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THEMATIC STUDY

ACCESS TO THE ASYLUM
PROCEDURE AT THE
DIPLOMATIC MISSIONS
OF THE REPUBLIC OF
LITHUANIA ABROAD AND
AT THE BORDER
CHECKPOINTS OF THE
STATE BORDER GUARD
SERVICE

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The Lithuanian Red Cross is a non-governmental organisation that provides social, humanitarian and legal assistance to refugees, asylum seekers, stateless persons and other migrants regardless of their legal status.

Adhering to the fundamental principles of the Red Cross and Red Crescent Movement, the Lithuanian Red Cross strives to protect life and health and to ensure respect for the human being, to relieve the suffering of individuals, being guided solely by their needs and without discrimination as to nationality, race, religious beliefs, class or political opinions, and does not engage in controversies of a political, racial, religious or ideological nature.

This thematic study was carried out as part of the project agreement of the Lithuanian Red Cross with the United Nations Refugee Agency (Project No SWE01/2022/MY/0000000065/000). The purpose of the study is to assess the practical possibilities for foreigners to submit an asylum application at the diplomatic missions of the Republic of Lithuania abroad and at the border checkpoints of the State Border Guard Service.

The study report is based on the information received from foreigners seeking asylum, attorneys and lawyers providing advice and assistance to foreigners, as well as from the Migration Department and the Ministry of Foreign Affairs. In addition, the study covers relevant legal regulation as well as relevant media reports, publicly available statistical information and statistics shared with the Lithuanian Red Cross by relevant institutions.

When evaluating the collected data, the monitors and lawyers of the Lithuanian Red Cross rely on their professional expertise and long-term experience in the field of migration and asylum, as well as the case-law of international courts, legal and scientific literature. We are grateful to partners and colleagues for additional insights.

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THEMATIC STUDY

**ACCESS TO THE ASYLUM PROCEDURE AT THE DIPLOMATIC
MISSIONS OF THE REPUBLIC OF LITHUANIA ABROAD AND
AT THE BORDER CHECKPOINTS OF THE STATE BORDER
GUARD SERVICE**

LIST OF ABBREVIATIONS

BCP – border checkpoint

CJEU – Court of Justice of the European Union

ECHR – European Court of Human Rights

EU – European Union

EUAA – European Union Asylum Agency

EUROSTAT – Statistical Office of the European Union

FRC – Foreigners' Registration Centre

FRONTEX – European Border and Coast Guard Agency

LRC – Lithuanian Red Cross.

MD – Migration Department under the Ministry of the Interior of the Republic of Lithuania

MFA – Ministry of Foreign Affairs of the Republic of Lithuania

SBGS – State Border Guard Service under the Ministry of the Interior of the Republic of Lithuania

UNHCR – United Nations Refugee Agency

I. INTRODUCTION

In 1995 the Law of the Republic of Lithuania on Refugee Status established the asylum institute in Lithuania. In 1997 Lithuania ratified the 1951 United Nations Convention Relating to the Status of Refugees and undertook, in accordance with the provisions of the said convention, responsibility to protect refugees on its territory and provide them with proper integration conditions. The same year the first decisions to grant foreigners asylum in Lithuania were taken.

The development of the asylum system in Lithuania did not end with the ratification of the UN Convention. In 1999, in preparation for Lithuania's accession to the EU, the harmonisation of the national legal regulation of migration and asylum with the EU legislation started. In 2004, after renewing the procedures for registering and assessing asylum applications in light of the European standards, Lithuania became a member of the EU and recognised the precedence of the EU law by the Constitutional Act. In 2011-2013, with the active participation of Lithuania, a new package of legal acts defining the Common European Asylum System was adopted at the EU, the provisions of which have been fully applied since 2015.

As far as the right to asylum is concerned, at the EU level this right is enshrined in Article 18 of the Charter of Fundamental Rights, and the obligation to comply with the provisions of the 1951 United Nations Convention Relating to the Status of Refugees and the principle of non-refoulement are enshrined in Article 78(1) of the Treaty on the Functioning of the European Union. Separate directives and regulations determine the criteria for granting asylum, the applicable procedures, the reception conditions guaranteed to asylum seekers, the distribution of responsibility between different EU states, etc. According to the EU law, which is an integral part of the Lithuanian legal system, any person has the right to request asylum on the territory of a member state, including its border or transit zones, regardless of the probability that his/her request will be granted. Member States, including the Republic of Lithuania, in turn, have the duty to accept and properly and individually examine each such request, as well as not to return a person to the country of origin without first making sure that he/she is not at risk of persecution there.

When a person expresses his/her wish to apply for asylum, he/she becomes an asylum seeker and acquires the corresponding rights, including the right to remain in the country pending a decision on his/her application. Each asylum application must be registered and forwarded to the designated determining authority for assessment. The task of this institution is to conduct an investigation, the purpose of which is to assess the risk to the asylum seeker in case of return to the country of origin. During this investigation, asylum seekers are interviewed, all available relevant information about them and their respective countries of origin is collected, other institutions are consulted. If it is established that an asylum seeker has a well-founded fear of persecution, he/she is granted asylum and allowed to stay. On the other hand, if no real risk of persecution is established, he/she is refused asylum and is not allowed to stay. This is the general outline of the asylum procedure as it is regulated in the national and

EU law. The public administration institutions participating in this process must act prudently and carefully, they are bound both by the principles of constitutional law (rule of law, government institutions serve the people, primacy of the law, prohibition of discrimination, equality of persons before the law, proportionality, etc.) and good administration and responsible management principles (legality, objectivity, non-abuse of power, transparency, etc.).

In 2021, faced with a greatly increased flow of asylum seekers, Lithuania decided to simply stop accepting asylum applications from those foreigners who entered the country irregularly. Despite the fact that in 2022 the CJEU ruled that such restrictions for a certain category of persons completely prevent the exercise of the right to asylum and are therefore incompatible with the EU law, the Lithuanian institutions have consistently reiterated the same position that all those wishing to apply for asylum are able to do so in the places provided for that purpose – at the Embassy of the Republic of Lithuania in Minsk or at the BCP of the SBGS.

The LRC carried out a study aimed at assessing whether the aforementioned methods of submitting asylum applications are actually available to everyone and provide effective protection to individuals against refoulement without assessing the need for protection. The results of the study show that applying for asylum at the embassy is actually not available to everyone who wants it, does not in any way ensure the protection of a person from refoulement, and is not in itself considered a procedure arising from the EU law. The possibility of applying for asylum at the BCP of the SBGS, in turn, is also not accessible to everyone who wants to submit an asylum application, and in certain cases is restricted. Thus, the system currently in place in Lithuania prevents some persons from exercising the right to asylum and for this reason violates the EU law, which has precedence over national legislation.

II. ABOUT THE STUDY

The study was conducted in August - November 2022. It analyses the available information collected during the mentioned period. The study is largely based on qualitative data collected through interviewing and document analysis. Some of the interviews conducted were structured, some were semi-structured or unstructured, i.e., some of the interviews were planned for and agreed upon in advance and followed a prepared questionnaire, while some were spontaneously initiated by people contacting the LRC, where there were fewer pre-prepared questions or the course of the interview was dictated by the revealed circumstances. While collecting the information, we interviewed the foreigners who sought to apply for asylum[1] (8 interviews, carried out live, by phone or via social networks, as well as 2 e-mail correspondences), attorneys or lawyers who provide legal advice and assistance to foreigners (3 interviews), also requested and received some specific data from the MD and the MFA. In addition, the project partner – UNHCR – provided the LRC with the qualitative data collected about the case relevant for the study. The personal data of the participants of the described situations are not presented in the text, ensuring the confidentiality of the information sources. The factual data collected was verified as far as possible. In the event that conflicting information about the same event was received from different sources, this has been noted in the text.

The testimonies of the individuals were presented in a summarised form, without changing the content or context of the story and maintaining the accuracy of the information collected. When assessing the credibility of the testimonies of individuals, the fact that the testimonies were collected from individuals who directly participated in the events described, i.e., they were the primary sources of information, was taken into account. In addition, the level of detail, consistency and compatibility of the stories with other available information, including reports on similar cases, as well as the plausibility of the described events in the context of the specific situation, were taken into account. In cases where details of the narrative could be corroborated by other evidence, such evidence was collected and assessed. Finally, in assessing the probative value of uncorroborated testimonies of individuals, the interpretations of the ECHR in cases concerning access to the asylum procedure were taken into account, where the decisive weight was given to people's accounts when credibility was disputed[2].

In addition to qualitative data, quantitative data managed by EUAA, MD, LRC, SBGS, the State Data Agency and EUROSTAT were used for the analysis. Considering the limited access to the necessary qualitative

[1] One of these interviews was conducted with a relative of an asylum-seeker.

[2] Judgement of the ECHR of 11 December 2018 in the case *M.A. and Others v. Lithuania* (Application No 59793/17), p. 107-113, ECLI:CE:ECHR:2018:1211JUD005979317, accessed on 8 December 2022: <https://hudoc.echr.coe.int/fre?i=001-207500>; Judgement of the ECHR of 13 February 2020 in the case *N.D. and N.T. v. Spain* (Applications No 8675/15 and 8697/15), p. 85, ECLI:CE:ECHR:2020:0213JUD000867515, accessed on 8 December 2022: <https://hudoc.echr.coe.int/eng?i=001-201353>; Judgement of the ECHR of 18 November 2021 in the case *M.H. and Others v. Croatia* (Applications No 15670/18 and 43115/18), p. 268-275, ECLI:CE:ECHR:2021:1118JUD001567018, accessed on 8 December 2022: <https://hudoc.echr.coe.int/fre?i=001-213213>

data, this report also analyses the reports of different organisations (FRONTEX, Amnesty International, Human Rights Watch), Lithuanian and foreign media reports, and relevant legal regulation. References to sources of information used are provided in the text.

During the study, a systematic analysis of the observed situation was carried out, and interpretative and inductive conclusions were presented. Although analytical in nature, this study has elements of advocacy. In addition, not only conclusions, but also recommendations are presented, reflecting the consistent position of the LRC in relation to the protection of refugees and asylum seekers.

The LRC will continue to monitor the access to the asylum procedure, supplementing the data collected during this study.

III. SITUATION OVERVIEW

In August 2021, Lithuania introduced the new legal regime, limiting foreigners' access to asylum procedures when a state of war, a state of emergency or an emergency situation due to a massive influx of foreigners have been declared in the country. The Law of the Republic of Lithuania on the Legal Status of Foreigners provides that in such cases the application for asylum can only be submitted to the SBGS – at the BCP or transit zones; to the MD – when a foreigner has already arrived in Lithuania legally; or at the diplomatic missions or consular offices of Lithuania operating in foreign countries, specified by the MFA[3]. At the same time, the so-called “redirection” (push-back) policy[4], was applied, which basically determines that persons who have been apprehended after crossing the state border with Belarus at an unauthorised place are forcibly returned to the territory of Belarus, regardless of whether they intend to apply for asylum. According to the constantly updated data of the SBGS[5], this year alone there were nearly 11 thousand such “redirected” persons (data as of the beginning of December).

In this way, when a foreigner crosses the so-called “green border” in an unauthorised place, his/her request for asylum is not to be registered, since the SBGS can only accept requests at the BCP, while the MD – only from persons that arrived legally. A discretionary exception had been applied exclusively to citizens of Belarus and the Russian Federation[6] who crossed the “green border” seeking international protection[7]. Individual asylum applications are also being accepted from persons in respect of whom the ECHR has granted a request to apply interim measures[8]. The situation has slightly changed in October-November this year, when the LRC recorded several cases where asylum applications were also

[3] See provisions of Article 140/12 of Chapter X/2 of the Law of the Republic of Lithuania on the Legal Status of Foreigners, accessed on 8 September 2022: <https://e-seimas.lrs.lt/portal/legalAct/lt/TAD/TAIS.232378/asr>

[4] See the decision of the Minister of the Interior of the Republic of Lithuania – State-Level Emergency Operations Manager “Regarding the massive influx of foreigners in the territories of the border section near the state border of the Republic of Lithuania with the Republic of Belarus and strengthening the state border protection”, accessed on 8 September 2022: https://vrm.lrv.lt/uploads/vrm/documents/files/LT_versija/Sprendimas_Nr_%2010V-20.pdf

[5] State Border Guard Service under the Ministry of the Interior of the Republic of Lithuania, Statistics on Non-admitted Illegal Migrants, accessed on 9 December 2022: <https://www.pasienis.lt/lit/Neileistu-neteisetu-migrantu-statistika>

[6] NOTE: This information concerns the actual situation up to 19 September 2022, when the entry of citizens of the Russian Federation into the Republic of Lithuania was strictly limited.

[7] [the SBGS representative] claimed that the majority of illegal migrants trying to enter Lithuania are young, strong, healthy men looking for better economic conditions. There were no cases of such foreigners being admitted for humanitarian reasons. “Belarusian citizens, as well as Russian citizens, who are fleeing the regime in those countries due to their activities and views are admitted. There were no cases when there were reasons to allow people from other countries into Lithuania”. See: “Migrant stuck at the border with his family: help, we are being punished by both Lithuania and Belarus”, Delfi.lt, 2 September 2022, accessed on 6 September 2022:

<https://www.delfi.lt/news/daily/lithuania/pasienyje-su-seima-istriges-migrantas-padekite-mus-baudzia-ir-lietuva-ir-baltarusija.d?id=91113377>

[8] See, for example, “The border guards admitted four foreigners to Lithuania, to whom the ECHR applied protection”, Lrt.lt, 14 April 2022, accessed on 6 September 2022: <https://www.lrt.lt/naujienos/lietuvoje/2/1673456/pasienieciai-i-lietuva-ileido-keturis-uzsieniecius-kuriems-eztt-pritaike-apsauga> and “Migrant stuck at the border with his family: help, we are being punished by both Lithuania and Belarus”, Delfi.lt, 2 September 2022, accessed on 6 September 2022: <https://www.delfi.lt/news/daily/lithuania/pasienyje-su-seima-istriges-migrantas-padekite-mus-baudzia-ir-lietuva-ir-baltarusija.d?id=91113377>

accepted from persons who were brought to hospitals due to particularly severe health conditions (frostbite, dehydration).

This policy implemented by Lithuania towards asylum seekers has received a lot of criticism[9]. For example, in its 2021 annual report[10] the FRONTEX Fundamental Rights Officer overviews the practices carried out by Lithuania at the border with Belarus and related aspects that FRONTEX considers as raising concern.

As noted in the aforementioned report, from July 2021, in response to an unprecedented increase in the number of migrants arriving irregularly through the “green border” in Lithuania, FRONTEX started emergency border intervention activities in Lithuania. The FRONTEX Fundamental Rights Officer Unit started monitoring activities in Lithuania at the beginning of August 2021 and continued practically until the end of last year. FRONTEX monitors have observed a systematic practice of so-called “redirection”, which their report equates to collective expulsion and the restriction of access to international protection. The FRONTEX report notes that this practice was based on amended national legislation that is not in line with EU law and recommended practice. Additional concerns include poor identification procedures and protection mechanisms for vulnerable persons, extensive use of detention and other issues, such as poor access to information and legal advice, (in)ability to understand the information provided, short timelines for appeal, etc. FRONTEX expressed its concern that, despite the agency's active participation in managing the crisis at the border, the Lithuanian authorities continuously and systematically apply practices which raise fundamental rights concerns[11].

The report indicates that FRONTEX set a goal for 2022 to conduct training for Lithuanian institutions and prepare them to work in extreme conditions. FRONTEX noted that it continues to monitor and document possible ongoing violations of fundamental rights at the border with Belarus.

The dispute over the controversial legislative changes limiting the possibilities to submit an asylum application also reached the CJEU, which in its judgement of 30 June 2022 in the case M.A., with the participation of the State Border Guard Service (C-72/22 PPU), noted[12] that Article 7(1) of Directive

[9] See, for example, Legal Note #11. "Extraordinary responses: legislative changes in Lithuania, 2021", European Council on Refugees and Exiles (ECRE), September 2021, accessed on 6 September 2022: <https://ecre.org/wp-content/uploads/2021/09/Legal-Note-11.pdf>;

The Fundamental Rights Officer Annual Report 2021, European Border and Coast Guard Agency (FRONTEX), June 2022, accessed on 6 September 2022:

https://FRONTEX.europa.eu/assets/Key_Documents/FRO_reports/The_Fundamental_Rights_Officer_Annual_Report_2021.pdf;

Lithuania: Forced out or locked up – Refugees and migrants abused and abandoned", Amnesty International, 27 June 2022, accessed on 6 September 2022: <https://www.amnesty.org/en/wp-content/uploads/2022/06/EUR5357352022ENGLISH.pdf>;

Judgement of the Court of Justice of the European Union of 30 June 2022 in the case C-72/22 PPU, accessed on 6 September 2022: [https://curia.europa.eu/juris/document/document_print.jsf?](https://curia.europa.eu/juris/document/document_print.jsf?mode=lst&pageIndex=0&docid=261930&part=1&doclang=LT&text=&dir=&occ=first&cid=814044)

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[10] See The Fundamental Rights Officer Annual Report 2021, European Border and Coast Guard Agency (FRONTEX), 2022 Luxembourg: Publications Office of the European Union, 2022, accessed on 8 September 2022:

https://FRONTEX.europa.eu/assets/Images_News/2022/FRO_Report_2021.pdf

[11] Ibid

[12] See judgement of 30 June 2022 in the case M.A., with the participation of the State Border Guard Service (C-72/22 PPU, EU:C:2022:505), paragraphs 58-61, 72, 74-75.

2013/32/EU of the European Parliament and of the Council of 26 June 2013 on the common procedures for granting and withdrawing international protection (hereinafter – Directive 2013/32) provides that each adult with legal capacity has the right to make an application for international protection on his or her own behalf.

In addition, the jurisprudence of the CJEU shows that any third-country national or stateless person has the right to apply for international protection in the territory of a Member State, including its border or transit zones, even if he/she is illegally present in that territory. This right must be recognised, regardless of the probability that such a request will be granted. Article 6(2) of Directive 2013/32 also enshrines the duty of Member States to ensure that a person who has made an application for international protection has an effective opportunity to lodge it as soon as possible. Taking this into account, it should first of all be noted that when making an application for international protection, registering that application and lodging it, the objective of Directive 2013/32 to effectively, i.e., in the simplest way possible, ensure the possibility to use the procedure for granting international protection must be respected. In addition, the right to request such protection determines, first of all, that the right to have the application submitted, registered and examined within the time limits set out in Directive 2013/32 must be respected, and secondly, most importantly, that the effectiveness of the right to asylum guaranteed by Article 18 of the EU Charter of Fundamental Rights must be ensured. In this way, the legal regime determined by Article 14012 of the Law of the Republic of Lithuania on the Legal Status of Foreigners is incompatible with the aforementioned provisions of Directive 2013/32, as it actually deprives foreigners, who have crossed the state border in places not designated for that, of the opportunity to apply for asylum.

In response to criticism regarding the restrictions on access to asylum procedures, representatives of Lithuanian institutions have consistently reiterated the same position formulated over a year ago, namely – that those “illegal migrants” whose asylum applications are not even registered do not need asylum. The SBGS had been making an exception for citizens of Belarus and the Russian Federation[13], the rest are considered “economic migrants”[14].

In this regard, it should first be noted that the SBGS officials actually take over the role of the institution responsible for examining asylum applications and decide at their own discretion who needs international protection and who does not, without an established procedure and clear criteria. This is

[13] NOTE: This information concerns the actual situation up to 19 September 2022, when the entry of citizens of the Russian Federation into the Republic of Lithuania was strictly limited.

[14] *[the SBGS representative] claimed that the majority of illegal migrants trying to enter Lithuania are young, strong, healthy men looking for better economic conditions. There were no cases of such foreigners being admitted for humanitarian reasons. “Belarusian citizens, as well as Russian citizens, who are fleeing the regime in those countries due to their activities and views are admitted. There were no cases when there were reasons to allow people from other countries into Lithuania”.* See: “Migrant stuck at the border with his family: help, we are being punished by both Lithuania and Belarus”, Delfi.lt, 2 September 2022, accessed on 6 September 2022: <https://www.delfi.lt/news/daily/lithuania/pasienyje-su-seima-istriges-migrantas-padekite-mus-baudzia-ir-lietuva-ir-baltarusija.d?id=91113377>

“We actually see that most of those illegal migrants who are currently trying to come to Lithuania illegally are far from being migrants who are fleeing war or persecution, but are simply economic migrants” (Rustamas Liubajevs, SBGS commander), see “Topic of the day. Liubajevs: Lukashenka's regime also wants to prove that we are unable to secure our border”, LRT, 2 September 2022, accessed on 6 September 2022: <https://www.lrt.lt/mediateka/irasas/2000231428>

inconsistent with Directive 2013/32, which requires Member States to designate a determining authority for all procedures, which will be responsible for the proper examination of applications under this Directive. In Lithuania, the powers of the determining authority are granted to the MD, while the SBGS cannot perform these functions.

CLARIFICATION OF CONCEPTS

The terms "*unlawful migrant*", "*illegal migrant*", even more so "*illegal*" are imprecise, derogatory and unusable. Concepts of this kind are not found in any legal act regulating migration issues. An activity (e.g., migration) may be referred to as "*illegal*", but not a person (migrant). Violation of the law cannot make one "*illegal*" (i.e., outside the law) as the use of the term implies. For example, Lithuanian residents who have broken the law are not called "*illegal*" citizens.

According to the information provided by the EUAA[15], asylum seekers from those countries whose citizens are considered by the SBGS as "economic migrants", whose asylum applications are neither registered nor, much less, examined, have a sufficiently high "recognition rate" at the EU level (i.e., the proportion of applicants that are granted asylum). 92% of asylum seekers from Syria receive asylum EU-wide, i.e., their requests are well-founded and the risk of harm in the country of origin is real. 88% of asylum seekers from Yemen, 86% of asylum seekers from Eritrea, 45% of asylum seekers from Afghanistan, 35% of asylum seekers from Iran, 27% of asylum seekers from Cameroon, 26% of asylum seekers from the Democratic Republic of Congo, and 23% of asylum seekers from Iraq receive asylum in the EU. It should be noted that based on the information published by the MD[16], the majority of asylum seekers from countries such as Syria, Eritrea and Afghanistan receive asylum in Lithuania as well. Thus, we have a paradoxical situation – if their applications are not accepted and not examined, these people are "economic migrants", but after the applications are accepted and examined, it turns out that they nevertheless need asylum. Moreover, it should be noted that Belarusian citizens, who are exempted by the SBGS, do actually have a high "recognition rate" – as much as 86% of asylum applications submitted by such persons are granted. However, this "recognition rate" is still lower than, for example, in respect to citizens of Syria or Yemen, whose asylum requests are not accepted in Lithuania. The "recognition rate" of the other category of asylum seekers mentioned by the SBGS – citizens of the Russian Federation – is 33%, which is comparable to asylum seekers from Iran, the Democratic Republic of the Congo or Cameroon, but it was the citizens of the Russian Federation that Lithuanian officials made an exception for.

In order to justify the implemented policy, the representatives of the Lithuanian institutions resort to the argument that the mere fact that people who have been denied asylum in Lithuania continue to seek it in

[15] See Latest Asylum Trends, European Union Agency for Asylum, September 2022, accessed on 1 December 2022: <https://euaa.europa.eu/latest-asylum-trends-asylum>

[16] Migration Yearbook 2021, Migration Department, 2022, accessed on 6 September 2022:

[https://migracija.lrv.lt/uploads/migracija/documents/files/2021%20m_%20migracijos%20metra%C5%A1tis_skelbimui\(3\).pdf](https://migracija.lrv.lt/uploads/migracija/documents/files/2021%20m_%20migracijos%20metra%C5%A1tis_skelbimui(3).pdf)

other countries “confirms” that they did not need any asylum in the first place[17].

Such an argument would be justified if these people were actually granted asylum in Lithuania but would not enjoy it and still go to other countries, whereas in the situation that’s opposite, where the asylum they request is not granted to them in Lithuania, their subsequent movements provide no support for the conclusions on their alleged goals and motives. In addition, bearing in mind that, for example, in 2021, less than 0.5% of asylum seekers from Iraq received asylum in Lithuania, compared to 37% in the EU in the same period (excluding Lithuanian data – 41%)[18], people's determination to seek asylum in other countries probably does not support conclusions on their need for international protection as well.

CLARIFICATION OF CONCEPTS

Based on 1951 United Nations Convention Relating to the Status of Refugees, the term "refugee" describes a *person who, owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it.*

This definition does not mention Lithuania or any other specific country where such persons are found. This way, the person being or not being a "refugee" (i.e., in actual need of international protection) does not depend on the choice of the country in which he or she decides to seek asylum.

Another recurring argument to justify the restrictions concerns the “alternative” routes to asylum that do not require crossing a state border at an unauthorised location. The heads of Lithuanian institutions and politicians consistently emphasised, that everyone who wants to apply for asylum has such an opportunity – at the BCP of the SBGS and the Embassy of the Republic of Lithuania in Belarus[19].

[17] “Although the foreigner registration certificate issued to migrants registered in Lithuania does not give them the right to leave Lithuania or apply for asylum and live in another EU country, most illegal migrants who have left accommodation centres still try to reach other EU countries. [...] According to the Vice-Minister of the Interior Arnoldas Abramavičius, this trend confirms the insights previously mentioned by Lithuanian institutions and services, that the primary goal of illegal migrants is not asylum in Lithuania, but richer Western European countries”, see: “Ministry: most illegal migrants are not interested in life in Lithuania, their goal is Western Europe”, 15min.lt, 28 July 2022, accessed on 6 September 2022: <https://www.15min.lt/naujiena/aktualu/lietuva/ministerija-daugumos-neteisetu-migrantu-gyvenimas-lietuvoje-nedomina-ju-tikslas-vakaru-europa-56-1908768>

“A part of them, most likely the majority, as we understand, left, went in different directions. Apparently, that was the goal to begin with – it is obvious that these individuals did not have the goal of obtaining asylum in Lithuania and staying”, see: “Bilotaitė’s criticism of Amnesty International conclusions regarding illegal migrants in Latvia: the organisation’s position on Ukraine dotted all the i’s and crossed all t’s”, LRT, 13 October 2022, accessed on 17 October 2022: <https://www.lrt.lt/naujienos/lietuvoje/2/1799964/bilotaites-kritika-amnesty-international-isvadoms-del-neteisetu-migrantu-latvijoje-taskus-sudejo-organizacijos-pozicija-del-ukrainos>

[18] First instance decisions on asylum applications by type of decision - annual aggregated data, Eurostat, accessed on 7 December 2022: <https://ec.europa.eu/eurostat/databrowser/view/tps00192/default/table?lang=en>

[19] “It was clearly communicated that asylum can be requested at border checkpoints and at the Lithuanian embassy in Minsk” (Evelina Gudžinskaitė, Director of the MD), see, “Illegal migrants will spread across Lithuania”, Diena.lt, 3 July 2022, accessed on 6 September 2022: <https://www.diena.lt/naujienos/lietuva/salies-pulsas/neteiseti-migrantai-pasklis-po-lietuva-1085415>;

Despite the allegedly available information[20] that there are tent-type camps on the territory of Belarus, where migrants are held by officials and not released, Lithuania's position allowing to apply for asylum only upon arriving by "legal means" has not changed.

According to the testimonies collected by Amnesty International in 2021[21], Belarusian officials brought migrants from Minsk to the borderland in trucks, then took them in groups to the buffer zone, often surrounded by a fence on both sides, and forcibly drove them towards the border, beating people with rubber sticks and threatening to set off service dogs. Belarusian officials did not allow people stuck in the buffer zone for days or even weeks either to return deeper into the country or to leave the fenced area. Some reported that they were able to return to Minsk after paying officials money. As the number of migrants stranded in the country increased, Belarusian officials began forcibly returning them to their countries of origin, disregarding their need for protection. Similar testimonies were collected by the Human Rights Watch in 2022[22]. One of the interviewees testified that in March 2022, the Belarusian border guards drove him and 3 other men into a cold river, mocked them for an hour, and then forced them to swim to the Lithuanian side at gunpoint. One of the men, who could not swim, drowned, another was swept away by the current and his fate is unknown. It should be noted that basically similar

"The possibility for migrants to legally enter the territory of the Republic of Lithuania and request asylum in the territory of the Republic of Lithuania remains. Our legislation, I am referring specifically to the resolution of the Seimas regarding the state of emergency, provide for this possibility. If illegal migrants arrive or migrants arrive at the checkpoint and submit the request, that is they would arrive officially, in which case their requests for asylum would be registered and the procedure would be initiated" (Rustamas Liubajevs, SBGS Commander), see: "Topic of the day. Liubajevs: Lukashenka's regime also wants to prove that we are unable to secure our border", LRT, 2 September 2022, accessed on 6 September 2022: <https://www.lrt.lt/mediateka/irasas/2000231428>;

"We ensure the possibility, i.e. at the embassy, at certain border checkpoints – unfortunately, we do not see much examples of the willingness to take advantage of this, for understandable reasons and the regime's participation in that process" (Agnė Bilotaitė, Minister of the Interior of the Republic of Lithuania), see, "A. Bilotaite: Lithuania must defend itself and will not back down from its decisions regarding migrants", 15min.lt, 1 July 2022, accessed on 6 September 2022: <https://www.15min.lt/naujiena/aktualu/lietuva/a-bilotaite-lietuva-turi-gintis-ir-neatsitrauks-nuo-savo-sprendimu-del-migrantu-56-1744310>

"Migration can only be legal by applying to embassies or border points" (Laurynas Kasčiūnas, member of the Seimas of the Republic of Lithuania), see: "Kaščiūnas: this was one of the strongest national security decisions last year", Delfi.lt, 2 August 2022, accessed on 6 September 2022: <https://www.delfi.lt/news/daily/lithuania/kasciunas-tai-buvo-vienas-stipriausiu-nacionalinio-saugumo-sprendimu-praeitais-metais.d?id=90873925>

[20] *"We certainly have evidence and information that Belarusian officials are knowingly participating in that process. We have information that there are certain camps on the territory of Belarus, maybe they are small tent-type camps, where illegal migrants are kept, and they are not released. We know that those people are very often completely unprepared and not adapted to the winter conditions, they do not have the right clothes. Very often it can be expected that, on the recommendation of Belarusian officials, they end up at the border of the Republic of Lithuania completely without shoes, thus trying to exert pressure and enter Lithuania"* (Agnė Bilotaitė, Minister of the Interior of the Republic of Lithuania), see: "A. Bilotaitė warns of A. Lukashenko's new plans: double the number of Belarusian officers at the border", Lrytas.lt, 23 November 2022, accessed on 25 November 2022:

<https://www.lrytas.lt/lietuvosdiena/aktualijos/2022/11/23/news/a-bilotaite-ispeja-apie-naujus-a-lukasenkos-planus-pasienyje-dvigubai-daugiau-baltarusiu-pareigunu-25260659>

[21] "Belarus/EU: New evidence of brutal violence from Belarusian forces against asylum-seekers and migrants facing pushbacks from the EU", Amnesty International, 20 December 2021, accessed on 19 October 2022:

<https://www.amnesty.org/en/latest/news/2021/12/belarus-eu-new-evidence-of-brutal-violence-from-belarusian-forces-against-asylum-seekers-and-migrants-facing-pushbacks-from-the-eu/>

[22] "Violence and Pushbacks at Poland-Belarus Border", Human Rights Watch, 7 June 2022, accessed on 27 October 2022: <https://www.hrw.org/news/2022/06/07/violence-and-pushbacks-poland-belarus-border>

information was provided to the media by the SBGS[23] – that migrants are being transported to the Lithuanian border in trucks, that Belarusian officials are standing behind their backs after bringing them to the border, forcibly pushing migrants to the territory of Lithuania and not allowing them to return. However, neither the abundance of reports about inhumane treatment of migrants, nor the immediate observation of the actual situation of migrants by the SBGS officers, has affected the claims that these people can apply for asylum in the BCP according to the established procedure, or even apply for asylum to Belarusian authorities, since Belarus is a safe state[24].

Taking into account the observed practice of the institutions and the open-source information available, with the flow of migrants trying to cross the “green border” not decreasing, the LRC initiated a study, the purpose of which is to assess the practical possibilities of submitting an asylum application at diplomatic missions of the Republic of Lithuania abroad and at the BCP of the SBGS.

Without disputing the fact that the mentioned options (applying for asylum at the BCP of the SBGS and the Embassy of the Republic of Lithuania in the Republic of Belarus) are provided for in the Law of the Republic of Lithuania on the Legal Status of Foreigners, we draw attention to several aspects that show that these procedures do not necessarily ensure effective, easy and rapid access to the procedure for granting international protection, the importance of which, among other things, is emphasised by the CJEU in its 30 June 2022 judgement in case C-72/22 PPU.

[23] See, for example, “SBGS recorded how Belarusian officials push migrants to Lithuania: our eastern neighbours cleverly kept it quiet”, Delfi.lt, 17 August 2021, accessed on 19 October 2022: <https://www.delfi.lt/news/daily/lithuania/vsat-uzfiksavo-kaip-baltarusijos-pareigunai-i-lietuva-stumia-migrantus-musu-rytiniai-kaimynai-gudriai-tai-nutylejo.d?id=87973245>; “SBGS Commander: we have intelligence that at least one group of migrants is surrounded by Belarusian officials at the Lithuanian border”, Delfi.lt, 11 November 2021, accessed on 19 October 2022: <https://www.delfi.lt/news/daily/lithuania/vsat-vadas-turime-duomenu-kad-bent-viena-migrantu-grupe-prie-lietuvos-sienos-yra-apsupta-baltarusijos-pareigunu.d?id=88641827>; “SBGS: migrants from Belarus are being transported to the Lithuanian border again”, Delfi.lt, 22 November 2021, accessed on 19 October 2022: <https://www.delfi.lt/news/daily/lithuania/vsat-prie-lietuvos-sienos-is-baltarusijos-vel-vezami-migrantai.d?id=88738551>

[24] “After the lawyer’s biting retort, Kasčiūnas answered sternly: your proposals are a paradise for Lukashenko’s regime”, Delfi.lt, 27 August 2021, accessed on 19 October 2022: <https://www.delfi.lt/news/daily/lithuania/po-kandzios-advokato-replikos-kasciunas-atsake-grieztaijusu-pasiulymai-rojus-lukasenkos-rezimui.d?id=88278337>

IV. ACCESS TO THE ASYLUM PROCEDURE AT THE DIPLOMATIC MISSIONS OF THE REPUBLIC OF LITHUANIA

GENERAL SITUATION AND TRENDS

Pursuant to the Order No V-393 of the Minister of Foreign Affairs of the Republic of Lithuania of 21 September 2021 “Regarding submission of applications for asylum by foreigners”[25], applications for asylum by foreigners may be submitted only at one diplomatic mission – the Embassy of the Republic of Lithuania in the Republic of Belarus (Minsk). In addition, the head of the embassy in Minsk determines the method and time of submission of asylum applications, appoints a responsible employee of the embassy, who will be tasked with forwarding asylum applications submitted by foreigners to the MD.

The Description of the Procedure for submitting Applications for Asylum by Foreigners at Diplomatic Missions and Consular Offices approved by Order No V-392 of the Minister of Foreign Affairs of the Republic of Lithuania of 21 September 2021 states that when submitting an asylum application, a foreigner must submit: a written application for asylum in the prescribed form; a copy of a valid travel document; copies of documents confirming legal stay in the foreign country where the application is submitted; other documents justifying the need for asylum. All documents are submitted in an envelope addressed to the MD. The employee of the diplomatic mission shall forward the submitted application and other specified documents to the MD by diplomatic mail at least once a month[26]. In its response to the LRC request for information[27], the MFA emphasised that the request is not submitted *to*, but rather *via* the representative offices, i.e., the representative office only forwards the documents received to the MD, and does not examine them, check the content of the submitted documents, and does not perform any other procedural actions, nor does it contact the foreigners who have submitted applications. According to the data provided by the MFA, from 21 September 2021, the Embassy of the Republic of Lithuania in the Republic of Belarus handed over to the MD 11 envelopes with asylum applications from foreigners (one envelope may contain asylum applications from several persons, e.g., family members).

In this regard, we first note that neither Directive 2013/32 nor 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 is applicable to the situations where asylum applications are submitted to representative offices of Member States[28]. This way, the procedure where foreigners are provided with

[25] See The Order of the Minister of Foreign Affairs of the Republic of Lithuania of 21 September 2021 No V-393 “Regarding submission of applications for asylum by foreigners”, accessed on 8 September 2022: <https://e-seimas.lrs.lt/portal/legalAct/lt/TAD/9e86bc811ad111ecad9fbbf5f006237b?jfwid=-a0zwtcnnf>

[26] See The Order of the Minister of Foreign Affairs of the Republic of Lithuania of 21 September 2021 No V-392 “Regarding the approval of the description of the procedure for submitting applications for asylum by foreigners at diplomatic missions and consular offices”, accessed on 8 September 2022: <https://e-seimas.lrs.lt/portal/legalAct/lt/TAD/7f7cdfe01ad111ecad9fbbf5f006237b?jfwid=-yvnrjnys6>

[27] Letter of the MFA of 07/10/2022 No (25.2.1E)3-6265 “Regarding provision of information”.

[28] According to Articles 3 of the aforementioned Directives, they apply only to requests for international protection submitted in the territory of the Member States, including the border, and do not apply to asylum applications submitted to the representative offices of the Member States.

the opportunity to submit an application for asylum at a diplomatic mission does not fall within the scope of EU asylum acquis^[29], and, accordingly, cannot be considered as implementing the obligations arising from this regulation. This is indirectly confirmed by the regulation of the relevant procedure in the national law of Lithuania, or rather, its complete absence, since neither regulation of the procedure for assessing applications for asylum submitted to the Embassy of the Republic of Lithuania in the Republic of Belarus, nor the reception conditions and guarantees applicable to the foreigners who have submitted applications at the mentioned embassy are currently in place. Thus, the “embassy procedure” per se cannot be considered as an opportunity arising from EU law, and as a possibility emphasised by the CJEU for individuals to have effective, easy and rapid access to the procedure for granting international protection.

At the same time, we note that the obligation to submit a valid travel document and copies of documents confirming legal stay in Belarus in itself limits the possibility for foreigners to use this way of applying for asylum. Article 31 of the 1951 United Nations Convention Relating to the Status of Refugees, which exempts refugees from liability for illegal entry or illegal stay, reflects the general principle recognising that, in exercising their right to asylum, people are often forced to cross national borders or be in their territory without the necessary documents or with documents that are insufficient, fraudulent or obtained illegally^[30]. Failure to comply with applicable migration requirements, such as those related to visas or registration, is often an unavoidable reality for refugees^[31]. In view of this, presenting “proper” documentation cannot be a prerequisite for the submission of an asylum application.

[29] The EU acquis is a set of common rights and obligations that are binding on all EU countries as EU Member States. Acquis evolves continuously over time. It includes: the content, principles and political objectives of the EU Treaties; any legislation adopted to apply those treaties and the case-law of the Court of Justice of the European Union; declarations and resolutions; measures in the fields of common foreign and security policy, measures in the fields of justice and home affairs; international agreements that the EU concludes, and agreements concluded among the Member States themselves with regard to the EU's activities. Candidate countries must adopt the acquis before joining the EU. Derogations from the acquis are granted only in exceptional circumstances and are limited in scope. The acquis must be incorporated by candidate countries into their national legal order by the date of their accession to the EU, and they are obliged to apply it from that date.

Source: <https://eur-lex.europa.eu/legal-content/LT/ALL/?uri=LEGISSUM:acquis>

[30] EXCOM Conclusion No. 58 (XL) 1989, para. (a). UN Ad Hoc Committee on Refugees and Stateless Persons, Comité spécial pour les réfugiés et les apatrides, Deuxième session, Project de rapport du Comité spécial de l'apatridie et des problèmes connexes, Lake Success, New York, 16 janvier au février 1950, 15 February 1950, E/AC.32/L.38, comment to paragraph 1 of then-draft Article 26, <http://www.refworld.org/docid/3ae68c264.html>: „Le réfugié dont le départ du pays d'origine est généralement une évasion, est rarement en état de se conformer aux conditions requises pour pénétrer régulièrement (possession d'un passeport national et d'un visa national) dans le pays de refuge. Il serait conforme à la notion d'asile de ne pas imposer de sanctions pénales au réfugié qui, fuyant les persécutions, traverse clandestinement la frontière, mais se présente aussitôt que possible aux autorités du pays d'asile, et est reconnu comme réfugié de bonne foi“. R v. Asfaw, [2008] UKHL 31, United Kingdom: House of Lords (Judicial Committee), 21 May 2008, para. 9, http://www.refworld.org/cases,GBR_HL,4835401f2.html. Mahamad Arwah Abdi and Another v Minister of Home Affairs and others, Case No: 734/2010, South Africa: Supreme Court of Appeal, 15 February 2011, para. 22, <http://www.refworld.org/cases,SASCA,50239bb62.html>

[31] UN Ad Hoc Committee on Refugees and Stateless Persons, Ad Hoc Committee on Statelessness and Related Problems, Status of Refugees and Stateless Persons - Memorandum by the Secretary-General, 3 January 1950, E/AC.32/2, comment to paragraph 2 of then-draft Article 24, <http://www.refworld.org/docid/3ae68c280.html>, stating: „[a] refugee whose departure from his country of origin is usually a flight, is rarely in a position to comply with the requirements for legal entry (possession of national passport and visa) into the country of refuge. It would be in keeping with the notion of asylum to exempt from penalties a refugee, escaping from persecution, who after crossing the frontier clandestinely, presents himself as soon as possible to the authorities of the country of asylum.“ UNHCR, Beyond Proof, Credibility Assessment in EU Asylum Systems: Full Report, May 2013, p. 213, <https://www.refworld.org/docid/519b1fb54.html>

It should also be mentioned that the “embassy procedure” does not ensure the protection of a person from refoulement, since, according to the information provided by the MD, persons who have submitted applications at the embassy are not allowed into the territory of the Republic of Lithuania while their applications are being processed. According to the information provided by the MD[32], from November 2021 until January 2022, 21 foreigners applied for asylum at the Embassy of the Republic of Lithuania in the Republic of Belarus, no such applications were registered in the subsequent period. According to the data as of August of this year, 8 of those applications were still being processed (4 single Cuban citizens and 4 families from Iraq), contact with the remaining foreigners was lost (a family of 2 from Syria, 1 Syrian citizen, a family of 5 Iraqi citizens, 1 Iraqi citizen, 1 Cuban citizen, a family of 3 from the Russian Federation). The MD no longer publishes statistics on pending asylum applications, but the recently presented data on the decisions adopted in the period of August-November of this year[33], show that during the mentioned period no decisions were made regarding the requests submitted by Cuban citizens. Taking this into account, it is likely that at least some of those who submitted asylum applications at the embassy in Minsk are still awaiting decisions. Basically, this means that these asylum seekers are (were) in the territory of Belarus and under jurisdiction of the Belarusian state institutions for a period that already exceeds the maximum allowed period for examination of asylum applications (6 months). In addition to the fact that such a prolonged stay in Belarus does not in itself protect asylum seekers from refoulement, another important aspect is the time limitation of their legal stay on the territory of Belarus. The expiration of the visa that allowed foreigners to enter and stay in Belarus leads to a situation where foreigners can no longer wait for the decision of the MD in Belarus and, as a result, the contact with them is lost. Provided below is information about asylum seekers who tried to exercise their right to asylum by submitting applications at the Embassy of the Republic of Lithuania in Minsk.

[32] The data were obtained during the inter-institutional meeting held on 17 August 2022, as well as during informal correspondence with the MD.

[33] Migration Department under the Ministry of the Interior of the Republic of Lithuania, Asylum Statistics, accessed on 1 December 2022: <https://migracija.lrv.lt/lt/statistika/prieglobstis-statistika>;
https://migracija.lrv.lt/uploads/migracija/documents/files/Statistika/Prieglobstis/Prieglobs%C4%8Dio%20statistika_2022%2008.pdf;
https://migracija.lrv.lt/uploads/migracija/documents/files/Statistika/Prieglobstis/Prieglobs%C4%8Dio%20statistika_2022%2009.pdf;
https://migracija.lrv.lt/uploads/migracija/documents/files/PRS%20spalio%20m%C4%97n_%20.pdf
https://migracija.lrv.lt/uploads/migracija/documents/files/Prieglobs%C4%8Dio%20statistika_2022%2011.pdf

CASE STUDY

Based on the testimony of the asylum seeker (Cuban citizen)[34], he applied for asylum at the Embassy of the Republic of Lithuania in Minsk in the beginning of November 2021. The embassy confirmed that it forwarded the request to the MD. The asylum seeker did not receive any document confirming his status as an asylum seeker, nor any information about the procedure and progress of his application. To date, i.e., a year after submitting the application at the embassy, the asylum seeker did not receive any decision on his application, nor was he interviewed, and neither was he given the opportunity to enter the territory of the Republic of Lithuania, where his application is being processed. According to this individual, Belarusian officials informed him that he no longer has the right to stay in Belarus and must leave the territory of the country by 10 August 2022. Later, he informed that he filed a complaint with the court and thus extended the possibility of temporarily stay on the territory of Belarus. On 12 September 2022, the said Cuban citizen informed the LRC that he was deported from Belarus to Cuba (arrived to Havana on 26 August 2022). According to this individual, state security officers met him at the airport, apprehended him and took him for questioning, threatening to initiate criminal prosecution. According to him, the MD has been informed about this situation. This story illustrates that the possibility established in the law to submit an asylum request at the embassy, at least in its current form, does not ensure one of the fundamental goals of the asylum institute – the protection of a person from refoulement.

The LRC received information about a family of 5 Iraqi citizens who applied for asylum at the Embassy of the Republic of Lithuania in Minsk[35]. They are currently receiving legal counselling from a Lithuanian attorney[36]. The mentioned persons arrived to Belarus in autumn 2021: father of the family – on 10 October, mother with children (one of them has an autism spectrum disorder) – on 24 October. Belarusian tourist visas held by these Iraqi citizens were valid for 14 days, i.e., since autumn 2021, their presence on the territory of Belarus is illegal.

In the beginning of December 2021, the family applied by e-mail to the Embassy of the Republic of Lithuania in Minsk regarding asylum. On 12 January 2022, the embassy informed them that they had to come to the embassy in person to submit their asylum applications. On the same day, these individuals visited the embassy, where they received the forms they had to fill out. The foreigners took the forms back to their place of residence, filled them in and submitted all the necessary documents to the embassy the next day. The foreigners did not receive any document confirming that their applications have been accepted and that they are now asylum seekers.

On 14 February 2022, the asylum seekers contacted the embassy by e-mail inquiring about the progress of their asylum applications and received an answer that for all questions related to the processing of asylum applications they should contact the MD. Following the instructions, the asylum seekers sent

[34] The asylum seeker maintains contact with the lawyers of the LRC.

[35] It should be noted that in August of this year the MD informed that out of all the asylum requests submitted at the embassy in Minsk, only 8 were pending: 4 single Cuban citizens and a family of 4 from Iraq. A family of 5 from Iraq was listed among those with “lost contact”.

[36] The LRC monitor communicated with the attorney on 3 and 4 November 2022.

several letters to the MD and received automated responses (on 20 February, 4 March, 14 March and 25 May) that the MD had received the letters and that they would be replied to in the near future, but they did not receive any replies.

The first non-automated response was received only on 27 May of this year – they were asked to indicate their ILTU numbers. On the same day, the asylum seekers wrote back that they did not have such numbers and explained that their family was still in Minsk. On 11 July, these individuals received another e-mail from the MD specialist, who asked if they are still in Belarus and if the asylum procedure is still relevant for them. The letter additionally indicated that, upon receiving a positive answer, the specialist would organise their interview in July, and also asked to clarify the language spoken by the interpreter they would require during the interview. The asylum seekers replied to this letter on the same day. Since the MD specialist who wrote to them did not reply, they sent the same e-mail again on 18 July, but received an automatic response that it was not possible to deliver the letter because this e-mail box did not exist. On 19 August, the asylum seekers sent another e-mail to the general MD e-mail address. On 22 August, they received a reply asking to provide more information about themselves in order to identify them. On 25 August, the asylum seekers received e-mail from another MD specialist, who informed about the intended interview and also asked which language they would require interpretation to/from. The individuals provided an immediate response to all the questions. On 31 August, the MD organised a remote interview of the asylum seekers. At the time of preparation of this report, i.e., more than 3 months after the interview and almost a year after the submission of the asylum application, the individuals have still not received any information about the decision. At the moment, the asylum seekers are staying illegally on the territory of Belarus, waiting for the decision of the MD, avoid visiting public places, and try not to get apprehended by Belarusian officials.

Violation of the visa regime in Belarus is an administrative offence. Based on Article 24.35(3) of the Code of the Administrative Offences of the Republic of Belarus[37], failure to leave Belarus after the specified period of stay is subject to a fine of 50 “base units” (50 x 32 BYN = 1600 BYN = EUR 637.77) or deportation. According to media reports, in the period of June-July 2022 and in October, the operation “Illegal-2022” was carried out in Belarus, the purpose of which was to detect migration violations and punish offenders. It has been reported that during the operation carried out in the summer 2022, in Minsk alone, more than 500 foreigners were subjected to administrative fines and 57 of them were deported from Belarus[38]. During the operation carried out in autumn 2022, in Minsk, more than 600 foreigners have been fined, and decisions have been made to deport 174 persons[39]. It is reported that a total of 332 foreigners are

[37] National Legal Internet Portal of the Republic of Belarus, Code of the Administrative Offences of the Republic of Belarus, 6 January 2021 No 91-3, accessed on 4 November 2022:

<https://pravo.by/document/?guid=3871&p0=HK2100091&ysclid=la2l9vnhrm400953045>

[38] “Minsk has been ‘cleared’ of illegal migrants, almost 60 foreigners to be expelled from the country”, Sputnik.by, 7 July 2022, accessed on 4 November 2022: <https://sputnik.by/20220707/minsk-zachistili-ot-nelegalov-pochti-60-inostrantsev-budut-vydvoreny-iz-strany-1064481610.html>

[39] “Operation ‘Illegal’: more than 170 foreigners to be deported from Belarus”, Sputnik.by, 18 October 2022, accessed on 4 November 2022: <https://sputnik.by/20221018/operatsiya-nelegal-bolee-170-inostrantsev-deportiruyut-iz-belarusi--1068114339.html>

expected to be deported for migration violations across the country as part of the operation “Illegal-2022”[40]. It is almost certain that if the aforementioned family of 5 asylum seekers from Iraq were apprehended during this operation carried out by Belarusian officials, they would also add to the statistics of deported persons.

The information collected shows that only those foreigners who have a valid travel document and a document confirming their legal stay in Belarus can submit an asylum application at the Embassy of the Republic of Lithuania in Minsk. In addition, the further procedure for examining such a request is not properly regulated, and people who have submitted applications wait in limbo and face the risk of expulsion to their country of origin without receiving a decision from the MD.

[40] “The results of ‘Illegal-2022’ have been summed up”, Ministry of Internal Affairs of Belarus, 19 October 2022, press release, accessed on 4 November 2022: <https://t.me/pressmvd/5575>;

“Ministry of Internal Affairs deports 332 foreigners from Belarus for violating migration rules”, Mediazona.by, 19 October 2022, accessed on 4 November 2022: <https://mediazona.by/news/2022/10/19/nelegal-2022>

V. ACCESS TO THE ASYLUM PROCEDURE AT THE BCP OF THE SBGS

GENERAL SITUATION AND TRENDS

Unlike the "embassy procedure", submitting an asylum application at the BCP is formally compatible with the EU acquis and (in some cases) operational. In the period of January-November of this year, the LRC monitoring team received 64 reports from SBGS[41] about asylum applications submitted at the BCP, in total – about 125 persons who arrived individually or in a group, 5 of them (citizens of the Russian Federation, Kyrgyzstan, Afghanistan and Azerbaijan) – have been transferred back in accordance with the Dublin III Regulation through Vilnius International Airport. 80 of these persons applied for asylum at BCPs on the border with Belarus, including the Kena railway station, where transit trains from the Russian Federation are inspected.

The above statistics include several cases where the SBGS did not inform the LRC about the asylum applications registered at the BCP, but the LRC learned about it from other sources or by matching the data received with the official monthly statistics provided by the SBGS. Moreover, the above statistics do not necessarily coincide with the official SBGS statistics. For example, in the period from January to October 2022 (subsequent data were not received from SBGS during the preparation of the report), the LRC recorded 111 requests for asylum submitted to the BCP at the external border of the EU (on the border with Belarus and Russia), while the SBGS reported 95 (in fact, 96 were reported, but the application by a citizen of Sakartvelo, registered at Vilnius Airport, is not relevant for this study). Comparing the official data collected by the LRC and that provided by the SBGS, it was noticed that the SBGS did not include in their official statistics 7 applications by Ukrainian citizens who applied for asylum at the BCP, there are also differences between the number of applications by citizens of Russia (LRC: 66, SBGS: 60) and Belarus (LRC: 22, SBGS: 19)[42]. The numbers of applications lodged by citizens of Tajikistan (13) and Azerbaijan (3) do not differ.

Asylum applications registered at the BCP on the border with Belarus and Russia (January-October 2022)[43]

Country of origin	SBGS official statistics	Data collected by the LRC
Azerbaijan	3	3
Belarus	19	22
Russia	60	66
Tajikistan	13	13
Ukraine	0	7
TOTAL	95	111

[41] The SBGS informs the LRC about registered asylum applications pursuant to the agreement of 2 June 2010 "On mutual cooperation in resolving issues related to asylum seekers (persons falling under UNHCR mandate)".

[42] It should be noted that the mere fact that the SBGS sometimes does not include asylum seekers in the BCP statistics logs does not mean that these foreigners are not included in the statistics at all. Due to internal procedures and other aspects, foreigners are sometimes listed in the SBGS border station or the FRC statistics logs. Meanwhile, the LRC monitoring team follows the primary source in the statistics they keep when the notification about asylum seekers is received from the relevant BCP of the SBGS.

[43] The data presented in the table are not statistics of all asylum applications submitted in Lithuania. It does not include applications submitted to the SBGS after irregular crossing of the border, as well as applications registered at the territorial offices of the MD, the FRC, Vilnius International Airport and the Embassy of the Republic of Lithuania in Minsk.

Within the framework of this study, the data collected by the LRC on asylum applications submitted in January-November of this year at BCP on the border with Belarus (Kena railway station, Lavoriškės, Medininkai, Raigardas, Šalčininkai, Šumskas and Tvereičius BCP) was analysed. Among those who arrived via the mentioned BCPs are citizens of the Russian Federation (24 reports concerning 52 persons), Belarus (4 reports concerning 6 persons), Ukraine (2 reports concerning 5 persons), Tajikistan (5 reports concerning 14 persons) and Azerbaijan (1 report concerning 3 persons). It should be noted that citizens of all the third countries mentioned do not need a visa to enter Belarus[44].

Asylum applications registered at the BCP on the border with Belarus (January-November 2022)

Country of origin	Data collected by the LRC
Azerbaijan	3
Belarus	6
Russia	52
Tajikistan	14
Ukraine	5
TOTAL	80

It is noteworthy that those few cases of asylum applications submitted at the border with Belarus in 2022 by Ukrainian citizens were registered in the first half of March, i.e., immediately after the start of the war in Ukraine and before the adoption of the resolution of the Government of the Republic of Lithuania on granting temporary protection to the residents of Ukraine fleeing the war. It is likely that applying for asylum at the border was the easiest way to enter Lithuania at that time for Ukrainian citizens who did not have the biometric passports required under the visa-free regime. The only case when an application for asylum submitted by citizens of Azerbaijan was registered in 2022 at the BCP, was recorded in the second half of September. According to the data available to the LRC, the application was submitted by a political activist who was repressed in the past in the country of origin, whose son has been granted refugee status in Lithuania, and who was travelling with his daughter and granddaughter. Despite the geographical proximity, in 2022, citizens of Belarus very rarely used the opportunity to request asylum at the BCPs located on the border with Belarus (3 reports in March and 1 report in August), especially compared to the registered asylum applications submitted by Belarusian citizens after crossing the border in an unauthorised place during the same period (97 reports regarding 131 persons) or arriving from the territory of the Russian Federation – the Kaliningrad Region (14 reports regarding 23 persons). This trend is explained by the fact that people fleeing persecution are not inclined to contact the officials of their country of origin and choose such methods of entry that allow them to avoid the control of departing persons carried out by the Belarusian border guards.

The situation of asylum seekers from Tajikistan should be mentioned separately. In 2018-2019, a sudden increase in the number of such asylum seekers was observed, but in the subsequent period it decreased again (in 2016 – 18 persons, in 2017 – 53 persons, in 2018 – 118 persons, in 2019 – 217 persons, in 2020 – 62 persons, in 2021 – 52 persons)[45].

[44] Ministry of Foreign Affairs of the Republic of Belarus, Visa-free travel (general information), accessed on 7 November 2022: <https://mfa.gov.by/visa/freemove/general/>

[45] Migration Yearbook 2021, Migration Department, 2022, accessed on 7 November 2022:

[https://migracija.lrv.lt/uploads/migracija/documents/files/2021%20m_%20migracijos%20metra%C5%A1tis_skelbimui\(3\).pdf](https://migracija.lrv.lt/uploads/migracija/documents/files/2021%20m_%20migracijos%20metra%C5%A1tis_skelbimui(3).pdf)

In the same period, with the increase in numbers of asylum seekers from Tajikistan, the LRC monitoring team started to record incidents where the officials at the BCP of the SBGS did not register the applications submitted by citizens of this country or registered them only after several attempts. Another observed trend was that in order to have their requests registered at the BCP, Tajik citizens (right away or during repeated attempts to submit an asylum application) came to the BCP with a hired attorney or their attorney waited for them on the Lithuanian side of the BCP[46]. Such incidents were also recorded later – in 2021[47], and are being recorded still. The LRC did not record incidents where asylum applications were not accepted when persons were accompanied or met by an attorney. Another category of persons with regard to whom similar trends are observed (both refusal to register asylum applications at the BCP and use of an attorney as a “guarantor” for ensuring the right to asylum) are Russian citizens of Chechen origin.

In 2022, the MD stopped publishing detailed asylum statistics[48], also removed historical statistical data and annual reports of the Asylum Division from open access[49]. In September 2022, the publication of partial asylum statistics was renewed, thus at the time of preparation of this report the data for August-November were available[50]. According to the data published by the State Data Agency[51], in January-September 2022, 33 citizens of Tajikistan applied for asylum in Lithuania. According to the data published by the MD[52], in October-November 2022, 16 citizens of Tajikistan applied for asylum in Lithuania. The sum of these numbers shows that in January-November 2022, 49 citizens of Tajikistan applied for asylum in Lithuania (this number includes applications registered both at the SBGS and the MD). As already mentioned, during this period, the LRC received information about 14 asylum seekers from Tajikistan who applied for asylum at the BCP (5 groups of people, all of them arrived through the Lavoriškės BCP), as well as about a group of 6 persons who requested asylum after illegally crossing the border, and about 2 individual cases, when asylum applications were submitted by persons placed in accommodation centres. It is noted that in the case of citizens of Tajikistan, the SBGS often did not inform the LRC about the asylum applications submitted at the BCP – out of 5 known cases (in the months of June, August, September, October and November), the SBGS only informed the LRC about asylum seekers from Tajikistan who submitted their applications at Lavoriškės BCP on 5 August 2022 and 14 November 2022. It is also noted that in at least 2 out of 5 known cases, at the BCP asylum seekers from Tajikistan were met by an attorney.

[46] See LRC’s consolidated monitoring report 2017-2020.

[47] See, for example, the monitoring reports on Lavoriškės BCP of 3 November 2021 and 11 November 2021 by the LRC monitor S. Vaitonis.

[48] A copy of the statistical data published on the MD website in September 2021 is stored in the internet archive, accessed on 7 November 2022:

<http://web.archive.org/web/20210928172515/https://migracija.lrv.lt/lt/statistika/prieglobscio-skyriaus-statistika/statistika-1>

[49] A copy of the annual reports published on the MD website in September 2021 is stored in the internet archive, accessed on 7 November 2022:

<http://web.archive.org/web/20210928164744/https://migracija.lrv.lt/lt/statistika/prieglobscio-skyriaus-statistika/ataskaitos>

[50] Migration Department under the Ministry of the Interior of the Republic of Lithuania, Asylum Statistics, accessed on 1 December 2022: <https://migracija.lrv.lt/lt/statistika/prieglobscio-statistika>

[51] State Data Agency, Official Statistics Portal, Asylum Seekers, accessed on 1 December 2022: <https://osp.stat.gov.lt/statistiniu-rodikliu-analize?indicator=S3R854#/>

[52] Migration Department under the Ministry of the Interior of the Republic of Lithuania, Asylum Statistics, accessed on 1 December 2022: <https://migracija.lrv.lt/lt/statistika/prieglobscio-statistika>

The incident of 28 October 2022 shall be mentioned, when the attorney representing the asylum seekers from Tajikistan contacted the LRC by phone and informed that 3 citizens of Tajikistan had arrived at Lavoriškės BCP from Belarus and applied for asylum: a woman and her 2 minor children (3 and 1.5 years old).

According to the attorney, he was prompted to contact LRC after waiting at the BCP for 3 hours, while the SBGS officials did not allow him to see his clients and did not provide any information, most likely deliberating whether to register asylum applications. After some time, when the LRC contacted Lavoriškės BCP, the shift commander confirmed that the asylum applications were registered and the people were being transported to Santaros Clinic of the Vilnius University Hospital, since the boy had a broken leg (arrived at the BCP with a cast on) and was complaining of pain. Later, the aforementioned woman told the LRC that she arrived at the border in a hired car, that she and her children passed the Belarusian border guards' check promptly and without any problems. When they reached the Lithuanian side, the woman submitted an asylum application, but the SBGS officials refused to let them in on the grounds that the family's travel documents were not in order. After contacting the attorney (hired by her husband's father), the latter arrived at the border, but was not allowed to contact his clients. According to the woman, after 3-4 hours of waiting, the officers finally responded to the request to take the children to the hospital for examination (the boy complained of leg pain, the girl has a congenital heart defect). After the medical examination in Vilnius, the woman and her children were returned to the Lavoriškės BCP, where the initial procedures for registering an asylum application were carried out.

Information collected by the LRC shows that certain groups of asylum seekers (citizens of Tajikistan and citizens of the Russian Federation of Chechen origin) have been facing difficulties in submitting asylum applications at the BCP for several years. The refusal to register such applications has led to the formation of a practice where people, in order to exercise their right to asylum, hire attorneys who accompany asylum seekers or meet them at the BCP and thus play the role of a "guarantor" for the registration of the application. In such a situation, the possibility of applying for asylum at the BCP becomes directly dependent on the ability of asylum seekers or their relatives to pay for the services provided by private attorneys.

OBSTACLES ON THE BELARUSIAN SIDE

When assessing the efficiency of the procedure of applying for asylum at the BCP, probably the most important aspect is that persons arriving from the territory of Belarus must pass the control of Belarusian officials before they contact the SBGS officials. Only after the former let the persons pass, they can reach the border guards of Lithuania and exercise the right to request asylum.

Thus, the actual access of foreigners to the asylum procedure at the border directly depends on the same Belarusian officials who, based on, among other things, the information provided by the Lithuanian authorities, transport the migrants to the borderland, take them to the Lithuanian state border and force them to cross it in an unauthorised place[53]. According to the foreigners themselves, Belarusian officials often take away or tear up the documents they have.

According to the information provided by the State Border Committee of the Republic of Belarus[54], foreigners crossing the Belarusian border must present a valid travel document (passport) with a valid Belarusian visa or a certificate of return to the country of origin (if the passport is lost on the territory of Belarus). It is almost certain that foreigners who no longer have a travel document would face an obstacle when trying to pass border control on the Belarusian side.

In addition to not having a travel document, exiting the territory of Belarus via the BCP (as a mandatory precondition for entering the territory of Lithuania via the BCP) is complicated by several practical aspects. First of all, not having a visa to enter the Schengen area. According to Belarusian citizens who have applied for asylum in Lithuania interviewed by the LRC, it is currently almost impossible to pass the border control on the Belarusian side without having the visa required to enter Lithuania. However, judging by the information provided by the SBGS, it is likely that this kind of “no-passage” practice, at least in some cases, does not apply to citizens of other countries, for example, the Russian Federation or Tajikistan, since there are recorded cases of citizens of the mentioned countries allowed exit from the territory of Belarus despite not having an entry visa and applying for asylum upon reaching the Lithuanian authorities. The LRC does not have information about what tactics the Belarusian officials working at the BCP apply in relation to the citizens of other countries, such as those who they push across the border of Lithuania. However, it should be noted that those allowed to cross without an entry visa are all citizens of those countries who do not need a visa to enter Belarus and who can thus return without restrictions in case the Lithuanian border guards do not allow them in.

According to an interviewed Lithuanian attorney[55], providing counselling to asylum seekers (mostly

[53] This issue has also been voiced by Erika Leonaitė, the Ombudsperson of the Seimas of the Republic of Lithuania: *“Those possibilities are very thin, because the Belarusian regime simply prevents access to this possibility. As far as we know, at least as far as I have heard, they are actually being taken somewhere away from the border checkpoints [...] so that they cross the border in other places”*, see “Topic of the day. Liubajevs: Lukashenka's regime also wants to prove that we are unable to secure our border”, LRT, 2 September 2022, accessed on 6 September 2022: <https://www.lrt.lt/mediateka/irasas/2000231428>

[54] State Border Committee of the Republic of Belarus, Border Crossing Rules for Foreign Citizens, accessed on 18 October 2022: <https://gpk.gov.by/peresechenie-granitsy/peresecheniya-granitsy-inostrantsev/>

[55] The interview was conducted live on 15 November 2022, by mutual agreement the identity of the attorney is not disclosed.

citizens of the Russian Federation and Tajikistan), the reaction of Belarusian border officials to foreigners travelling to Lithuania without valid Schengen visas, varies. In certain cases, officials ask foreigners how they intend to enter Lithuania without valid travel documents, and warn that they may not be allowed in. In other cases, the officials simply put a formal seal of departure from Belarus and do not pay attention to the fact that the person leaving does not have a Lithuanian entry visa. In certain cases, foreigners have to provide additional explanations as to their intention to seek international protection in Lithuania, show prepared asylum applications, etc. In such cases, the attorney's clients are being held up on the Belarusian side, the higher ranks are contacted, sometimes additional interviews are conducted, personal belongings are searched, etc.

The situation becomes even more complicated when the right of the foreigner in question to be on the territory of Belarus has expired (for example, after the tourist visa has expired). In this case, it is likely that foreigners trying to exit Belarus through the BCP would be detained as illegally being on the country's territory, and possibly punished. In addition, if such person is allowed to pass, Belarusian officials would risk that the Lithuanian side will not allow them in, and they will end up stuck between the two BCP without the right to return to Belarus.

Situations worth separate mention are those reported in the media, when Lithuanian border guards "redirect" foreigners and force them to return to the territory of Belarus, while Belarusian officers on duty on the other side do not allow them to retreat deeper into the territory and force them to go back to Lithuania. It is clear that for people caught up in such situation, the alternative of going to the BCP and applying for asylum in the manner prescribed by law is simply not physically available.

The LRC interviewed a foreign attorney^[56] involved in the "Rule 39 Initiative" project, who has worked with persons seeking asylum after the migration crisis that arose in 2021 on the Lithuanian border with Belarus. From the second half of 2021 until now, she has worked with 10-12 persons who travelled to Lithuania in a group or individually: citizens of Syria, Yemen, Pakistan and Cuba.

According to the interviewee, approximately 90 per cent of her clients had a Belarusian visa. Some of them first tried to go to Poland, but when they failed, they chose Lithuania or they were forcibly brought to the border of Lithuania from the border with Poland by Belarusian officials. All clients of the aforementioned attorney had valid travel documents. In the process, some of their documents were lost, because Belarusian officials took them away, tore them up, etc. Belarusian officials also forcibly transported this attorney's clients from one point to another and forced them towards the Lithuanian side. People seeking asylum could not independently decide what and how to do next, for instance, to choose the option of regular arrival to the BCP. It should be noted that some of them no longer had documents or the time of their legal stay in Belarus had expired.

The Tajik citizen who submitted an asylum application at Lavoriškės BCP on 14 November 2022 told the LRC that he was previously detained by Belarusian officials in the city of Braslaw located near the border with Lithuania and Latvia and ended up in the detention centre in Vitebsk. It should be noted that he is

[56] The interview was conducted on 30 August 2022 remotely. By mutual agreement, the interviewee's identity is not disclosed.

the husband of a woman with two young children who applied for asylum in the same Lavoriškės BCP on 28 October 2022 (see above). According to the husband, based on the available information that the family may not be allowed to enter Lithuania without Schengen visas, he went to the border alone to find out what the situation was, whether a vehicle was needed to cross the border (he was planning to buy bicycles), how the Belarusian border guards react to those leaving without visas, etc. Even though he had valid documents and was on the territory of Belarus legally, local officials detained him on the grounds that he allegedly intended to cross the border illegally. The person ended up in the detention centre, where he spent about 40 days. With the help of the attorneys hired by his father, he was released, and only upon regaining his freedom did he learn that his family was already in Lithuania. Belarusian officials have warned him that he must leave the country within a month or face deportation to Tajikistan. The man arrived at the border by a bicycle, on the Belarusian side he had to go through three inspections and each time show his travel documents, but in the end he was allowed to pass through. According to this individual, the SBGS officials on the Lithuanian side did not want to let him in and ordered him to return to Belarus. The man explained that he cannot go back because he is threatened with deportation, that he wants to apply for asylum in Lithuania and that his family has already arrived to Lithuania. Finally, after spending the night at Lavoriškės BCP, his asylum application was registered, and the initial procedures were conducted.

ALTERNATIVE ROUTE

The LRC managed to get in touch with three asylum seekers from Belarus (two men and one woman[57]), who applied for asylum at the BCP of the SBGS. It should be noted that all interviewed persons did not cross the border of Belarus and Lithuania but came across the border of the Russian Federation and Lithuania, from the Kaliningrad Region[58].

One of the interviewed asylum seekers claimed that he had an exit ban in Belarus prohibiting him from leaving the country. Others said they were not sure what level of restrictions were being applied to them, or if they were being applied at all. All interviewed Belarusians first travelled from Minsk to Saint-Petersburg by bus, for they had heard that when crossing the border with the Russian Federation in this manner the border control is minimal, documents are only visually checked by a border officer stepping into the bus, no passport stamps are made, etc. In two cases, these assumptions were confirmed, only in one case the passenger's documents were taken for verification in databases. All the mentioned Belarusians successfully reached Saint-Petersburg and continued their journey by plane (domestic flight) to the Kaliningrad Region. According to the interviewees, when travelling within the Russian Federation, the document checks were also minimal.

One of the males had a new biometric passport (without visas) with him during the trip. The female interviewee said that she had an old-style passport (without valid visas, but with an expired Lithuanian visa). The third Belarusian had an internal Belarusian passport without visas and additional stamps (the person had never left Belarus).

The interviewed citizens of Belarus arrived to Lithuania via the Kybartai-Černyševskoje BCP. All of them were questioned by the Russian officers about how they intend to enter Lithuania without valid Schengen visas. However, the actual procedure for being allowed to exit the Russian Federation, the inspection, the interview and the time spent on the Russian-controlled side are different. The most difficult situation occurred in relation to a Belarusian who had a new biometric passport without any stamps. Russian officials held him up for about 5 hours, the interrogation was carried out by the officers of the Federal Security Service summoned for this occasion. According to the interviewed man, the officials stumbled upon the fact that they could not check the databases against the data in the new biometric passport (written only in Latin characters, not Cyrillic), and demanded to submit an old-style internal passport with entries made in Cyrillic. Finally, the man was allowed to continue with this journey. The interviewed woman stated that she explained to the Russian officials that she was travelling for work matters, showed the previous visas issued by Lithuania, and assured that all outstanding formalities would be taken care of by the employer waiting on the Lithuanian side. The woman had with her documents proving persecution in Belarus, but the Russian authorities did not carry out a detailed inspection of her personal belongings. The third Belarusian, who also did not have a valid visa in his passport, told Russian officials

[57] Interviews took place on 2 August 2022 and 5 August 2022 live (1), by phone (1) and via the Telegram messaging app (1).

[58] According to the information available to the LRC, in 2022, only 6 citizens of Belarus who submitted asylum applications arrived through the BCP located on the border with Belarus: (1) 1 March 2022, Šumskas BCP, 3 persons; (2) 5 March 2022, Medininkai BCP, 1 person, (3) 26 March 2022, Lavoriškės BCP, 1 person, (4) 15 August 2022, Tverečius BCP, 1 person, arrived on foot.

that his relatives were waiting for him on the Lithuanian side, who would deliver the missing documents. According to this man, after this answer, the response of the Russian officials was limited to a single remark that his passport was about to expire.

Only one of the interviewed persons indicated that the Lithuanian officials who accepted the asylum application behaved unpleasantly, did not explain what to expect next and ordered to wait in common premises. According to this person, their behaviour changed after they began clarifying details about the reasons for applying for asylum.

OBSTACLES ON THE LITHUANIAN SIDE

Despite the assurances that anyone who wants to can apply for asylum at the BCP of the SBGS, actual practice shows that even after foreigners reach the Lithuanian border guards, there are instances when applications for asylum are not registered and people are forced to return to Belarus. According to the data provided for this study purposes by the UNHCR (project partner of the LRC)[59], in the beginning of June 2022, asylum seekers (citizens of the Russian Federation), a couple, arrived at Medininkai BCP and immediately asked for asylum (verbally). The SBGS officials refused to register the request and stated that: persons can return to Minsk and apply for asylum at the Embassy of the Republic of Lithuania; persons can go to the state border of the Republic of Poland and request asylum there; persons can request asylum in the Republic of Belarus, which is safe for them[60]; the BCP is undergoing repairs and there is no place to accommodate them in. The asylum seekers were offered to go back to Belarus, but they refused and spent the night outdoor. The next morning, the SBGS officials issued them with formal decisions on refusal to grant entry to the territory of the Republic of Lithuania, and the persons returned to Belarus.

A similar incident occurred in September of this year when the LRC received information that in the evening of 9 September 2022, 7 Tajik citizens related by family ties (3 adult women and 4 minor girls) came to Medininkai BCP and asked for asylum. Though the foreigners did not have Schengen visas in their travel documents, Belarusian officials allowed them through to the Lithuanian side. The citizens of Tajikistan came to the BCP on bicycles. As the LRC noticed during previous visits, bicycle traffic at Medininkai BCP is quite intense and is permitted. However, according to the aforementioned persons, the SBGS officials told them that it was impossible to pass by bicycles due to road repair works, and did not allow them access even to the BCP building. Personal documents and pre-filled asylum applications (written in English and Lithuanian) were taken from the foreigners. According to the persons, they waited for about 3 hours, after which they were served with decisions on the refusal to grant entry to the territory of the Republic of Lithuania and their passports were returned with the refusal of entry stamp. The asylum application was not registered and the asylum procedure was not initiated. Decisions on the refusal to grant entry stipulated that persons are refused entry because they do not have a valid visa or residence permit in Lithuania. The citizens of Tajikistan refused to sign these decisions, but were nevertheless turned around and sent back to the Belarusian side, to Kamenyj Log BCP. Later, when Lithuanian attorneys raised this issue in the courts (see the ruling of the Supreme Administrative Court of Lithuania of 16 November 2022 in administrative case No eAS-781-463/2022), the SBGS stated that the foreigners did not apply for asylum at Medininkai BCP and, therefore, were not allowed entry to the Republic of Lithuania. However, judging by the information collected about this case, it is unlikely that people who planned to apply for asylum and had detailed applications written in several languages in advance did not show these applications and did not mention the need for asylum when they arrived at the BCP, but instead simply demanded “entry” despite having no visas. As noted by the ECHR in the case

[59] Asylum seekers communicated with the UNHCR representatives.

[60] In this regard, it should be noted that in its judgement of 23 July 2020 in the case *M.K. and Others v. Poland* (applications No 40503/17, 42902/17 and 43643/17), the ECHR stated that “*asylum procedures in Belarus are not effective when it concerns Russian citizens*” (§ 177).

M.A. and Others v. Lithuania[61], when the persons *“introduced themselves to the border guards, produced their identity documents and did not try to hide the fact that they do not have visas or other documents granting them the right to enter Lithuania”*, their *“behaviour is consistent with their statement that they came to the Lithuanian border to request asylum”*. In the same case, the ECHR stated that there was nothing presented to the court *“to suggest that the border guards tried to determine why, if not to seek asylum, did the applicants arrive at the border without valid travel documents”*.

A Lithuanian attorney providing paid services to asylum seekers agreed to talk to the LRC about the challenges of submitting asylum applications at the BCP of the SBGS[62]. According to this attorney, in 2021, the asylum applications of all the clients he represented were registered. Meanwhile, in 2022, there have already been 3 instances when asylum applications were not accepted and people were not allowed to enter Lithuania. The mentioned instances took place at different SBGS border units: Medininkai BCP, Šalčininkai BCP and Lavoriškės BCP.

In all three instances, we are talking about individuals with different profiles in terms of demographics and origins. In one case, these were citizens of Tajikistan (two related women with minor children), in the other two cases – citizens of the Russian Federation (the latter cases occurred after 19 September 2022, when the stricter entry procedure for citizens of the Russian Federation came into force). The profiles of the mentioned citizens of the Russian Federation are also different. In one case, persons of Tajik origin with Russian citizenship and living in Saint-Petersburg (a mother with 5 young children) tried to apply for asylum at the BCP. According to the attorney, during the border inspection, the Lithuanian officials did not hide the fact that the foreigners were not admitted because they were Russian citizens, and ignored any attempts to apply for asylum. In the second case, a young ethnic Russian male who was drafted for military service in the armed forces of the Russian Federation after the mobilisation was announced, attempted to request asylum[63].

Clients of the attorney who tried to apply for asylum at the BCP were handed decisions on refusal to grant entry and cross the state border, the attorney himself was not allowed to meet with his clients and received copies of the aforementioned documents electronically at a later stage. The documents formally state that foreigners do not have a valid visa or residence permit and are therefore denied entry. The fact that they applied for asylum is not mentioned.

On 22 September 2022, media reported[64] on the incident at Raigardas BCP, when a citizen of the Russian Federation of Chechen origin was denied entry to the Republic of Lithuania. No information is

[61] Judgement of the ECHR of 11 December 2018 in the case M.A. and Others v. Lithuania (application No 59793/17), p. 107 and 113, ECLI:CE:ECHR:2018:1211JUD005979317, accessed on 8 December 2022: <https://hudoc.echr.coe.int/fre?i=001-207500>

[62] The interview was conducted live on 15 November 2022, by mutual agreement the identity of the attorney is not disclosed.

[63] Late in the evening of 27 September 2022, the monitoring team of the LRC was informed by phone that a citizen of the Russian Federation was requesting asylum at Medininkai BCP. The next day, while LRC was trying to get more details, the representative of the Medininkai BCP reported that there was a mistake, that the citizen of the Russian Federation did not request asylum and was already returned back to Belarus. In order to protect the interests of his client, the attorney did not disclose specific details and did not elaborate whether it is the same foreigner who unsuccessfully attempted to enter the country on 27 September.

[64] See *“The Chechen attempting to enter Lithuania without a visa was hand-carried back to Belarus by border guards”*, Lrytas.lt, 22 September 2022, accessed on 26 September 2022: <https://www.lrytas.lt/lietuvosdiena/aktualijos/2022/09/22/news/be-vizos-i-lietuvanorejusi-patekti-cecena-pasienieciai-rankomis-iskele-atgal-i-baltarusija-24660194>

available on whether he attempted or intended to seek asylum. According to the SBGS representative, this person objected to his return to the territory of Belarus, *“laid on the floor and stated that he would not get up”, “claim that they can do whatever they want with him, but he needs to go to the European Union”*. In this regard, it should be noted that pursuant to the Article 65 of the Law of the Republic of Lithuania on the Legal Status of Foreigners, where there are indications that a foreigner who is present at a BCP may wish to apply for asylum, he shall be provided in a language that he understands with information on this right and the procedures to be followed, i.e., the SBGS officials must be proactive.

In the opinion of the LRC, the behaviour of the person described by the SBGS representative can be qualified as an *“indication”* that he *“may wish to apply for asylum”*, however, in this particular case, the officials probably did not explain the procedure for submitting an asylum application, sticking to the unequivocal rule that *“a person without a visa cannot be granted entry”*. When assessing the version of events as presented by the SBGS, it should also be noted that the SBGS officials were wondering why the Belarusian border guards granted passage to a person without a visa: *“He did not have a visa, he came only with a passport. For some reason, the Belarusians granted him passage”*. These comments show that despite public statements that anyone who wishes to can apply for asylum at the border, the SBGS officials working at the BCP operate under assumption that only those with a visa or a residence permit should be able to reach them.

As in the case of submitting an application at the embassy, the above-mentioned examples illustrate that the possibility to submit an application for asylum to the BCP provided for in the law does not necessarily ensure the protection of a person against refoulement.

According to the information provided by the SBGS[65], during the first ten months of this year, 4,252 foreigners (travelling by land, air and sea) were denied entry into the country. The three countries of origin that stand out are the Russian Federation (1,680 denied persons or 39.5% of all denied persons), Belarus (1,563 / 36.7%) and Ukraine (494 / 11.6%). Among other countries of origin to be noted are Tajikistan, Sakartvelo, Israel, Turkey, Uzbekistan, Kazakhstan and Moldova. Based on the data available to the LRC, it is not possible to assess how many of these persons could have sought international protection.

[65] Data provided by the SBGS for January-October 2022.

THE SITUATION OF RUSSIAN CITIZENS

On 7 September 2022, 9 citizens of the Russian Federation of Chechen origin (two families with 6 minor children, including two toddlers born in 2022) applied for asylum at Raigardas BCP. The foreigners submitted passports and children's birth certificates, they did not have Schengen visas. Their asylum applications were registered, but the MD decided to examine them in the framework of accelerated procedure, so these asylum seekers were not formally admitted to the territory of the Republic of Lithuania and ended up at the Pabradė FRC of the SBGS without freedom of movement. Families with children were accommodated without the right to leave the inner territory of the so-called detained women's dormitory, and later transferred to the vulnerable persons' dormitory.

The LRC interviewed both families of Chechen origin[66]. One of the interviewed asylum seekers stated that before arriving in Lithuania, his family tried to submit an asylum application at the Polish border twice, both times unsuccessfully. According to the man, after the Polish border guards refused to accept their applications, the family returned to the nearest town of Grodno in a rented car and decided to go to the border with Lithuania. According to the asylum seeker, he first went to the border alone and asked Belarusian officials how to cross the border. It was explained to him that the border can be crossed by vehicles, including bicycles. After returning to Grodno, the man bought bicycles for the whole family, also strollers for younger children. While in Grodno, another Chechen woman with her children joined them and later came to Lithuania together with them. Both families arrived at Raigardas BCP on 3 adult bicycles, 2 children's bicycles and attached strollers. These people reached the border late in the evening (the distance from Grodno to Raigardas BCP is about 30 km). According to the interviewed asylum seekers, the Lithuanian officials initially did not want to accept their asylum applications, but after long persuasions, taking into account the fact that it was cold outside and they would have to travel back in the dark through a wooded area, they finally agreed to register the asylum applications.

At the time of the preparation of the report, this case recorded 3 months ago was the last time when an asylum application of citizens of the Russian Federation was registered at the BCP, although until September 2022 such applications were recorded regularly. It cannot be ruled out that this change is related to the mobilisation announced in Russia at the end of September and the public statements that Lithuania “*will not provide asylum*”[67] to Russians fleeing the mobilisation, as well as the order received by the SBGS to not register asylum applications submitted by Russian citizens at the BCP in a “*strict and principled manner*”[68].

[66] Interviews were conducted live at Pabradė FRC on 10 October 2022 and by phone on 4 November 2022.

[67] See “Landsbergis: Lithuania will not provide asylum to Russians mobilized for war against Ukraine”, LRT, 24 September 2022, accessed on 26 September 2022: <https://www.lrt.lt/naujienos/lietuvoje/2/1786260/landsbergis-mobilizuojamiems-karui-pries-ukraina-rusams-lietuva-neteiks-prieglobscio>

[68] *To the question asked by the member of the Seimas Ligita Girskienė, whether they find it normal that Russian citizens go through the Vilnius airport almost uncontrollably, Minister Agnė Bilotaitė answered as follows: “I want to emphasise that we adhere to the decisions that were made after coordination with the region, that is, the three Baltic countries and Poland. The Government's resolution has been adopted and everything is carried out in principled manner, as stated in these agreements and documents. I want to assure you that **from my side, the State Border Guard Service has been given a clear order to implement this resolution in a strict and principled manner. They do just that, I am very grateful for the activity and work of our officers, because we have many challenges and they do handle them well.**”*

Source: “Tightened procedure for Russians is not an obstacle to enter Europe: they publicly share tips on how to bypass the restrictions”, Delfi.lt, 28 September 2022, accessed on 6 October 2022: <https://www.delfi.lt/news/daily/lithuania/sugrieztinta-tvarka-rusams-ne-kliutis-patekti-i-europa-viesai-dalinasi-patarimais-kaip-apeiti-ribojimus.d?id=91412985>

In its reports, the SBGS does not mention that Russian citizens who are not allowed to enter Lithuania arrive with intention to apply for asylum, but mentions that some of them indicate that they are fleeing mobilization[69], which is again an obvious “indication” that the person in question may wish to apply for asylum.

On 22 October the media reported[70] that, according to the MD, only 2 persons applied for asylum in Lithuania due to the mobilization announced in Russia. Since the SBGS did not report on these cases, it is likely that the mentioned persons applied for asylum at the MD after entering the territory in a regular manner. Meanwhile, other sources mention that Russian citizens are requesting asylum at the Lithuanian border[71]. As already mentioned, in such cases, the law obliges the officers to provide the person with information about the applicable procedures. In this regard, we also would like to remind that based on the current legislation, decisions on granting or denying asylum are made after an individual assessment of each case, applying special procedures that meet international standards[72]. All EU member states appoint a determining authority responsible for carrying out these procedures and proper examination of applications[73]. In Lithuania, this “determining authority” is the MD. Nevertheless, judging by media reports, it is not the MD, but the SBGS that currently decides on the “sufficiency” of a person’s reasons for being granted asylum[74], although the function of the SBGS is to register asylum applications, not to assess their validity. According to the head of the SBGS, the also involved in this process is the MFA, whose representatives provide recommendations to the border guards on the possibility of applying for asylum. In addition, according to the head of the SBGS, a person must provide “*objective evidence*”

[69] See “Russians fleeing mobilization are appealing to Lithuania: some state it clearly, others come up with stories”, LRT, 28 September 2022, accessed on 29 September 2022: <https://www.lrt.lt/naujienos/lietuvoje/2/1788992/i-lietuva-prasosi-nuo-mobilizacijos-begantys-rusai-vieni-tai-nurodo-aiskiai-kiti-kuria-istorijas>

[70] “Two Russians applied for asylum in Lithuania due to the mobilization announced in Russia”, Kauno Diena, 22 October 2022, accessed on 25 October 2022: <https://kauno.diena.lt/naujienos/lietuva/salies-pulsas/del-rusijoje-paskelbtos-mobilizacijos-prieglobscio-lietuvoje-paprasedu-rusai-1100057>

[71] *Another possible “gateway”, according to D. Gaizauskas, is Kaliningrad transit. It is assumed that this is how Russians enter Lithuania, but they never leave the country. “I am from Marijampole, I live in the border area. It is full of cars of Russian citizens, not only trucks, but also passenger vehicles. The customs officers say that Russian citizens are arriving in transit, and they are not going back to Kaliningrad, they are asking to get off and apply for asylum and so on, we don’t know what to do, because there is no communication, there is no headquarters for emergency management, in general, everyone seems to be lost, no one understands what is happening in the country,” he asserted.*

Source: “Tightened procedure for Russians is not an obstacle to enter Europe: they publicly share tips on how to bypass the restrictions”, Delfi.lt, 28 September 2022, accessed on 6 October 2022: <https://www.delfi.lt/news/daily/lithuania/sugrieztinta-tvarkarusams-ne-kliutis-patekti-i-europa-viesai-dalinasi-patarimais-kaip-apeiti-ribojimus.d?id=91412985>

[72] See Article 10 of the 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.

[73] See Article 4 of the 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.

[74] *“There were five [Russian citizens] who clearly stated their reason, but this is not the reason for admission to Lithuania and they are not among those who can be granted passage. They were sent back”, commented G. Mišutis. True, the SBGS representative told the LRT.lt portal that some Russians who have arrived at the Lithuanian border initially state that they are fleeing the mobilization, but later they start making up stories and naming a bunch of other reasons. “It happened that at first they mention mobilization in the conversation, then that they are persecuted because of their appearance or something alike. There is a lot of uncertainty in the statements of some individuals, but the element of mobilization is present. You can see that a person is trying to talk about everything he knows just to find some reason [to be allowed into the country],” he said.* Source: “Russians fleeing mobilization are appealing to Lithuania: some state it clearly, others come up with stories”, LRT, 28 September 2022, accessed on 29 September 2022: <https://www.lrt.lt/naujienos/lietuvoje/2/1788992/i-lietuva-prasosi-nuo-mobilizacijos-begantys-rusai-vieni-tai-nurodo-aiskiai-kiti-kuria-istorijas>

confirming that he or she “actively participated in opposition activities” and was persecuted[75].

In this regard, above all it should be noted that even granting of asylum, let alone registration of an asylum application, does not require a person to actually experience persecution in the past. According to the case-law of the CJEU, any third-country national or stateless person has the right to apply for international protection in the territory of a Member State, including its border or transit zones. This right must be granted regardless of the likelihood that such a request will be granted (see, for example, judgement of 16 November 2021, in the case C-821/19 (EU:C:2021:930), paragraph 136 and jurisprudence referred to therein). This way, both the a priori determination to grant or not to grant asylum to a certain category of persons, and denial of access to the relevant procedures to these persons, are incompatible with the obligations of the Republic of Lithuania under international and EU law.

CLARIFICATION OF CONCEPTS

*“Registration of asylum applications” and “allowing entry” of foreigners are not the same thing. Lithuania **must register** all the asylum applications submitted. And only then decide on whether to *allow entry*.*

*“Assessment of asylum applications” and “granting asylum” are also not the same thing. Lithuania **must properly assess** all submitted applications. And only then decide whether to *grant asylum*.*

The information collected shows that only those foreigners who were granted passage by the Belarusian authorities after document inspection can submit an asylum application to the BCP of the SBGS. In addition, even in cases where foreigners manage to reach the SBGS officials, their asylum applications are sometimes not registered, and they themselves are refouled back to the Belarusian side.

[75] The SBGS commander Rustamas Liubajevs on the criteria for accepting or non-accepting asylum applications from Russian citizens: *“There is a certain mechanism or, as we say now, an algorithm. It is natural that in some cases both border guards and not only border guards, and other services, specifically the Ministry of Foreign Affairs, participate in the situation assessment process. The only thing I have to point out in this matter is that, surely, the fact that a citizen is trying to avoid the so-called mobilization does not give him the opportunity to apply to the competent Lithuanian institutions for the granting of refugee status. Therefore, if there are certain grounds for obtaining this status, it is necessary to submit certain documents, i.e., not only say that he does not agree with the Kremlin's policy, but also provide some objective evidence that he participated in opposition activities, and was actively involved and was persecuted. If the border guards have certain questions, there is a possibility to contact the representatives of the Ministry of Foreign Affairs, who maintain, say, contacts with the opposition leaders, who at a certain moment can provide recommendations to our officials on, say, the possibility of applying to Lithuania and obtaining political asylum. Again, I must point out that very objective facts and evidence that the citizen participated in opposition activities and was persecuted by the Kremlin regime is required”.* See, “Delfi broadcast: Tourists and migrants on the Lithuanian border, sabotage on gas pipelines in the Baltic Sea” (from 12:17 min.), Delfi.lt, 4 October 2022, accessed on 18 October 2022: <https://www.delfi.lt/ru/news/live/efir-delfi-turisty-i-migranty-na-granice-litvy-diversii-na-gazoprovodah-v-baltijskom-more.d?id=91400193>

VI. CONCLUSIONS AND RECOMMENDATIONS

In order to justify the applied “redirection” (push-back) policy[76], the Lithuanian institutions refer to the judgement of the ECHR of 5 April in the case *A.A and Others v. North Macedonia*[77], according to which Article 4 of Protocol No. 4 of the European Convention on Human Rights (prohibiting the collective expulsion of foreigners) is not violated if potential asylum seekers are not prevented from approaching the legitimate border crossing points and lodging an asylum application there and are not returned after attempting to apply for asylum at the border crossing. In addition, the institutions rely on the judgement of the ECHR of 13 February 2020 in the case *N.D and N.T v. Spain*[78], according to which the State is not responsible for ensuring the international protection of such foreigners and the collective expulsion of migrants without their identification and without the right to formal asylum procedures can be legitimate if the State has provided the foreigners with effective opportunities to arrive legally.

It should be noted that in both of the aforementioned cases, the ECHR assessed not only the fact of illegal entry, but, first of all, whether the State created an effective opportunity for the foreigners to arrive legally, and whether, in a specific case, foreigners had serious reasons not to use this opportunity. In the case of *N.D. and N.T. v. Spain*, the ECHR found that in the case in question there had not only been a legal obligation to accept asylum applications at the border crossing point but also an actual possibility to submit such applications (§ 214). In the case of *A.A. and Others v. North Macedonia*, the ECHR found that there is nothing in the case file to suggest that potential asylum-seekers were in any way prevented from approaching the legitimate border crossing points and lodging an asylum claim there (§ 121).

In neither case, the ECHR assessed situations where armed officers of another State physically force people to cross the border in an unauthorised place. It is almost certain that in such circumstances the court would see it as important factors preventing foreigners from choosing a legitimate way of entering the country. On the other hand, it is highly doubtful that a situation where a person's access to the BCP primarily depends on the officials of another State, who have the authority to apprehend this person and/or not allow passage, and even after reaching the BCP, the request for asylum may not be registered, would be qualified as an “effective opportunity” to lodge an asylum application at the border.

[76] Pursuant to the accompanying note to the Draft Law amending Articles 1, 2, 4, 10, 11, 14, 15, 16, 18, 23 and 26 of the Law of the Republic of Lithuania on the State Border and Protection Thereof No VIII-1666 and supplementing the Law with Article 21 and a new Chapter IX and the Draft Law amending Article 10 of the Law of the Republic of Lithuania on the Management, Use and Disposal of State and Municipal Assets No VIII-729, as well as the Draft Law amending the Law on Civil Protection and related laws.

[77] Judgement of the ECHR of 5 April 2022 in the case *A.A. and Others v. North Macedonia* (applications No 55798/16, 55808/16, 55817/16, 55820/16 and 55823/16), ECLI:CE:ECHR:2022:0405JUD005579816, accessed on 8 November 2022: <https://hudoc.echr.coe.int/eng?i=001-216861>

[78] Judgement of the ECHR of 13 February 2020 in the case *N.D. and N.T. v. Spain* (applications No 8675/15 and 8697/15) ECLI:CE:ECHR:2020:0213JUD000867515, accessed on 8 November 2022 <https://hudoc.echr.coe.int/eng?i=001-201353>

To sum up the information collected for the purpose of this report, the “embassy procedure” does not ensure the protection of a person from refoulement, and in itself cannot be considered as an opportunity arising from EU law for individuals to have effective, easy and rapid access to the procedure for granting international protection. On the other hand, due to limited physical access and the practice of not registering asylum applications, the declared possibility of submitting an asylum application at the BCP of the SBGS is not available to all who wish to submit such an application.

In light of the above, and pursuant to the principle of the Rule of Law, we call on all responsible authorities:

- **To abolish and not extend measures restricting the right to apply for asylum and ensure that the opportunity to submit such an application is available to all foreigners, leading to effective, easy and rapid access to the international protection mechanism in line with the EU asylum acquis;**
- **To provide an opportunity for the foreigners who have submitted applications for asylum at the Embassy of the Republic of Lithuania in Minsk and whose applications have been accepted for assessment, to come to the territory of Lithuania and enjoy the reception conditions in line with the EU asylum acquis;**
- **To regulate the procedure for examination of asylum applications submitted at the Embassy of the Republic of Lithuania in Minsk to be compatible with the EU asylum acquis;**
- **To ensure that all asylum applications submitted at the BCP of the SBGS are registered and processed in line with the EU asylum acquis.**



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