

21 April 2023, Vilnius

**EUROPEAN COURT OF HUMAN RIGHTS**

*Case C.O.C.G. and Others v. Lithuania*

**Application No. 17764/22**

**WRITTEN SUBMISSIONS**

**Third-Party Intervention**

**Submitted by the Human Rights Monitoring Institute**

## INTRODUCTION

1. Human Rights Monitoring Institute (“HRMI”) respectfully submits written comments pursuant to leave granted by the President of the Section by letter dated 29 March 2023, under Rule 44 § 3 of the Rules of Court.
2. HRMI is Lithuania-based non-governmental organization founded in 2003 with the mission to strengthen an open and democratic society by contributing to the protection and fostering of human rights and freedoms. Through strategic litigation on behalf of disadvantaged groups before national and international human rights bodies, research, advocacy for legislative and policy enhancements and awareness raising campaigns, HRMI seeks, *inter alia*, to integrate human rights into public policy, and to hold State institutions accountable for practices affecting human rights.
3. These written comments address the following issues raised in the case *C.O.C.G. and Others v. Lithuania*:
  - 1) Whether effective access to asylum procedures existed in Lithuania at the time of the events, and more generally from 2 August 2021 to the present day;
  - 2) A description of the numbers and modalities of summary returns (push-backs) at the border and/or from the Lithuanian territory to Belarus, as taking place at the time of the events and, more generally, from 2 August 2021 to the present day;
  - 3) Whether a genuine and effective access to means of legal entry existed in Lithuania in the period relevant for the case in question (first half of 2022);
  - 4) Whether asylum seekers accommodated without freedom of movement under the emergency legislation were being de facto deprived of their liberty; whether they were being informed of the grounds of deprivation of their liberty and whether they had the possibility to challenge the lawfulness of such deprivation of liberty during the time period relevant for the case in question.
4. The written comments are composed of four parts according to the above issues raised in the case. Pursuant to the instructions by the President of the Section, HRMI will refrain from commenting on the facts or merits of the case.

***Whether effective access to asylum procedures existed in Lithuania at the time of the events, and more generally from 2 August 2021 to the present day.***

5. On 2 July 2021, in response to the substantial increase in the numbers of migrants and asylum seekers irregularly crossing the Lithuanian-Belarussian border, the Government issued a resolution, announcing an extraordinary situation (*liet. ekstremali situacija*).<sup>1</sup> On 2 August 2021, the head of operations of the State-level extraordinary situation, the Minister of Interior adopted a decision No. 10V-20, which enacted the policy of the so called “returns” (*liet. apgręžimai*) / push-backs at the border and collective expulsions of foreigners from the territory of Lithuania to

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<sup>1</sup> Resolution of the Government of the Republic of Lithuania No. 517 on the Announcement of State-level Extraordinary Situation and the Appointment of the Head of Operations of the State-level Extraordinary Situation, 2 July 2021, <https://e-seimas.lrs.lt/portal/legalAct/lt/TAD/ad73a4c1dc0011eb866fe2e083228059/asr>

Belarus.<sup>2</sup> According to the decision, crossing of the State border was allowed only through international border checkpoints. People who were attempting to cross irregularly, would not be allowed entry and would be redirected to the nearest international border checkpoint. Furthermore, people who have crossed the border irregularly and are *de facto* present in the territory of Lithuania, including those seeking asylum, would not be allowed entry into the territory of Lithuania and would be “redirected to the nearest operating international border checkpoint or diplomatic mission of the Republic of Lithuania”.

6. On 10 August 2021, the Parliament passed amendments to the Law on the Legal Status of Foreigners (“Foreigners Law”), which severely restricted access to asylum procedures and effectively legalized the policy of push-backs and returns of asylum seekers.<sup>3</sup> The amendments provided that in times of war, state of emergency, extraordinary situation or extreme event due to mass influx of foreigners, the foreigner’s request for asylum can be submitted only: a) at the border checkpoints or transit zones – to the State Border Guard Service (“SBGS”); b) to the Migration Department in case of legal entry; c) to the Lithuanian diplomatic missions abroad. Under the amendments, asylum requests submitted not according to this procedure shall not be accepted. An exception has been provided that, taking into account the vulnerability of the foreigner or other individual circumstances, the SBGS may, under their discretion, accept an application for asylum.<sup>4</sup>
7. As Frontex Fundamental Rights Officer noted in his 2021 annual report, assessing the legislation in question, “practices that according to the [...] Officer are contrary to the international and EU law, including unlawful collective expulsions and prevention of entry without providing an effective access to asylum, were introduced with these amendments”.<sup>5</sup> UNHCR expressed concern that such regulation created two categories of refugees and provided for negative legal consequences for all persons crossing the border illegally.<sup>6</sup> UNHCR stressed that the “right to seek and receive asylum does not depend on the legality of the asylum seekers’ arrival in the country, because asylum seekers are often forced to arrive or enter the territory without prior permission”.<sup>7</sup>

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<sup>2</sup> Decision No. 10V-20 of the Minister of Interior of the Republic of Lithuania, Head of Operations of Extreme Situation on the Management of Mass Influx of Foreigners in the Territories of the Border Zone next to the State Border of the Republic of Lithuania with the Republic of Belarus and Strengthening the Protection of the State Border, 2 August 2021, <https://e-seimas.lrs.lt/portal/legalAct/lt/TAD/6c0ea3a0f42811ebb4af84e751d2e0c9?positionInSearchResults=21&searchModelUUID=48baf645-4426-45a5-89cb-bb259fa318b8>

<sup>3</sup> Law of the Republic of Lithuania No. XIV-515 on the Amendment of Article 67 of the Law on Legal Status of Foreigners No. IX-2206, 10 August 2021, <https://e-seimas.lrs.lt/portal/legalAct/lt/TAD/baee7ea2fa7211ebb4af84e751d2e0c9?positionInSearchResults=3&searchModelUUID=48baf645-4426-45a5-89cb-bb259fa318b8>

<sup>4</sup> On 23 December 2021, another set of amendments were passed to the Foreigners Law, introducing a specific section into the Law that is applicable in times of war, state of emergency or extraordinary situation, and establishing a separate legal regime for the foreigners under these conditions. The previous amendments fundamentally restricting access to asylum procedures and effectively legalising the pushbacks and returns of asylum seekers were enacted in Article 140<sup>12</sup> of the amended Law. Law of the Republic of Lithuania No. XIV-816 on the Amendment of 2, 3, 5, 26, 32, 40, 50, 67, 71, 76, 77, 79, 113, 125, 126, 130-1, 136, 138, 139, 140, Abolishment of Article 69 and Section IX<sup>1</sup> and Supplementation with Section X<sup>2</sup> of the Law on Legal Status of Aliens No. IX-2206, 23 December 2021, <https://e-seimas.lrs.lt/portal/legalAct/lt/TAD/c67c9f5266e611ecb2fe9975f8a9e52e?jfwid=-9faifleft>

<sup>5</sup> Frontex, The Fundamental Rights Officer’s Annual Report, 2021, [https://frontex.europa.eu/assets/Images\\_News/2022/FRO\\_Report\\_2021.pdf](https://frontex.europa.eu/assets/Images_News/2022/FRO_Report_2021.pdf)

<sup>6</sup> UNHCR comments on the draft law amending the Law of the Republic of Lithuania “On the Legal Status of Foreigners”, 27 September 2021, <https://www.refworld.org/cgi-bin/texis/vtx/rwmain/opendocpdf.pdf?reldoc=y&docid=615c360c4>

<sup>7</sup> UNHCR comments on the draft law, 27 September 2021.

8. In practice, these amendments meant that people were prevented from making asylum applications when they arrived at the border, except for international border checkpoints, that is, even when people at the border indicated they wanted to claim asylum, they would not be allowed entry into Lithuania.<sup>8</sup> In case people had already crossed the border irregularly and were *de facto* in the territory of Lithuania (in the border zone area or further into the territory of the country) and wanted to request asylum, their applications would not be accepted. Instead, they would be apprehended, taken to the border with Belarus and returned to the territory of Belarus, without issuing individual decisions or providing any safeguards against such removal.
9. On 6 of August 2021, a representative of the Parliamentary Ombudspersons' Office conducted a monitoring visit at the border with Belarus (border sign No 134-135).<sup>9</sup> The monitor recorded that “persons, including a woman with a minor child, who crossed the border in illegal places and expressed a wish to seek asylum in Lithuania, were not admitted to the territory of the country [...]”.<sup>10</sup> According to the report, the people were not informed where and how they could make asylum applications; furthermore, no vulnerability assessment was conducted or medical aid was provided to these asylum seekers. The same monitoring visit also recorded that a group of 34 persons, 15 of whom were minors, were not allowed to enter the territory of Lithuania. Given that the Belarussian officers were standing at the other side of the border and precluding the return of the people, the group was taken by a minibus to another section of the border, “where they were disembarked and escorted back to Belarus”.<sup>11</sup> On 9 August 2021, a group of 11 foreigners, including 3 minors, was located in a settlement near the border; the group was apprehended and returned collectively back to Belarus.<sup>12</sup> According to the report, no medical or humanitarian aid was provided in this case either.
10. In October 2021, UNHCR released a statement expressing concern at the restrictions of fundamental right to asylum, and reiterated that push-backs not only risked endangering lives but were also “illegal under international law”.<sup>13</sup>
11. On 21 December 2021, in its Concluding Observations for Lithuania, UN Committee against Torture expressed concern regarding “reported incidents of the collective expulsion of asylum seekers by the State party without reviewing their individual situations, including the practice of push back operations, whereby arriving asylum seekers, including children, have been deterred from crossing the border of the State party and left in the proximity of the border in dire conditions, with no access to asylum procedures, food, water and shelter.”<sup>14</sup> The Committee recommended

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<sup>8</sup> Hearing of the Parliamentary Human Rights Committee, 8 September 2021, <https://www.youtube.com/watch?v=QTmHxO-MIJg>

<sup>9</sup> Seimas Ombudspersons' Office of the Republic of Lithuania, Report No. NKP-2021/1-3 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, Para. 8.2.5. [http://hrmi.lt/wp-content/uploads/2021/10/E5339-Ataskaita\\_Migrantai\\_2021\\_RED\\_EN-1-2.pdf](http://hrmi.lt/wp-content/uploads/2021/10/E5339-Ataskaita_Migrantai_2021_RED_EN-1-2.pdf)

<sup>10</sup> Ibid.

<sup>11</sup> Ibid.

<sup>12</sup> Ibid.

<sup>13</sup> UNHCR, “Acknowledging the extraordinary situation in Lithuania, UNHCR raises concerns about legislative response and accommodation conditions”, 11 October 2021, <https://www.unhcr.org/neu/68731-acknowledging-the-extraordinary-situation-in-lithuania-unhcr-raises-concerns-about-legislative-response-and-accommodation-conditions.html>

<sup>14</sup> UN Committee against Torture, Concluding Observations on the fourth periodic report of Lithuania No. CAT/C/LTU/CO/4, 21 December 2021, <https://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=6QkG1d%2FPPrICAqhKb7yhsIcr%2Ff5KGx6%2F9UjrX%2Bsu%2Bg425Y6BAyPkLZzR19RyMJcnb7fronFg60gi7jxyzitu8tr3LpkQbODCdtVz4%2BPu6K1w1fFQFrRMNiWXDENI%2F3>

Lithuania to ensure that “all asylum seekers, including those arriving in an irregular manner and in times of emergency, have the right, in law and in practice, to apply for asylum and to remain on the territory pending the outcome of the asylum procedure”.<sup>15</sup>

12. Nevertheless, the policy and practice of push-backs and collective returns without providing access to asylum procedures continued throughout 2022. On 10 March 2022, in response to Russia’s war of aggression against Ukraine, the Parliament introduced a state of emergency.<sup>16</sup> The resolution, *inter alia*, provided that persons, attempting to cross or having crossed the external border of the European Union in places not designated for that purpose, are not allowed entry to the territory of Lithuania. An exception to the application of this provision was made to humanitarian entry of foreigners who flee military aggression and (or) persecution, including those not having a valid travel document.
13. The Lithuanian Red Cross noted in its 2022 annual monitoring report, that in 2022, asylum applications from citizens of Belarus or Russian Federation were generally accepted by the SBGS, also in case of irregular entry, whereas people from the Middle East, Africa and Asia were being returned back to Belarus, except for several cases when people were let in because of critical medical condition or because of having interim measures from the Court.<sup>17</sup>
14. According to the SBGS’s data, in 2022, a total of 206 asylum applications were registered, that were filed by persons having irregularly crossed the Lithuanian-Belarusian border.<sup>18</sup> Out of them, 159 applications were made by the citizens of Belarus. Although the demographic data of people who were pushed back or returned to Belarus is generally not being published by the SBGS, there were instances recorded when people from such countries as Afghanistan<sup>19</sup> and Syria<sup>20,21</sup> were being repeatedly returned back to Belarus without the opportunity to make asylum applications, despite the rather high recognition rate for citizens of these countries in the European Union as well as in Lithuania (in 2022, the Migration Department granted asylum to 35 Afghani citizens (66 percent recognition rate) and 25 Syrian citizens (69 percent recognition rate).<sup>22</sup>
15. It is important to note that currently amendments to the Foreigners Law are being considered by the Parliament. The amendments are to implement the Court of Justice of the European Union’s judgement in M.A., C-72/22 PPU, and would allow making an application for asylum to the SBGS

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<sup>15</sup> Ibid.

<sup>16</sup> Resolution of the Parliament of the Republic of Lithuania No. XIV-932 on the Introduction of the State of Emergency, 10 March 2022, <https://e-seimas.lrs.lt/portal/legalAct/lt/TAD/c2966eb2a07111ec9e62f960e3ee1cb6?jfwid=17a44zipcq>

<sup>17</sup> Lithuanian Red Cross Society’s 2022 annual monitoring report, <https://redcross.lt/veiklos/prieglobscio-ir-migracijos-programa/stebesena-2/>

<sup>18</sup> Parliamentary Ombudspersons’ Office 2022 annual activity report, <https://e-seimas.lrs.lt/portal/legalAct/lt/TAK/f2dc1e20c30811ed924fd817f8fa798e?positionInSearchResults=10&searchModelUUID=51059f45-499b-4518-a629-bcc05f8f8d6a>

<sup>19</sup> BNS News, “The attorney of Afghans who were not allowed entry into Lithuania, claims that they were in the territory of Lithuania”, 9 September 2021, <https://news.bns.lt/64617285/>

<sup>20</sup> BNS News, “Two Egyptians stuck in a swamp were taken by emergency response workers by stretchers”, 24 January 2022, <https://www.bns.lt/topic/1912/news/67909141/>

<sup>21</sup> 15min.lt, “To a group of 7 Afghans and Syrians - red traffic light at the border“, 3 April 2023, <https://www.15min.lt/naujiena/aktualu/nusikaltimaiirnelaimes/septynetui-is-afganistano-ir-sirijos-raudonas-svieso-foras-lietuvos-pasienyje-59-2032872>

<sup>22</sup> Migration Department under the Ministry of Interior, 2022 annual migration report, [https://migracija.lrv.lt/uploads/migracija/documents/files/2022\\_Migracijos\\_metrastis.pdf](https://migracija.lrv.lt/uploads/migracija/documents/files/2022_Migracijos_metrastis.pdf)

despite the means of entry.<sup>23</sup> However, at the same time amendments to the Law on State Border and its Protection are being proposed, which would legalise push-backs and returns in case of an extraordinary situation due to mass influx of foreigners.<sup>24</sup>

16. Taking all of the above circumstances into account, it is safe to conclude that effective access to asylum procedures did not exist in Lithuania at the time of events, and more generally from 2 August 2021 to the present day (obstacles in accessing asylum procedures at the international border checkpoints and the lack of effectiveness of the procedures whilst lodging an application at the Lithuanian embassy in Belarus are discussed in Paras. 21-26 below). Furthermore, it is important to note that the exception allowing entry and making an application for asylum after crossing irregularly was applied only to citizens of some countries, mainly Belarus. The absolute majority of citizens of other countries, who might also have fled persecution and could have had genuine grounds for asylum, were being summarily returned to Belarus without the possibility to claim asylum and remain in Lithuania whilst their asylum applications are considered.

*A description of the numbers and modalities of summary returns (push-backs) at the border and/or from the Lithuanian territory to Belarus, as taking place at the time of the events and, more generally, from 2 August 2021 to the present day.*

17. According to SBGS's official statistics, as of 20 April 2023, since the instatement of the push back policy, there were a total of 20 167 cases of push-backs/returns.<sup>25</sup> In 2022, there were 11 211 push-backs recorded, whilst in 2023 – 850 such cases. Although the official statistics state that these are the number of people who were not allowed entry, it is important to note that some of these push-back cases might have been repetitive. There are no officially published statistics on how many people were pushed back or returned to Belarus more than once.
18. In terms of modalities of push-backs and returns, these are carried out mainly in two ways: people who arrive at the border not at the designated places for crossing are not allowed entry into the territory of the country (the decision of the head of the State-level extraordinary situation allows using means of psychological and / or physical coercion measures in such cases). Another common way in which people are being pushed back is when they have already entered the territory of Lithuania and are either in the border zone area or a place further from the border, e.g. small towns, which might be at a 15-20 kilometres distance from the border. In such a case, people are apprehended, boarded on vehicles, taken to the border with Belarus and collectively returned back to Belarus.<sup>26</sup> It is important to note that in case of push-backs people are not being taken to international border checkpoints where they could, under the current Lithuanian legislation, make asylum applications, but are taken or escorted to other places at the border where there are no Belarussian officers on the other side, and directed to go back to Belarus.

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<sup>23</sup> Republic of Lithuania, Draft Law No. XIVP-2385 on the Amendment of Articles 140(8), 140(12) and the Abolishment of Articles 140(11), 140(17) of the Law on the Legal Status of Foreigners No. IX-2206, registered 13 January, 2023, <https://e-seimas.lrs.lt/portal/legalAct/lt/TAP/927284f0930d11edb55e9d42c1579bdf?positionInSearchResults=3&searchModelUUID=95fb27e3-6dbe-4b6a-8b4b-f3d22137718d>

<sup>24</sup> Republic of Lithuania, Draft Law on the Amendment of Sections I and III and Articles 4, 10, 16, 18, 23, 26 and the Supplementation with Article 23(1) and New Section IX of the Law on State Border and its Protection, registered on 13 January 2023, <https://e-seimas.lrs.lt/portal/legalAct/lt/TAP/31695270930c11edb55e9d42c1579bdf?positionInSearchResults=4&searchModelUUID=95fb27e3-6dbe-4b6a-8b4b-f3d22137718d>

<sup>25</sup> <https://vsat.lrv.lt/lt/naujienos/neileistu-neteisetu-migrantu-statistika>

<sup>26</sup> V. Balkūnas, 15min.lt, “Muted reality at the border: migrants, officially “not allowed entry” – in the forests and in the shops”, 21 October 2021, <https://www.15min.lt/naujiena/aktualu/reportazas-is-pasienio-55-1579438>

19. The demographic and other information on the people who were pushed back is generally not published, except in separate cases, although there were instances recorded, when families with minor children were pushed back to Belarus<sup>27</sup>, although children are inherently vulnerable in such situations. At least one instance of family separation during repeated push-backs was recorded.<sup>28</sup> Although the Government claims that vulnerability assessment is being carried out in each case, there is no approved procedure for such assessment and a conclusion can be drawn from public statements by SBGS that it is performed by “visual” evaluation.<sup>29</sup> The Foreigners Law provides for the definition of people who are considered vulnerable.<sup>30</sup> However, it is not clear whether the SBGS follows this definition in practice; there are no official statistics published on the number of people let in based on their vulnerability and the nature of their vulnerability.
20. Although there is vast and well documented evidence that people who are subject to push-backs at the border experience a genuine risk of violence (including gender-based violence) and ill-treatment from the Belarussian officers, whose actions in some cases might even amount to torture<sup>31</sup>, there is no individual assessment carried out in this respect of the individuals who are being collectively returned back to Belarus, that is, whether, in case they would be returned, they would be at a genuine and personal risk to experience such inhuman and degrading treatment at the hands of Belarussian officers, including in cases when people explicitly tell the SBGS officers about the actually experienced violence, ill-treatment and threats to life.<sup>32</sup>
21. It is important to note that, according to emergency legislation, there is an exception from returns for people who are fleeing military aggression and (or) persecution, including in cases when they do not have a valid travel document. However, there is no approved formal procedure for assessing whether people are fleeing military aggression and / or persecution, and this assessment is being carried out rather superficially, allowing entry to people fleeing from Belarus and Russian Federation, and denying entry to people from other regions, who, according to public SBGS’s comments, are in general considered to be “economic migrants”.<sup>33</sup>

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<sup>27</sup> Parliamentary Ombudspersons’ Office 2022 annual activity report, <https://e-seimas.lrs.lt/portal/legalAct/lt/TAK/f2dc1e20c30811ed924fd817f8fa798e?positionInSearchResults=10&searchModelUUID=51059f45-499b-4518-a629-bcc05f8f8d6a>

<sup>28</sup> V. Miškinis, delfi.lt, “A migrant stuck at the border with his family: help, we are being punished by Lithuania as well as Belarus”, 2 September 2022, <https://www.delfi.lt/news/daily/lithuania/pasienyje-su-seima-istriges-migrantas-padekite-mus-baudzia-ir-lietuva-ir-baltarusija.d?id=91113377>

<sup>29</sup> Tv3.lt, “Border guards do not have a procedure for returns: it is not always possible to ascertain which persons are indeed vulnerable”, 6 October 2021, <https://www.tv3.lt/naujiena/lietuva/pasienieciai-neturi-migrantu-apgrezimo-tvarkos-ne-visada-gali-nustatyti-kurie-asmenys-isties-pazeidziami-n1117983>

<sup>30</sup> Art. 18<sup>2</sup> of the Foreigners Law defines vulnerable person as a person with special needs (such as a minor, a disabled person, a person over the age of 75, a pregnant woman, a single parent with minor children, a person suffering from mental and behavioural disorders, a victim of trafficking in human beings or a person who has been subjected to torture, rape or other serious forms of psychological, physical or sexual violence. <https://e-seimas.lrs.lt/portal/legalAct/lt/TAD/ac2cfa50b06f11ecaf79c2120caf5094?jfwid=>

<sup>31</sup> Human Rights Watch, “Violence and pushbacks at Poland-Belarus border”, 7 June 2022, <https://www.hrw.org/news/2022/06/07/violence-and-pushbacks-poland-belarus-border>

<sup>32</sup> Jovavoszinios.lt, “Illegal migrants not allowed entry into Lithuania tell of their treatment by Belarussian officers”, 16 December 2022, <https://www.jovavoszinios.lt/naujiena/i-lietuva-neileisti-neteiseti-migrantai-pasakoja-apie-baltarusijos-pareigunu-elgesi-su-jais>

<sup>33</sup> R. Augustaitytė, ELTA, Lrt.lt, “Whislt NGO express concern regarding an informational vacuum at the border, the representative of SBGS says that there are no secrets”, 25 August 2022, <https://www.lrt.lt/naujienos/lietuvoje/2/1766695/nvo-nuogastaujant-del-informacinio-vakuumo-pasienyje-vs-atstovastikina-jokiu-paslapciu-nera>

*Whether a genuine and effective access to means of legal entry existed in Lithuania in the period relevant for the case in question (first half of 2022).*

22. Although the Government's position is that it provides access to asylum procedures at the international border checkpoints at the border with Belarus, the Lithuanian Red Cross Society's monitoring data indicates that people encounter serious practical obstacles in accessing asylum procedures in this way.
23. To access Lithuania's border checkpoints, people seeking asylum must first go through the Belarussian border control. In its 2022 monitoring report, the Lithuanian Red Cross noted that, according to the information provided by state border committee of the Republic of Belarus, foreigners crossing the border must provide a valid travel document (passport) with a valid Belarussian visa or a certificate of return to the country of origin (if the passport has been lost in Belarus).<sup>34</sup> The report states that "it is almost without doubt that foreigners without a travel document would meet obstacles when trying to pass through the border control on the side of Belarus".<sup>35</sup> According to the report, those not having a valid Belarussian visa (e.g. a visa has expired) are at a likely risk of detention and sanctions.
24. The Red Cross monitoring report also found that even in cases when asylum seekers manage to reach the Lithuanian side of the border, there were instances recorded when their asylum applications were not registered, and people themselves were returned back to Belarus.<sup>36</sup> Furthermore, according to the Red Cross report, despite the public claims that anyone wanting to claim asylum can file applications at the border checkpoints, judging from the public comments of the SBGS, officers at the checkpoints "are of the position that they should be reached only by those having a visa or a residence permit".<sup>37</sup>
25. According to SBGS's data, in 2022, a total of 180 requests for asylum were registered that were filed at the international border checkpoints, 92 of them – at the checkpoints on the border with Belarus.<sup>38</sup> Of these 92 requests filed, the absolute majority were submitted by citizens of the Russian Federation (61 applications) and Tajikistan (21 applications).
26. In regards to the possibility to file asylum applications at the Lithuanian embassy in Belarus, the Red Cross notes that, for filing the application for asylum, the persons must present: 1) a designated form of request for asylum; 2) a copy of a valid travel document; 3) copies of documents confirming legal stay in the foreign country where the application is being filed; 4) other documents confirming the necessity of asylum.<sup>39</sup> It is important to note that there is no specific procedure approved for examining asylum applications submitted at the embassy. Furthermore, individuals who filed the applications are not being issued travel documents to enter Lithuania and exercise their rights as asylum seekers. In case the visa allowing stay in Belarus expires, the people who filed applications are at a genuine risk of being deported back to their countries of origin, especially given the noted delays in examination of these applications by the

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<sup>34</sup> Lithuanian Red Cross Society's 2022 thematic report on access to asylum at the international border checkpoints and the diplomatic missions abroad, <https://redcross.lt/veiklos/prieglobsio-ir-migracijos-programa/stebesena-2/>

<sup>35</sup> Ibid.

<sup>36</sup> Ibid.

<sup>37</sup> Lrytas.lt, "A Chechen who wanted to enter Lithuania without a visa was taken by hands by the border guard officers back to Belarus", 22 September 2022, <https://www.lrytas.lt/lietuvosdiena/aktualijos/2022/09/22/news/be-vizos-i-lietuva-norejusi-patekti-cecena-pasienieciai-rankomis-iskele-atgal-i-baltarusija-24660194>

<sup>38</sup> Parliamentary Ombudspersons' Office 2022 annual activity report.

<sup>39</sup> Lithuanian Red Cross Society's 2022 thematic report on access to asylum at the international border checkpoints and the diplomatic missions abroad.



Migration Department. At least one person – an asylum seeker from Cuba – who filed an application at the embassy, has been deported from Belarus to his country of origin as his visa has expired. The Vilnius district administrative court found in this case, that the Migration Department unjustifiably delayed the asylum procedures, did not cooperate with the applicant and essentially ignored him when he warned that he was not able to stay in Belarus any longer.<sup>40</sup>

27. In 2022, a total of 27 applications for asylum were submitted at the Lithuanian embassy in Belarus.<sup>41</sup> In the beginning of 2023, only 6 of these applications were still being examined; examination of 9 applications has been discontinued, whereas with 12 applicants the Migration Department was attempting “to establish contact”.<sup>42</sup> The statistics indicate that the asylum procedures, when filing applications at the embassy, are not effective and asylum seekers, whose stay in Belarus is limited in time, are at a real risk of refoulement to their countries of origin.
28. The overall conclusion would be that no genuine and effective access to means of legal entry existed in Lithuania in the period relevant for the case, as people seeking asylum experience serious practical obstacles in accessing asylum procedures at the international border checkpoints at the border with Belarus. Individuals, who filed applications at the Lithuanian embassy in Belarus, due to delays in examination of their applications, are at a real risk of refoulement from Belarus to their countries of origin.

***Whether asylum seekers accommodated without freedom of movement under the emergency legislation were being de facto deprived of their liberty; whether they were being informed of the grounds of deprivation of their liberty and whether they had the possibility to challenge the lawfulness of such deprivation of liberty during the time period relevant for the case in question.***

29. Art. 140<sup>8</sup> (3) of the Foreigners Law provides that in times of war, state of emergency or extraordinary situation due to the large influx of people crossing into the country, non-citizens who enter irregularly (asylum seekers, migrants not seeking asylum, or individuals whose asylum applications have been rejected), are to be accommodated in designated places without the right to freely move in the territory of the Republic of Lithuania.<sup>43</sup> This administrative measure can be applied for up to six months with the possibility of extension for another six months.<sup>44</sup> No individual decisions are issued and no judicial review is provided for by law for the initial six months period of such accommodation.
30. Numerous legal experts and judicial bodies have found that this administrative measure clearly amounts to deprivation of liberty, often in degrading circumstances. In practice, such accommodation meant that migrants and asylum seekers were placed in the premises of border guard stations, foreigners’ registration and refugee reception centers without the right to freely leave the centers and, in some cases, without the possibility to move freely across the different sectors of the centers. The Parliamentary Ombudspersons’ Office — after conducting monitoring

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<sup>40</sup> Vilnius district administrative court’s 16 March 2023 judgement in administrative case No. eI2-2077-535/2023, <https://hrmi.lt/wp-content/uploads/2023/03/2023-03-16spreadimas-bylojeI2-2077-535-2023-nuasmienintas.pdf>

<sup>41</sup> Parliamentary Ombudspersons’ Office 2022 annual activity report.

<sup>42</sup> Ibid.

<sup>43</sup> Republic of Lithuania, Law on the Legal Status of Foreigners No. IX-2206 (last amended on 17 March 2022, consolidated version valid as of 1 April 2022), <https://e-seimas.lrs.lt/portal/legalAct/lt/TAD/ac2cfa50b06f11ecaf79c2120caf5094?jfwid=>

<sup>44</sup> Art. 140<sup>8</sup> (9) of the law provides that in certain cases, when individual administrative decisions are issued by the Migration Department or State Border Guard Service to accommodate a foreigner without the right to freely move in the territory of the country, such decisions can be appealed to a district court in 14 days.

visits in Kybartai foreigners' registration center<sup>45</sup> (now closed) and Medininkai foreigners' registration center<sup>46</sup> (now closed) — found that the conditions in the centers amounted to detention and degrading treatment. The Lithuanian courts have likewise ruled in a series of cases that accommodation at these facilities amounted to *de facto* detention.<sup>47</sup> In these and other cases concerning such restriction of liberty, the courts found it to be unlawful and / or ungrounded and disproportionate.<sup>48</sup> The European Committee for the Prevention of Torture, after its 2021 visit to the foreigners' registration centres in Kybartai, Medininkai and Pabradė, concluded that the situation at these sites amounted to detention.<sup>49</sup>

31. According to numerous reports, lack of information on their rights, legal status, the grounds and the length of detention was one of the most common complaints of the foreigners in the sites. The Parliamentary Ombudsperson's monitoring visit in *ad hoc* camps in 2021 found that the detainees „were not provided with any information about their legal status in the Republic of Lithuania. The interviewed foreigners 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 the places of their temporary accommodation, the expected duration of their stay at these places and the procedures that they are subject to [...]“.<sup>50</sup> Furthermore, some of the foreigners informed that the only information they received were periodic verbal reminders of the possibility to voluntarily return to their countries of origin and a leaflet stating that none of the foreigners having illegally crossed the Lithuanian-Belorussian border were granted asylum in Lithuania in 2021.
32. The situation with provision of information has not improved substantially when migrants and asylum seekers were transferred to the 5 large foreigners' registration and refugee reception centres in the autumn of 2021. CPT, after visiting the centres in Medininkai, Pabradė and Kybartai in December 2021, noted a “strong sense of confusion” due to the lack of provision of information.<sup>51</sup> According to the CPT report, the foreign nationals arriving at the centres were provided with a document listing their rights and responsibilities, however, the procedures on how

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<sup>45</sup> Parliamentary Ombudspersons' Office of the Republic of Lithuania's Report No. NKP-2021/1-4 on the Implementation of the Rights and Freedoms of Foreigners in Kybartai Foreigners' Registration Centre of the State Border Guard Service under the Ministry of Interior, 24 January 2022, [https://www.lrski.lt/wp-content/uploads/2022/01/Final\\_Ataskaita\\_Kybartai\\_2021.pdf](https://www.lrski.lt/wp-content/uploads/2022/01/Final_Ataskaita_Kybartai_2021.pdf)

<sup>46</sup> Parliamentary Ombudspersons' Office of the Republic of Lithuania's Report No. NKP-2022/1-1 on the Implementation of the Rights and Freedoms of Foreigners in Medininkai Foreigners' Registration Centre of the State Border Guard Service under the Ministry of Interior, 7 July 2022, [https://www.lrski.lt/wp-content/uploads/2022/07/Ataskaita\\_MURC\\_2022\\_FINAL.pdf](https://www.lrski.lt/wp-content/uploads/2022/07/Ataskaita_MURC_2022_FINAL.pdf)

<sup>47</sup> 31 March 2022 decision of the Supreme administrative court of Lithuania in the case No. A-1 804-502/2022; 5 May 2022 decision of the Supreme administrative court of Lithuania in the case No. A-2414-881/2022, <https://liteko.teismai.lt/viesasprendimupaieska/tekstas.aspx?id=40323ea5-cd4a-4e75-85f5-da3deddfb6a>; 19 May 2022 decision of the Supreme administrative court of Lithuania in the case No. A-2595-602/2022.

<sup>48</sup> 26 October 2022 decision of the Supreme administrative court in the case No. A-3969-968/2022; 26 October 2022 decision of the Supreme administrative court in the case No. A-3948-442/2022.

<sup>49</sup> European committee on the prevention of torture and inhuman or degrading treatment or punishment, Report to the Lithuanian Government on the periodic visit to Lithuania carried out by the CPT from 10 to 20 December 2021, No. CPT/Inf (2023) 01, <https://rm.coe.int/1680aa51af>

<sup>50</sup> Seimas Ombudspersons' Office of the Republic of Lithuania, Report No. NKP-2021/1-3 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, [http://hrmi.lt/wp-content/uploads/2021/10/E5339-Ataskaita\\_Migrantai\\_2021\\_RED\\_EN-1-2.pdf](http://hrmi.lt/wp-content/uploads/2021/10/E5339-Ataskaita_Migrantai_2021_RED_EN-1-2.pdf)

<sup>51</sup> CPT report No. CPT/Inf (2023) 01, <https://rm.coe.int/1680aa51af>

to exercise these rights were not specified, and “evidently, these remained largely unknown or misunderstood”.<sup>52</sup>

33. A similar conclusion was reached by the Parliamentary Ombudspersons’ Office after visiting the Kybartai centre in January 2022, where it found that while there was a brief document on the rights of foreigners at the center, there was insufficient information on the content of those rights or how to exercise them.<sup>53</sup> Although the document stated that the asylum seekers have a right to free legal aid, no additional information on how to request legal aid, the terms and form of legal assistance was provided. The Ombudsperson concluded that the information provided was insufficient for asylum seekers to effectively access their right to receive state guaranteed legal aid.
34. In regards to the provision of information in Medininkai centre, although the arriving foreigners were being familiarised with the document containing information on their rights and responsibilities, the Parliamentary Ombudsperson noted in her 2022 July report that “in the English and Arabic versions of the document a very complex and somewhat inaccurate language is used, not only in the sense of words, but also structure, therefore it is relatively difficult to understand the text”.<sup>54</sup> The document in question (Annex 1) does not provide information on the grounds of the initial six months (de facto) detention or the procedure by which such detention can be challenged before a judicial body. As noted in Para. 28, the initial period of six months of detention is applied *en masse* and automatically without issuing any formal decisions which could be challenged in court. CPT noted in its report, that detained foreigners in the centres were not being informed on their situation and their rights, such as the right to inform a relative or the right of access to a lawyer<sup>55</sup>, the information, which should have been provided from the very outset of their deprivation of liberty.
35. Therefore, a conclusion can be made that: a) asylum seekers were being *de facto* deprived of their liberty; b) people were not being informed of the grounds of such deprivation of liberty and no formal individual decisions were being issued regarding such *de facto* detention; c) the lack of information on the grounds of detention and the procedures of how to challenge such detention, as well as the lack of legal aid in such cases, placed the asylum seekers in the position where they had little possibilities to challenge the lawfulness of such deprivation of liberty.

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<sup>52</sup> Ibid.

<sup>53</sup> Parliamentary Ombudspersons’ Office of the Republic of Lithuania’s Report No. NKP-2021/1-4 on the Implementation of the Rights and Freedoms of Foreigners in Kybartai Foreigners’ Registration Centre of the State Border Guard Service under the Ministry of Interior, 24 January 2022, [https://www.lrski.lt/wp-content/uploads/2022/01/Final\\_Ataskaita\\_Kybartai\\_2021.pdf](https://www.lrski.lt/wp-content/uploads/2022/01/Final_Ataskaita_Kybartai_2021.pdf)

<sup>54</sup> Parliamentary Ombudspersons’ Office of the Republic of Lithuania’s Report No. NKP-2022/1-1 on the Implementation of the Rights and Freedoms of Foreigners in Medininkai Foreigners’ Registration Centre of the State Border Guard Service under the Ministry of Interior, 7 July 2022, [https://www.lrski.lt/wp-content/uploads/2022/07/Ataskaita\\_MURC\\_2022\\_FINAL.pdf](https://www.lrski.lt/wp-content/uploads/2022/07/Ataskaita_MURC_2022_FINAL.pdf)

<sup>55</sup> CPT report No. CPT/Inf (2023) 01.