border team of the SBGS. Clause 6 of Article 19¹ (4) of the Law on Seimas Ombudsmen, when carrying out national prevention of torture, the Seimas Ombudsmen shall have the right to conduct visits to places of detention accompanied by selected experts. Pursuant to this provision, experts Mėta Adutavičiūtė, Goda Jurevičiūtė and Ugnė Grigaitė of the Human Rights Monitoring Institute were hired during the visits conducted on 24–26 August 2021.

During the inspections, the officials visited the Kapčiamiestis border guard station (Pertakas 3, Pertako village, Kapčiamiesčio eldership, Lazdijai district) of the Varėna border team of the SBGS, the Druskininkai border guard station (Mizarų g. 59, Druskininkai), the Raigardas border checkpoint of the Druskininkai border guard station (Gardino g. 130, Jaskonių village, Viečiūnų eldership, Druskininkai municipality), the Latežeris border checkpoint of the Druskininkai border guard station (Pariečės kelias 9, Latežerio village, Viečiūnų eldership, Druskininkai municipality), Švendurbės river border checkpoint of the Druskininkai border guard station (Nemuno kelias 76, Lipliūnų village, Leipalingio eldership, Druskininkai municipality), Kabeliai border guard station (Kabelių g. 59B, Kabelių village, Marcinkonių eldership, Varėna district), A. Barakauskas border guard station (Mantotų village, Kaniavos eldership, Varėna district), Purvėnai border guard station (Pasienio g. 2, Purvėnų village, Šalčininkai district); Padvarionys border guard station of Vilnius border team of the SBGS (Bajorų g. 1, Bajorų village, Vilnius district), Adučiškis border guard station (Adučiškio g. 4, Kackonių village, Švenčionys district), Švenčionys border guard station (Jančiūnų village, Švenčionys district), Tverečius border guard station (Daktorių village, Ignalina district); Pūškos border guard station (Pūškų village, Ignalina district); other places of detention of foreigners, including in the premises of the former Kapčiamiestis children foster home (Veisiejų g. 6, Kapčiamiestis, Lazdijai district municipality), premises of the former Kapčiamiestis children foster home (Veisiejų g. 6, Kapčiamiestis, Lazdijai district municipality), the former Vydeniai primary school (Mokyklos g. 2, Vydenių village, Vydeniai eldership, Varėna district municipality), premises of the former Linkmenys school (Liepų g. 2, Linkmenų village, Linkmenų eldership, Ignalina district), the former Kazitiškis school (Mokyklos g. 10, Kazitiškis, Ignalina district) and Medininkai border school (Pasieniečių g. 11, Medininkų village, Vilnius district).

According to the data provided by the SBGS during inspections, there were 100 people temporarily accommodated/ kept at the Kapčiamiestis border guard station (27 of whom were minors), 170 people – at the Druskininkai border guard station (80 of whom were minors), 198 people – at the Švendurbės river border checkpoint of the Druskininkai border guard station (there were some minors, but their exact number was not provided during the inspection), 141 people – at the Kabeliai border guard station (62 of whom were minors), 100 people – at the A. Barausko border guard station (37 of whom were minors), 83 people – at Purvėnai border guard station (27 of whom were minors), 81 people – at the premises of the former Kapčiamiestis children foster home (14 of whom are

minors), 146 people – at the premises of the former Vydeniai primary school (about 30 of whom were minors), 44 people – at the Padvarionys border guard station of Vilnius border team of the SBGS (18 of whom were minors), 76 people – at the Adučiškis border guard station (29 of whom were minors), 50 people – at the Švenčionys border guard station (3 of whom were minors), 30 people – at the Tverečius border guard station – (3 of whom were minors), 32 people – at the Pūškos border guard station (there were no minors at this border guard station), 67 people – at the premises of the former Linkmenys school (25 of whom were minors), premises of the former Kazitiškis primary school – 121 people (according to preliminary data) (24 of whom were minors), and 141 people – at the Medininkai border guard school (63 of whom were minors). There were no persons accommodated/kept at the Raigardas and Latežeris border checkpoint of the Druskininkai border guard station of Varėna border team of the SBGS.

The inspections assessed issues related to: ensuring material reception conditions for asylum seekers (clause 3); ensuring the right to adequate meals (clause 4); access to personal health care services (clause 5); assessment of the vulnerability and special needs of individuals (clause 6); availability of information on rights, obligations, procedures of examination of asylum applications (clause 7); ensuring the right of persons to lodge asylum applications (clause 8); arranging reception of asylum seekers (clause 9).

Officials of SBGS border guard stations, personal health care specialists, elders, other persons who worked at the visited places of detention of foreigners and persons who provided assistance, also foreigners temporarily accommodated in the places of detention were interrogated during the inspections, also inspecting tents and other premises of accommodation of foreigners, sanitary facilities, administrative premises, documents obtained during inspections and other collected data.

2. Pursuant to Article 71(1) of the Law, an asylum seeker in the Republic of Lithuania shall, inter alia, have the right to use material reception conditions; to receive information about his or her rights and obligations during the examination of his/ her application for asylum and the consequences for a failure to comply therewith, also information related to the examination of the application for asylum free of charge, in a language which he or she understands; to use state-guaranteed legal aid in accordance with the procedure established by the Minister of the Interior to the extent related to the examination of an application for asylum; to make use of services of an interpreter free of charge in connection with the processing of an asylum application; to receive basic medical aid, psychological assistance and social services free of charge at the SBGS or another place of accommodation; to contact and meet with representatives of the United Nations High Commissioner for Refugees and other organizations providing specialized legal aid or counselling to asylum seekers in observance of privacy terms and conditions; after being attributed to a group of vulnerable persons, to receive reception conditions that meet their special needs, while living in places of accommodation, places of detention allocated by institutions of the Republic of Lithuania, border guard checkpoints, transit areas or the SBGS.

The Government of the Republic of Lithuania declared a state-level emergency across the country due to a massive influx of aliens by clause 1 of its Resolution No. 517 of 2 July 2021 “Regarding the declaration of a state-level emergency and the appointment of a state-level emergency operations manager” which took effect of 4 July 2021.

On 23 July 2021, amendments to the Law took effect, providing for the possibility to restrict certain rights of asylum seekers in cases where the state cannot guarantee them due to a state of war, state of emergency declared by the state, also due to an emergency situation or emergency event relating to mass influx of aliens. These amendments have been adopted taking into account that, as

stated in the explanatory memorandum to these amendments, “the recent increase in the number of foreigners who illegally cross the state border with the Republic of Belarus and, having identified them, abuse the asylum procedure shows that increased illegal migration processes have been encouraged by undemocratic regimes, and it is likely that this situation is not a one-off or short-term problem, but may further increase and recur” (language of this and other quotes has not been corrected)¹.

In light of the above, Article 71 (1¹) of the Law establishes that: “having declared a state of war, state of emergency, also an emergency situation or emergency event due to mass influx of aliens, rights of asylum seekers referred to in clause 1 hereof may be restricted temporarily and proportionately, if they cannot be guaranteed for objective and justified reasons, except for the right to material reception conditions, provision of basic medical care and state-guaranteed legal aid, and for vulnerable persons – the right to access reception conditions that meet their special needs [...]”

Pursuant to Article 5(6) of the Law (version which took effect on 23 July 2021), in the event of a state of war, a state of emergency, an emergency situation or emergency event declared due to a mass influx of aliens, asylum seekers having lodged applications for asylum at border checkpoints, transit areas or shortly after the illegal crossing of the state border of the Republic of Lithuania, until a decision is made to admit them to the Republic of Lithuania, temporarily accommodated in border checkpoints, transit areas, the SBGS or other places specially adapted therefor without granting them the right to freely move in the territory of the Republic of Lithuania, while pursuant to Article 5(8) of the Law, the adoption of the decision to admit an asylum seeker temporarily accommodated in places of temporary accommodation listed in clause 6 of this Article to the Republic of Lithuania may be extended for the period of the state of emergency, emergency situation or emergency event declared due to a mass influx of aliens for the period of the event and 28 days after their end, but for no longer than 6 months.

Pursuant to clause 15 of Annex No. 2 “Arranging State-level Emergency Management” of Resolution No. 1503 “On the Approval of the State-Level Emergency Management Plan” of the Government of the Republic of Lithuania of 20 October 2010, the Ministry of the Interior of the Republic of Lithuania was appointed the responsible institution during an emergency situation due to a mass influx of aliens, which is responsible for arranging the liquidation of the state-level emergency and its consequences, while the Ministry of National Defence of the Republic of Lithuania, the Ministry of Social Security and Labour of the Republic of Lithuania, and the Ministry of Health of the Republic of Lithuania, the Ministry of Education, Science and Sports of the Republic of Lithuania, the Ministry of Foreign Affairs of the Republic of Lithuania and directors of municipal administrations were appointed as supporting institutions, which help the responsible institution to liquidate of the state-level emergency and its consequences, and to mobilize the available material and human resources. The said provision also establishes that functions of these entities during the emergency situation due to a mass influx of aliens. The Ministry of the Interior was authorized to arrange the detention and temporary accommodation of foreigner who have crossed the state border illegally and to organize the assurance of public order and traffic safety in the border section and in the territories where aliens are accommodated; Ministry of National Defence – to use military units if necessary; the Ministry of Health – to coordinate the organization of health care for foreigners in order to provide them with emergency medical services and post-natal care, as well as medical-quarantine control; the Ministry of Foreign Affairs – to transfer information received from competent

¹ Online access: <https://www.e-tar.lt/portal/lt/legalAct/c1991f40e0cc11eb9f09e7df20500045>.

authorities to diplomatic missions and consular posts of foreign states whose citizens have been detained after illegally crossing the state border of the Republic of Lithuania, and to coordinate the establishment and maintenance of relations with foreign governments and institutions; the Ministry of Social Security and Labour – to organize the provision of social support to foreigners belonging to vulnerable groups and to mobilize material and human resources required to accommodate foreigners belonging to vulnerable groups, to organize the use of the Lithuanian Red Cross Society and other non-governmental organizations in providing social services to foreigners; also to make proposals to the institutions concerned regarding the use of non-governmental organizations; the Ministry of Education, Science and Sports – to coordinate the education of foreigners according to pre-primary, pre-school, general education or vocational training programmes; directors of municipal administrations – to, inter alia, mobilize all the resources in the respective municipality necessary for the accommodation of foreigners, to organize catering, protection of foreigners and the provision of other necessary assistance related to reception and accommodation.

II. CIRCUMSTANCES DETERMINED DURING INSPECTIONS

3. Ensuring material reception conditions of asylum seekers

3.1. Lithuania has committed to recognize the right of every person to an adequate standard of living for himself/ herself and his/ her family under Article 11 of the International Covenant on Economic, Social and Cultural Rights, including the right to have enough food, clothing and housing, and to the continuous improvement of living conditions, also, under Article 12 of this Covenant – the right of every person to be in the best possible physical and mental health condition.

Article 17(1) of Directive 2013/33/EU of the European Parliament and of the Council of 26 June 2013 laying down standards for the reception of applicants for international protection (hereinafter – Directive 2013/33/EU) establishes that Member States shall ensure that material reception conditions are available to applicants when they make their application for international protection, while clause 1 of Article 17(2) states that Member States shall ensure that material reception conditions provide an adequate standard of living for applicants, which guarantees their subsistence and protects their physical and mental health.

Both Articles 10, 17 and 18 of Directive 2013/33/EU, and standards of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (hereinafter – CPT) ([CPT/Inf (97) 10] p. 30–31) establish that it is essential to ensure that asylum seekers are provided with adequate material conditions that guarantee them a decent standard of living and protect their physical and mental health.

The European Court of Human Rights (hereinafter – EctHR) noted that a healthy living environment is ensured, inter alia, by compliance with hygiene requirements, thus both the neatness of the institution itself and opportunities created for persons to look after their personal hygiene have been assessed. Such as aspect as adequate supply with hygiene products, for example, sufficient toilet paper, toothbrushes, shampoo and / or shower gel, etc., may justify the absence of “degrading” treatment; otherwise there are reasonable concerns that conditions of detention, particularly those of detained foreigners, may exceed the limits allowed under Article 3 of the European Convention on Human Rights (hereinafter – the Convention or the ECHR) (for example, a ruling of 7 April 2005 in the case *Karalevičius v. Lithuania*). The CPT has also noted that the premises of detention of persons, including foreigners, shall be clean ([CPT / Inf (97) 10], p. 29 and [CPT / Inf (2002) 15], p. 47).

The Supreme Administrative Court of Lithuania (hereinafter – the SACL) has formed a practice according to which a lack of hygiene measures for a person whose freedom of movement is restricted by a state decision is incompatible with respect for human dignity. A person must be provided with personal hygiene products, including soap, toothbrush, toothpaste, etc., i. e. he/ she cannot constantly feel dirty and humiliated (for example, the ruling of the SACL of 3 April 2017 in the case No. A -1121-858/2017).

The Description of the Procedure and Conditions for Temporary Accommodation of Asylum Seekers at Border Control Checkpoints and Structural Units of the State Border Guard Service under the Ministry of the Interior of the Republic of Lithuania, approved by Order No. 1V-346 of the Minister of the Interior of the Republic of Lithuania of 6 May 2016 “Regarding the Approval of the Description of the Procedure and Conditions for Temporary Accommodation of Asylum Seekers at Border Control Checkpoints and Structural Units of the State Border Guard Service under the Ministry of the Interior of the Republic of Lithuania” (hereinafter – Description of Temporary Accommodation of Asylum Seekers in Structural Units of the SBGS) lays down the requirements for premises for accommodation of asylum seekers who lodged applications at SBGS border checkpoints or in the territory of the Republic of Lithuania where the border legal regime is in force till a decision is made to admit them to the Republic of Lithuania (hereinafter – asylum seekers), procedure of accommodation of asylum seekers, assurance of reception conditions for asylum seekers, their rights and obligations. Pursuant to clause 4 of this Description, the SBGS controls the installation of premises for the accommodation of asylum seekers at border control checkpoints and structural units of the SBGS as well as their compliance with the set requirements. Clause 2 of the Accommodation Procedure establishes that provisions of the Accommodation Procedure shall not apply to unaccompanied minors and persons accommodated in the SBGS or the Refugee Reception Centre.

The Rules of the Administration of Places of Accommodation of Foreigners, Internal Procedure and Performance Procedural Actions approved by Decision No. 10V-31 of the Minister of the Interior of 14 August 2021 “On the Rules of the Administration of Places of Accommodation of Foreigners, Internal Procedure and Performance Procedural Actions” (hereinafter – the Rules for the Accommodation of Foreigners) regulates the appointment of a person administering places of accommodation, his functions and other matters related to the administration of places of accommodation, the procedure of visits to accommodation places, criteria for accommodation of foreigners, rights and duties of foreigners and their restrictions at accommodation places, and the performance of procedural actions related to registration, survey and provision of foreigners with information in places of accommodation. Clause 2 of the Rules on Accommodation of Foreigners establishes that these rules shall apply at accommodation places of foreigners who are not considered to have entered the territory of the Republic of Lithuania in accordance with the provisions of the Law and who are accommodated without the right of movement in the Republic of Lithuania.

3.2. The following was found during the inspections:

3.2.1. the majority of foreigners at SBGS border guard stations, including minors and other vulnerable persons, were accommodated under temporary accommodation conditions, i. e. with 6 to 12 people living in one tent, and several dozens of foreigners living in hangars set up in the SBGS Druskininkai border guard station and the SBGS Kabeliai border guard station. The rest of the people were allowed to stay in the office premises and garages of the SBGS border guard stations;

3.2.2. most tents (including hangars) leak rainwater which accumulates inside of the tents, so they felt humid. Sleeping mattresses and bed linen was wet on rainy days. The interviewed foreigners

said that they could not sleep under such conditions, and that constant humidity led to many people feeling the symptoms of cold;

3.2.3. In August 2021, there were 19 rainy days in the districts of Lazdijai and Druskininkai, 21 – in the district of Varėna, 18 – in the districts of Dūkštas and Šalčininkai, 17 – in the district of Vilnius, and 15 – in the district of Švenčionys; a dangerous meteorological phenomenon heavy rain² occurred 1 time in August in Lazdijai district, 3 times – in the districts of Druskininkai and Varėna, 6 times – in the district of Šalčininkai, 4 – in the districts of Vilnius and Dūkštas, and 5 times – in the district of Švenčionys. Also, there was 1 case³ of natural meteorological phenomenon⁴ in the district of Dūkštas in August.

3.2.4. The average minimum air temperature in August 2021 in Lithuania was 12.4 degrees, but it should be noted that, say, on August 22–25, the minimum recorded air temperature was a mere 5.5–3.8 degrees above zero in Varėna district, and it was slightly higher (7.8–4.1 degrees above zero) in Lazdijai district during the same period of time⁵;

3.2.5. There are showers and toilets set up in containers (prefabricated houses) in places of temporary accommodation of foreigners in SBGS units, but they are shared by men and women; locks in some toilets were broken; showers were separated by curtains, which does not ensure privacy; the interviewed women said they did not feel safe. Moreover, hygiene requirements were not ensured in these sanitary facilities, there were cracked sink pipes, some shower heads were broken;

3.2.6. The number of toilets and showers installed in places of accommodation of foreigners was disproportionately low compared to the number of people accommodated in these places. People living there said they did not have cleaning supplies, thus they were not able to clean the facilities and to take care of their hygiene themselves. Foreigners and SBGS officials said that there was only enough hot water for 4-5 persons to take a shower with an hour wait for water to warm up for others to shower. It should be noted that bio-toilets set up in certain places of temporary accommodation of foreigners (for example, Druskininkai border guard, the territory of the former Linkmenys school) did not ensure actual needs of foreigners – they were rarely emptied (once per week), dirty and overflowing;

3.2.7. premises of former schools and orphanages, where foreigners were temporarily accommodated, were in poor condition: mold was observed in many places, windows were boarded up, the premises could not be ventilated, there was a lack of toilets, washrooms and showers;

3.2.8. foreigners accommodated in the premises of former schools and orphanages slept on mattresses, folding military beds or bunk beds;

3.2.9. foreigners accommodated in places of temporary accommodation set up in SBGS units slept in tents on military-tourist mats or folding military beds in sleeping bags;

² a dangerous meteorological phenomenon heavy rain is recorded at the rainfall of ≥ 15 and < 50 mm within 12 hours or a shorter period of time (Order No. V-80 of 25 November 2020 of the Director of the Lithuanian Hydrometeorological Service under the Ministry of Environment “On Approval of Indicators of Dangerous Meteorological Phenomena”).

³ Statement No. (B.42-10)-B8-2394 of Meteorological and Aviation Observations Division of the Lithuanian Hydrometeorological Service under the Ministry of Environment of 16 September 2021.

⁴ natural meteorological phenomenon severe rain is recorded at the rainfall of 50–80 mm within 12 hours or a shorter period of time (Order No. D1-870 of the Minister of Environment of the Republic of Lithuania of 11 November 2011 (edition of Order No. D1-344 of the Minister of Environment of the Republic of Lithuania of 9 June 2020) “On the Approval of Indicators of Natural, Catastrophic Meteorological and Hydrological Phenomena”).

⁵ Statement No. (B.42-10)-B8-2394 of Meteorological and Aviation Observations Division of the Lithuanian Hydrometeorological Service under the Ministry of Environment of 16 September 2021.

3.2.10. foreigners accommodated in premises of former schools and orphanages were not provided with hygiene items and cleaners, clothes, thick blankets; there was a shortage of hot water, while tap water was brownish and had a bad smell. There was a shortage of drinking water;

3.2.11. there were no washrooms in the premises of former schools, orphanages or territories of SBGS units where Muslims could wash up, therefore practitioners of Islam wash up in hygiene facilities where water accumulates as there are no drainage systems installed;

3.2.12. there were 10–30 people accommodated in the premises (rooms) of former schools and orphanages, some of them slept in corridors.

67 people were accommodated in a sports hall of the former Linkmenys school, i.e. men, women and minors living in a single space, there was a shortage of air in the hall, people were not able to open windows, there was noise, no privacy ensured, the hall was not cleaned, people slept on mattresses arranged in the hall, and most of the inhabitants did not have warm blankets. Moreover, people had to stay in the sports hall all the time, letting 10 people to go out at a time, for a mere 15 minutes per day;

3.2.13. there were no fire protection rules or an evacuation plan in a place accessible to foreigners and in a language they understand in the premises of former schools and orphanages (except for the premises of the former Kapčiamiestis orphanage), and foreigners were not instructed what to do in case of a verbally. It should be noted that the detention facilities of foreigners were locked at night, raising a question of ensuring the safety of persons in case of fire;

3.2.14. the majority of foreigners had spent an average of forty days at the premises of former schools, orphanages and SBGS units set up for temporary accommodation under detention conditions;

3.2.15. foreigners were provided with hygiene products - shampoo, soap, a dental hygiene kit; women – with sanitary pads at place of temporary accommodation of foreigners set up in SBGS units;

3.2.16. foreigners were not centrally supplied with cloths or footwear depending on weather conditions. Foreigners did not have warm cloths and footwear in the majority of places of accommodation of foreigners; some foreigners wrapped themselves in blankets or sleeping bags;

3.2.17. the accommodation of foreigners, including vulnerable persons, in fenced areas without the right to free movement which was not even ensured within that area where they stayed (for example, in the building of the former Linkmenys school) for over a month is equivalent to detention, but even the minimum requirements which the installation of detention premises is subject to have not been met. It should also be noted that people were kept in fenced areas under these conditions for a month or more without any court ruling.

3.3. It should be stated that the restriction of the liberty of migrants, which lasted for an average of forty days, failing to ensure adequate material reception conditions, hygiene, weather-appropriate clothing, footwear and the right to privacy is equivalent to inhuman or degrading treatment in accordance with the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

4. Ensuring the right to adequate food

4.1. In accordance with Article 11 of the International Covenant on Economic, Social and Cultural Rights, the States Parties recognize the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions, and shall take appropriate steps to ensure the realization of this right.

Article 17(1) of Directive 2013/33/EU states that Member States shall ensure that material reception conditions are available to applicants when they make their application for international protection, while clause 1 of Article 17(2) of the Directive establishes that Member States shall ensure that material reception conditions provide an adequate standard of living for applicants, which guarantees their subsistence and protects their physical and mental health.

When explaining the concept of the right to adequate food in its General Comment No. 12 “Right to adequate food” of 12 May 1999, the Committee on Economic, Social and Cultural Rights emphasized that the right to food must be guaranteed without prejudice to other human rights and can only be considered properly exercised if a person has access to food that is culturally acceptable and healthy (clauses 7 and 8 of the General Comment).

In the case law of the ECtHR, proper exercise of the right to food has been revealed from the aspects of both ensuring the needs of vulnerable persons and in terms of ensuring freedom of religion. The ECtHR has noted that, regardless of the economic situation in the country, the state has a duty to ensure health care of vulnerable persons, adequate living conditions and adequate food⁶. When analysing questions relating to the implementation of religious freedom, the ECtHR recognized that a person’s freedom of religion will not be violated if he or she is able to follow without restriction the dietary habits and rules established by his or her professed faith⁷. The ECtHR also stated that persons deprived of their liberty must be provided with food in accordance with their religious beliefs and maintaining a balance between the interests of all persons held in places of detention⁸.

According to provisions of clause 29 of the Accommodation Procedure, centralized catering shall be arranged for asylum seekers in accommodation premises or temporary housing; food shall be supplied: 3 times per day for adults and 4 times a day – for minors, and shall be of 2 types: traditional or vegetarian.

Sub-clause 5.5 of the Rules of Accommodation of Foreigners establishes that an administering person shall arrange catering for foreigners in a place of their accommodation, while clause 23 of the Rules establishes that among all other things catering shall be ensured in places of accommodation.

Pursuant to clause 7 of the Description of Temporary Accommodation of Asylum Seekers in Structural Units of the SBGS, meals for asylum seekers shall be arranged in accordance with the procedure established by the Commander of the SBGS procedure, and if asylum seekers want to purchase food at their own expense, SBGS officials shall, as far as possible, organize their escort to the nearest grocery store or a public catering establishment.

The Description of the Procedure for Organizing Catering of Persons Held in Structural Units of the State Border Guard Service under the Ministry of the Interior of the Republic of Lithuania (hereinafter – the Description for Organizing Catering), approved by Order No. 4-289 of 27 August 2020 approved by the Commander of the State Border Guard Service under the Ministry of the Interior of the Republic of Lithuania, regulates the arrangement of catering, procurement and distribution of food baskets to asylum seekers having lodged applications in structural units and waiting for a decision on the legal status, aliens in respect of whom a decision was made not to admit them to the Republic of Lithuania detained by SBGS officials, other persons kept in temporary detention premises of structural units of the SBGS for up to 48 hours, also foreigners who came to the Republic of Lithuania with the permission of the Minister of the Interior of the Republic of

⁶ *Nencheva et. al v. Bulgaria*, decision of the ECtHR in the case No. 48609/06 of 18 June 2013.

⁷ *Cha'are Shalom Ve Tsedek v. France*, decision of the ECtHR in the case No. 27417/95 of 27 June 2000.

⁸ *Vartic v. Romania*, decision of the ECtHR in the case No. 14150/08 of 17 December 2013.

Lithuania for special humanitarian reasons, who stay in the structural units of the SBGS during the period of their compulsory self-isolation.

4.2. The inspections revealed that:

4.2.1. migrants were not provided with warm food in almost all border guard stations of the SBGS, except for the Švenčionys border guard station of Vilnius team of the SBGS, where the supply of warm food started on 28 July 2021 (once per day on workdays) and the Padvarionys border guard station of Vilnius team of the SBGS where the supply of warm food started on 24 August 2021 (once per day);

4.2.2. Migrants accommodated in places of temporary accommodation of foreigners set up in the SBGS units (except for the SBGS border guard stations listed in clause 4.2.1 hereof) have been provided with dry rations only (1 can of meat, 1 can of corn, 1 cup of instant soup, a packet of biscuits, 1 bar, 1 packet of bread sticks, a 1.5-liter-bottle of water, a pack of tea and a pack of sugar. Sometimes dry rations were supplemented with products brought by Lithuanian Red Cross, for example, a jar of canned soup). Most of residents said that there was a lack of food and drinking water;

4.2.3. People accommodated in places of temporary accommodation of foreigners set up in the SBGS units were provided with the opportunity to warm up water for tea and to use a microwave oven;

4.2.4. SBGS officials arranged, at their own initiative, mobile stores arriving at border guard stations, or several persons would collect orders and money from other asylum seekers, whom SBGS officials would take to a store for supplementing their meals with food purchased at their own expense. The interviewed asylum seekers said they bought yogurt, cheese or milk for their children;

4.2.5. In all places of temporary accommodation of foreigners set up in SBGS units, migrants and SBGS officials complained about a lack of dairy products for children;

4.2.6. in the premises of former schools and orphanages, food was supplied to people accommodated there three times per day. For breakfast, inhabitants would get, for example, cup of yogurt and a pack of biscuits for breakfast, then a warm meal consisting of, say, spaghetti, fried chicken and some vegetables (peas, carrots) for lunch, and pancakes for dinner. The interviewed foreigners and employees of municipalities said that foreigners were rarely served vegetables and fruits. Residents complained of a lack of drinking water. Inspectors confirmed that tap water had an unpleasant smell and was brownish in some premises;

4.2.7. in premises of former schools and orphanages, minors were not provided with food 4 times a day. The menu offered to the inhabitants was not divided into traditional or vegetarian as per clause 29 of the Accommodation Procedure;

4.2.8. unlike in premises of former schools and orphanages, meals for migrants accommodated in places of temporary accommodation of foreigners set up in SBGS units were arranged in accordance with the Description of Organizing Meals, which establishes that persons detained for up to 48 hours shall be provided with a meal once per day;

4.2.9. there was no procedure for organizing meals to asylum seekers established as provided for in accordance with the Description of Temporary Accommodation of Asylum Seekers in SBGS Structural Units.

4.3. It can be stated that a failure to ensure the right to adequate food at places of temporary accommodation of foreigners set up in SBGS units is equivalent to inhuman or degrading treatment in accordance with the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

5. Ensuring access to personal health care services

5.1. Article 12 of the International Covenant on Economic, Social and Cultural Rights establishes that the States Parties recognize the right of everyone to the enjoyment of the highest attainable standard of physical and mental health. The steps to be taken by the States Parties to the present Covenant to achieve the full realization of this right shall include, inter alia, measures necessary to ensure medical service and medical attention in the event of sickness.

Article 19 of Directive 2013/33/EU establishes that Member States shall ensure that applicants receive the necessary health care which shall include, at least, emergency care and essential treatment of illnesses and of serious mental disorders.

In its General Comment No. 14 “Right to the highest attainable standard of health”, the Committee on Economic, Social and Cultural Rights noted that according to the Covenant on Economic, Social and Cultural Rights, the parties to the Covenant are committed to ensuring equal access to physical and mental health care, including for asylum seekers, illegal migrants and detainees under their jurisdiction (p. 34).

In its 19th General Report, the CPT states that illegal migrants must be guaranteed the right to health care services. Every center where illegal migrants are held must have a person with a nursing qualification at the least, who would provide initial check-up of new-comers, collect their applications for a doctor’s visit, ensure proper and timely use of medicines and complete the necessary medical documents [CPT / Inf (2009) 27], p 81 and 91).

Clause 8 of the Procedure of Temporary Accommodation of Asylum Seekers in SBGS Structural Units establishes that having noticed that health condition of an asylum seeker has become worse or if he/ she complains about a health disorder, the SBGS officials shall call an ambulance. If an asylum seeker needs outpatient treatment, an escort of SBGS officials shall be arranged, ensuring that the asylum seeker does not leave the treatment institution arbitrarily.

According to Decision No 10V-4 of the Minister of the Interior – the State-Level Emergency Operations Manager of 11 July 2021 “Regarding the Provision of Health Care Services to Foreigners” (edition, which entered into force on 4 August 2021), directors of municipal administrations have been instructed to ensure primary and secondary level emergency medical care for foreigners having illegally crossed the state border and care at the onset of labour; timely carriage of patients to a personal health care institution providing tertiary level services, and, if necessary, provision of tertiary level emergency medical care services; public health care; use of human resources of the municipalities listed in the Annex to this Decision to ensure the provision of primary and secondary emergency care and care at the onset of labour; to appoint a responsible personal health care institution providing emergency medical care services to foreigners and to ensure their transportation from the place of their accommodation to this institution for the provision of health care services; to provide treatment and self-isolation sites for people infected with COVID-19 (coronavirus infection) and other communicable diseases. Clause 2 of this Decision instructs the Ministry of Health to organize the provision of tertiary level emergency medical services to foreigners. Clause 4 of this Order instructs the SBGS to call an ambulance to inform the Police Department under the Ministry of the Interior of the Republic of Lithuania about the need to accompany foreigners when transporting them from places of their accommodation to places of medical assistance, and clause 5 instructs the Public Security Service under the Ministry of the Interior of the Republic of Lithuania to call an ambulance in case of a need for medical aid to foreigners at their accommodation places where it ensures physical protection of aliens, and inform the SBGS structural unit in the region thereof,

and clause 6 instructs the Police Department to organize the escort of a foreigner from places of accommodation of foreigners to a health care institution on the need to provide medical care to an alien in a health care institution and to ensure his/ her protection while medical care services are provided. Decision No. 1V-585 of the Minister of the Interior – the State-Level Emergency Operations Manager of 7 July 2021 “On the organization of the assessment of health condition of aliens and laboratory tests for COVID-19 (coronavirus infection) during the state-level emergency declared as a result of mass influx of aliens” obligated the SBGS to engage in primary distribution of foreigners at the place of the situation, till the arrival of the mobile health team, wearing 3rd security level personal protection measures taking into account the results of their temperature measurements and other observed acute signs of upper respiratory tract infections. Foreigners have been divided into two streams, with people who have a fever (of 37.3° C and above), signs of acute upper respiratory tract infections (such as a cough, difficulty in breathing, etc.) going into one stream, and those, who did not develop a fever or other acute signs of upper respiratory tract infections – to another stream; Medical Center of the Ministry of the Interior has been contacted for the assessment and examination of the health condition of foreigners for COVID-19 disease (coronavirus infection) and municipal mobile checkpoints – for urgent health assessment, for rapid tests and, if they test positive, for tests performed using swabs from a person’s nasopharynx and pharynx for laboratory tests for COVID-19 (coronavirus infection), and if foreigners need emergency medical aid, to call an ambulance. This Decision obliges directors of administrations of the municipalities in whose territory foreigners crossing the state border are accommodated to bring together a mobile team for laboratory assessment of the health condition, testing for COVID-19 disease (coronavirus infection) using rapid tests and nasopharyngeal swabs.

The Description of the Procedure for Initial Assessment and Re-assessment of the Health Status of Aliens Having Illegally Crossed the State Border of the Republic of Lithuania approved by Decision No. 10V-24 of the Minister of the Interior – the State Level Emergency Operations Manager of 4 August 2021 establishes the procedure of initial assessment and re-assessment of health condition, which is equivalent to primary level care emergency medical aid services in the face of an emergency situation. According to clause 4 of the Description, a municipal administration shall bring together a team of personal health care specialists from personal health care institutions that are a part of the Lithuanian national health system and / or other personal health care specialists delegated by municipalities (i.e. a team of personal health care professionals consisting of a family doctor or a medical doctor, a general practice nurse (or a community nurse) and, if necessary, a midwife, which will provide an initial and repeated assessment of health condition of foreigners at the place of their accommodation), which will provide services of initial assessment and re-assessment of health condition to foreigners temporarily accommodated in the territory of the municipality. The mobile team shall go to places of temporary accommodation of foreigners for initial and repeated medical examinations once a day from 8 a.m. to 8 p.m., every day. If health condition of foreigners becomes severely worse during non-working hours of the mobile team, officials in charge of the protection of foreigners shall be authorized to call an ambulance. Pursuant to clause 6 of the said Description, the mobile team having arrived at the place of temporary accommodation of foreigners for the first time shall perform an initial health assessment of all patients, and shall perform the initial health assessment of newly arrived patients not later than within 48 hours from their accommodation at the place of their temporary accommodation. After the initial health assessment, the mobile team shall compile a list of patients who will need a re-assessment and of their health condition and shall set a date for the re-assessment.

5.2. The following was found during the inspections:

5.2.1. personal health care services in all visited places of temporary accommodation of aliens were available to aliens only when they needed emergency medical assistance;

5.2.2. According to data of the SBGS, if necessary, emergency medical assistance was also ensured for migrants who were at the border. During the period from 2 August 2021 till 8 September 2021, ambulance was called to illegal migrants 8 times in the area of operation of the Varėna border team of the SBGS, and medical aid was provided to 12 people, 4 of whom were minors. Ambulance was called 5 times to illegal migrants at the state border in the area of operation of the Vilnius border team of the SBGS, and medical aid was provided to 7 people;

5.2.3. to ensure the need for emergency medical aid to foreigner in full, there is a great shortage of personal health care specialists and ambulances; for example, there were only two ambulances providing aid in the territory of Lazdijai district municipality, thus medical staff said that they were not able to urgently respond to all needs for medical care not only of foreigners, but also of residents of Lazdijai district;

5.2.4. when medical assistance must be provided to a person in a personal health care institution, having called an ambulance to the place of temporary accommodation of foreigners, police officers are also invited to accompany foreigners to and from this institution. An ambulance was called to one foreigner accommodated in premises of the former Kapčiamiestis orphanage during the inspection. Medics arrived at the scene in about 15 minutes, but had to wait for an additional 15 minutes for police officers to come. The medics regretted having to hold the ambulance back and that both they and the person in need of emergency medical care, as well as other people in need of emergency care were forced to wait;

5.2.5. personal health care specialists regularly visited some places of temporary accommodation of foreigners only, for example, they visited the Padvarioniai border guard station and the Adutiškis border guard station of the of the Vilnius team of the SBGS, as well as the Border Guard School building once a week. However, in most of the visited places of accommodation of foreigners, medics were invited in case of emergency only and did not visit them regularly;

5.2.6. the visited places of temporary accommodation of foreigners had first aid kits and / or sets of first aid measures assembled according to the list approved by Decision No. 10V-24 of the Minister of the Interior– the State Level Emergency Operations Manager of 4 August 2021 “On the Approval of the Description of the Procedure for Initial Assessment and Re-assessment of the Health Condition of Aliens Having Illegally Crossed the State Border of the Republic of Lithuania. Foreigners were supplied with medicines prescribed by doctors and other medicinal products intended to meet daily needs of foreigners (e.g. to relieve pain or cold symptoms) by municipal administrations, employees of the Lithuanian Red Cross Society or other persons providing assistance to migrants, while elders of the respective eldership took care of this in premises of former schools and orphanages. However, the foreigners interviewed said they lacked medication. Several interviewed foreigners complained that they and their children experienced constant abdominal pain due to poor dry rations, but they received medication a few times only. One foreigner told that her minor child with cerebral palsy was prescribed a very low dose of medication for diagnosed indications, and it was not enough to alleviate the child’s ailments;

5.2.7. 12 aliens who had contact with persons infected with COVID-19 disease (coronavirus infection) were kept in the premises for detention of aliens located in A. Barauskas border guard station of the Varėna team of the SBGS; during the inspections, there were no other separate premises intended and set up specifically for self-isolation of such persons;

5.2.8. In the territory of the Druskininkai border guard station of the Varėna team of the SBGS, foreigners infected with COVID-19 disease (coronavirus infection) or those who had contact with infected persons were instructed by SBGS officials to gather at the bench near the entrance to the administrative building of the SBGS. According to SBGS employees, this is when the issue of where to isolate these persons was being solved, but until the issue was resolved, these people were taken to the premises of the support station located in the forest for the night;

5.2.9. SBGS officials informed that all foreigners were tested for COVID-19 (coronavirus infection) with rapid tests. If tested positive, nasopharyngeal swabs for laboratory tests for COVID-19 disease (coronavirus infection) are arranged. If tested negative, SBGS officials accept asylum applications and take the initial steps of the asylum procedure.

Still it was found during the inspections foreigners were not tested consistently for COVID-19 (coronavirus infection). Most foreigners were tested as soon as they arrived, however, persons not yet tested were also accommodated in tents together with tested people. For example, foreigners accommodated in the areas of the Druskininkai border guard station and Švendurbė river border checkpoint of the Druskininkai border guard station of the SBGS informed that most of them were tested and their test results were negative, however, a group of untested persons were accommodated in the same tent with them for several days. The inspection in the Pūškos border guard station of Vilnius border team of the SBGS revealed that rapid tests only were performed on newly arriving foreigners, and, if tested positive with COVID-19 infection (coronavirus infection), they were re-tested by nasopharyngeal tests;

5.2.10. vaccination of foreigners against COVID-19 disease (coronavirus infection) has been arranged in the accommodation places of foreigners, and foreigners who do not object to vaccination get jabbed;

5.2.11. there were persons in the accommodation places of foreigners, who complained of various health ailments (swollen legs, back pain, toothache, cold, etc.) which, according to these persons, have lasted long and the painkillers were no longer enough for these ailments to pass. These foreigners asked to be examined by a doctor, but, according to SBGS officials, due to a shortage of personal health care specialists and pursuant to respective decisions of the Minister of the Interior – the State Level Emergency Operations Manager, solely people in need of urgent medical aid are examined;

5.2.12. Foreigners accommodated in the Pūškos border guard station of Vilnius border team of the SBGS said they could not complain about the lack of medical services, however, there was a foreigner with diabetes at the border guard station, who waited for a visit to the doctor for almost two months (her first visit is scheduled for 16 September 2021). SBGS officials noted that if a person did not ask for a doctor's consultation himself/ herself, doctor's arrival was not arranged for such a person. It should be noted that the said foreigner could communicate in her native language only. This example illustrates that the initial assessment of the health condition of foreigners with the involvement of an interpreter (if necessary) was not smooth and timely;

5.2.13. foreigners are only provided with first medical aid free of charge, while foreigners are asked to pay for other personal health care services and medicines not prescribed by a doctor and non-reimbursable medicines themselves. The foreigners interviewed said that they did not have enough money for that. Moreover, they did not have access to their bank accounts, so they were also unable to get and use money transfers either;

5.2.14. there were foreigners with severe disabilities and those who required constant care of personal health care specialists in places of accommodation of foreigners. For example, there was a

child with cerebral palsy accommodated in the territory of the Švendurbė river border checkpoint of the Druskininkai border guard station of the SBGS. Also, there was a foreigner with epilepsy at the Švenčionys border guard station of Vilnius border guard of the SBGS. Ambulance was called for him/her a few times, however, he was never taken to a health care institution for treatment and/ or tests;

5.2.15. officials of the SBGS or the Public Security Service decide on the need to call an ambulance at the places of accommodation of foreigners, but they did not always respond to requests of aliens to call an ambulance. According to officials, they did not always know whether foreigners really need help, because if it turns out that emergency medical care was not needed, the arriving medics would blame them therefor.

5.3. Therefore it can be stated that the implementation of the right of aliens to the highest available standard of health care is not adequately ensured at the places of accommodation of foreigners, which is equivalent to inhuman or degrading treatment prohibited under the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

6. Assessing vulnerability of persons and special needs and the provision of adequate accommodation conditions for vulnerable persons

6.1. Directive 2013/33/EU notes that reception of persons with special reception needs should be a primary concern for national authorities in order to ensure that such reception is specifically designed to meet their special reception needs (clause 14 of the preamble). Article 18(3) of the Directive 2013/33/EU establishes that Member States shall take into consideration gender and age-specific concerns and the situation of vulnerable persons in relation to applicants within the premises and accommodation centres during the examination of an application for international protection made at the border or in transit zones.

According Article 19 of Directive 2013/33/EU, Member States shall provide necessary medical or other assistance to applicants who have special reception needs, including appropriate mental health care where needed.

Article 21 of Directive 2013/33/EU obligates Member States to take into account the specific situation of vulnerable persons, while Article 22(1) of Directive 2013/33/EU establishes that in order to effectively implement Article 21, Member States shall assess whether the applicant is an applicant with special reception needs. That assessment shall be initiated within a reasonable period of time after an application for international protection is made and may be integrated into existing national procedures. Member States shall ensure that the support provided to applicants with special reception needs in accordance with this Directive takes into account their special reception needs throughout the duration of the asylum procedure and shall provide for appropriate monitoring of their situation.

Pursuant to Article 23(1) of Directive 2013/33/EU, the best interests of the child shall be a primary consideration for Member States when implementing the provisions of this Directive that involve minors. Member States shall ensure a standard of living adequate for the minor's physical, mental, spiritual, moral and social development. Moreover, according to clause b of Article 23(2), in assessing the best interests of the child, Member States shall in particular take due account of the minor's well-being and social development, taking into particular consideration the minor's background, while Article 23(3) establishes that Member States shall ensure that minors have access to leisure activities, including play and recreational activities appropriate to their age within the premises and accommodation centres.

Article 25 of Directive 2013/33/EU establishes that Member States shall ensure that persons who have been subjected to torture, rape or other serious acts of violence receive the necessary

treatment for the damage caused by such acts, in particular access to appropriate medical and psychological treatment or care. Those working with victims of torture, rape or other serious acts of violence shall have had and shall continue to receive appropriate training concerning their needs, and shall be bound by the confidentiality rules provided for in national law, in relation to any information they obtain in the course of their work. Also, Article 23(4) of Directive 2013/33/EU establishes that Member States shall ensure access to rehabilitation services for minors who have been victims of any form of abuse, neglect, exploitation, torture or cruel, inhuman and degrading treatment, or who have suffered from armed conflicts, and ensure that appropriate mental health care is developed and qualified counselling is provided when needed.

In accordance with Article 27 (1) of the United Nations Convention on the Rights of the Child, Lithuania has committed to recognize the right of every child to a standard of living adequate for the child's physical, mental, spiritual, moral and social development.

The United Nations High Commissioner for Refugees (UNHCR) has noted that asylum seekers, especially children, may have suffered physical health problems and / or emotional or mental disorders as a result of trauma related to fleeing their countries of origin, and they may need urgent help of specialists therefor. However, in most cases, asylum seekers are only provided with emergency medical care, if it is available. However, asylum seekers should have access to medical and psychological assistance if they need it as soon as they arrive in the country of asylum and throughout the asylum procedure ([4 September 2001, EC / GC / 01/17], p. 14).

The ECtHR has stated⁹ that in order to implement Article 3 of the ECHR, States must take appropriate steps to care for and protect the most vulnerable persons, including children, victims of torture, violence or trafficking in human beings, persons with health problems and other vulnerable persons. This includes the obligation to take active steps to identify vulnerabilities as early as possible through effective vulnerability assessment procedures.

The ECtHR noted¹⁰ that the best interests of the child must always be a primary consideration and that States must therefore ensure special protection and care for children, including adequate measures to prevent ill-treatment. Children should not be kept in places unsuitable for them, and accommodation conditions of children should not create a situation of stress and anxiety for them with particularly traumatic consequences. This means that reception conditions of migrants should be adequate and appropriate for children's age.

The ECtHR has emphasized a number of times¹¹ that the authorities should be particularly careful when accommodating (detaining) asylum seekers in order to avoid situations comparable to those which forced them to flee their countries of origin. The ECtHR indicated that the vulnerability of individuals due to their belonging to the LGBT community must be taken into account in order to ensure their safety and not be held in common areas with other foreigners from countries with widespread cultural or religious prejudices against such persons.

⁹ Decision of ECtHR of 5 April 2011 in the case *Rahimi v. Greece*, petition No. 8687/08; Decision of ECtHR of 4 April 2017 in the case *Thimothawes v. Belgium*, petition No. 39061/11; Decision of ECtHR of 3 May 2016 in the case *Abdi Mahamud v. Malta*, petition No. 56796/13.

¹⁰ Decision of ECtHR of 5 April 2011 in the case *Rahimi v. Greece*, petition No. 8687/08; Decision of ECtHR of 28 February 2019 in the case *Khan v. France*, petition No. 12267/16; Decision of ECtHR of 12 October 2006 in the case *Mubilanzila Mayeka and Kaniki Mitunga v. Belgium*, petition No. 13178/03; Decision of ECtHR of 19 January 2012 in the case *Popov v. France*, petition No. 39472/07 and 39474/07; Decision of Grand Chamber of the ECtHR of 4 November 2014 in the case *Tarakhel v. Switzerland*, petition No. 29217/12.

¹¹ Decision of ECtHR of 5 July 2016 in the case *O. M. v. Hungary*, petition No. 9912/15; Decision of ECtHR of 20 May 2010 in the case *Alajos Kiss v. Hungary*, petition No. 38832/06.

Issues relating to gender identity, sexual orientation and belonging to the LGBT community have been included in the guidelines developed by the European Asylum Support Office (EASO) for assessing the vulnerability of asylum seekers and their special needs¹².

Sub-clause 12.2.8 of the Lithuanian Migration Policy Guidelines approved by Resolution No. 79 of the Government of the Republic of Lithuania of 22 January 2014 “On the Approval of the Lithuanian Migration Policy Guidelines” stipulates that when it comes to immigration, special attention must be paid to aliens with special rights or aliens who, due to the situation in which they ended up, need more favourable conditions or protection (for example, asylum seekers, vulnerable aliens, etc.). According to sub-clause 12.3.2 of the Lithuanian Migration Policy Guidelines, ensuring that the reception and accommodation conditions of asylum seekers comply with legal requirements is necessary using the financial opportunities provided by the European Union funds, the state budget of the Republic of Lithuania and other sources of funding. Increasing the flexibility of the reception and accommodation mechanism for asylum seekers and its ability to adapt to changing flows of asylum seekers would also be appropriate, with a particular focus on accommodation conditions of people with special needs.

Article 2(18²) of the Law on the Legal Status of Aliens of the Republic of Lithuania (hereinafter – the Law) defines the term “vulnerable person” as a person with special needs, such as a minor, a person with a disability, a person over the age of 75, a pregnant woman, a single parent raising a minor, a person with a mental or behavioural disorder, a victim of trafficking or a person who has been tortured, raped or suffered from other psychological, physical or sexual violence.

Clause 9 of Article 71(1) of the Law establishes that if an asylum seeker is classified as a member of a group of vulnerable persons, he/ she shall have the right to use reception conditions that meet his/ her special needs.

Article 71(2) of the Law establishes that minor asylum seekers shall have the right to study according to a general education or vocational training programme/programmes in accordance with the procedure laid down by the Minister of Education and Science. The right to study according to a general education or vocational training programme/programmes shall be ensured without any undue delay and no later than within 3 months from the date of the application for asylum. An asylum seeker who started his or her studies as a minor has the right to complete the general education or vocational training programme/programmes even if he or she has reached the age of majority while studying.

The Seimas Ombudsman noted that although being with their family members, children of asylum seekers live through extremely stressful events: they have to flee from their home country to another country which they do not know, where they hope to receive asylum; they seek to set up in the new country together with their family without knowing the language, culture or, rules, etc. of the host country. Proper and quality development of a child’s emotions, cognitive abilities and development requires stability, which is lost in such situations.

Clause 22 of the Description of the Procedure for Granting and Revoking Asylum in the Republic of Lithuania approved by Order No. 1V-131 of the Minister of the Interior of the Republic of Lithuania of 24 February 2016 “Regarding the Approval of the Description of the Procedure for Granting and Revoking Asylum in the Republic of Lithuania” establishes, inter alia, that an application for asylum shall be deemed to have been lodged when the alien submits it to the state institution or body referred to in clause 1 of Article 67 of the Law, in compliance with the requirements set out in clause 2 of the same Article. Having crossed the state

¹² Online access: <https://ipsn.easo.europa.eu/easo-tool-identification-persons-special-needs>.

border of the Republic of Lithuania illegally, asylum applications shall be submitted immediately. According to sub-clause 25.5.3 of the Description, when completing an application for asylum in the prescribed form, a civil servant authorized by the institution receiving asylum applications shall conduct an initial interrogation of asylum seekers and enter their data in their asylum applications of the prescribed form. The purpose of the initial interrogation is to collect data about asylum seekers and the accompanying family members of the asylum seekers, and other data referred to in the said sub-clause; moreover, the initial interrogation shall also include an initial assessment of the vulnerability of asylum seekers.

6.2. The inspections found that

6.2.1. according to SBGS officials, they perform an initial assessment of a person's vulnerability by visually inspecting the person and interrogating him/ her. No other vulnerability assessment is performed. The interviewed officials said that they identified families, minors, pregnant women and people with disabilities as vulnerable persons. Vulnerability for possibly suffered violence or belonging to sexual minorities has not been assessed. Also, a person's vulnerability due to his or her belonging to some ethnic group has not always been assessed. For example, a group of 8 Yazidis from the Xinjar region of Iraq was housed accommodated with other foreigners at the Adutiškis border guard station of the SBGS Vilnius team, but SBGS officials were unaware of this. The exact numbers of pregnant women living in places of accommodation of foreigners were unknown;

6.2.2. The Description of the Procedure for Identification of Foreigners with Special Needs, their Accommodation and Assistance Offered to them at the Foreigners' Registration Center of the State Border Guard Service under the Ministry of the Interior of the Republic of Lithuania approved by Order No. 4-597 of the Commander of the SBGS of 23 December 2016 lays down the procedure of the classification, identification, accommodation of and assistance to vulnerable people and work with such people, which is followed by the Foreigners' Registration Center of the State Border Guard Service. The following groups of vulnerable persons have been identified in this description: minors, persons with disabilities or severe illness, persons with mental illness, pregnant women, single parents with children, the elderly, people who may have been subjected to torture, rape or other forms of severe psychological, physical or sexual violence, victims of trafficking and other vulnerable people with special needs.

It should be noted that no similar procedure has been provided regarding the assessment of vulnerability of persons, accommodation of vulnerable persons and provision of assistance to them also applied in other units of the SBGS, where foreigners are temporarily accommodated, and in other premises designated for this purpose by municipal administrations;

6.2.3. The SBGS informed that since 16 August 2021, families with young children have been moved from the SBGS border guard stations to the camp of container houses set up at the SBGS Border Guard School. The process of transfer of vulnerable asylum seekers to the Refugee Reception Center has been under constant coordination, moving them to the centre as soon as information on newly opened up vacancies is obtained. Since 16 September 2021, the transfer of vulnerable persons from other accommodation places to the container house camp set up at the Refugee Reception Center has been planned;

6.2.4. at the time of the inspection, there were aliens classified as vulnerable persons in places of accommodation of foreigners who had lived in conditions that did not meet their special needs for 30 days or more. Minors, pregnant women, the elderly, people with chronic illnesses or long-term health problems, including asthma, diabetes, epilepsy, also minors with Down syndrome, cerebral

palsy, a minor diagnosed with schizophrenia, persons with obvious physical disabilities (e.g., a person without an arm) were set up in tents and garages that have not been adapted to special needs, but they did not receive any additional attention (services, facilities, special meals, special accommodation conditions) taking their special individual needs into account. For example, as per sub-clause 5.2.12 of this report, a foreigner with diabetes, who was accommodated at Pūškos border guard station of the SBGS Vilnius border team, was not examined by a doctor for almost two months. When asked whether she was served special meals, the SBGS official informed that all foreigners received the same dry rations, but she could purchase products suitable for diet in a mobile store;

6.2.5. The interviewed foreigners told that the special needs of vulnerable people were not met: children were not provided with special food or milk every day, there was a significant shortage of clothes and shoes suitable for wearing in cold and humid weather, not all pregnant women received medical check-ups, additional, and they did not receive any additional special meals, but some women said they received a pack of vitamins; people with health problems or disabilities were provided with first medical care only;

6.2.6. Foreigners belonging to the LGBTQ + community were accommodated at Pūškos border guard station of the Vilnius border team of the SBGS and at the Padvarionys border guard of the SBGS, and possibly at the Druskininkai border guard station of the Varėna team of the SBGS. These persons were accommodated in common areas, i.e. together with other foreigners, who are hostile to members of the LGBTQ + community because of their religious beliefs or other views. In some places visited during the inspections, officials did not know if there were foreigners who belong to the LGBTQ + community living in them and that they were classified as vulnerable. When foreigners arrive at the place of their temporary accommodation, they are not asked about their sexual orientation or gender identity during their initial assessment (interview), so the vulnerability of foreigners due to their belonging to sexual minorities and the resulting violence is not assessed, and, respectively, special needs of persons that belong to LGBTQ + community are not identified immediately.

There were two foreigners belonging to the LGBTQ + community living at Pūškos border guard station of the Vilnius border team of the SBGS on 15 September 2021. Officials were aware of this circumstance, and these foreigners were allowed to temporarily stay in a separate tent, but the tent stood in the common area of the tent city, with another 30 people living in it (28 of them were men, and 5 of them were in temporary self-isolation). After the inspection, on 24 September 2021, these people were transferred to a room in an outbuilding (a garage) along with several other foreigners. These foreigners belonging to the LGBTQ + community can only communicate in their mother tongues, so they cannot communicate their experiences and special needs to officials or other support providers discreetly and without the assistance of an interpreter. It should be noted that by his letter No. 14VR-3057 “Regarding the Provision of Information” of 21 September 2021, the Commander of the SBGS Vilnius Border Team informed the Seimas Ombudsman that there are no vulnerable persons in the Pūškos border guard station of the SBGS Vilnius Border Team. This example revealed that SBGS officials do not conduct a comprehensive assessment of the vulnerability and special needs of foreigners, do not classify members of the LGBTQ + community as vulnerable, and are unaware of their special needs;

6.2.7. places of temporary accommodation of foreigners do not assess whether the person is a victim of trafficking in human beings, whether he or she has been tortured, raped or otherwise subjected to severe psychological, physical or sexual violence, which may lead to him/ her having special needs. The procedures or methodologies to be followed by officials in assessing a person’s

vulnerability in this regard in order to identify the person who has experienced violence and to provide him/ her with the necessary assistance are not clear either;

6.2.8. foreigners were not provided with psychological assistance at places of their temporary accommodation of foreigners;

6.2.9. education of minors and meaningful leisure time were not arranged in any of the detention facilities of foreigners visited during the inspections. Foreigners said they lived in the camps for more than a month but had no information on when their children will start receiving education. One of the interviewed foreigners said that he offered to SBGS officials to teach foreigners living in the camp English, but he was not provided with a board, paper or pens for that. SBGS officials informed that organizing education of minors at the visited places of accommodation of foreigners was not planned, because the plan was to relocated families with children in the nearest future.

6.3. It should be noted that the procedures for assessing the vulnerability of aliens and identifying special needs in places of their temporary are not clear and uniform, the special needs, rights and legitimate interests of all vulnerable persons are not ensured, therefore aliens in places of temporary accommodation live under conditions of inhuman or degrading treatment prohibited under the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

7. On the availability of information on rights, duties and examination of asylum applications

7.1. Directive 2013/33/EU notes that in order to ensure compliance with the procedural guarantees consisting in the opportunity to contact organisations or groups of persons that provide legal assistance, information should be provided on such organisations and groups of persons (clause 21 of the preamble). Article 5 of Directive 2013/33/EU provides for the duty of Member States to provide applicants for international protection with information on organisations or groups of persons that provide specific legal assistance and organisations that might be able to help or inform them concerning the available reception conditions, including health care in a language that the applicant understands.

Directive 2013/32/EU of the European Parliament and of the Council of 26 June 2013 on common procedures for granting and withdrawing international protection (hereinafter – Directive 2013/32/EU notes that in the interests of a correct recognition of those persons in need of protection as refugees or as persons eligible for subsidiary protection, every applicant should have an effective access to procedures, the opportunity to cooperate and properly communicate with the competent authorities so as to present the relevant facts of his or her case and sufficient procedural guarantees to pursue his or her case throughout all stages of the procedure. Moreover, the procedure in which an application for international protection is examined should normally provide an applicant at least with: the right to stay pending a decision by the determining authority; access to the services of an interpreter for submitting his or her case if interviewed by the authorities; the opportunity to communicate with a representative of the United Nations High Commissioner for Refugees (UNHCR) and with organisations providing advice or counselling to applicants for international protection; the right to appropriate notification of a decision and of the reasons for that decision in fact and in law; the opportunity to consult a legal adviser or other counsellor; the right to be informed of his or her legal position at decisive moments in the course of the procedure, in a language which he or she understands or is reasonably supposed to understand; and, in the case of a negative decision, the right to an effective remedy before a court or a tribunal (clause 25 of the preamble);

The United Nations High Commissioner for Refugees has noted that regardless of whether or not the asylum seekers submit their applications as soon as they arrive or after they arrive, they often face difficulties at an early stage in the asylum process. In addition to proper consultation on the practical procedure of their reception, the asylum procedure and other useful information, asylum seekers may lack basic information on the asylum procedure and this may prevent them from submitting their asylum application formally or in a comprehensible manner ([EC / GC 4 September 2001]). / 01/17], p. 11).

The CPT has stated in his 19th General Report that detained illegal migrants must be guaranteed the right to a lawyer and the opportunity to inform their relatives or third parties of their detention. When doctors or nurses are unable to properly diagnose and assess a person's health condition due to a language barrier, they must have immediate access to a qualified interpreter ([CPT / Inf (2009) 27], pages 81 and 92). Given that the language barrier inevitably creates difficulties in communicating in places where detained immigrants are accommodated, the CPT places particular emphasis on the selection and appropriate training of staff to carry out supervision in such places, and at least some of the employees should have the necessary foreign language skills ([CPT / Inf (97) 10], p. 29)).

Pursuant to Article 71(1¹) of the Law, the right to state-guaranteed legal aid may not be restricted even having declared a state of war, a state of emergency, emergency situation or emergency event due to a mass influx of aliens. However, according to amendments to the Law that entered into force on 23 July 2021, other rights of asylum seekers listed in clause 1 of this Article, including the right to access translation services and information, may be restricted under the above circumstances, but only if they cannot be guaranteed for objective and justified reasons, and these restrictions must be applied temporarily and proportionately.

Description of the Procedure for Granting and Revoking Asylum in the Republic of Lithuania, approved by the Minister of the Interior of the Republic of Lithuania in 2016 February 24 by order no. 1V-131 "On Approval of the Description of the Procedure for Granting and Revoking Asylum in the Republic of Lithuania",

Clause 6 of the Description of the Procedure for Granting and Revoking Asylum in the Republic of Lithuania approved by Order No. 1V-131 of the Minister of the Interior of the Republic of Lithuania of 24 February 2016 "Regarding the Approval of the Description of the Procedure for Granting and Revoking Asylum in the Republic of Lithuania" establishes, inter alia, that asylum seekers shall be interviewed in the asylum seeker's mother tongue or in a language that the asylum seeker best understands and can clearly communicate in. If necessary, an interpreter shall be present at the interview. An authorized representative providing state-guaranteed legal aid to an asylum seeker shall be invited to the interview if the asylum seeker so requests, except for unaccompanied minor asylum seekers. Unaccompanied minor asylum seekers shall be interviewed in participation of an authorized legal aid representative and a representative referred to in Article 2 (2¹) of the Law, who shall have the opportunity to inform the unaccompanied minor asylum seeker of the significance and possible outcomes of the interview before the interview, and, if necessary to help him/ her to get ready for the interview, and to ask the unaccompanied minor asylum seeker questions and / or to comment on his / her answers under the conditions established by the civil servant. The Migration Department under the Ministry of the Interior of the Republic of Lithuania (hereinafter – the Migration Department) shall ensure the participation of an interpreter and / or an authorized representative providing state-guaranteed legal aid at the interview. Asylum seekers

may invite to an interview persons who provide them with legal assistance that is not guaranteed by the state at their own initiative and own expense.

Clause 35 of the Rules of Accommodation of Foreigners provides for the translation of the provisions of Section IV of these Rules “Rights and Duties of Foreigners” into English, Russian and, if possible and necessary, into other languages understood by foreigners, printed and hung in places clearly visible to foreigners, and if possible and necessary, provisions of Section IV of these Rules may also be made available in other ways suitable for foreigners.

7.2. The following was found during the inspections:

7.2.1. The Deputy Commander of the SBGS informed that: “In case of an emergency situation, asylum seekers having crossed the state border illegally shall be provided with material reception conditions (food, hygiene items, a sleeping place, clothes, etc.), provision of emergency medical aid and state-guaranteed legal aid, also their other rights laid down in Decision No. 1V-31 [...] of 14 August 2021”. It should be noted that clause 24 of the Rules of Accommodation of Foreigners states that foreigners shall have the following rights at the places of accommodation of foreigners: to use material reception conditions in accommodation places; to receive information about their legal status in the Republic of Lithuania; to receive the necessary medical aid; to use state-guaranteed legal aid in accordance with the procedure established by the Minister of the Interior of the Republic of Lithuania; and vulnerable persons shall have the right to receive reception conditions that meet their special needs;

7.2.2. still, one of the main problems identified by foreigners at all the places of their accommodation visited during the inspections was the fact that they were not provided with any information about their legal status in the Republic of Lithuania. The foreigners interviewed stated that they were not acquainted with the asylum procedure and access to free legal services, lack information about the rights and duties of foreigners at places of their temporary accommodation, the expected duration of their stay at these places and the procedures that they are subject to, also about organizations offering assistance and information for asylum seekers in Lithuania.

The inspections confirmed that information on the asylum procedure and access to free legal services for foreigners was not available. On the days of the inspections, information on the rights and duties of foreigners was not available in places that were clearly visible and easily accessible to foreigners in the territory of their accommodation, nor was this information available in any other format (e.g. by distributing leaflets). SBGS officials working at the places of temporary accommodation of foreigners explained that foreigners were provided with limited information on asylum only, and that some of them acknowledged that the information was not provided altogether due to the lack of human resources, and fears that when having more information about their rights, foreigners may cause unrest.

Some of the interviewed foreigners informed that the only information which they were provided with in places of their accommodation was a periodic verbal reminder about the possibility to return to their country of origin and leaflets stating that not a single migrant having illegally crossed the border of the Republic of Lithuania was granted asylum in Lithuania in 2021;

7.2.3. Officials of the Pūškos border guard station of the Vilnius border team of the SBGS informed that provisions of the Rules of Accommodation of Foreigners providing for the rights and duties of foreigners have been translated into the English, Russian, Arabic, French, Tamil, Punjabi, Badini and Lingala language, but the interviewed foreigners assured that they were not provided with the text of the rules. When asked about this, the SBGS informed that the plan was to print the text and to distribute it to foreigners, but it has not yet been translated into a language understood by

foreigners accommodated at the border station. It should be noted that during the inspection, there were people from Iraq, whose official languages are Arabic and Kurdish, and Afghanistan, where the official languages are Dari and Pashto, staying at the Pūškos border guard station of the Vilnius border team of the SBGS. Two of the 32 people accommodated at the border station spoke English, but were not provided with information about the rights and duties of foreigners either. Officials could not answer when the said information would be translated into languages which persons accommodated at the border station understand, the officials could not answer. It should be noted that some foreigners, including English-speakers, lived in this border guard stations for almost two months;

7.2.4. according to the elder who worked in the premises of the former Vydeniai primary school, foreigners accommodated in these premises were informed about their rights and duties in writing, but, according to the foreigners themselves, the only document which they were provided with during their entire stay at the place, i. e. of more than 35 days, was the asylum application form, which did not contain any information other than the addressee (Migration Department), the heading “*Application for refuge*” and the marks for completing the document. All the interviewed foreigners said that they did not know their legal status in the Republic of Lithuania, they did not have any information on who to turn to for free assistance, about the procedures they will have to undergo, the time which they would have to spend at the place of their temporary accommodation, and that their only source of information was conversations with the elder, who also did not know some of the information relevant for them;

7.2.5. the majority of the foreigners interviewed complained that their mobile phones were confiscated and that they did not have access to any phones at the place of their detention, thus they could not contact organizations that could provide help and information to them, or their family members to inform them about the place of their stay and their status. For example, foreigners accommodated at the Padvarionys border guard station of the Vilnius team of the SBGS on 16 July 2021 could not contact their relatives until 25-26 of August of 2021 when they recovered their mobile phones, i. e. for more than 5 weeks.

According to officials, some of personal belongings of foreigners, including their mobile phones, were taken from them to find out the circumstances relating to illegal border crossing. SBGS officials explained that mobile phones, as well as other personal items relevant to the investigation and prosecution of a criminal offense, were seized and inspected in order to determine the situation of the incident and other circumstances relevant to the case due to illegal crossing of the state border. Having determined that they may be evidence in a pre-trial investigation of the commission of a criminal offense, they are considered to be objects relevant to the investigation and prosecution of the criminal offense. SBGS officials also explained that mobile phones were also taken from foreigners for the purpose of protecting official information related to the protection of the state border and arrangement of the protection. Having moved foreigners from structural units of the SBGS to other accommodation places, mobile phones were returned, unless they had to be included in pre-trial investigation material.

However, the foreigners assured that they were not informed about the grounds for taking their phones from them and the date when they would be returned to them. During the visit, some asylum seekers had already recovered their mobile phones and contacted their family members; also, one of the visited places of accommodation of foreigners provided them with the opportunity to purchase new mobile phones at their own expense from employees of the Lithuanian Red Cross Society;

7.2.6. Mobile phones were also taken from foreigners accommodated at the Pūškos border guard station of the Vilnius border team of the SBGS, however, they were provided with one phone, which they could use to call their relatives or lawyers with the permission of SGBS officials. Foreigners interviewed at this border guard station confirmed that they were able to use this phone to call their family members, and that representatives of the Lithuanian Red Cross Society had also provided them with an opportunity to use a phone. During the visit, at the request of employees of the Human Rights Bureau of the Office, the SBGS officials provided an opportunity for a foreigner having newly arrived at the border guard station to use the common phone on the following day after his/ her arrival. The foreigner knew the telephone number of his lawyer by heart and was able to contact him;

7.2.7. the fact of seizure of personal belongings of foreigners, including mobile phones, is recorded in the Protocol of Personal Inspection and Inspection of Belongings, the form of which states, inter alia, that personal inspection and inspection of belongings shall be carried out in accordance with Article 598 of the Code of Administrative Offenses of the Republic of Lithuania. Clause 1 of the Article establishes that the officer conducting the investigation of the offense shall have the right to inspect the body of the person being subjected under administrative liability, the victim or another person, and, if necessary, to determine whether there are any traces of the offense or special signs on his/ her body, and to inspect his/ her belongings. It should be noted that the basis for seizure of the belongings seized during the personal inspection and inspection of belongings listed in the said protocol is not specified. When asked to indicate the legal grounds for the seizure of mobile phones of foreigners (specific provisions of legal acts which were followed), SBGS officials could not indicate them;

7.2.8. SBGS officials reported that the Migration Department ensures the state-guaranteed legal aid for asylum seekers. On 10 June 2020, SBGS signed a cooperation agreement with the Lithuanian Red Cross Society, in accordance with which lawyers of the Lithuanian Red Cross provide foreigners with legal information and consultations at the structural units of the SBGS. However, the interviewed foreigners said that representatives of the Lithuanian Red Cross Society show up very rarely. Some foreigners said that the Lithuanian Red Cross Society is not able to provide information to all foreigners because they often do not have time to visit all places of temporary accommodation of foreigners. Foreigners also said that only an officer conducting interviews and an interpreter were present at their interrogations, and that legal aid was not ensured, because there was no attending lawyer (except for the interrogation of unaccompanied minors). Foreigners said they were unaware of the fact that they had to express a wish for the lawyer to participate in their interviews, because no one informed them thereof. Moreover, foreigners whose asylum applications were rejected, said they did not know the procedure in accordance with which they could appeal such decisions.

It should be noted that citizens of Belarus received legal advice and aid from the organization called *Dapamoga*;

7.2.9. translation services were not available in places of temporary accommodation of foreigners (except for the participation of translators in the interrogations of foreigners), which makes it difficult for foreigners to communicate with officers, doctors and other persons assisting foreigners, directly express their daily needs, and to receive and understand information on their status in the Republic of Lithuania.

7.3. It should be noted that the right of asylum seekers to information about their rights and duties, and the consequences of a default thereon during the examination of asylum applications, also to information related to the examination of asylum applications, has not been adequately ensured,

which equates to inhuman or degrading treatment or punishment prohibited under the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

8. Ensuring the right of persons to lodge asylum applications

8.1. Clauses 2 and 3 of Article 2 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment establishes that no exceptional circumstances whatsoever, whether a state of war or a threat of war, internal political instability or any other public emergency, may be invoked as a justification of torture, and an order from a superior officer or a public authority may not be invoked as a justification of torture. Lithuania has committed according to Article 3 of the Convention not to expel, return or extradite a person to another State where there are substantial grounds for believing that he would be in danger of being subjected to torture. In order to determine whether such reasons exist, competent authorities shall take into account all relevant considerations, including, where appropriate, the continuing nature of serious, manifest or massive violations of human rights in that State.

Article 14 of the Universal Declaration of Human Rights declares the inherent right of every human being to seek and to enjoy asylum from persecution in other countries.

Directive 2013/32/EU states that with a view to ensuring effective access to the examination procedure, officials who first come into contact with persons seeking international protection, in particular officials carrying out the surveillance of land or maritime borders or conducting border checks, should receive relevant information and necessary training on how to recognise and deal with applications for international protection, inter alia, taking due account of relevant guidelines developed by EASO. They should be able to provide third-country nationals or stateless persons who are present in the territory, including at the border, in the territorial waters or in the transit zones of the Member States, and who make an application for international protection, with relevant information as to where and how applications for international protection may be lodged (clause 26 of the preamble).

The ECtHR concluded back in 2018¹³ that Lithuania violated Article 3 of the ECHR (prohibition of torture), because officials of the SBGS refused to accept asylum applications from Chechen citizens at the Lithuanian border with the Republic of Belarus three times, thus preventing the officials in charge from assessing whether the applicants had a well-founded fear of torture or inhuman treatment if they were returned to Belarus and then – to Russia. Taking into account the principles developed in its practice, the ECtHR reminded that States have the right to control the entry, stay and expulsion of foreigners. However, the expulsion of an alien may infringe Article 3 of the ECHR when there are reasonable grounds for believing that the person is in danger of being subjected to torture, inhuman or degrading treatment or punishment in the host State. In such a case, Article 3 of the ECHR obliges States not to expel the person. In this case, the ECtHR relied on publicly available information on the human rights situation in the Chechen Republic and the shortcomings of the asylum system in Belarus. The ECtHR indicated that the main question to be answered in this case was whether the Lithuanian authorities had carried out a proper assessment of the applicants' words that they would be tortured before returning them to Belarus.

¹³ Decision of 11 December 2018 of the ECtHR in the case *M. A. et. al. v. Lithuania*, petition No. 59793/17.

In 2021, the ECtHR concluded¹⁴ that Poland violated Article 3 of the ECHR because border officials of Poland refused several times to create opportunities for people from Syria to apply for international protection in the Republic of Poland and to use asylum procedures by directing them to the Republic of Belarus, even though they these persons felt that they could not use effective asylum procedures in Belarus, which was equated to the risk of inhuman and degrading behaviour with them.

Thus, according to the case law of the ECtHR, referring a person in pursuit of international protection to the country of his/ her origin or to a third country without ensuring that he or she is not at risk of torture, inhuman or degrading treatment or denying him or her a possibility to lodge an application for international protection equating this to a violation of Article 3 of the ECHR.

Member States may derogate from their obligations under this Treaty in accordance with the procedure laid down in Article 15 of the ECHR and apply additional or stricter restrictions than those provided for in individual Articles of the ECHR if they are strictly necessary because of a state of public emergency. However, it should be noted that this discretion of States is not absolute. The ECtHR has held that States may avail themselves of the possibility provided for in the ECHR to deviate from their obligations under this Treaty in very exceptional cases only where usual measures or restrictions permitted by the ECHR would not be sufficient to protect public safety, health and order. Furthermore, under Article 15 (2) of the ECHR, even in the event of war or any other emergency endangering the survival of a nation, States Parties may not derogate from their obligations under Article 2 of the ECHR “Right to life”, Article 3 of the ECHR “Prohibition of Torture”, Article 4 “Prohibition of Slavery and Forced Labor” and Article 7 “No Punishment without Law”. The ECtHR has stated that the absolute prohibition of torture and other cruel, inhuman or degrading treatment or punishment laid down in Article 3 of the ECHR is one of the fundamental values of democratic societies, and States may not derogate from the obligation to guarantee certain rights and freedoms.

The United Nations High Commissioner for Refugees has repeatedly noted¹⁵ that when an asylum application is lodged at a state border, international law requires at least temporary admission of the person and examination of his/ her application, otherwise the principle of asylum and non-expatriation would be meaningless. The right to apply for asylum and to exercise it is a fundamental human right, which States must ensure, protecting such persons from being return to a potentially unsafe country, even in the event of an emergency and / or irregular migration.

According to Article 65 of the Law, an alien shall have the right to apply for and receive asylum in the Republic of Lithuania in accordance with the procedure established by the Law. If there are indications that an alien at a detention centre, a border control station or transit zone may wish to apply for asylum, such an alien shall be provided with information on this right and the applicable procedures in a language he or she understands.

In their official press release of 21 September 2021, the United Nations High Commissioner for Refugees, the United Nations Refugee Agency and the International Organization for Migration expressed their deep concern at the deterrence of migrants traveling through Belarus seeking asylum in Lithuania, Latvia or Poland at their borders and the deaths of four migrants on the Polish border with Belarus. The report notes that people get stuck in the areas near the borders of these countries for weeks and do not receive any help, shelter or basic services there. Many of them were left to suffer

¹⁴ Decision of the ECtHR of 8 July 2021 in the case *D. A. et. al. v. Poland*, petition No. 51246/17.

¹⁵ Observations of the United Nations High Commissioner for Refugees of 27 September 2021 regarding a draft law amending and supplementing the Law on the Legal Status of Aliens of the Republic of Lithuania No. 21-29207.

in very difficult conditions, unprotected from natural external factors and suffering from hypothermia. In recognition of the significant challenges posed by illegal migration, these organizations called on the governments concerned to manage the situation in accordance with international legal obligations and to work together to address the situation by giving priority to human rights, i. e. to contact the affected persons immediately providing them with emergency medical aid, food, water and shelter, especially in view of the approaching winter. The report acknowledged that, although states have the sovereign right to control their borders, the situation is incompatible with respect for human rights, including the inherent right to apply for asylum. International organizations working in the field of refugee law have paid particular attention to the fact that deterrence of asylum seekers at borders was life-threatening and illegal under international law. States should never use asylum seekers and migrants in pursuit of their political objectives. States should share the fundamental responsibility to protect vulnerable persons in solidarity, and political disagreements over responsibilities should never lead to disregard to human lives and international obligations of the states¹⁶.

Pursuant to Article 67(11) of the Law which took effect on 12 August 2021, having declared a state of war, state of emergency, an emergency situation or emergency event due to a mass influx of aliens, applications for asylum of foreigners may be lodged at border control points or transit zones with the SBGS; in the territory of the Republic of Lithuania, when the foreign entered the Republic of Lithuania legally – with the Migration Department; in a foreign state - in diplomatic missions or consular posts of the Republic of Lithuania specified by the Minister of Foreign Affairs. Article 67(7) of the Law regulates that the Minister of Foreign Affairs shall establish the procedure governing the lodging of applications for asylum of aliens abroad having declared a state of war, a state of emergency, emergency situation or emergency due to a mass influx of aliens.

Decision No. 10V-20 of the Minister of the Interior – the State-Level Emergency Operations Manager of 2 August 2021 “Regarding the management of massive influx of aliens in the border area at the state border of the Republic of Lithuania and Belarus and enhancing state border protection” delegates institutions that ensure and help to ensure the protection of the state border of the Republic of Lithuania with the Republic of Belarus ensuring that persons cross the external border on land through border checkpoints only, and that persons intending to cross the state border in other places are not allowed in the country and are directed (asked to go) to the nearest operating international border checkpoint or a diplomatic mission of the Republic of Lithuania. Moreover, this decision states that deterrent actions and other measures provided for in Article 28 (2) of the Law on the State Border and its Protection of the Republic of Lithuania shall be applied in respect of persons who do not take into account the above-mentioned legal requirements or instructions of officials, and if persons fail to comply with these measures, with their active actions or possessed objects obviously and actually endanger the life or health of officials or other persons, proportionate measures established in Article 28(3) of the Law on the State Border of the Republic of Lithuania and its Protection may be taken.

8.2. Inspections showed that:

8.2.1. according to the information provided by the SBGS officials, during the emergency situation due to the mass influx of aliens, having identified foreigners who crossed the state border illegally, they are first registered and issued registration documents, then they are asked to describe and submit to the Migration Division of the SBGS the circumstances necessary to justify an asylum

¹⁶ Online access: <https://www.unhcr.org/news/press/2021/9/6149dec74/unhcr-iom-shocked-dismayed-deaths-near-belarus-poland-border.html?fbclid=IwAR1OKxZajYrgVWC1CgihRbbDHDYcxp1MOVibowgxpTjg8sKNWwkts1b9MJQ>

application. Mobile teams of the Migration Department, which include representatives of other state institutions, registering aliens in all places of their accommodation, receiving asylum applications and performing other initial actions, started working in mid-May 2021;

8.2.2. however, there were persons at the places of detention of foreigners who said that they did not know whether they have lodged an asylum application and how to do that, although some of them had been detained in places of temporary accommodation for more than a month. None of the foreigners interviewed during the inspections said that they had been issued a certificate of reception of their application for asylum; they said they had never seen such a document drafted in their regard;

8.2.3. according to SBGS officials, all persons accommodated in territories of border guard stations lodged an oral application for asylum by officials ticking that in the foreigners' registration form, but the inspection revealed that not all foreigners' registration forms indicated whether the foreigner wanted asylum in Lithuania. Annex 2 to the Description of the Procedure of Registration of Aliens and Issuance of a Document Confirming Registration approved by Order No 4-239 of the Commander of the SBGS of 23 July 2021 "Regarding Amendments to the Order No. 4-579 of the Commander of the SBGS "Regarding the Approval of the Description of the Procedure of Registration of Aliens and Issuance of a Document Confirming Registration of 21 December 2017" was set out in a new wording, providing, inter alia, for a new clause 9 in the *sample form of the registration confirmation sheet*, marking therein whether the foreigner wishes to seek asylum in the Republic of Lithuania. So this issue was not indicated in the *foreigner's registration confirmation sheet* till 23 July 2021. The foreigners interviewed said they did not understand why foreigners who arrived before 23 July 2021 were not asked whether they wanted asylum in Lithuania, and they were not sure if such a need of persons who arrived before the said date was indicated somewhere;

8.2.4. it was found during the inspections that foreigners did not know (they were not explained) the procedure for lodging applications for asylum in the Republic of Lithuania in foreign countries. The description of the procedure of lodging applications for asylum of foreigners in diplomatic missions and consular offices of the Republic of Lithuania was approved by Order No. V-392 of the Minister of Foreign Affairs of the Republic of Lithuania of 21 September 2021 "On Approval of the Description of the Procedure of Lodging Applications for Asylum of Foreigners in Diplomatic Missions and Consular Offices of the Republic of Lithuania". It should be noted, however, that till 21 September 2021, i.e. until the adoption of this legal act, it was not clear whether persons in foreign states could (and in what procedure) lodge asylum applications with diplomatic missions or consular posts of the Republic of Lithuania in a foreign state;

8.2.5. during the night shift at the border section of the border of Lithuania and Belarus (at the state border sign No 134-135) of 6 August 2021, persons, including a woman with a minor child, who crossed the state border in illegal places and expressed a wish to seek asylum in Lithuania, were not admitted to the territory of the country using psychological measures (hand gestures and a dog). It should be noted that these persons were not directed to the nearest operating international border checkpoint or diplomatic mission of the Republic of Lithuania, but were guided back towards the Republic of Belarus. The officials did this (took deterrence steps) did not provide the above-mentioned persons with any information on the procedure of lodging asylum applications with the SBGS effective in the Republic of Lithuania. During this incident, the vulnerability of people was not assessed, they were not provided with emergency medical aid, also failing to make sure that the persons knew where they could legally apply for asylum in the Republic of Lithuania.

During that same night shift at the border section of the border of Lithuania and Belarus (at the state border sign No 129), SBGS officials did not allow a group of 34 persons, 15 of whom were

minors, to enter the country. Having taken into account the fact that the Belarusian border guards standing on the other side of the border would not allow these persons to return to Belarus, the SBGS officials took them to the 125-126 state border mark by minibus, where they were disembarked and escorted towards Belarus.

It should be noted that according to data of Druskininkai automatic meteorological station, on 6 August 2021, the average daily temperature ranged from 13.1 to 19.7 ° C, while the recorded precipitation that day was as much as 19.5 mm. Thus, unfavourable weather conditions could pose a threat to the health and life of migrants who were deterred from the Lithuanian border and directed towards Belarus.

On 9 August 2021, Šalčininkai police found 11 foreigners in one of the settlements, including 4 minors, 3 women and 4 men (at the Tribonys border guard station of Varėna border team of the SBGS). After military volunteers arrived at the place, the border guards and the military police had already arrived at the settlement. Despite the fact that one man asked for medical help, foreigners were tired and thirsty, and children were scared and crying, Lithuanian border guards and volunteer soldiers collected their phones and returned the foreigners to Belarus¹⁷.

It should be noted that these persons were not provided with any information on the procedure for lodging asylum applications with the SBGS in force in Lithuania. The vulnerability of persons was not assessed wither, the necessary medical aid was not called, and it was not made sure that persons knew where they could legally apply for asylum in the Republic of Lithuania;

8.2.6. SBGS officials said that Belarusian officials did not allow persons intending to cross the border of the Republic of Lithuania to return to Belarus¹⁸. Moreover, Belarusian officials took active action to push migrants to Lithuania¹⁹. This is why people get stuck on the Lithuanian-Belarusian border for a long time, suffering torture and inhumane conditions because of being cold, lacking food, drinking water, warm clothes, shoes; they need emergency medical care because of exhaustion and other potential health problems²⁰;

8.2.7. The Decision of the Minister of the Interior – the State-Level Emergency Operations Manager to strengthen the protection of the state border due to the massive influx of aliens in the territories of the border section near the state border of the Republic of Lithuania with the Republic of Belarus was adopted on 2 August 2021. This decision instructs the authorities ensuring and assisting in ensuring the protection of the state border of the Republic of Lithuania with the Republic

¹⁷ service report of a volunteer soldier of 10 August 2021 who was on duty at the Tribonys border guard station of Varėna border team of the SBGS (in Šalčininkai district), which guards a section covering the total of 41 km of the border with Belarus in the district of Šalčininkai), registered at the headquarters of the National Defence Volunteer Forces of the Lithuanian Armed Forces, after which the Commander of [unpublished] team of Volunteer Forces of the Lithuanian Armed Forces addressed volunteers confirming the authenticity of the event and disclosing more details of the event: “On 9 August 2021, at about 4:30 p.m., while on duty, a volunteer soldier of [unpublished] was near officials of the SBGS when they carried out the task of eviction of illegal migrants. Seeing an hearing screams of women and children, and being in an affected psycho-emotional state, the soldier started to conflict with SBGS officials that they were mistreating [migrants], and began filming them, threatening to distribute the video on social networks. Having contacted the soldier, his teammate calmed him down and persuaded him to hand over his phone to a colleague, who deleted all the footage”.

¹⁸ 2 September 2021 (tv3.lt). *SBGS: there currently are two groups of migrants at the Lithuanian border on the Belarus side*, online access at <https://www.tv3.lt/naujiena/lietuva/vsat-prie-lietuvos-sienos-baltarusijos-puseje-siuo-metu-yra-dvi-migrantu-grupes-n112579>.

¹⁹ 2 September 2021 (15min.lt) *There is a footage from the border showing how Belarusian officials pushed 13 migrants to Lithuania*; online access at <https://www.15min.lt/naujiena/aktualu/nusikaltimaiirnelaimes/pasienyje-nufilmuota-kaip-baltarusijos-pareigunai-skydais-stume-13-migrantu-i-lietuva-59-1558642?copied>.

²⁰ 8 September 2020. *Extraordinary story at the border: a migrant woman treated at a Lithuanian hospital was returned to Belarus*, online access: <https://www.15min.lt/naujiena/aktualu/lietuva/lietuvos-baltarusijos-pasienyje-istrigusi-migrante-nugabenta-i-ligonine-56-1561730?copied>.

of Belarus to ensure, inter alia, that persons crossing the external border on land cross it through border checkpoints only, and that persons crossing the state border at other points and having ended up in the border section and planning to seek for asylum in the Republic of Lithuania would not be admitted to the territory of the country and would be directed from the territory of the country (asked to go) to the nearest operating international border checkpoint or a diplomatic mission of the Republic of Lithuania.

However, it should be noted that amendments to Article 67 of the Law, which stipulate that an alien's application for asylum lodged without following the procedure of clause 1¹ of this Article, shall not be accepted, explaining the procedure for lodging applications for asylum, came into force on 12 August 2021 only.

8.3. It must be stated that foreigners have not been provided with information on the right to seek asylum in the Republic of Lithuania and the procedures applicable therein or it has been provided improperly, deterring actions have been taken against persons at the border of Lithuania to direct them towards Belarus without making sure that they are not at risk of torture, inhuman or degrading treatment or that they are no risk factors which endanger the life or health of these persons, including by denying them the opportunity to legally apply for asylum in Lithuania, which violates the right of persons to seek and enjoy asylum from persecution in other countries, creating conditions equivalent to torture and inhuman or degrading treatment prohibited under the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

9. Arranging the reception of asylum seekers

9.1. In accordance with Article 7 (d) of the United Nations Covenant on Economic, Social and Cultural Rights, States Parties, while recognizing the right of everyone to just and favorable conditions of work, undertake to ensure, inter alia, rest, leisure and reasonable limitation of working hours and paid annual leave, also payment for work on public holidays.

Article 2 of the European Social Charter (revised) establishes in order to ensure effective exercise of the right to decent work conditions, Lithuania has undertaken, inter alia, to establish acceptable time of a work day and work week, to eliminate risks in hazardous or unhealthy working conditions, and, where such risks cannot be eliminated or reduced as necessary, reduce the working day of employees working in these areas or provide them with additional paid leave, guarantee a weekly rest period, ensure that employees working overnight have access to the measures provided for in light of the exceptional nature of that work, and, in accordance with Article 4, to ensure the effective exercise of the right to fair remuneration for work, including the right of employees to higher pay for overtime.

The CPT emphasizes appropriate qualifications, their development (on communication, intercultural communication, recognition of stress symptoms, etc.) and foreign language skills of employees working with migrants in places of detention. There is a risk of tensions between detainees of different nationalities and ethnic groups in places of accommodation of migrants. The CPT therefore places a particular emphasis on the selection and appropriate training of employees responsible for supervision in such centers. Such employees should not only have good personal communication skills, but should also be familiar with different cultures of detainees. There should be at least a few employees with the required foreign language skills. Moreover, they should be trained to recognize the possible stress symptoms of detainees (due to a suffered trauma or socio-cultural differences) and to take appropriate measures ([CPT / Inf (97) 10], p. 29)).

Pursuant to Article 20(2) of the Law on the State Border of the Republic of Lithuania and its Protection, the SBGS has been authorized to implement the protection of the state border and the control of its crossing, and during the war – to defend the state as a part of armed forces. Item 4 of the Procedure of Temporary Accommodation of Asylum Seekers in Structural Units of the SBGS provides that the SBGS shall control the installation of premises for the accommodation of asylum seekers in border control points and SBGS structural units and their compliance with the set requirements.

Clauses 4 - 6 of the Foreigners' Accommodation Rules provide for appointing for each place of accommodation a person responsible for its administration (the administering person) and, if necessary, - an assistance group of the administering person. The administering person shall: take care of creating and maintaining reception conditions, organize accommodation of foreigners in places of accommodation; create conditions for the provision of services required in accommodation establishments; create conditions for the representatives of state or municipal institutions and establishments to perform the functions provided for them in legal acts; supervises the observance of hygiene and fire safety requirements in the accommodation places and their territories; organize meals for foreigners at the place of accommodation; arrange the supply of footwear, clothing, hygiene products, personal protective equipment to foreigners at the place of accommodation; organize that foreigners are acquainted with their rights and duties, and other information relevant to them; in the event of conflict and / or unrest at the place of accommodation, immediately take measures and actions to identify and eliminate the causes of the unrest and inform the senior security officer thereof; lead the support team, assign tasks to its members, give instructions and monitor their implementation; solve other issues related to the administration of the place of accommodation. The institution managing the place of accommodation or the institution or body appointed by the State-Level Emergency Operations Manager shall: organize the arrangement of the territory and the installation or adaptation of the place of accommodation; if necessary, organize the fencing of the territory of the place of accommodation; organize the installation or provision of a workplace for the administering person and his/ her support group and the visitors referred to in clause 11 of the Rules with foreigners; prepare fire safety instruction (s), providing for evacuation routes, meeting places and other necessary general requirements and measures to ensure fire safety.

9.2. The inspections found that:

9.2.1. in addition to performing their direct functions related to the protection of the state border and control of its crossing, SBGS officials also faced additional challenges in resolving the issues of accommodation of foreigners in territories of border guard stations and the problems faced by foreigners in ensuring their daily needs or settling disagreements (e. g. forming between different ethnic groups). SBGS officials contribute to ensuring proper installation of the premises intended for the accommodation of foreigners, uninterrupted supply of food, availability of emergency medical aid, meeting social and other needs of foreigners. In view of this, the workload of SBGS officials has significantly increased, they have to work not only after working hours on weekdays, but also on weekends, at nights, postponing annual leave, so these officials work in conditions harmful to their health during an emergency situation;

9.2.2. some SBGS officials acknowledged that although their workload had increased significantly during the emergency due to the mass influx of foreigners, and some of them were forced to work in extremely stressful work mode without rest days and at nights, not all the increased workload and overtime were recorded, and not all of this overtime work was paid for extra;

9.2.3. there were no social workers or psychologists visiting places of temporary accommodation of foreigners, therefore SBGS officials have to manage all social challenges which foreigners face;

9.2.4. inspections at the places of accommodation of foreigners revealed that the right of most aliens to satisfactory material reception conditions, information, including about their legal status in the Republic of Lithuania, free legal aid, also the right of vulnerable persons to receive reception conditions meeting their special needs, have been restricted for more than a month, for an indefinite period of time. When asked about the implementation of Article 71 (1¹) in practice, the SBGS and other officials working in places of temporary accommodation of foreigners could not specify how and in what manner or according to which interpretations of the competent authorities should ensure that the rights of aliens referred to in that provision are temporarily and proportionately restricted in emergencies due to mass influxes of aliens, and who is responsible for the control of proper implementation of this requirement;

9.2.5. the Rules of Accommodation of Foreigners approved by Decision of the Minister of the Interior of 14 August 2021 regulate the appointment of a person administering places of accommodation, his/ her functions and other matters related to the administration of places of accommodation, also the procedure for visiting places of accommodation, accommodation criteria of foreigners, rights, duties of foreigners and restrictions in places of their accommodation, procedural steps related to registration, interrogation and information of foreigners, however, it is not clear what was followed in resolving these issues when accommodating foreigners in the SBGS and other premises before that date;

9.2.6. material conditions of accommodation of foreigners, organization of meals, intensity of visits of health care professionals, scope of information dissemination different across different territories of SBGS units and other places of accommodation of foreigners, because, according to the majority of interviewed officials, there was a significant lack of coordinated and systematic organization of accommodation of foreigners at the state level. For this reason, some foreigners were given the opportunity to stay in dedicated buildings, receive hot food, clean drinking water, regular medical visits, opportunity to use a phone, to receive the necessary information from representatives of aid organizations, and some foreigners were forced to live in air- and water-permeable tents for a month or more, regardless of their gender, age, nationality, disability, illness and special needs, to receive dry rations only, to have no opportunity to consult a doctor, and to receive no information about their legal situation in Lithuania. Thus, foreigners were not provided with equal conditions for their temporary accommodation, failing to ensure equal rights of these persons.

9.3. It can be concluded that in the face of the emergency situation due to the mass influx of aliens, SBGS officials work in conditions harmful to their health, temporary accommodation of foreigners and provision of services which they need were not coordinated, the principle of equality of persons was violated and human rights of both foreigners and officials were violated, creating conditions equivalent to torture and inhuman or degrading treatment prohibited under the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

III. CONCLUSIONS

10. Having summarized the circumstances established during the inspections related to the human rights situation of persons held in territories of border guard stations of Varėna team and

Vilnius team of the SBGS and other places of accommodation of foreigners and taking into account the legal regulation referred to in this report, international human rights standards and:

10.1. having assessed that the deprivation of liberty of foreigners lasted for an average of forty days without adequate protection of material reception conditions for asylum seekers, the right to person's privacy, and the fact that aliens were not provided with adequate clothing and footwear appropriate for weather conditions, sufficient cleanliness and order was not ensured in tents and some of the premises, and only partial conditions for foreigners to maintain proper personal hygiene due to limited supply of hygiene items, the Seimas Ombudsman concludes that such conditions of detention of foreigners are equivalent to inhuman or degrading treatment prohibited under the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment;

10.2. considering that almost all foreigners received dry rations only for more than 30 days, while meals served three times per day, including a hot dish, was organized in premises of former schools and orphanages only, also the fact that foreigners did not get warm food in places of temporary accommodation of foreigners set up in structural units of the SBGS, the Seimas Ombudsman concludes that a failure to ensure adequate food is equivalent to inhuman or degrading treatment prohibited under the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

10.3. considering that personal health professionals regularly visited some of the places of temporary accommodation of foreigners only, some persons did not receive an initial health examination immediately, thus failing to diagnose their health problems for a long time, testing foreigners for COVID-19 (coronavirus infection) and accommodation of untested persons was not organized responsibly in all places of temporary accommodation, foreigners were asked to pay for some personal health care services and medicines themselves, there was a lack of personal health care specialists and ambulances to ensure all the needs of foreigners for emergency medical care, the Seimas Ombudsman concludes that the right of foreigners to the highest available health care was not adequately guaranteed;

10.4. considering that the procedures for assessing the vulnerability of persons in places of their temporary accommodation are not clear and uniform, the vulnerability of foreigners and their special needs have not been fully established and some vulnerable persons are not provided with reception conditions that meet their special needs, the Seimas Ombudsman concludes that such actions are equivalent to torture and other cruel, inhuman or degrading treatment;

10.5. considering that the accommodation conditions of foreigners in tents, garages and some of premises do not meet the best interests of children, as well as the fact that no employment is organized for minors in places of their temporary accommodation, the Seimas Ombudsman concludes that children's rights were guaranteed, thus creating conditions equivalent to torture, inhuman and degrading conditions for children;

10.6. considering that not all places visited during the inspections were aware of the presence of foreigners belonging to the LGBTQ + community and that they were classified as vulnerable persons, also that those persons were accommodated in common area and/ or premises together with other foreigners, who were intolerant of that community, the Seimas Ombudsman concludes that conditions equivalent to torture, inhuman and degrading treatment were created in the places of temporary accommodation of foreigners;

10.7. considering that there were not attempts made in places of temporary accommodation of foreigners of whether or not a person is a victim of trafficking in human beings, has been tortured, raped or otherwise subjected to severe psychological, physical or sexual violence, which may lead to

special needs, also the fact that there is not clear procedure or methodology for assessing a person's vulnerability in this aspect, which officials should follow in order to identify a victim of violence and provide him/ her with the necessary aid, and that psychological assistance was not provided to all foreigners in places of their temporary accommodation, the Seimas Ombudsman concludes that special needs of persons who may be victims of trafficking in human beings or who have been subjected to torture, rape or other severe violence, were not identified, and assistance to these vulnerable persons was not organized, thus conditions equivalent to torture, inhuman and degrading treatment were created in the places of temporary accommodation of foreigners;

10.8. considering the fact that foreigners and asylum seekers did not have or had limited access to information on their legal status in the Republic of Lithuania, and the processing of the lodged asylum applications, the rights and duties of asylum seekers and the consequences of defaulting thereon in the course of the procedure of examination of asylum applications, the Seimas Ombudsman concludes that the right of access to information of foreigners and asylum seekers was violated;

10.9. considering the fact that the services of an interpreter were provided to foreigners during the initial asylum interrogation only, the Seimas Ombudsman concludes that the right of foreigners and asylum seekers to receive quality legal, medical aid and other services and information in a language they understand was violated;

10.10. considering that aliens were not provided or were provided with little information about their rights and duties, including access to legal services and appealing against decisions made in their regard, the Seimas Ombudsman concludes that the right of aliens to be properly acquainted with the procedure for appealing against decisions made in their regard and access to free legal aid was violated;

10.11. considering that information on the right to seek asylum in the Republic of Lithuania and the procedures applicable therein has not been provided or was provided improperly to foreigners, and the fact that deterrent actions were taken to direct persons at the Lithuanian border are directed to Belarus without informing them of legal procedure and where these persons could lawfully lodge asylum applications, the Seimas Ombudsman concludes that the right of persons to seek and use asylum from persecution in other countries was violated;

10.12. considering that persons who intended to enter the territory of the Republic of Lithuania illegally were directed towards Belarus by deterrent actions of Lithuanian border officials without having made sure that these migrants were not subjected to torture, inhuman or degrading treatment, and that there were no risk factors to life or health of these persons, the Seimas Ombudsman concludes that conditions equivalent to torture, inhuman and degrading treatment were created;

10.13. considering that in the event of an emergency situation due to a mass influx of foreigners, SBGS officials must ensure, in addition to the performance of the functions assigned to them related to the protection of the state border and control of its crossing, proper installation of premises for accommodation of foreigners, uninterrupted food supply to them and access to necessary medical aid, the meeting of social and other needs of foreigners, etc., also the fact that social workers, interpreters or psychologists were not used in these places to reduce this additional workload, the Seimas Ombudsman concludes that due to the significantly increased workload, SBGS officials work under conditions harmful to their health and their right to rest was not properly ensured;

10.14. considering that it is not clear how and in what procedure it must be ensured that during an emergency situation due to a mass influx of aliens the rights of aliens specified in Article 71(1¹) of the Law are restricted temporarily and proportionately and who is responsible for monitoring proper implementation of this requirement, the Seimas Ombudsman concludes the disproportionality

of restrictions of the rights and freedoms of foreigners and their excessive detention duration is equivalent to torture, inhuman and degrading treatment;

10.15. considering the fact that reception conditions of applicants for temporary asylum in the structural units and other premises of the SBGS differed, and some foreigners were accommodated in significantly worse conditions than the rest without any clear selection, the Seimas Ombudsman concludes that foreigners were not provided with equal conditions for their temporary accommodation, in violation of the principle of equality of persons and creating conditions in places of temporary accommodation of foreigners equivalent to torture, inhuman and degrading treatment.

IV. RECOMMENDATIONS

11. Considering the circumstances determined during the inspections and in accordance with clause 8 of Article 19(1), clause 7 of Article 19¹ (4) and Article 19¹ (6) of the Law, the Seimas Ombudsman of the Republic of Lithuania recommends the **Prime Minister of the Republic of Lithuania Ingrida Šimonytė** to take the violations determined in this report and take all measures to ensure that the reception of foreigners in the protection of the Lithuanian border is in full compliance with European and international law, in particular the European Convention on Human Rights and the Convention relating to the Status of Refugees of 1951.

12. Considering the circumstances determined during the inspections and in accordance with clause 8 of Article 19(1), clause 7 of Article 19¹ (4) and Article 19¹ (6) of the Law, the Seimas Ombudsman of the Republic of Lithuania recommends **the Minister of the Interior of the Republic of Lithuania Agnė Bilotaitė** to take the following measures:

12.1. to determine the implementation of Article 71(1¹) of the Law of the Republic of Lithuania “On the Legal Status of Aliens” in practice, providing that “having declared a state of war, a state of emergency, an emergency situation or emergency event due to the mass influx of aliens, rights of asylum seekers referred to in clause 1 can be restricted temporarily and proportionately, if they cannot be guaranteed for objective and justified reasons”, listing the specific measures to be taken to ensure that rights and freedoms of asylum seekers are not restricted for an unlimited period of time, disproportionately and without any exceptions, and to appoint a person responsible for monitoring proper implementation of the requirement to restrict the rights of asylum seekers referred to in this provision for a temporary period of time, proportionately and only if they cannot be ensured for objective and justified reasons;

12.2. provide for a clear procedure of accommodation of asylum seekers and ensure equality between individuals both in the allocation of foreigners to places of accommodation of foreigners and in the provision of such accommodation, giving priority to vulnerable persons;

12.3. ensure that officials of the institutions ensuring and helping to ensure the protection of the state border of the Republic of Lithuania with the Republic of Belarus duly inform all persons intending to enter or having already entered the Republic of Lithuania about the right to apply for asylum in the Republic of Lithuania and appropriate procedures therefor.

13. Considering the circumstances determined during the inspections and in accordance with clause 8 of Article 19(1), clause 7 of Article 19¹ (4) and Article 19¹ (6) of the Law, the Seimas Ombudsman of the Republic of Lithuania recommends the **Minister of Social Security and Labour of the Republic of Lithuania Monika Navickienė** to take measures to assess the need for social

workers in places of temporary accommodation of foreigners and to make social services available in these places according to identified needs ensuring that:

14.1. adequate hygiene is ensured in living quarters, personal hygiene and other premises of foreigners, and that conditions are created for the persons to clean their living and common use premises themselves by providing them with sufficient necessary means for that purpose;

14.2. foreigners are provided with appropriate material reception conditions for asylum seekers, weather-appropriate clothing and footwear;

14.3. in order to ensure their right to adequate food:

14.3.1. special nutritional needs of newly arrived foreigners are identified without any undue delay and, in presence of reasons to serve a person special meal, measures are taken to organize and provide such meals;

14.3.2. hot food is provided in all places of detention of foreigners at least once per day;

14.3.3. meals are served three times a day in all places of detention of foreigners, also offering vegetarian meals;

14.3.4. the procedure of the organization of meals for asylum seekers would be approved in the implementation of clause 7 of the Description of Temporary Accommodation of Asylum Seekers in Structural Units of the SBGS.

14.4. In order to provide foreigners with timely access to high-quality personal health care services:

14.4.1. take measures to ensure that, an initial examination of health foreigners is provided in all places of temporary accommodation of foreigners no later than within 48 hours from their accommodation, also ensuring that requests of foreigners to see a doctor are accepted, ensuring proper and timely use of medicines and the completion of the necessary medical documents;

14.4.2. to ensure that medics regularly visit all SBGS units where foreigners are accommodated;

14.4.3. to ensure that services of health professionals are accessible to all vulnerable persons;

14.4.4. to ensure that all foreigners having arrived to places of temporary accommodation of foreigners are immediately tested for COVID-19 (coronavirus infection) and kept in a room isolated from other aliens until a test is performed;

14.4.5. to ensure that foreigners infected with COVID-19 (coronavirus infection) or exposed to COVID-19 (coronavirus infection) are held in specially equipped isolation premises which would not look like detention facilities as much as this is possible;

14.5. to approve a procedure for identification, accommodation and provision of aid to aliens with special needs in all subdivisions of the State Border Guard Service under the Ministry of the Interior of the Republic of Lithuania;

14.6. to approve the methodology to be used by officials and / or specialists of the respective field to assess whether a person is a victim of trafficking in human beings, whether he or she has been subjected to torture, rape or other serious psychological, physical or sexual abuse that may lead to him/ her having special needs; to identify persons having experienced violence and to provide them with the necessary aid free of charge, including medical, social and psychological services;

14.7. to take measures to ensure that all places of reception and detention of foreigners offer a comprehensive vulnerability assessment in accordance with clearly defined procedures, including, inter alia, vulnerability due to possibly suffered torture, rape or other serious psychological, physical or sexual violence, disability, pregnancy, belonging to sexual minorities or an ethnic group;

14.8. to ensure that all premises are adapted to the needs of persons with disabilities or it is ensured that persons with disabilities are not accommodated in premises that have not been adapted for them;

14.9. to hire, as needed, responsible institutions or specialists with the necessary qualification (child rights protection specialist, child psychologist, psychologist, special educator, social worker, speech therapist, etc.) in the process of assessing the vulnerability and special needs of asylum seekers;

14.10. to ensure meaningful leisure time for foreign minors in places of their temporary accommodation and the right to study according to pre-school, general education or vocational training program (s), not later than within 3 months from the date of lodging an asylum application;

14.11. to ensure cooperation with Child Rights Protection and Adoption Service under the Ministry of the Interior of the Republic of Lithuania in resolving the issues of ensuring the rights and legitimate interests of minor children (organization of their leisure and education activities, accommodation and isolation);

14.12. to ensure that all foreigners are guaranteed the right to receive information about their rights and duties and consequences of default thereon during the asylum procedure, free of charge in a language they understand, and information related to the examination of asylum applications (oral counselling, distribution of printed memoranda, publication of information on information stands easily accessible to foreigners);

14.13. to ensure that foreigners are provided with the opportunity to contact and meet with lawyers, representatives of the Office of the United Nations High Commissioner for Refugees and other organizations providing specialized legal assistance or counselling to asylum seekers by phone, and to meet with them under conditions ensuring privacy;

14.14. to ensure the right of foreigners to use state-guaranteed legal aid as far as the examination of asylum applications is concerned, in particular by properly informing foreigners about the possibility of exercising this right;

14.15. to ensure that all foreigners are properly and immediately informed of the order and procedures for lodging asylum applications in the Republic of Lithuania, also about the acceptance of their application for asylum;

14.16. to ensure that a protocol of personal inspection and inspection of belongings indicate the appropriate basis for seizure of items seized during the personal inspection and inspection of belongings, and that having seized personal belongings of foreigners, they are duly informed of the reasons and grounds for seizing their items;

14.17. to ensure that SBGS officials are provided with opportunities to continuously improve their foreign language skills in order to improve the quality of daily communication with foreigners;

14.18. to take measures to ensure, as far as possible, constant access to and timely provision of interpretation services in all places of accommodation and detention of foreigners;

14.19. to ensure in SBGS units the organization of work by properly allocating the workload of employees and ensuring the number of employees necessary to perform specific functions, also ensuring teamwork in preparing conclusions on vulnerability, properly completing documents of assessment of vulnerability and needs and storing them in personal files (questionnaires of accommodation on accommodation of foreigners, identification and assessment of their needs, etc.);

14.20. to ensure that all the persons met at the Lithuanian border with the Republic of Belarus seeking to cross the state border in prohibited places or persons having already entered the Republic of Lithuania in prohibited places are duly informed about the asylum procedure in Lithuania and / or

directed to the nearest operating international border checkpoint or diplomatic mission of the Republic of Lithuania;

14.21. ensure that, in the event of a threat to the life or health of persons seeking to cross the border in unauthorized places and in need of urgent medical assistance or other assistance due to exhaustion, dehydration, hypothermia, such assistance is provided without delay;

14.22. considering that the workload of SBGS officials working in the SBGS units in whose territories foreigners are temporarily accommodated has significantly increased during the emergency due to the mass influx of foreigners, to ensure that all their overtime work is paid extra, and that during these emergencies these SBGS officials are provided with time to rest at least one day per week.

15. Considering the circumstances identified during the inspections and clause 7 of Article 19¹ (4) and Article 19¹ (6) of the Law on the Seimas Ombudsmen of the Republic of Lithuania, the Seimas Ombudsman of the Republic of Lithuania recommends **Directors or administrations of Alytus city, Alytus district, districts of Druskininkai and Ignalina, Lazdijai district, Varėna district, Šalčininkai district and Švenčionys district** to ensure that:

15.1. to bring together a mobile team of personal health care specialists from personal health care institutions and/or other persons delegated by municipalities that are a part of the national health system of Lithuania in the territory of the respective municipality (i.e. a team of personal health specialists carrying out an initial and repeated assessment of the health condition of foreigners and their place of accommodation, which would consist of a family doctor or a doctor, a general practitioner (or community nurse), and a midwife, if necessary, and would regularly provide services of initial and repeated assessment of the health condition of foreigners in places of their temporary accommodation in the territory of that municipality;

15.2. to ensure that conditions of reception and accommodation of foreigners and other services related to their reception and accommodation (catering, hygiene, logistics, cleaning, preparation of the territory and premises, etc.) in the respective municipalities are provided in all places of temporary accommodation of foreigners, when the SBGS cannot ensure these conditions and services.

16. Considering the circumstances identified during the inspections and clause 7 of Article 19¹ (4) and Article 19¹ (6) of the Law on the Seimas Ombudsmen of the Republic of Lithuania, the Seimas Ombudsman of the Republic of Lithuania recommends the **Director of the State Food and Veterinary Service Mantas Staškevičius** to plan an inspection in places of temporary accommodation of foreigners of the compliance of food supplied to foreigners with mandatory food quality, food safety and food processing requirements, and that methodological assistance is provided to those responsible for proper compliance with legal requirements.

17. Considering the circumstances identified during the inspections and clause 7 of Article 19¹ (4) and Article 19¹ (6) of the Law on the Seimas Ombudsmen of the Republic of Lithuania, the Seimas Ombudsman of the Republic of Lithuania recommends **Giedrė Aleksienė, the Head and Acting Director of the Communicable Diseases Management Division of the National Public Health Centre under the Ministry of Health** to ensure control of compliance with public health safety regulations (hygiene norms) (state public health safety control) in places of temporary accommodation of foreigners and to ensure that methodological assistance is provided to responsible

persons regarding proper compliance with public health safety regulations (hygiene norms) established in legal acts.

18. Pursuant to Article 19¹ (6) of the Law on the Seimas Ombudsmen of the Republic of Lithuania, the institutions listed in Section IV of the report must examine the recommendations of the Seimas Ombudsman addressed to them and consult Seimas Ombudsmen on possible measures of implementation of the recommendations. The Seimas Ombudsman shall be provided with information on the examination of the recommendations in accordance with Article 20 (3) of the Law on the Seimas Ombudsmen's Office of the Republic of Lithuania, upon immediate adoption of decisions on measures to be taken, but not later than within 30 days from the date of receipt of the recommendations.

Seimas Ombudsman, Head of the Office

Augustinas Normantas