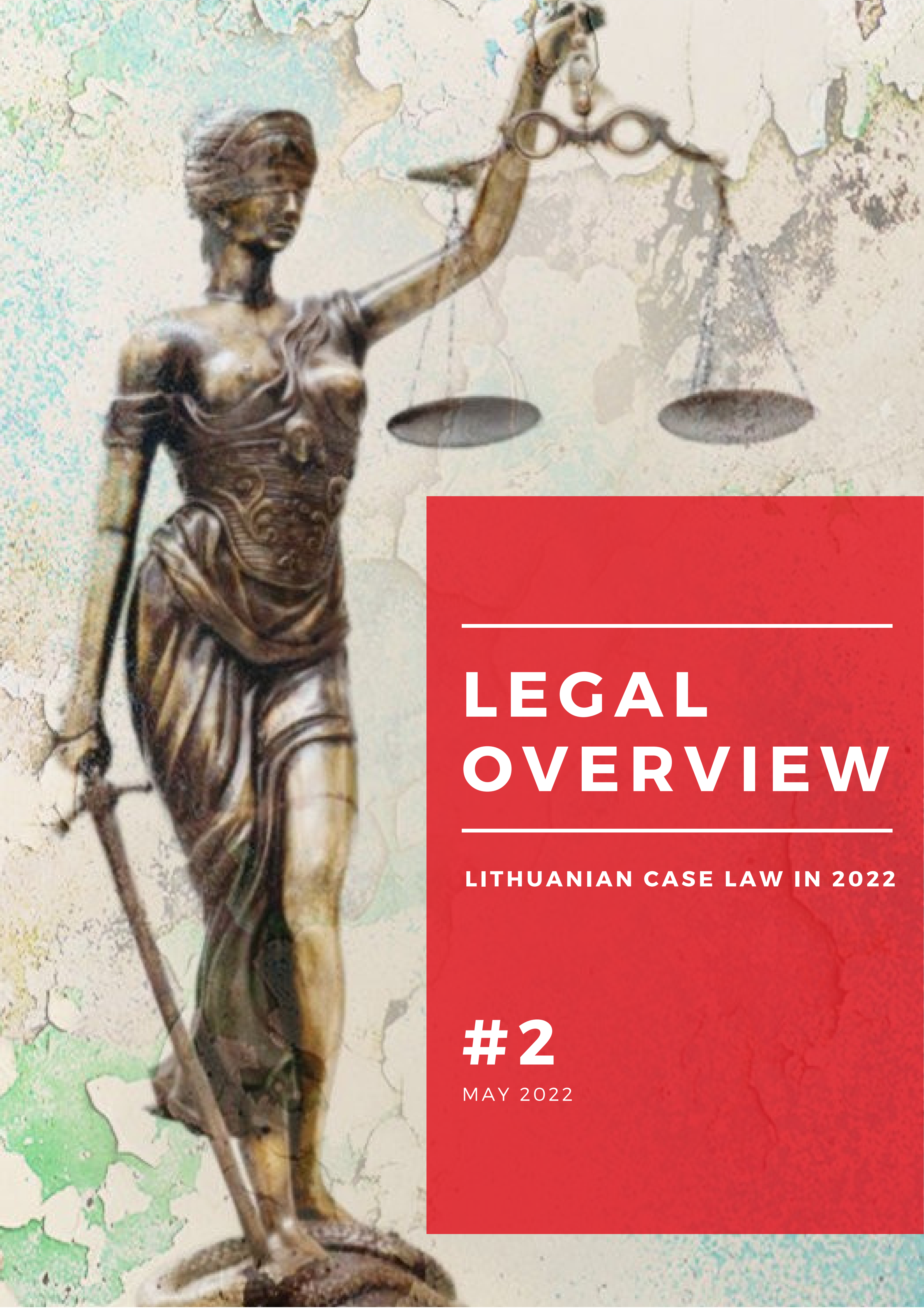
LEGAL
OVERVIEW
LITHUANIAN CASE LAW IN 2022
#2
MAY 2022

Lithuanian Red Cross is a nongovernmental organization which has been providing social, humanitarian, and legal assistance to refugees, asylum seekers, stateless persons, and other migrants irrespective of their legal status for over 25 years.

Legal overviews have been prepared within the framework of the Lithuanian Red Cross initiative, which aims to monitor the practice of Lithuanian courts in the area of migration and asylum and to share information on some significant decisions. The overviews include relevant extracts from this year's case law and additional explanations that are not legally binding.

The commentaries provided in the overviews are intended to explain the wider context and potential impact of the judgements covered on the development of case law. In providing these commentaries, the lawyers of the Lithuanian Red Cross rely on their subject matter competency and long-term experience in the field of migration and asylum, as well as on case law of international courts, legal and scientific literature. We are grateful to our partners and colleagues for additional insights.

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DECISIONS IN THIS OVERVIEW

I. Ruling of the Supreme Administrative Court of Lithuania (hereinafter the SACL) of 31 March 2022 in administrative case A-1804-502/2022
KEYWORDS: restriction of freedom of movement.

II. Ruling of the SACL of 21 April 2022 in administrative case A-2247-781/2022
KEYWORDS: restriction of freedom of movement, non-cooperation.

III. Ruling of the SACL of 5 May 2022 in administrative case A-2402-520/2022
KEYWORDS: restriction of freedom of movement, non-cooperation.

IV. Ruling of the SACL of 5 May 2022 in administrative case A-2414-881/2022
KEYWORDS: restriction of freedom of movement.

V. Ruling of the SACL of 19 May 2022 in administrative case A-2595-602/2022
KEYWORDS: restriction of freedom of movement.

I. I. RULING OF THE SACL OF 31 MARCH 2022 IN ADMINISTRATIVE CASE A-1804-502/2022

CASE SUMMARY: The applicant lodged an appeal against the decision of the Marijampolė District Court, Marijampolė Chamber, of 15 February 2022 to impose on the applicant an alternative measure to detention – accommodation in the Kybartai Foreigners' Registration Centre of the State Border Guard Service under the Ministry of the Interior of the Republic of Lithuania, with the right of movement only within the territory of the accommodation place.

In the present case, the SACL has ruled on the following legally relevant aspects:

- on the measure restricting the alien's freedom of movement constituting *de facto* detention.

In paragraphs 21-24 of its ruling of 31 March 2022, the SACL stated:

„21. When assessing the arguments of the appeal that the application of an alternative measure to detention by imposing restrictions on the freedom of movement in the Kybartai Foreigners' Registration Centre constitutes de facto detention, the Panel of Judges notes that in the case-law of the Supreme Administrative Court of Lithuania, it has been recognised that, in the light of the findings of the Report of the Seimas Ombudsmen's Office, the placement in the Kybartai Foreigners' Registration Centre cannot be equated to application of the alternative to detention measure provided for in Article 115 (2) (5) of the Law (see, e.g. the ruling of the Supreme Administrative Court of Lithuania of 9 March 2022 in administrative case 1512-552/2022). Thus, it is recognised that ***the accommodation of the alien in fact corresponds to detention.***

22. Having assessed the data on the factual situation at the Kybartai Foreigners' Registration Centre collected during the court hearing in the appellate court, the Panel of Judges finds that, despite the positive measures taken by the State Border Guard Service in its response to the appeal, inter alia, by adopting the recommendations approved by Order No 4-67 of the Commander of 25 February 2022 with a view to improving the situation of foreigners at the Kybartai Foreigners' Registration Centre, the factual situation at the Kybartai Foreigners' Registration Centre has not changed to such an extent that the Panel of Judges could question the grounds of the appeal and reasonably conclude that the imposition of movement restrictions by the alien on an alternative measure to detention would adequately ensure the legal content of this measure and the resulting rights of the alien, including the right to move within the territory, communicate with other persons, etc. ***According to the relevant data collected in the case, restricting the freedom of movement by establishing an alternative measure to detention would in principle be identical to restricting the freedom of movement by detaining a person, which is not in line with the system of these measures and the logic of their application enshrined in the Law****. Thus, the application of an alternative measure to detention in the present case would entail, on the one hand, the establishment of circumstances mitigating the alien's situation and, consequently, of the justification for the application of a measure which is less severe than detention, and, on the other hand, the actual detention of the alien and the guarantee of rights equivalent to those of a detained person. This situation is, in the view of the Panel of Judges, unacceptable.*

23. Therefore, in the present case, the Court of First Instance's conclusion that the application of an alternative measure to detention by restricting the alien's freedom of movement in the present case is proportionate to the objectives pursued cannot be accepted. The case does not contain sufficient

evidence to justify the Panel of Judges in doubting the findings of the Report, as confirmed by the previous case law of the Supreme Administrative Court of Lithuania, that ***the application of an alternative measure to detention by imposing restrictions on the freedom of movement during the proceedings would amount to de facto detention****.*

24. Summarizing the arguments set out above, the Panel of Judges agrees with the arguments of the appeal and finds that, ***in the present case, the restriction of the freedom of movement would unduly restrict one of the fundamental rights of the individual – the freedom of movement, guaranteed by Article 5 of the Convention for the Protection of Human Rights and Fundamental Freedoms*** *[...]"*

The essence of the Court's ruling in this case is that the distinction between "detention" and other (alternative) measures restricting a person's liberty depends on the factual circumstances of the particular situation and not on the classification of such measures in national law. This reflects the jurisprudence of the European Court of Human Rights (ECtHR) and the Court of Justice of the European Union (CJEU). In deciding on the distinction between restriction of freedom of movement and deprivation of liberty within the meaning of Article 5 of the European Convention for the Protection of Human Rights and Fundamental Freedoms, in the context of the detention of aliens in transit zones and accommodation centres, the ECtHR assessed [1] the following factors: (i) the individual situation of the applicants and their conscious decisions, (ii) the legal regime applicable in the country concerned and its purpose, (iii) the appropriate duration, taking into account in particular the purpose of the detention and the procedural safeguards applicable to the applicants, and (iv) the nature and extent of the actual restrictions imposed on the applicants. In some cases, the ECtHR has found, after assessing the restrictions imposed on individuals, that detention in centres of this kind amounts to "deprivation of liberty", irrespective of what it was called in national law [2]. In joined cases C-924/19 PPU and C-925/19 PPU, the CJEU held that an obligation imposed on a third-country national to remain permanently in a strictly defined closed transit zone, in which his/her movements are restricted and controlled and he/she is not lawfully able to leave the zone of his/her own free will in any direction, constitutes a deprivation of liberty which is to be regarded as 'detention' within the meaning of Directive 2013/33/EU of the European Parliament and of the Council of 26 June 2013 laying down standards for the reception of applicants for international protection.

According to both the above-mentioned jurisprudence of the ECtHR and the CJEU and the above-mentioned decision of the SACL, irrespective of the name given to the measure restricting a person's liberty in national law, it may amount to a "deprivation of liberty" in the context of Article 5 of the European Convention for the Protection of Human Rights and Fundamental Freedoms, if it amounts to de facto detention in practice. Thus, both the "alternative measure to detention" imposed by a judicial decision and the "accommodation without right to free movement" imposed by an administrative decision may unduly restrict one of the fundamental rights of the individual, namely right to liberty, in particular in absence of the grounds for detention provided for in Article 5(1)(f) or without ensuring the guarantees provided for in Article 5(2) and (4).

II. RULING OF THE SACL OF 21 APRIL 2022 IN ADMINISTRATIVE CASE A-2247-781/2022

CASE SUMMARY: The applicant lodged an appeal against the decision of the Vilnius Regional District Court, Širvintos Chamber, to extend the applicant's detention in the Foreigners' Registration Centre of the State Border Guard Service under the Ministry of the Interior of the Republic of Lithuania.

In the present case, the SACL has ruled on the following legally relevant aspects:

- on qualifying the lack of an identity document as "non-cooperation".

In paragraph 37 of its ruling of 21 April 2022, the SACL stated:

„37. The Panel of Judges notes that the alien has been detained since 26 October 2021, i.e. for almost six months as at the time his case is considered by the appellate court. Also, as confirmed by the case file, the alien submitted a photo of his identity document and the Centre noted in its reply to the appeal that the alien's identity had been established on the basis of the data provided in the copy of the passport. It's the assessment of the Panel of Judges, that in the present case no evidence has been established that the presence of the alien constitutes a threat to the security of the State or to public order, and, contrary to the assertions of the Court of First Instance and the Centre, ***there is no evidence in the case file to substantiate the fact that the alien did not cooperate, was malicious towards the public authorities and their officials, or towards the established order. The Centre's argument that the lack of an identity document is unequivocally regarded as non-cooperation with the state authorities must be assessed in the light of the totality of the data collected in the case, and it should be noted that it cannot be said that this circumstance, which is not exceptional in the context of migration law, per se (automatically) necessitates the need for detention of the person and thus for the most severe restriction of the natural freedom of movement of the person.***“

In this case, the SACL reaffirmed the position formulated in its practice that non-cooperation is usually associated with malice, the alien's ill-will towards the state authorities (see decision of 31 March 2022 in administrative case A-1886-629/2022; decision of 31 March 2022 in administrative case A-1920-624/2022, decision of 1 April 2022 in administrative case A-1887-822/2022, decision of 6 April 2022 in administrative case A-1888-789/2022). In the present case, noting that in the context of migration law such a circumstance is not exceptional, the SACL stated that the lack of an original identity document does not automatically imply the necessity to restrict the person's freedom of movement.

The question of "non-cooperation" in this case is relevant for the interpretation of Article 113(5)(1) of the Law of the Republic of Lithuania on the Legal Status of Aliens, which states that in deciding whether there are grounds for believing that an alien is likely to abscond, it shall be taken into account whether the alien does not have an identity document and does not cooperate in establishing his/her identity and/or nationality (refuses to provide data on himself/herself, provides misleading information in order to mislead the civil servants or employees of the competent institutions or bodies of the Republic of Lithuania, submits forged documents, etc.).

It should be noted that the lack of an identity document and "non-cooperation" in establishing his/her identity in the context of this norm are two separate cumulative conditions, and thus the content of the norm itself distinguishes between the lack of a document and "non-cooperation“ and establishes an exemplary list of the circumstances which are to be considered as non-cooperation of the alien. In the present case, the alien did not submit the original documents, but provided a copy of his passport, which allowed his identity to be established. Accordingly, the qualification of his situation in the context of that provision does not lead to a finding of non-cooperation.

III. RULING OF THE SACL OF 5 MAY 2022 IN ADMINISTRATIVE CASE A-2402-520/2022

CASE SUMMARY: The applicant lodged a complaint with the court against the decision of the Migration Department by which she was accommodated in the Medininkai Foreigners' Registration Centre without being granted the right to free movement in the territory of the Republic of Lithuania.

In the present case, the SACL has ruled on the following legally relevant aspects:

- on qualifying the illegal crossing of the border of the Republic of Lithuania as "non-cooperation".

In paragraphs 39-42 of its ruling of 5 May 2022, the SACL stated:

„39. The Panel of Judges notes that in the case-law of the Supreme Administrative Court of Lithuania, non-cooperation is generally recognised as crossing the state border not through a border control point, failure to present identity documents, leaving the camp, attempting to leave the Republic of Lithuania, etc. (see e.g. the ruling of 30 December 2021 in administrative case A-4462-822/2021; etc.). ***However, the mere fact of entering the Republic of Lithuania illegally cannot lead to the categorical conclusion that the applicant is not cooperating*** *(on this point, see decision of the Supreme Administrative Court of Lithuania of 1 April 2022 in administrative case A-1887-822/2022; ruling of 31 March 2022 in administrative case A-1886-629/2022; etc.).*

40. In the present case, the alien illegally crossed the state border of the Republic of Lithuania outside the border control point on 5 July 2021, i.e. already during the state of emergency declared in the Republic of Lithuania on 2 July 2021 due to the mass influx of foreigners, however this circumstance alone does not allow to conclude that the applicant should continue to be subjected to restrictions on her freedom of movement in the territory of the Republic of Lithuania after 5 April 2022. The decision allows the applicant to be admitted to the Republic of Lithuania, and the applicant has submitted copies of identity documents and explanations to both the Migration Department and the court regarding the grounds for asylum.

41. No data has been submitted in this case regarding the threat posed by the foreigner to state security or public order, or the violations committed by her during the period of application of the alternative measure to detention or earlier. Applicants have been subject to restrictions on movement within the territory of the Republic of Lithuania for a sufficiently long period of time. In the present case, it is not possible to assess the grounds of the applicant's application for asylum, since the dispute is not initiated on the basis of the applicant's application for asylum, but rather on the basis of the restrictions imposed on her temporary accommodation, while the case concerning the grounds of the applicant's application is pending before the Šiauliai Chamber of the Regional Administrative Court, which will rule on the validity of those grounds.

42. ***The Migration Department did not indicate any other circumstances (risk factors for absconding) which could reasonably lead to the assessment that the applicant is likely to abscond, nor is there any such information in the file****. Therefore, the Panel of Judges concludes that in the present case the applicant's accommodation regime (with restrictions on the movement in the Republic of Lithuania) is unjustified and disproportionate. Having assessed the totality of the circumstances established in the*

case, the Panel of Judges finds that the restriction of freedom of movement in the case in question would unreasonably restrict the alien's freedom of movement, therefore, this part of the Migration Department's Decision shall be annulled and the foreigner shall be accommodated in the Medininkai Foreigners Registration Centre without restrictions on freedom of movement.“

In the present case, the SACL stated that entering the Republic of Lithuania illegally does not in itself justify the conclusion that a person is not cooperating. The question of "non-cooperation" is relevant in this case in the context of the interpretation of Article 113(5)(10) of the Law of the Republic of Lithuania on the Legal Status of Aliens, which states that when deciding whether there are grounds to believe that an alien may abscond, it shall be assessed whether, during the examination of the application for asylum or the determination of the issue of the return of the alien to the foreign country, the alien fails to co-operate with the civil servants or staff of the competent authorities or bodies of the Republic of Lithuania. It should be noted that this norm refers to the behaviour of the alien during specific legal procedures. It is obvious that at the moment when a person enters the Republic of Lithuania illegally, the above-mentioned procedures have not yet been carried out in respect of that person. The unlawful entry into the Republic of Lithuania does not take place "during the examination of the application for asylum", but before the submission of the application for asylum, and therefore the content of the provision itself does not allow to classify the illegal entry as circumstances that (in the context of this legal provision) should be considered as non-cooperation by the alien.

The SACL also noted that the decision of the Migration Department did not provide any circumstances justifying the restriction of the right to free movement. Pursuant to Article 140/8 (6) of the Law of the Republic of Lithuania on the Legal Status of Aliens, the Migration Department, when adopting a decision to admit an asylum seeker to the Republic of Lithuania, shall also adopt a decision to accommodate the asylum seeker without granting him/her the right of free movement on the territory of the Republic of Lithuania. Such a decision (to deny the right of free movement) may be taken only when the circumstances referred to in Article 113 (5) (1), (6) to (11) of the Law of the Republic of Lithuania on the Legal Status of Aliens are identified. Despite the fact that the abovementioned Article 113 (5) contains a list of risk factors for absconding, the decision to accommodate a person without granting him the right of free movement cannot be based simply on stating the risk of absconding, since the particular circumstances referred to in Article 113 (5) (1), (6) to (11) must exist. Any other factual circumstances, including those referred to in the remaining subparagraphs of Article 113(5), do not justify the application of Article 140/8 (6), even if they fully justify the conclusion that the person is likely to abscond. Thus, a person's right to free movement may be restricted on the basis of Article 140/8 (6) solely on the basis of particular "circumstances" (which must be expressly stated in the decision), but not on the basis of a "risk of absconding" per se, while a restriction of the right to free movement on the sole ground of "the risk of absconding" is not compatible with the requirements of the above provision.

IV. RULING OF THE SACL OF 5 MAY 2022 IN ADMINISTRATIVE CASE A-2414-881/2022

CASE SUMMARY: The applicant lodged an appeal against the decision of the Vilnius Regional District Court, Švenčionys Chamber, to impose on the applicant an alternative measure to detention, namely accommodation at the Pabradė Foreigners' Registration Centre of the State Border Guard Service under the Ministry of the Interior of the Republic of Lithuania, with the right of movement only within the territory of the accommodation place.

In the present case, the SACL has ruled on the following legally relevant aspects:

- on the measure restricting the alien's freedom of movement constituting *de facto* detention.

In paragraphs 33-34 of its ruling of 5 May 2022, the SACL stated:

„33. The Panel of Judges also notes that the appellant is accommodated in the Foreigners' Registration Centre in Pabradė, in Sector B, which, according to the appellant, is located in an ***enclosed and guarded area of the Foreigners' Registration Centre, with approximately 100-150 sq. m. surrounded by a fence and with additional security, with container homes, which are arranged in such a way that movement of persons is only possible on the pathways between the homes, and that the pathways are 3 m wide. According to the assessment of the Panel of Judges, this can be regarded as de facto detention****.*

34. Taking into account the evidence submitted in the case, the situation in the Foreigners' Registration Centre, the duration of the appellant's detention (a period of 9 months, which, if prolonged, would amount to a period of as much as 1 year), the Panel of Judges finds that the prolongation of the alternative measure to detention imposing restrictions on movement would not adequately guarantee the legal content of that measure and the appellant's rights resulting therefrom, including the rights of the appellant to move around the territory and to communicate with other persons, etc. According to the relevant material collected in the case, restricting the freedom of movement by establishing an alternative measure to detention would in principle be identical to restricting the freedom of movement by detaining a person, which is not in line with the system of these measures and the logic of their application enshrined in the Law. Thus, the application (prolongation) of an alternative measure to detention in the present case would mean that the appellant would be effectively detained for a period of 1 year. This situation is, in the view of the Panel of Judges, unacceptable.“

With this decision, the SACL reaffirmed that the distinction between "detention" and other (alternative) measures restricting a person's liberty depends on the factual circumstances of the particular situation and not on the classification of such measures in national law. The above-mentioned ruling of 31 March 2022 qualified accommodation with restrictions on freedom of movement in the Kybartai Foreigners' Registration Centre as de facto detention. In the present case, having assessed the actual conditions of the "accommodation", the SACL made a similar assessment of the accommodation in the container home sector of the Pabradė Foreigners' Registration Centre. Hence, accommodation in that centre subject to restrictions on freedom of movement may also, by its nature, amount to de facto detention and potentially infringe Article 5 of the European Convention for the Protection of Human Rights and Fundamental Freedoms.

V. RULING OF THE SACL OF 19 MAY 2022 IN ADMINISTRATIVE CASE A-2595-602/2022

CASE SUMMARY: The applicant lodged a complaint against the decision of the Kaunas District Court, Kaunas Chamber, to impose on the applicant an alternative measure to detention – placement in the Refugee Reception Centre, with the right of movement only within the territory of the accommodation place.

In the present case, the SACL has ruled on the following legally relevant aspects:

- on the measure restricting the alien's freedom of movement constituting *de facto* detention.

In paragraph 23 of its ruling of 19 May 2022, the SACL stated:

„Having established that the Aliens' family consists of minor children, who are also subject to ***an alternative measure to detention, with the right to move only within the Refugee Reception Centre, which de facto amounts to the conditions of detention****, it should be noted that Article 20(2) of the Constitution of the Republic of Lithuania stipulates that no one may be arbitrarily detained or held in custody. No one shall be deprived of his or her liberty except on such grounds and in accordance with such procedures as the law may prescribe. Personal liberty is one of the most fundamental natural rights of the individual, and its restriction is only permissible when necessary and unavoidable, in strict compliance with the law (see, e.g., the Resolution of the Constitutional Court of the Republic of Lithuania of 5 February 1999). This means that detention is an ultima ratio (measure of last resort) and can only be used in cases where the objectives set by law cannot be achieved by other means."*

As already mentioned, in its ruling of 31 March 2022, the SACL qualified accommodation with restrictions on freedom of movement in the Kybartai Foreigners' Registration Centre as de facto detention, and on 5 May 2022 it ruled similarly in relation to the accommodation in the container home sector of the Pabradė Foreigners' Registration Centre. The ruling of 19 May 2022 qualified accommodation in a Refugee Reception Centre as de facto detention as well. It should be noted that, in this particular case, the SACL did not even discuss the actual conditions of 'accommodation', but simply assessed the substance of this measure alternative to detention itself, which in fact does not differ in content from detention. Thus, the case-law of the SACL sees a certain directionality in this matter, namely that "detention", as understood in international and European Union law, is to be regarded as "detention" irrespective of which name the measure restricting a person's liberty is given in national law.

ENDNOTES

[1] Ilias and Ahmed, Application no. 47287/15, 21 November 2019, §§ 217-18; Z.A. and Others v. Russia, Application nos. 61411/15 and 3 others, 21 November 2019, § 138; R.R. and others v. Hungary, Application no. 36037/17, 2 March 2021, § 74

[2] Abdolkhani and Karimnia v. Turkey, Application no. 30471/08, 22 September 2009, § 127

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