



Lietuvos
Raudonasis
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THE SITUATION OF FOREIGNERS AFTER TRANSFER TO LITHUANIA UNDER THE DUBLIN III REGULATION

FEBRUARY 2024

The Lithuanian Red Cross is a non-governmental organization 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.

The study report is based on the information related to the situation of foreigners transferred to Lithuania from other EU Member States pursuant to Dublin III Regulation, which was gathered from various sources.

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.

This thematic study report is for information purposes only and does not create/entail in itself rights or legal obligations in dealing with individual cases.

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Lithuanian Red Cross. (February 2024). *The Situation of Foreigners After Transfer to Lithuania Under the Dublin III Regulation*

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I. INTRODUCTION

More than 4 thousand asylum seekers arrived in Lithuania via Belarus irregularly in 2021. Lithuania was not prepared for such a sudden increase in the number of asylum seekers resulting in challenges of accommodation of asylum seekers faced during the summer of 2021. At first, asylum seekers were accommodated at border units and in tent camps built by the State Border Guard Service (hereinafter referred to as the SBGS) at the Foreigners' Registration Centre (hereinafter referred to as the FRC), disused schools, etc. The largest tent camp for the accommodation of men was built in Rūdninkai polygon. Long-term solutions had to be found as autumn approached and the weather got colder, thus a town of container houses (Medininkai FRC) was built next to the border guard school in Medininkai, and, upon moving the convicts out of the Kybartai correctional facility, Kybartai FRC was established there and the men from Rūdninkai polygon were relocated. Moreover, an additional town of container houses was built in Pabradė FRC and Rukla Refugee Reception Centre (hereinafter referred to as the RRC), and a new RRC branch was established in Naujininkai in Vilnius. All asylum seekers had already been moved to long-term accommodation by late autumn in 2021. However, despite the opening of three new centres, there was still a severe shortage of accommodation, with all centres severely overcrowded. The absolute majority of asylum seekers were *de facto* detained and were forced to spend all their time in the place of their accommodation. The reception conditions of asylum seekers were assessed not only by Lithuanian Red Cross (hereinafter referred to as the LRC) monitoring team, but also by international organisations, such as Médecins Sans Frontières (Doctors without Borders) and Amnesty International. Subject to the assessment of the aforementioned organisations, the conditions of accommodation at Kybartai and Medininkai FRC can be equated to torture and other ill-treatment [1]. The Parliamentary Ombudspersons of Lithuania, having assessed the conditions at Kybartai FRC, stated that the totality of the circumstances determined during the inspections lead to the fact that the totality of the conditions to which foreigners at Kybartai FRC were subjected to were equivalent to the prohibited inhumane or degrading behaviour according to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment [2]. Although the aforementioned reports mostly focussed on Kybartai FRC, asylum seekers and other foreigners in other centres also lived under extremely difficult conditions [3]. After almost a year-long *de facto* detention, in the summer of 2022, the majority of foreigners who remained in the centres have received court's decisions to assign alternative measures to detention: accommodation in SBGS without restrictions on the freedom of movement. Most of the foreigners who regained their freedom of movement in 2022 took advantage of the opportunity and left Lithuania for other European Union countries. Out of more than 4 thousand foreigners, only a few hundred of them remained in the centres by the end of 2022 [4].

[1] Amnesty International. „Lithuania: forced out or locked up“:
<https://www.amnesty.org/en/documents/eur53/5735/2022/en/>;

Médecins Sans Frontières. „People detained in Lithuania are experiencing abuse, violence and mental health distress“:
<https://www.msf.org/prolonged-detention-over-2500-migrants-lithuania-must-end-now>

[2] Report of the Seimas Ombudspersons' Office "Dėl užsieniečių žmogaus teisių ir laisvių užtikrinimo Valstybės sienos apsaugos tarnybos prie Lietuvos Respublikos Vidaus reikalų ministerijos Kybartų užsieniečių registracijos centre" [On ensuring the human rights and freedoms of foreigners in the Kybartai Foreigners' Registration Centre of the State Border Guard Service under the Ministry of the Interior of the Republic of Lithuania]:
https://www.lrski.lt/wp-content/uploads/2022/01/Final_Ataskaita_Kybartai_2021.pdf

[3] The Lithuanian Red Cross Monitoring Report of 2021:

https://redcross.lt/wp-content/uploads/2022/09/2021_metine_lrk_stebesenos_ataskaita.pdf

[4] The Lithuanian Red Cross Monitoring Report of 2022:

https://redcross.lt/wp-content/uploads/2022/09/2022_LRK_Stebesenos_ataskaita_PAPILDYTA_20230125.pdf

Whereas the Member States of the European Union (as well as Iceland, Switzerland, Norway, and Liechtenstein) are bound by the Dublin III Regulation [5], the matter of foreigners who have left the country remains relevant to Lithuania. The aforementioned Regulation determines which Member State shall be responsible for examining an asylum application lodged by a third-country national. Pursuant to Chapter III of the Dublin III Regulation, the first country where a third-country national has applied for asylum or crossed the border irregularly shall be responsible for examining the person's application for asylum. Therefore, foreigners who applied for asylum in Lithuania, but later went to another EU country and also applied for asylum there, should be transferred back to the Republic of Lithuania, which, as the first state of entrance, shall remain responsible for examining their applications, based on the Dublin III Regulation. However, the flows of people transferred to Lithuania in 2023 are not so large (112 foreigners were transferred by the 20th of December) and it seems that most of the foreigners who have left Lithuania in 2022 are not transferred to Lithuania. There is information available that, for example, some courts in Germany have granted interim measures to prevent transfers to Lithuania due to a real risk of inhuman or degrading treatment after severe restrictions in the country's asylum system in response to the crisis at the border with Belarus [6]. The LRC also receives inquiries from organizations operating in foreign countries about reception conditions of asylum seekers and treatment of persons who have been transferred to Lithuania under the Dublin III Regulation.

Having assessed the relevance of the topic, the LRC conducted a thematic monitoring study with the goal of gathering information on the imposition of restrictions of freedom of movement and reception conditions that are ensured for foreigners transferred to Lithuania under the Dublin III Regulation.

[5] Regulation (EU) No. 604/2013 of the European Parliament and the Council of 26 June 2013 establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person (recast):

<https://eur-lex.europa.eu/legal-content/LT/ALL/?uri=CELEX%3A32013R0604>

[6] ECRE Country report: Dublin (Germany):

<https://asylumineurope.org/reports/country/germany/asylum-procedure/procedures/dublin/>

II. REGARDING THE MONITORING

The monitoring was carried out in the months of July – October in 2023, the report analyses the information that was gathered during monitoring visits as well as the information from publicly available sources. Within the course of the monitoring the LRC submitted questionnaires to the Ministry of the Interior of the Republic of Lithuania (hereinafter referred to as the MoI) (see *Appendix No. 1*), the Administration of Pabradė FRC (see *Appendix No. 2*), and based on a standardised questionnaire conducted interviews with foreigners included in the target group (see *Appendix No. 3*). The target group for the monitoring was asylum seekers and other foreigners who were transferred to Lithuania under the Dublin III Regulation.

According to the Migration Yearbooks [7], published by the Migration Department (hereinafter referred to as the MD), the number of requests from other states to take back asylum seekers increased notably in 2022, but there were no significant changes in the number of foreigners actually transferred. For example, 575 such requests were received in 2020 and most of them were granted, but only 27 persons were actually transferred to Lithuania (and only 15 of them applied for asylum upon arrival in Lithuania). 453 requests from other countries were received in 2021, 390 of them were granted, but only 53 foreigners were transferred. The number of requests submitted by other countries increased to 2,119 in 2022, but only 59 persons were actually transferred to Lithuania. It should be noted that the MD no longer publishes how many of the registered asylum applications were submitted by foreigners transferred under the Dublin III Regulation from 2021, and no longer publishes how many requests from other countries to take back asylum seekers have been granted from 2022. The summary statistics of 2023 are expected to be published in the spring of 2024.

Whereas the LRC does not have access to the data of foreigners transferred to Lithuania under the Dublin III Regulation, the Administration of the Centre helped to identify foreigners accommodated or detained in the FRC. For the purposes of this thematic monitoring study, LRC monitors visited Pabradė FRC twice: on 12-Jul-2023 and 26-Oct-2023. During the first visit the Administration of the FRC provided information only about the asylum seekers in the Centre, i.e., the LRC did not have access to foreigners with a different legal status that were included in the target group. During the visit LRC monitor conducted 9 interviews with asylum seekers. The list of foreigners submitted by the FRC during the second visit included one person without the status of an asylum seeker, i.e., the Administration of the FRC provided information on all foreigners included in the target group, regardless of their status. 6 asylum seekers were interviewed during the second visit. Additionally, after identifying foreigners who fall into the target group during other working visits to the FRC, 2 more interviews were conducted: with 1 asylum seeker and 1 undocumented foreigner.

All interviews were conducted in person during the visits to FRC. Interviews with foreigners were conducted by 2 members of the LRC monitoring team (male and female). 2 interpreters were used during the interviews as needed: interpreter (male) from Arabic, Kurdish, and Farsi languages and European Union Agency for Asylum (hereinafter referred to as the EUAA) interpreter (male) from the Arabic language. With English-speaking and Russian-speaking foreigners LRC monitors communicated without the help of interpreters. All foreigners were asked the same questions with possible follow-up

[7] Migration Department under the Ministry of the Interior of the Republic of Lithuania, Migration Yearbooks: <https://migracija.lrv.lt/lt/statistika/migracijos-metrasciai/>

questions depending on the answer provided (follow-up questions could differ depending on the “Yes” or “No” answer to the question).

In order to reach the largest possible number of persons with a more diverse profile, the LRC also contacted the representatives of the Administrations of Rukla RRC and Naujininkai RRC, but the latter indicated that none of the people accommodated in RRCs were transferred to Lithuania under the Dublin III Regulation.

In addition to the data collected during the interviews, data provided by the FRC and the MoI was used for analysis. Considering the limitations of the necessary data collected during the interviews, this report also analyses the individualised court decisions that were adopted when deciding matters on restriction of freedom of movement of foreigners transferred to Lithuania under the Dublin III Regulation. References to information sources used are provided in the text.

III. ANALYSIS OF THE DATA COLLECTED DURING THE MONITORING

1. Data collected during the interviews

General information about respondents [8]

In total, LRC monitors interviewed 17 people (which accounts for approximately 15 percent of all persons transferred to Lithuania in 2023) met in Pabradė FRC from 6 different countries of origin. Most of the foreigners (11) were citizens of Iraq, 2 of them were from Kazakhstan, other interviews were conducted with citizens of Azerbaijan, Egypt, Iran, and Syria with one interviewee from each of these countries. 15 interviews were conducted with men (88 percent) and 2 were conducted with women. 16 interviewed foreigners were asylum seekers at the time of the interview, 1 was undocumented foreigner.

The age of the respondents varied from 21 to 42 years. All but one lived alone, without family members in the FRC. One woman stated that she was transferred to Lithuania together with her underage daughter. At the time of the interview freedom of movement was restricted for 6 persons while 11 could leave the territory of the FRC for a limited period (48 or 72 hours).

First arrival to Lithuania

Most of the respondents (11) indicated that they came to Lithuania for the first time in the summer of 2021 by crossing the border irregularly. A total of 14 persons stated that they arrived to Lithuania irregularly, 2 persons stated that they arrived through border checkpoints with visas allowing them to enter and stay in the country, and 1 person stated that he first arrived to Lithuania when he was transferred under the Dublin III Regulation (on the basis that he had a visa issued by Lithuania). 13 foreigners who arrived to Lithuania irregularly indicated that they applied for asylum upon arrival; 8 of them indicated that final decisions were made not to grant asylum in their asylum cases at the time when they left Lithuania for another EU country (i.e., the persons were no longer asylum seekers at the time of the departure), 3 of them stated that they were still asylum seekers when they left, 1 of them admitted that he did not know what his status was. 1 asylum seeker indicated that he did not leave Lithuania for another EU country, but agreed to voluntarily return to his country of origin to which he was returned. He suffered torture upon return to his country of origin and travelled to the EU again when the opportunity presented itself. All respondents stated that they applied for asylum in other EU countries.

Transfer to Lithuania

12 respondents indicated that they were transferred to Lithuania from Germany (6 of them were transferred from North Rhine-Westphalia, 4 – from Bavaria, 1 – from Hesse and 1 –from Bremen), 4 were transferred from Sweden and 1 was transferred from Austria. 9 respondents indicated that they appealed the decision received in another EU country regarding their transfer to Lithuania, 8 did not do so. 3 respondents indicated that they did not appeal the decision because they did not receive it. One of the interviewed commented on her transfer to Lithuania as follows: *“No one in Germany explained to me why I had to be returned to Lithuania. I had a private lawyer there, but that did not help either. It all happened in the middle of the night, they came and took us out. The SBGS officials explained to me why everything happened only when I was in Lithuania”*.

[8] The Report contains data collected during confidential interviews with foreigners. In terms of personal data, foreigners were asked to indicate only their country of origin, gender, and age.

13 respondents stated that they had to go through the primary asylum procedures again after they were transferred to Lithuania. 3 of them indicated that the procedures were not repeated, and 1 person was unsure and did not provide an answer.

Freedom of movement

All the interviewed persons stated that after they were transferred to Lithuania, they initially ended up in Vilnius Airport, but they were immediately (within a couple of hours) transferred to Pabradė FRC for accommodation. When asked whether their freedom of movement was restricted upon their transfer to Pabradė FRC, 14 out of 17 respondents gave an affirmative answer to the question. After checking for what period and on what grounds the freedom of movement was restricted, 8 persons indicated that the freedom of movement was restricted from 2 to 10 days due to the mandatory quarantine of all new arrivals to the centre. 6 respondents stated that their freedom of movement was restricted by decision of a court, imposing an alternative measure to detention: accommodation in the FRC with the right to move only within the territory of the Centre. When asked about the grounds for detention, 5 persons indicated that the court had imposed an alternative measure to detention, arguing that once they had already left the country illegally. 1 person stated that he was not aware of the grounds for the imposed alternative measure to detention (vulnerability and poor psychological condition of the person were determined). 4 persons whose freedom of movement was restricted by decisions of courts stated that their freedom of movement was restricted for 3 months. 2 persons stated that initially restriction of their freedom was ordered for 3 months, however, by appealing court's decisions, they managed to regain their freedom of movement, so they did not have the opportunity to leave the territory of the centre for approximately 1 month and 4 days and 1 month and 15 days.

Legal aid

Respondents were asked whether they used state-guaranteed legal aid (hereinafter referred to as the SGLA) after their transfer to Lithuania. 7 respondents gave an affirmative answer, all of them indicated that they used the SGLA services for dealing with restriction of freedom of movement, but only 2 of them contacted the lawyer who represented them before the court hearing. 6 respondents indicated that they used the services of private lawyers (2 of them also used the SGLA). All of them also turned to private lawyers on the issue of restriction of freedom of movement. One respondent stated that his freedom of movement was not restricted by the decision of a court, but he still consulted a private lawyer. When asked why he turned to a private lawyer, the respondent stated: *"After I was transferred to Pabradė FRC, I was detained for a week due to the imposed quarantine. I didn't know when it would end and how long I would not have the freedom of movement, so I turned to a private lawyer for release from quarantine"*. Only 2 persons indicated that the use of lawyers helped them in regaining their freedom of movement, in both cases the asylum seekers used the SGLA services.

Reception conditions

The respondents were asked during the interview about the conditions of their reception, whether the services of medical personnel and psychologists were available to them, or whether humanitarian aid was provided. 16 respondents answered that they at least partially had access to free medical services, had the opportunity to receive free consultation offered by a psychologist. 1 of them indicated that he had a health problem that required him to receive some form of medical care every week, but services were only provided in an emergency. 1 respondent indicated that officially he had the opportunity to use health care services, but when he turned to the medical staff (for services of psychologist), he was

not provided with the needed aid.

All interviewees indicated that they were provided (or knew that they could be provided upon request) with humanitarian aid in the form of hygiene products, clothing, footwear, etc. 4 persons indicated that they received enough hygiene products and other necessities but lacked clothes. The majority did not detail what items they had received but assured that help was provided. The other 4 persons explicitly emphasized that they received not only hygiene products, but also clothes and footwear.

Respondents were asked whether, in their opinion, they were treated differently than others after being transferred to Lithuania because they had already left Lithuania once. 12 respondents answered that they did not think that they were treated differently. The remaining 5 respondents stated that they did not know whether the disrespectful behaviour of officials was related to the fact that they had violated the rules once and left Lithuania: *"some officials are very good, some are very bad. I don't know the reasons for this"*, *"the behaviour of the officials is not nice, but they treat all the residents of the centre like this"*, *"the behaviour of the officials, except for a few, is bad, but I don't think it is related to my situation"*, *"the behaviour of the officials is as bad as earlier (in 2021-2022, before leaving Lithuania - ed.), nothing has changed. I don't know if I'm being treated like that because I left Lithuania before"*, *"Some officials behaved and are behaving inappropriately, cursing, insulting, but this is not necessarily related to the fact that I was transferred to Lithuania"*.

2. Analysis of the collected data

5 out of the 6 respondents, who indicated that their freedom of movement was restricted during the interview, used the services of private lawyers (2 of them also used the SGLA) while the sixth one used only SGLA. All respondents whose freedom of movement was restricted at the time of the interview were Iraqi. All of them came to Lithuania in July of 2021. All but one of them left Lithuania (without having the right to do so) in the summer of 2022, the sixth one (having returned to the country of origin) left in August 2021. 5 of them were transferred to Lithuania from Germany (1 of them from Bavaria, 4 of them from North Rhine-Westphalia) and 1 of them from Austria. 1 of them was transferred in April, 3 of them were transferred in May, 2 of them were transferred in August this year. Earlier all of them applied for asylum in Lithuania, then in Germany and other countries. Final ruling in asylum cases had already been issued at the time when 3 of them left Lithuania, no such ruling was issued in the case of the other 2 of them, the last one of them was returned from Lithuania to the country of origin. 2 of these persons stated that their freedom of movement was not restricted at first after their transfer to Lithuania (in April and May), but later on, while exercising their freedom of movement, they tried to leave Lithuania again, however, they were detained and then subjected to an alternative measure to detention, i.e., accommodation in the FRC by determining the right to move only within the territory of the centre. The remaining 4 of them were subjected to an alternative measure to detention, i.e., accommodation in the FRC with the right to move only within the territory of the centre, immediately after their transfer by court ruling.

Another 2 foreigners indicated that their freedom of movement was restricted by a court decision following their transfer to Lithuania, but later, with the help of the SGLA, they were accommodated in the FRC without restrictions on their freedom of movement and measures restricting freedom of movement were not imposed on them during their stay.

All persons who indicated that their freedom of movement was restricted after their transfer to Lithuania specified that the restriction of freedom was based on the fact that they had already left Lithuania once. They believed that there were no additional individual reasons for the restriction of their freedom of movement.

The freedom of movement of 6 out of 17 foreigners was restricted immediately following their transfer to Lithuania. The rest of the respondents stated that after being accommodated in the FRC, they were detained (without a court decision) from 2 days up to a week for quarantine, but then they were accommodated without restrictions on their freedom of movement.

In the general context, 2 citizens of Kazakhstan stood out: both of them first arrived in Lithuania through the border crossing point and did not seek for asylum then – they entered the country legally and had the right to be there. Both persons later left Lithuania and were transferred back from Sweden. One of them indicated that he was transferred to Lithuania in April, and the other one was transferred in June. The freedom of movement of the foreigner transferred in April was restricted by a court decision, but this measure was not imposed on the foreigner transferred in June. The data gathered during the study do not explain what individual reasons led to the fact that different decisions were made in these 2 cases.

In order to identify the circumstances that led to the fact that some of the people in the target group had their freedom of movement restricted, and some did not, during the interviews, foreigners were asked various questions related to the circumstances of their first arrival in and departure from Lithuania, using the services of private and SGLA lawyers, etc. However, when analysing the data, it became clear that some of these issues were not significant for monitoring, as no clear correlations were observed between the aforementioned circumstances and the conditions for reception granted to foreigners transferred to Lithuania or what restrictions on the freedom of movement were imposed on them. The monitoring also aimed to test the hypothesis that the practice of restricting freedom of movement may vary depending on the period when a person was transferred to Lithuania, but during the investigation it was recorded that there were cases when persons were transferred to Lithuania on the same day, but the freedom of movement of one person was restricted while no such restrictions were imposed on the other one. In summary, it can be stated that the data collected from foreigners during the monitoring does not explain why the freedom of movement is limited to only a part of the persons following their transfer from another country, especially considering that almost all the respondents had previously left Lithuania illegally: this is the common denominator that unites these cases.

3. Information provided by the Administration of Pabradė FRC

On 15-Nov-2023 the Administration of Pabradė FRC sent their response to the questionnaire submitted to them. The response stated that not all foreigners transferred to Lithuania under the Dublin III Regulation ended up in Pabradė FRC. They did not provide any details concerning the factors affecting the determination as to whether a particular person would end up in Pabradė FRC. The Administration stated that 16 foreigners that fall into the target group were accommodated or detained in the FRC at the time of sending the response. None of them have been detained under a court decision, an alternative measure to detention by the court, i.e., accommodation in the FRC with

the right to move only within the territory of the centre, was imposed on 4 foreigners and an alternative measure to detention, i.e., accommodation in the FRC without restriction of the freedom of movement, was imposed on 6 foreigners. The response did not include a comment on the freedom of movement of the remaining 6 foreigners. The Administration of the FRC was also asked to elaborate in which cases the FRC applied to the court seeking restrictions on the freedom of movement of persons falling into the target group. In response to the question, the Administration of the FRC stated that the FRC was guided by the provisions of Chapter VII of the Law "On the Legal Status of Foreigners" of the Republic of Lithuania, risk factors, and established case law when deciding whether to apply to court for the detention of a person or for the imposition of an alternative measure to detention.

Since not all foreigners transferred to Lithuania under the Dublin III Regulation were under the supervision of the FRC, the Administration could not answer the question about the statistics of foreigners transferred to Lithuania in 2023 and offered contacting the MD on this matter.

The Administration of the FRC informed that the services available at the centre for asylum seekers transferred to Lithuania under the Dublin III Regulation were no different from the services provided to other asylum seekers accommodated in the centre. Also, the Administration of the FRC assured that the services available to foreigners who were transferred under the Dublin III Regulation and did not have the status of asylum seekers did not differ from the services that were provided to other foreigners who did not have this status. In summary, based on the information provided by the FRC, the fact that a certain foreigner was transferred to Lithuania under the Dublin III Regulation did not affect the provision of services and other reception conditions at the centre.

4. Information provided by the MoI

On 30-Nov-2023, the LRC applied to the MoI seeking a response to questions relevant to the report on the thematic monitoring. The MoI submitted responses to these questions on 21-Dec-2023 and 22-Dec-2023. Based on the information provided by the Ministry of the Interior, 112 foreigners were transferred to Lithuania under the Dublin III Regulation in 2023 (by the 20th of December) [9] of which 64 individuals applied for asylum in Lithuania following their transfer. Transferred foreigners were distributed by citizenship as follows:

Afghanistan	2	Guinea	1	Russia	3
Armenia	4	Iran	1	Syria	2
Azerbaijan	6	Iraq	38	Somalia	1
Belarus	7	Jordan	1	Tajikistan	2
Ivory Coast	1	Kazakhstan	3	Turkey	2
Cameroon	4	Kyrgyzstan	1	Ukraine	12
Egypt	2	Nigeria	2	Uzbekistan	14
Eritrea	2	Republic of South Africa	1		

TOTAL: 112

[9] Considering the fact that the statistics were presented 10 days before the end of the year, the received data is referred to as annual statistics.

Foreigners were transferred from the following countries:

Austria	6
Belgium	1
Germany	52
Denmark	2
Finland	3
France	1
Lichtenstein	1
Luxembourg	1
The Netherlands	3
Norway	13
Poland	4
Sweden	25
Total:	112

77 foreigners from the following countries of origin were accommodated in Pabradė FRC out of all persons transferred to Lithuania in 2023:

Azerbaijan	6
Iraq	33
Cameroon	4
Nigeria	2
Guinea	1
Eritrea	2
Somalia	1
Turkey	2
Russia	3
Uzbekistan	5
Belarus	3
Kazakhstan	2
Iran	1
Ivory Coast	1
Afghanistan	1
Armenia	4
Syria	2
Egypt	2
Ukraine	1
Jordan	1
Total:	77

The Mol could not provide exact figures on how many of the aforementioned persons had their freedom of movement restricted following their transfer, but stated that *“Foreigners handed over to Lithuania were accommodated in various ways, mostly a court ordered an alternative measure to detention with the right to move only within the territory of the place of accommodation, but there were also such cases, when the court granted the right to move freely in the territory of Lithuania”*. The Mol did not specify how many of the aforementioned 112 persons arrived in Lithuania irregularly in 2021 during the influx of asylum seekers.

IV. CASE LAW ON RESTRICTION OF THE FREEDOM OF MOVEMENT

As it has already been mentioned, the LRC does not have access to the data of foreigners transferred to Lithuania under the Dublin III Regulation (some of them live independently and the LRC does not have their contact information and the ability to identify persons falling into the target group). In order to partially compensate for the lack of data, this part of the report is based on court rulings published in the Lithuanian Court Information System [10] (hereinafter referred to as the LITEKO). This part analyses the issue of restricting the freedom of movement of foreigners who fall exclusively into the target group. Considering the fact that publicly announced court decisions are depersonalised, it cannot be ruled out that decisions issued regarding the foreigners with whom the members of the monitoring team of the LRC communicated at the FRC may be among them. Court decisions, as an additional source of information, provide an opportunity to accurately identify and assess the reasons for restricting freedom of movement, which foreigners themselves may not know or fully understand.

1. Methodology

Relevant decisions issued by Lithuanian courts were filtered by specifying the date (from 01-Jan-2023 to 31-Dec-2023) in the detailed search in the LITEKO and by specifying the word “Dublin” in the box “search text”. The rulings of Vilnius Regional District Court (hereinafter referred to as VRDC) and the Supreme Administrative Court of Lithuania (hereinafter referred to as the SACL) were respectively filtered in the search box “court” to narrow the search parameters, while reviewing the case law of the courts of both instances. The case number, outcome of the case or other precise information was not indicated. 66 VRDC and 47 SACL depersonalised decisions were found after filtering the court decisions according to the specified criteria, but not all the obtained results met the criteria of the cases required for the LRC analysis. Some of the filtered cases turned out not to be about foreigners transferred to Lithuania under the Dublin III Regulation, but, for example, about Lithuanian citizens who engaged in a certain activity in Dublin and therefore appeared among the results according to the keyword, or about foreigners planned to be transferred to Latvia. It should also be noted that the analysis used only those rulings that were issued regarding persons who were transferred to Lithuania in 2023. Ultimately, 20 relevant rulings were selected for analysis (10 decisions issued by the SACL and 10 issued by VRDC). The only criterion that was followed in a random order from the eligible rulings for analysis was their relative distribution in time (the rulings would be issued in different months) in order to compare whether the jurisprudence was changing. However, considering the fact that more decisions were issued in relevant cases in certain months, as the transfer of foreigners to Lithuania intensified, there were cases when several decisions issued on the same day or on consecutive days were analysed, and more rulings issued in certain months than those issued in other were analysed. As mentioned, half of the analysed rulings were judgements issued in the examination of appeals against decisions that have already been issued. Furthermore, some of the analysed decisions were issued during the examination of the FRC’s repeated application to the court regarding the extension of the restriction of freedom of movement imposed on a foreigner. In such cases, the analysis of the decisions was focussed not only on the reasons for the decision under consideration, but also on the previously issued court decision, which was referred to in the document.

[10] <https://liteko.teismai.lt/viesasprendimupaieska/detalipaieska.aspx>

Analysed court decisions (in chronological order):

- Decision of the SACL of 9 February 2023 in Administrative Case No. A-1419-822/2023 [11]
- Decision of VRDC of 24 February 2023 in Administrative Offence Case No. A20.-123-617/20 [12]
- Decision of the SACL of 8 March 2023 in Administrative Case No. A-1520-442/2023 [13]
- Decision of VRDC of 5 May 2023 in Administrative Offence Case No. A20.-219-617/2023 [14]
- Decision of the SACL of 25 May 2023 in Administrative Case No. A-1854-822/2023 [15]
- Decision of the SACL of 31 May 2023 in Administrative Case No. A-1921-556/2023 [16]
- Decision of the SACL of 21 June 2023 in Administrative Case No. A-1966-1047/2023 [17] (*return*)
- Decision of the SACL of 21 June 2023 in Administrative Case No. A-1969-662/2023 [18]
- Decision of the SACL of 19 July 2023 in Administrative Case No. A-2114-575/2023 [19]
- Decision of VRDC of 16 August 2023 in Administrative Offence Case No. A20.-413-1199/2023 [20] (*return*)
- Decision of VRDC of 16 August 2023 in Administrative Offence Case No. A20.-405-617/2023 [21]
- Decision of VRDC of 24 August 2023 in Administrative Offence Case No. A20.-431-617/2023 [22] (*return*)
- Decision of VRDC of 24 August 2023 in Administrative Offence Case No. A20.-436-1199/2023 [23]
- Decision of VRDC of 25 August 2023 in Administrative Offence Case No. A20.-442-617/2023 [24]
- Decision of VRDC of 7 September 2023 in Administrative Offence Case No. A20.-467-1194/2023 [25]
- Decision of VRDC of 12 September 2023 in Administrative Offence Case No. A20.-456-1199/2023 [26] (*issued in respect of the same person as the Judgement of the SACL in Case No. A-2114-575/2023*)
- Decision of the SACL of 19 October 2023 in Administrative Case No. A-2436-822/2023 [27]
- Decision of the SACL of 8 November 2023 in Administrative Case No. A-2523-552/2023 [28]
- Decision of VRDC of 21 November 2023 in Administrative Offence Case No. A20.-568-617/2023 [29]
- Decision of the SACL of 13 December 2023 in Administrative Case No. A-2683-662/2023 [30]

The factors that could potentially influence the decisions issued were evaluated during the analysis:

- 1) *What was the foreigner's status at the time of the decision (asylum seeker or not)?*
- 2) *Is the foreigner considered a vulnerable person?*

[11] <https://liteko.teismai.lt/viasasprendimupaieska/tekstas.aspx?id=72dcdaf-e19f-41be-9088-37f90056c4d3>

[12] <https://liteko.teismai.lt/viasasprendimupaieska/tekstas.aspx?id=8666a677-1ec3-47e5-a95e-33373f5d5def>

[13] <https://liteko.teismai.lt/viasasprendimupaieska/tekstas.aspx?id=04607e41-f823-461f-b58b-4a4a1dc787ff>

[14] <https://liteko.teismai.lt/viasasprendimupaieska/tekstas.aspx?id=307989d6-407c-4b7e-9f6a-402a16d4d57c>

[15] <https://liteko.teismai.lt/viasasprendimupaieska/tekstas.aspx?id=98e16ac4-a794-4108-bf74-2779da47eb1d>

[16] <https://liteko.teismai.lt/viasasprendimupaieska/tekstas.aspx?id=587ad7bf-3d31-4b03-abad-553dc2844fb2>

[17] <https://liteko.teismai.lt/viasasprendimupaieska/tekstas.aspx?id=48165c4a-644c-48d4-86e2-541524c91530>

[18] <https://liteko.teismai.lt/viasasprendimupaieska/tekstas.aspx?id=7fe27717-8c58-4214-9824-4b5006d7c07e>

[19] <https://liteko.teismai.lt/viasasprendimupaieska/tekstas.aspx?id=128a298d-678d-41e6-b239-2dda9c92a616>

[20] <https://liteko.teismai.lt/viasasprendimupaieska/tekstas.aspx?id=b8162151-b97f-4392-aa5c-0acc8203e50f>

[21] <https://liteko.teismai.lt/viasasprendimupaieska/tekstas.aspx?id=eda9a25c-9104-4225-8b76-54b6ed3f44c2>

[22] <https://liteko.teismai.lt/viasasprendimupaieska/tekstas.aspx?id=d215cc0d-d68d-457a-a56d-afd967017b7b>

[23] <https://liteko.teismai.lt/viasasprendimupaieska/tekstas.aspx?id=f28d027e-df58-4bc2-a775-14117a343968>

[24] <https://liteko.teismai.lt/viasasprendimupaieska/tekstas.aspx?id=f4765854-db27-4f32-95e6-e13f4036d191>

[25] <https://liteko.teismai.lt/viasasprendimupaieska/tekstas.aspx?id=b2480d95-6272-49ca-a675-a79e1f6daba0>

[26] <https://liteko.teismai.lt/viasasprendimupaieska/tekstas.aspx?id=7c45460b-efac-489c-aa21-33c6b8ab6a0e>

[27] <https://liteko.teismai.lt/viasasprendimupaieska/tekstas.aspx?id=275e253c-2287-46c4-87ad-f36b968e6298>

[28] <https://liteko.teismai.lt/viasasprendimupaieska/tekstas.aspx?id=e793d064-f881-4aad-af92-71d59f93190d>

[29] <https://liteko.teismai.lt/viasasprendimupaieska/tekstas.aspx?id=ecccb568-3e7b-4f03-8676-e3a7611cc348>

[30] <https://liteko.teismai.lt/viasasprendimupaieska/tekstas.aspx?id=b8cb62b8-eab8-4c91-9166-5a74737ae086>

- 3) Did the foreigner come to Lithuania irregularly during the influx of foreigners in 2021 or later?
- 4) Under what circumstances did the foreigner leave Lithuania for the first time (what was his / her status, did he / she has the freedom of movement)?
- 5) Had the foreigner's identity been confirmed?
- 6) Does the foreigner pose a threat to national security or public order?
- 7) Does the foreigner cooperate with Lithuanian authorities?
- 8) Did the foreigner try to leave again after being transferred to Lithuania?

Assessment of the reasoning which the court relied upon as the grounds for the need to restrict the freedom of the foreigner was also subject to analysis.

2. Analysis of the case law

Part of the collected data is presented in a simplified manner in the table [31], additional data and the reasoning of the courts based on the adopted decision is presented in the appendices of the document. A more detailed description of the decisions of VRDC is provided in Appendix No. 4, and a more detailed description of the decisions of the SACL is available in Appendix No. 5.

VRDC

Administrative case number	Was the person's freedom of movement restricted by a court decision?	Is the person an asylum seeker?	Has vulnerability of the person been identified?	Is there evidence that the person poses a threat to national security or public order?	Has the identity of the person been confirmed by documents (original or copy)?	Is there any evidence that the person does not cooperate with state authorities?	Has the person left Lithuania without receiving a decision on asylum case?	Did the person try to leave again after being transferred to Lithuania?
A20.-123-617/20	NO	NO	NO	-	-	-	NO	NO
A20.-219-617/2023	YES	NO	NO	-	-	-	NO	YES
A20.-413-1199/2023	YES	NO	NO	-	NO	YES	NO	NO
A20.-405-617/2023	YES	YES	NO	-	-	-	YES	NO
A20.-431-617/2023	YES	NO	NO	-	-	-	NO	NO
A20.-436-1199/2023	NO	YES	NO	NO	YES	NO	NO	NO
A20.-442-617/2023	YES	YES	NO	-	-	-	NO	NO
A20.-467-1194/2023	YES	YES	NO	-	YES	-	NO	NO
A20.-456-1199/2023	NO	YES	YES	NO	NO	NO	YES	NO
A20.-568-617/2023	NO	YES	NO	NO	YES	NO	NO	NO

[31] A hyphen (-) marked in the table means that no information is provided in the ruling on the mentioned question.

SACL

Administrative case number	Was the person's freedom of movement restricted by a court decision?	Is the person an asylum seeker?	Has vulnerability of the person been identified?	Is there evidence that the person poses a threat to national security or public order?	Has the identity of the person been confirmed by documents (original or copy)?	Is there any evidence that the person does not cooperate with state authorities?	Has the person left Lithuania without receiving a decision on asylum case?	Did the person try to leave again after being transferred to Lithuania?
A-1419-822/2023	NO	YES	NO	NO	YES	NO	NO	NO
A-1520-442/2023	YES	YES	NO	NO	YES	-	NO	NO
A-1854-822/2023	NO	YES	NO	NO	YES	NO	NO	NO
A-1921-556/2023	YES	YES	NO	NO	-	-	NO	NO
A-1966-1047/2023	YES	NO	NO	NO	-	-	YES	NO
A-1969-662/2023	YES	YES	NO	-	-	-	NO	YES
A-2114-575/2023	YES	YES	YES	YES	NO	-	YES	NO
A-2436-822/2023	NO	YES	NO	NO	YES	NO	NO	NO
A-2523-552/2023	YES	YES	YES	NO	YES	-	NO ³²	NO
A-2683-662/2023	YES	YES	NO	NO	NO	-	YES	NO

3. Summary

This part will summarise the data collected during the analysis of court decisions. It is distinguished what had an impact on the restrictions on the freedom of movement of foreigners and what did not. Based on the observed correlations, the main factors leading to restrictions on the freedom of movement have been identified. The decisions of VRDC and the SACL are discussed separately, and in certain aspects, the differences, and similarities between the practices of courts of different instances are compared. Summarising the decisions of VRDC, the case law involving issuance of decisions concerning asylum seekers and undocumented foreigners staying in the country was discussed separately. The aforementioned groups are separated based on the different reasoning of VRDC when issuing decisions regarding persons awaiting expulsion to the country of origin or decisions on submitted asylum applications. In the case of summarising the decisions of the SACL, the aforementioned distinction was not made, because, out of 10 analysed rulings, only 1 case dealt with the issue of the situation of an undocumented foreigner staying in the country, so no conclusions are made about the case law of the SACL in this matter.

[32] The alien did not leave Lithuania without having the right to do so. While in Lithuania, he agreed to voluntarily return to his country of origin, but returned to the EU at a later time.

VRDC

It was decided to distinguish 2 groups of foreigners whose restrictions on the freedom of movement are discussed separately in the process of analysing the decisions of VRDC: 1) asylum seekers (6 decisions) and 2) undocumented foreigners staying in the country (4 decisions). This distinction is made in light of the different trends observed.

Asylum seekers

As mentioned, 6 of the analysed decisions of VRDC were made in cases of asylum seekers. The freedom of movement was not restricted in 3 cases out of 6 asylum seekers. VRDC emphasised the importance of the person's cooperation with the authorities when offering reasoning why restricting the freedom of movement of individuals was not necessary. VRDC noted that the persons cooperated (or there was no data that they did not cooperate) with the Lithuanian authorities only in 3 cases out of the 10 decisions analysed, and all 3 persons were accommodated without restricting their freedom of movement. The decisions of VRDC indicated that *"the imposition of restrictions on the freedom of movement of a foreigner, without determining the circumstances justifying the foreigner's non-cooperation, is subject to recognition as an unnecessary and disproportionate measure"*. It should be noted that cooperation is not mentioned in other decisions of VRDC, which restricted the freedom of movement of foreigners, i.e., the cooperation factor is not evaluated when arguing in favour the need to restrict the freedom of movement, the aforementioned argument is used only when substantiating decisions on not applying restrictions on the freedom of movement. It should be noted that in all 3 cases, when VRDC decided not to restrict the freedom of movement of asylum seekers, the persons did not pose a threat to national security or public order, in 2 out of 3 cases the persons' identity was confirmed, in 2 out of 3 cases the persons left Lithuania when final decisions had already been issued in their asylum cases. The third case is unique not only in that the identity of the person has not been confirmed and the person had left Lithuania without receiving a final decision in his asylum case, but also in that the person was found to be vulnerable and his freedom of movement was restricted for 6 months consecutively after being transferred to Lithuania. In this case, VRDC stated that a person's freedom of movement could not be restricted not only because he cooperated with state authorities, but also because the maximum duration of restriction of the freedom of movement possible under the current circumstances had been reached.

Asylum seekers' freedom of movement was restricted in 3 cases out of 6. As it has already been mentioned, in none of these cases did VRDC indicated whether the persons cooperated with the Lithuanian authorities. Furthermore, in all 3 cases, the decisions of VRDC did not indicate whether the persons posed a threat to national security or public order, in 2 cases it was not indicated whether the persons' identity was confirmed (it was confirmed in 1 case), in all cases the persons left Lithuania when the final decisions had already been issued in their asylum cases. In all cases, the restriction of the freedom of movement was based on the fact that the persons had already left Lithuania once without having the right to do so, i.e., an argument is used that could be applied to the majority of persons transferred to Lithuania under the Dublin III Regulation (except for those who did not apply for asylum in Lithuania before and were transferred to Lithuania on other grounds specified in the regulation, e.g., due to previously held visas).

Undocumented foreigners staying in the country

The analysis of the rulings of VRDC has shown that the freedom of movement of 2 out of 4 persons who did not submit applications for asylum after the transfer was restricted immediately following their transfer to Lithuania. Analysis of the data has shown an essential factor involved in limiting the freedom of movement, namely, the perspectives for return, i.e., whether the person can be expelled to the country of origin. The rulings by which it was decided not to restrict the freedom of movement of undocumented foreigners staying in the country were issued in February and April in the cases of Iraqi citizens. It should be noted that for a long time Lithuania failed to reach an agreement with the Iraqi authorities regarding the forced expulsion of their citizens to their country of origin, so returning Iraqis to their country of origin was only possible if the person agreed to return voluntarily. In this context, the freedom of movement of the Iraqi citizens awaiting expulsion was not restricted on the grounds that it was not clear when the MD's decision regarding expulsion of the individuals to their country of origin would be implemented. In the absence of the prospect of enforcement of the expulsion decision, the restriction of the freedom of foreigners could become indefinite, which is not permitted under the applicable regulations.

It should be noted that the alternative measure to detention, which did not restrict the freedom of movement, was initially imposed on one of the Iraqi citizens, but it was tightened quite quickly by changing it to accommodation without the right to leave the territory of the FRC by the ruling of VRDC issued on the 5th of May. The imposed measure was tightened after the person left the place of accommodation, did not return at the appointed time and was detained while trying to leave for Poland. In light of this, only one line indicates that the freedom of movement of a foreigner without the status of an asylum seeker was not restricted in the table of the rulings issued by VRDC.

2 out of 4 foreigners belonging to the group in question had their freedom of movement restricted immediately after their transfer to Lithuania. Both rulings were issued in August. The rulings indicated that since the foreigners had already illegally left Lithuania once, it was likely that they might do so again, thus preventing the execution of the ruling on their expulsion to the country of origin. In this case, it should be noted that one of the persons was a citizen of Nigeria and the other one was an Iraqi citizen. Unlike in the case of Iraqi nationals, expulsions to Nigeria have taken place in the past, e.g., in 2022 [33], i.e., in this case, the refusal of the country of origin to accept forcibly expelled citizens was not encountered. In the case of the Iraqi citizen, it is likely that the ruling on the restriction of the freedom of movement was issued due to a changed situation: based on the knowledge available to the LRC, Lithuania began carrying out the forced expulsion of Iraqi citizens to their country of origin approximately from the middle of 2023. If the Iraqi citizens who did not have the right to remain on the territory of Lithuania but did not wish to return to Iraq could not be forcibly expelled in the spring of 2023, at present, after Lithuania has reached an agreement with the Iraqi authorities, they may also be expelled to their country of origin, therefore, pending enforcement of the expulsion, the freedom of movement of such persons may be restricted.

[33] LRT "Naktinis migrantų grupės išskraidinimas į Nigeriją sukėlė aistras ir klausimą: ar tokia deportacija teisėta?" [The night flight of a group of migrants to Nigeria sparked agitation and the question: is such deportation legal?]: <https://www.lrt.lt/naujienos/lietuvoje/2/1844257/naktinis-migrantu-grupes-isskraidinimas-i-nigerija-sukele-aistras-ir-klausima-ar-tokia-deportacija-teiseta>

Based on exclusively analysed decisions of VRDC, no basis was found for the assumption that their content was influenced by such factors as the threat posed by individuals to state security or public order, possession of documents confirming identity of the person, cooperation with state authorities, status of individuals before leaving Lithuania. The 2 identified potentially influencing factors were the foreigner's country of origin (and Lithuania's ability to send the foreigner there) and the attempt to leave again after the transfer to Lithuania.

SACL

Out of 10 analysed cases, in 3 cases the SACL issued a decision to reverse the decision of the court of first instance and to no longer restrict the freedom of movement of foreigners, and in 7 cases decisions were issued to uphold further restriction of the freedom of movement of foreigners. Having analysed the reasoning of the decisions made in the judgements issued by the SACL, it was noticed that, when deciding whether the foreigner's freedom of movement should be restricted, the following aspects did not have a significant impact on the decision: 1) whether the person was identified as vulnerable; 2) whether the person posed a threat to national security or public order; 3) whether the identity of the person was confirmed; 4) whether the person left Lithuania without receiving a decision on asylum case.

On the contrary, the factor of cooperation with Lithuanian authorities, as in the case of VRDC, had influenced the ruling on the restriction of the freedom of movement. Only 3 out of 10 analysed judgements clearly stated that the foreigner cooperated (or there was no evidence that he / she did not cooperate) with the Lithuanian authorities. No restrictions on the freedom of movement were imposed on all 3 foreigners. As in the case law of VRDC, the aforementioned judgements emphasised that, if non-cooperation was not established, there was no reason to restrict the freedom of movement of foreigners. It should be noted that in all of the aforementioned cases the rulings were issued regarding asylum seekers, so it is not clear whether the same reasoning would be applied for dealing with the issue of restricting the freedom of movement of undocumented foreigners staying in the country. The SACL did not mention the cooperation factor in the remaining 7 cases.

In the process of analysing the aforementioned 7 cases, when the freedom of movement of foreigners was restricted, it was noticed that the SACL provided different reasoning the issued rulings. One asylum seeker's freedom of movement was restricted on the grounds that he had violated internal rules of the FRC 3 times before leaving Lithuania (he left and did not return on time, the last time he went abroad). Another court decision following the transfer [of the foreigner] to Lithuania provided for accommodation in the FRC without restricting the freedom of movement, but he, taking advantage of this, also violated the internal rules of the FRC: he left the centre and did not return in time, therefore, after the foreigner was detained and returned to the centre, the court changed the decision and restricted his freedom of movement. In the aforementioned cases, the restriction of the freedom of movement was based on the person's tendency to violate the rules of the accommodation centre. In 2 cases, the restrictions on the freedom of movement left in place for asylum seekers by the judgements issued by the SACL were motivated exclusively by the fact that the persons had already left Lithuania once without having the right to do so. In both cases, the judgements stated that the persons did not pose a threat to national security or public order, both left Lithuania after the MD's decision against granting asylum came into force, the identity of one person was confirmed, no information was

provided about the confirmation of the identity of the second person. In both cases, the decisions did not mention whether the individuals cooperated with Lithuanian authorities.

2 of the analysed decisions stood out as they were issued in the cases involving vulnerable foreigners. Vulnerable persons were *de facto* detained. Based on the assessment of the psychologist at the Department for Organisation of Reception Conditions of the FRC (hereinafter referred to as the DORC), both asylum seekers were found to be vulnerable, and it was recommended to ensure a calm and safe accommodation environment. In this regard, the SACL stated that an alternative measure to detention, accommodation of a person in the FRC and determining the right to move only within the territory of the centre would not have a negative impact on the health of the asylum seekers. The restriction of the freedom of movement was left in force arguing that there was a risk that the asylum seekers would leave Lithuania based on their previous actions. It should be noted that the histories of both persons were not standard, one of them committed crimes in a foreign country repeatedly, the other one travelled to many different EU countries without having the right to do so. The situation of the two vulnerable foreigners was also quite different, one of them did not pose a threat to national security or public order, his identity was confirmed, he did not leave Lithuania illegally while his asylum application was being processed (he returned to his country of origin voluntarily), and the second one, on the contrary, he posed a threat, his identity has not been confirmed, he left Lithuania without receiving a decision in his asylum case. Most of the factual circumstances in the cases differed, however, analogous rulings in favour or restricting their freedom of movement were issued in respect of both foreigners. As it has already been mentioned, the factor of cooperation with authorities was not discussed in these judgements. It should be noted that in the decision of 8 November in Case No. A-2523-552/2023 SACL indicated that *“the most severe measure, i.e., detention, is not imposed on the foreigner, therefore it cannot be claimed that his rights are excessively restricted or his needs as a vulnerable person are not ensured by imposing certain restrictions on him”* [34]. It should be noted that in none of the 20 analysed decisions issued by the VRDC and the SACL imposed “detention” on the foreigner who was transferred to Lithuania under the Dublin III Regulation, the freedom of movement was restricted by assigning an alternative measure to detention. *Inter alia*, this means that, at least in the cases under consideration, vulnerable persons were not subject to more lenient measures compared to other foreigners transferred under the Dublin III Regulation, i.e., the vulnerability factor did not affect the rulings.

In 1 out of 10 analysed cases, the foreigner did not have the status of an asylum seeker and was waiting for enforcement of a ruling on expulsion to the country of origin. The personalised order does not leave any hints about the foreigner’s country of origin, nor does it mention whether it was possible to enforce his expulsion to the country of origin. The reasoning for the need to restrict the freedom of movement was based exclusively on the fact that the person had already left Lithuania once without having the right to do so. Taking into account the fact that only in 1 case out of 10 was the judgement analysed in the case of an undocumented foreigner and it did not indicate specific circumstances justifying the restriction of freedom of movement, it can be stated that, unlike in the case of VRDC, the collected data did not presuppose general conclusions regarding the case law of the SACL on the movement of undocumented foreigners staying in the country on the issue of the restriction of freedom.

[34] <https://liteko.teismai.lt/viesasprendimupaieska/tekstas.aspx?id=e793d064-f881-4aad-af92-71d59f93190d>

Additional observations

The decisions of the SACL in Case No. A-1520-442/2023 and of VRDC in Case No. A20.-405-617/2023 and Case No. A20.-442-617/2023 noted that the persons had gone to foreign countries and lived there unlawfully (or “illegally”). It should be noted that the persons in whose cases the aforementioned rulings were issued were transferred to Lithuania based on the Dublin III Regulation, which is usually used for the transfer of asylum seekers. Taking this into account, it is very likely that the persons transferred to Lithuania applied for asylum in foreign countries, i.e., unlike going from one country to another, their “presence” in foreign countries was not “illegal”, just as persons seeking asylum in Lithuania are not in the country “illegally”. Thus, in the aforementioned cases, the courts base their conclusions on factually and legally incorrect assumptions.

An alternative measure to detention was imposed on all foreigners in respect of whom the analysed decisions were issued, however, their forms varied: 1) accommodation in the FRC without restrictions on the freedom of movement or 2) accommodation in the FRC by granting the right to move only in the territory belonging to the place of accommodation. In this regard, it should first be noted that any “alternative measure to detention” can only be applied if there is a basis for detaining a foreigner provided for in the Law “On the Legal Status of Foreigners” of the Republic of Lithuania, but the foreigner’s identity has been established, he does not pose a threat to national security and public order, provides assistance to authorities in determining his legal status in the Republic of Lithuania, etc. In this way, regardless of whether it is widely discussed in the ruling and what alternative detention measure is imposed, in all the analysed rulings it was assumed that there was a legal basis to detain foreigners transferred under the Dublin III Regulation.

Furthermore, the first of the aforementioned alternative measures to detention accurately conveys the nature of the accommodation regime for the foreigner, while the second can be assessed as *de facto* detention, as defined in Clause (h) of Article 2 of Directive 2013/33/EU of the European Parliament and of the Council of 26 June 2013 laying down the standards for the reception of applicants for international protection (recast), regardless of what the said measure is referred to in national law. The Court of Justice of the European Union stated on 14 May 2020 in Joint Cases C-924/19 PPU and C-925/19 PPU that the obligation imposed on a third-country national to remain permanently in a transit zone the perimeter of which is restricted and closed, within which that national’s movements are limited and monitored, and which he or she cannot legally leave voluntarily, in any direction whatsoever, appears to be a deprivation of liberty, characterised by “detention” [35]. In the judgement of the Constitutional Court of the Republic of Lithuania No. KT53-A-N6/2023 “Concerning the compliance of the provisions of the Law “On the Legal Status of Foreigners” of the Republic of Lithuania with the Constitution of the Republic of Lithuania” of 07-Jun-2023 it was stated that the temporary accommodation of an asylum seeker without granting the right to move freely within the territory of the Republic of Lithuania is one of the strictest and most restrictive measures of personal freedom that can be equated to detention (see, for example, Paragraphs 27.1, 27.3, 27.5 of the Resolution).

[35] Paragraph 4 of the Operative Part of the Ruling of the Grand Chamber of the Court of Justice of the European Union of 14 May 2020 in *FMS et al.*, C/924/19 PPU and C/925/19 PPU, EU:C:2020:367:

<https://curia.europa.eu/juris/document/document.jsf?text=&docid=226495&pageIndex=0&doclang=LT&mode=lst&dir=&occ=first&part=1&cid=1124>

In light of the ongoing debate on appropriate qualification of “accommodation in the FRC, granting the right to move only within the territory of the place of accommodation” and equating it to detention, the members of the monitoring team of the LRC assessed the difference between the actual situation of foreigners subject to court-ordered “detention” and foreigners subjected to an alternative measure to detention, determining the right to move only in the territory of the FRC. 2 essential differences were observed during the regular visits to the FRC for monitoring the reception conditions:

1) detained foreigners can use mobile telephones only at the specified time, while foreigners subject to an alternative measure to detention can use them freely;

2) detained foreigners can go outside to the fenced area around the building only at the specified time, while foreigners subject to an alternative measure to detention can go to the fenced perimeter around the building at any time.

No other differences were observed during the visits. Although the law refers to the “right to move within the territory belonging to the place of accommodation”, however, foreigners who are assigned this alternative measure to detention cannot go outside the fenced area belonging to a specific building, which further substantiates the position that this measure is *de facto* detention.

V. CONCLUSIONS

- Not all foreigners transferred to Lithuania under the Dublin III Regulation end up in the FRC. Out of 112 foreigners transferred to Lithuania in 2024, 77 persons were transferred to Pabradė FRC for temporary accommodation or detention. Those who find themselves in Pabradė FRC are guaranteed the same conditions as all residents of the centre, regardless of legal status [36].
- The number of foreigners transferred to Lithuania under the Dublin III Regulation in 2023 has almost doubled compared to 2022 (59 persons in 2022, 112 in 2023).
- Most of the foreigners transferred to Lithuania in 2023 consisted of Iraqi citizens (about 34 percent of all transferred persons). Also, the majority of foreigners transferred to Lithuania came from Germany (about 46 percent). Interviews with the foreigners included in the target group revealed that the majority of persons transferred from Germany were transferred from North Rhine-Westphalia and Bavaria.
- The Mol did not provide precise information about what part of the foreigners transferred to Lithuania in 2023 arrived in Lithuania irregularly for the first time during the influx of foreigners in 2021. However, based on the analysis of the data collected during the interviews and from the courts, it can be seen that the majority of persons arrived in Lithuania in the summer of 2021: this was the case with 11 out of 17 respondents and 16 out of 19 persons subject to the court decisions issued in their cases analysed by us.
- Not a single case has been observed that persons falling into the target group were detained by the decision of a court, in all cases an alternative measure to detention was imposed with or without restriction of the freedom of movement. The information provided by the Mol and the analysed case law show that the majority of persons transferred to Lithuania under the Dublin III Regulation had their freedom of movement restricted in Lithuania by imposing an alternative measure to detention, i.e., accommodation in the FRC, by granting the right to move only in the territory belonging to the place of accommodation. Although the restrictions on the freedom of movement of these persons are not formally referred to as detention, the persons were held under conditions of *de facto* detention.
- Putting together the information gathered during the interviews and the analysis of court rulings, no clear reasons were identified causing the freedom of movement of the asylum seekers included in the target group to be restricted. A certain regularity was observed in the rulings issued by both VRDC and the SACL decisions as the freedom of movement was not restricted for those foreigners who cooperated with state authorities. However, the analysis of the content of court decisions does not substantiate the assumption that non-cooperation was the basis for restricting the freedom of movement, since the relevant decisions did not mention at all whether individuals cooperated with state authorities. The freedom of movement of asylum seekers may be restricted regardless of vulnerability, regardless of whether they posed a threat to national security and public order, or whether their identity was confirmed. Also, the manner in which the person arrived in Lithuania for

[36] The reception and protection conditions ensured by Pabradė FRC are described in detail in the Annual Monitoring Report of the Lithuanian Red Cross of 2023: <https://redcross.lt/veiklos/prieglobscio-ir-migracijos-programa/stebesena-2/>

the first time and under what circumstances he / she left (whether a final decision was received / whether he / she was waiting for a response from the MD) did not affect court decisions. In certain cases, VRDC and the SACL issued rulings in favour of limiting the freedom of movement of foreigners by only arguing that the person had already left Lithuania arbitrarily in the past without having the right to do so.

- Based on the analysis of court decisions and the information collected during interviews with foreigners, a tendency can be seen that the freedom of movement was restricted to foreigners who usually fall into the target group after repeated attempts to leave Lithuania.
- The case law of VRDC shows that the freedom of movement of undocumented foreigners staying in the country and awaiting the execution of a decision on expulsion to their country of origin was not restricted in cases where expulsion to their country of origin was not practically feasible. On the other hand, if Lithuania has agreements with the person's country of origin and carries out expulsions to the aforementioned country, the foreigner's freedom of movement is limited by arguing that the persons had already left Lithuania once without having the right to do so, so there was a possibility that they would do it again. The case law of the SACL in relation to undocumented foreigner staying in the country was not analyzed due to the lack of data.
- It has been noticed that in certain cases the courts based their findings on the false assumption that foreigners resided "illegally" in foreign countries before they were transferred to Lithuania. In this regard, it should be noted that, like in Lithuania, the presence of asylum seekers in the territory of other countries that apply the Dublin III Regulation is not considered "illegal residence".

APPENDICES

Appendix No. 1. Questions to the Mol

1. How many foreigners were transferred to Lithuania under the Dublin III Regulation in 2023? (by countries of origin)
 - 1.1. How many of them are foreigners who came to Lithuania irregularly during the influx of foreigners which started in 2021?
 - 1.2. How many of them applied for asylum following their transfer to Lithuania?
 - 1.3. How many of them were accommodated at the FRC?
 - 1.4. How many of them had their freedom of movement restricted (detention or an alternative measure to detention giving the right to move within the territory of the place of accommodation)?
2. From which countries were the foreigners transferred? (indicate how many foreigners were transferred from a specific country next to the names)

Appendix No. 2. Questions to the Administration of the FRC

1. Do all persons returned to Lithuania under the Dublin III Regulation end up in the FRC at least for a while?
2. How many people transferred under the Dublin III Regulation are currently living in the FRC?
 - 2.1. How many of them have been detained under a court decision? On what grounds?
 - 2.2. How many of them have been subjected to an alternative measure to detention, i.e., accommodation in the FRC with the possibility of movement only in the territory of the centre, under a court decision? On what grounds?
 - 2.3. How many of them been subjected to a different alternative to detention under a court decision? What kind? On what grounds?
 - 2.4. How many of them have the right to move freely on the territory of Lithuania?
3. How many and what nationality persons have been transferred to Lithuania under the Dublin III Regulation since the start of 2023?
 - 3.1. How many of them are foreigners who came to Lithuania irregularly during the influx of foreigners started in 2021?
4. What criteria does the FRC apply when deciding whether to go to court seeking detention of a person or imposition of an alternative to detention?
5. Are the services available in the centre for asylum seekers transferred under the Dublin III Regulation different from the services provided to other asylum seekers accommodated in the centre? If so, what are the differences?
6. Are the services available in the centre for foreigners who do not have the status of asylum seekers and were transferred under the Dublin III Regulation different from the services provided to other foreigners who do not have the status of asylum seekers accommodated in the centre? If so, what are the differences?

Appendix No. 3. Questionnaire for the monitoring of foreigners transferred to Lithuania under the Dublin III Regulation

1. Country of origin
2. Gender (Male / Female / Other)
3. Are you over 18 years old? (Yes / No)
4. Do you live alone or with your family in Lithuania? (Alone / With family (adults only) / With family (including minors))
5. What is your legal status? (Asylum seeker / Undocumented foreigner / Other)
6. Is your freedom of movement currently restricted? (Yes / No)
7. When did you first arrive in Lithuania?
8. How did you come to Lithuania? (Regularly through a border crossing point / Irregularly crossing the green border / Other)
9. Did you apply for asylum in Lithuania at that time? (Yes / No)
 - 9.1. If so, what was the phase of your asylum application when you left Lithuania? (Case closed: asylum denied / Case opened: decision pending)
10. When did you leave Lithuania?
11. Have you applied for asylum in another EU country? (Yes / No)
12. When were you returned to Lithuania?
13. From which country were you returned to Lithuania?
 - 13.1. If you were returned from Germany, please specify from which German state.
14. Do you have a decision issued by a court or other authority regarding your transfer to Lithuania? (Yes / No)
15. Did you appeal the decision on transfer to Lithuania? (Yes / No)
16. When you were transferred to Lithuania, were you immediately transferred to the centre in Pabradė FRC, or were you accommodated at the airport or other premises for a while? (Immediately / At the airport / Other)
 - 16.1. If you were accommodated at the airport or other premises, how long did you spend there?

17. Was your freedom of movement restricted when you were transferred to Lithuania? (Yes / No)
17.1. If so, for what period?
17.2. If so, do you know on what basis your freedom of movement was restricted? (Name the basis)
17.3. If so, do you have a copy of court decision on the basis of which your freedom of movement was restricted?
17.4. *Additional observations*

18. When you were transferred to Lithuania, did you use the state-guaranteed legal aid services? (Yes / No)
18.1. If so, what services did the said lawyer provide you?
18.2. If so, are you in contact with your assigned lawyer? (Yes / No / Previously yes, but I no longer maintain contact)

19. Do you use the services of a private lawyer? (Yes / No / Previously yes, but I no longer use them)
19.1. If so, what matter did a private lawyer help you with?

Only for those whose freedom of movement was restricted, but it is no longer the case:

20. What helped you regain your freedom of movement? (Court-appointed detention period has expired / Private lawyer / NGO lawyer / State-guaranteed legal aid / Other)

For asylum seekers only:

21. When you transferred to Lithuania, did you have to go through the asylum procedures again (initial interview, interview with a representative of the Migration Department)? (Yes / No / Other)

For everyone about the living conditions:

22. What do you think, when you were transferred to Lithuania, did officials or other persons in a position of authority treat you differently than others because you had left Lithuania? (Yes / No)
22.1. If so, please explain why you think so.

23. Are free healthcare services available to you? (Yes / No)
23.1. *Additional observations*

24. Is free psychological-social support available to you?
24.1. *Additional observations*

25. Are you provided with the necessary humanitarian aid? (Yes / No)
25.1. *Additional observations*

Appendix No. 4. Additional information provided in the analysed decisions issued by VRDC

Decision of VRDC of 24 February 2023 in Case No. A20.-123-617/2023. The foreigner arrived in Lithuania in 2021 and spent 12 months in Lithuania under *de facto* detention conditions. She left Lithuania after she regained freedom of movement on 09-Jun-2022. On 22-Feb-2023 the foreigner was transferred to Lithuania under the Dublin III Regulation. After returning to Lithuania, she did not submit a subsequent application for asylum, so she did not have the right to stay in Lithuania at the time of the court decision. A decision was issued against her to send her to her country of origin (Iraq), but this decision was not being enforced and it was not clear when it would be enforced. Although the VRDC in the decision stated that the foreigner was a citizen of the Republic of Iraq, it went on to state that *“an agreement was not reached after contacting the Embassy of the Democratic Republic of the Congo”*. It is likely that a mistake was made and meant that an attempt was made to communicate with the Iraqi embassy. Considering the aforementioned circumstances, the court stated that *“after assessing the probability of the enforcement of the final ruling and the expulsion of the Foreigner from the Republic of Lithuania and siding with the arguments of the Centre and the court of first instance, the restriction of the Foreigner’s freedom of movement could become indefinite, but such a situation was not allowed under the Law”*. Taking this into account, it was decided not to restrict the freedom of movement of the foreigner.

Decision of VRDC of 5 May 2023 in Case No. A20.-219-617/2023. The foreigner arrived in Lithuania in July of 2021 and was *de facto* detained by 07-Jun-2022. On the said day, the foreigner was accommodated without restricting his freedom of movement. Having the opportunity to move freely, he left the place of accommodation on 29-Jun-2022 and did not return at the appointed time. On 26-Apr-2023 the foreigner was transferred to Lithuania from Germany under the Dublin III Regulation. He did not submit a subsequent application for asylum in Lithuania and did not acquire the right to stay in the country, the decision on expulsion to the country of origin previously issued in respect of him had to be enforced. An alternative measure to detention, i.e., accommodation in the FRC, without restrictions on the freedom of movement was imposed on the foreigner on 28-Apr-2023. Having the opportunity to move freely on 04-May-2023 he left the place of accommodation and was detained while trying to leave the Republic of Lithuania for the Republic of Poland. After the foreigner’s return to the FRC, the issue of restricting his freedom of movement was considered again. The court stated that: *“under the circumstances stated, there is a high probability that, without the application of restrictions on the freedom of movement, the Foreigner would leave the Republic of Lithuania for other countries of the European Union by taking advantage of the free movement of persons in the Schengen Area”*. It was decided to restrict the foreigner’s freedom of movement on such grounds.

Decision of VRDC of 16 August 2023 in Case No. A20.-413-1199/2023. The person arrived in Lithuania in July 2021, and he was *de facto* detained and by 06-Jul-2022. On the said day, it was decided to accommodate him without imposing restrictions on the freedom of movement. Another measure alternative to detention, i.e., accommodation in the SBGS, giving the right to move only in the territory belonging to the place of accommodation, was imposed on the foreigner on 02-Aug-2022, and on 14-Sep-2022 it was changed again to accommodation without the restriction of the freedom of movement. The foreigner, having the opportunity to move freely, left the place of accommodation on 25-Oct-2022 and did not return, and on 17-May-2023 he was transferred to Lithuania from Austria under the Dublin III Regulation. The foreigner did not submit a subsequent application for asylum; therefore, he did not have the right to stay on the territory of Lithuania at the time of the court judgement and was waiting for the decision on expulsion to the country of origin (Nigeria). As reasoning for the imposition of the

restriction of the freedom of movement, the court found that the foreigner did not cooperate with the employees of the competent authorities and did not provide the requested information about his identity. It is also indicated that *“the foreigner indicated different reasons for his departure from the country of origin, as well as his questionnaire data at different times”*. The decision of VRDC also mentioned that the foreigner during the court hearing said that he left Lithuania because he did not want to be sent to his country of origin. According to VRDC, *“After assessing this circumstance together with the other previously discussed circumstances that are relevant to the issue under consideration, it can be concluded that in the case under consideration there is reason to believe that the Foreigner would leave the Republic of Lithuania for other countries of the European Union <...> by taking advantage of the free movement of persons in the Schengen Area and would thereby avoid enforcement of the ruling on his expulsion without imposition of the restrictions on the freedom of movement”*. The ruling of VRDC also stated that the FRC applied to the Nigerian Embassy for the issuance of the documents for the person to return to their country of origin on 25-May-2023 and 01-Aug-2023, but the documents had not been received. Considering the fact that it is not clear when the MD’s decision on expulsion would be enforced, VRDC imposed the restriction of the freedom of movement to the person for 2 months instead of 3.

Decision of VRDC of 16 August 2023 in Case No. A20.-405-617/2023. The foreigner arrived in Lithuania in July 2021, he was *de facto* detained, and on 01-Oct-2021 he left the place of accommodation and left Lithuania. The person was transferred to Lithuania from Germany on 16-May-2023. The court stated that, taking into account the aforementioned circumstances, *“there is a high probability that the Foreigner would leave the Republic of Lithuania for other countries of the European Union by taking advantage of the free movement of persons in the Schengen Area without imposition of the restrictions on the freedom of movement <...> The behaviour of the Foreigner (illegally travelled to Germany and was in the European Union illegally from 1 October 2021 to 16 May 2023) does not negate the risk that he would seek to escape and leave the Republic of Lithuania without limiting his freedom of movement”*. The asylum seeker’s freedom of movement was restricted on these grounds.

Decision of VRDC of 24 August 2023 in Case No. A20.-431-617/2023. The foreigner arrived in the Republic of Lithuania in July 2021 and was *de facto* detained for 11 months. He was assigned an alternative measure to detention, i.e., accommodation in the FRC without restrictions on the freedom of movement on 23-Jun-2022. The foreigner left the Republic of Lithuania 04-Jul-2022 and he was transferred to Lithuania from Germany under the Dublin III Regulation on 24-Jul-2023. He did not submit a subsequent application for asylum in Lithuania, so he is waiting for the enforcement of the earlier decision in his asylum case to expel him to the country of origin (Iraq). The decision of VRDC stated that *“there remains a sufficient basis to believe that, while moving freely, the Foreigner could arbitrarily leave the Republic of Lithuania to other countries of the European Union repeatedly and hide, thus preventing the enforcement of the decision in his asylum case”*. The foreigner’s freedom of movement has been restricted on these grounds.

Decision of VRDC of 24 August 2023 in Case No. A20.-436-1199/2023. The foreigner arrived in Lithuania in July 2021, and he left the place of accommodation on 29-Aug-2021, thereby violating the FRC’s Internal Procedure Rules, but was detained and returned to the centre two days later. The person was imposed an alternative measure to detention, i.e., accommodation in the FRC without restrictions on the freedom of movement, on 27-Jul-2022. The person left the place of accommodation on 13-Aug-2022 and failed to return on time. He was transferred to Lithuania under the Dublin III Regulation on

31-May-2023. Following the transfer, on 02-Jun-2023, an alternative measure to detention, i.e., accommodation in the FRC without restrictions on movement, was imposed on him by a court ruling. The ruling of VRDC stated: *"it was determined that W. H. H. H., a citizen of the Republic of Iraq, entered the Republic of Lithuania illegally, not through the border checkpoint, without documents confirming his legal presence in the Republic of Lithuania, but he is an asylum seeker, the final decision in the asylum case is pending. The court examining the filing emphasises the fact that there is no data that the asylum seeker may pose a threat to national security and public order in the material submitted to the court. The Foreigner's identity has been determined, as far as possible, the Foreigner has cooperated with law enforcement in examining his application for asylum"*. The foreigner's freedom of movement was not restricted based on these grounds.

Decision of VRDC of 25 August 2023 in Case No. A20.-442-617/2023. The foreigner arrived in Lithuania in July 2021 and spent 11 months under conditions of *de facto* detention. He was accommodated on 29-Jun-2022 without imposing restrictions on the freedom of movement. The person left the place of accommodation on 20-Jul-2022 and failed to return at the set time. He was transferred to Lithuania from Germany under the Dublin III Regulation on 22-Aug-2023, upon arrival he submitted a subsequent application for asylum. The decision of VRDC did not provide information on whether the asylum seeker posed a threat to national security and public order, whether he cooperated with the Lithuanian authorities, or whether his identity was confirmed. Without assessing these circumstances, the court stated that *"the Foreigner, having the opportunity to move freely, just 20 days after his release from detention, illegally left the place of accommodation and left the Republic of Lithuania on 20-Jul-2022. He lived illegally in the European Union countries for more than a year <...> Under the circumstances described, there is a high probability that the Foreigner, who has taken advantage of the free movement of persons in the Schengen Area, would leave the Republic of Lithuania, if the restrictions on the freedom of movement are not imposed"*. The freedom of movement of the asylum seeker was restricted on these grounds.

Decision of VRDC of 7 September 2023 in Case No. A20.-467-1194/2023. The foreigner arrived in Lithuania in July 2021 and was *de facto* detained for almost a year. The foreigner was accommodated without restrictions on the freedom of movement under court ruling of 25-May-2022. The foreigner left the place of accommodation and left Lithuania two months after regaining the freedom of movement. He was transferred to Lithuania from Finland on 04-Sep-2023. The decision of VRDC did not contain data on whether the asylum seeker posed a threat to national security or whether he cooperated with the Lithuanian authorities. It stated that *"under the circumstances described, there is a high probability that, the Foreigner would leave the Republic of Lithuania by taking advantage of the free movement of persons in the Schengen Area without the imposition of restrictions on the freedom of movement"*. Based on this, the freedom of movement of the asylum seeker was restricted.

Decision of VRDC of 12 September 2023 in Case No. A20.-456-1199/2023. The foreigner arrived in Lithuania irregularly in July 2021 and violated the Internal Procedure Rules of the place of accommodation in October, left the place of accommodation, and failed to return at the set time (it is assumed that he had the right to go outside the centre at the time of his departure). The person was transferred to Lithuania under the Dublin III Regulation on 02-Mar-2023 and on 30-Mar-2023 he was added to the list of vulnerable persons. On 08-Apr-2023 the medical staff of the FRC family doctor's office indicated that the asylum seeker was in poor health upon arrival at the centre, he was given medical advice and prescribed treatment. The ruling of VRDC stated that the person was treated for

addiction to the use of potent psychotropic and narcotic substances, and currently (at the time of issuing the decision) his state of health was good. The representative of the FRC indicated during the examination of the filing that removal of the asylum seeker from the list of vulnerable persons being considered, but such data was not officially submitted to the court. The ruling of VRDC stated that in the case under consideration there was no indisputable data that the foreigner posed a threat to the national security and public order of Lithuania. According to VRDC, *"vulnerable persons <...> may be detained only in special cases (Paragraph 4 of Article 114 of the Law). And in this case, the Foreigner's freedom of movement has been de facto (Latin for "actually") restricted for more than 6 months. M. M. was added to the list of vulnerable persons 30 March 2023, i.e., almost 6 months ago. He is still included in it. This forms the basis for assuming that the Foreigner's health problems are serious enough"*. The court also noted that a foreigner could not be detained for more than 6 months (an alternative measure to detention was imposed on the asylum seeker by restricting freedom of movement from 02-Mar-2023 until the date of the decision), except in cases where he did not cooperate for the purposes of his / her expulsion from the Republic of Lithuania. Based on the stated circumstances, the person's freedom of movement was not restricted.

Decision of VRDC of 21 November 2023 in Case No. A20-568-617/2023. The foreigner arrived in Lithuania in July 2021, and he was *de facto* detained by 29-Jun-2022, he left the place of accommodation on 20-Jul-2022 and never returned. He was transferred to Lithuania from Germany under the Dublin III regulation on 22-Aug-2023. Initially, an alternative measure to detention was imposed on the foreigner by restricting his freedom of movement on 25-Aug-2023, and the extension of this alternative measure to detention was considered on 21-Nov-2023. The decision of VRDC stated that *"currently, the Foreigner has a work permit in the Republic of Lithuania, but he cannot use this right due to actual detention. Although in the case under consideration it was established that the Foreigner left the Republic of Lithuania and was returned under the Dublin III Regulation, in the court's opinion, the imposition of restrictions on the alien's freedom of movement, without establishing the circumstances justifying the non-cooperation of the Foreigner, is subject to recognition as an unnecessary and disproportionate measure for the goals pursued by the Law"*. The freedom of movement of the foreigner was not restricted based on these grounds.

Appendix No. 5. Additional information provided in the analysed decisions issued by the SACL

Decision of the SACL of 9 February 2023 in Case No. A-1419-822/2023. The foreigner arrived in Lithuania in July 2021. The decision of the SACL does not clearly indicate whether the person left Lithuania while having the ability to move only within the territory of the place of accommodation, or while having the right to move freely on the territory of Lithuania (conflicting information is provided: „Allowed the filing of the Alien Registration Centre by the Ruling of 8 June 2022, imposed an alternative measure to detention, i.e., accommodation in the SBGS or another place adapted for that by establishing the right to move only within the territory belonging to the place of accommodation, on the alien until 3 December 2022. Having the opportunity to move freely, the alien left the place of accommodation on 22 June 2022 at 10:14 a.m., departed from the Republic of Lithuania“). The foreigner was transferred to Lithuania under the Dublin III Regulation on 25-Jan-2023. On 27 January the court decided to grant the asylum seeker accommodation with restriction of the freedom of movement, although it stated that the asylum seeker cooperated with the Lithuanian authorities, there was no evidence that he posed a threat to national security and public order. The ruling stated: *“violation of the conditions of the alternative measure to detention and departure from the Republic of Lithuania shows that there is no possibility of achieving the goals of the Law by other means that restrict his freedom of movement to a lesser extent, i.e., to determine the reasons for granting asylum and issue a final decision in the asylum case”*. Based on this, an alternative measure to detention, i.e., accommodation in the SBGS, was imposed on the person by giving the right to move only within the territory belonging to the place of accommodation. The asylum seeker appealed the ruling of 27 January, the SACL allowed the appeal on 9 February and indicated that the identity of the foreigner had been established, he did not pose a threat to national security and public order, and the case did not provide data that the foreigner was currently not cooperating with the officials of the competent authorities, refused to provide information or assistance. According to the SACL *“The mere circumstance that the foreigner has violated the accommodation procedure (previously) is not a basis for restricting a person’s freedom of movement”*.

Decision of the SACL of 8 March 2023 in Case No. A-1520-442/2023. The foreigner arrived in Lithuania in 2022. He left the place of accommodation on 21-Jun-2022 and failed to return, and he was transferred to Lithuania under the Dublin III Regulation on 08-Feb-2023. The judgement issued by the SACL mentioned that the alien lived illegally in another EU country. According to the SACL, *“Although the Foreigner’s identity has been established, there is no data in the file that he poses a threat to national security and public order, but his behaviour does not negate the risk that, if a milder alternative measure to detention is given, he will try to escape, hide or otherwise prevent the competent authorities from accepting and enforcing decisions in his asylum case”*. Considering the aforementioned circumstances, the asylum seeker’s freedom of movement was restricted.

Decision of the SACL of 25 May 2023 in Case No. A-1854-822/2023. The foreigner arrived in Lithuania in August 2021, and he was *de facto* detained by 25-Jul-2022. He left the accommodation centre on 16-Aug-2022 and failed to return. He was transferred to Lithuania from Germany under the Dublin III Regulation on 12-Apr-2023. The court of first instance satisfied the FRC’s filing regarding the restriction of the foreigner’s freedom of movement, but the foreigner appealed this decision. The judgement of the SACL stated that *“in this case, as no circumstances have been established indicating that the Foreigner would interfere with the examination of the application for asylum or refuse to provide information or grounds for the application, would not participate in the organised procedures, etc., there is no reason to agree with the Centre’s arguments and conclude that the Foreigner is not cooperating with the competent*

authorities processing his application for asylum. Although in the case under consideration it was established that the Foreigner departed from the Republic of Lithuania and was returned under the Dublin III Regulation, and there is no dispute about this fact in the case, subject to the assessment of the panel of judges, the imposition of restrictions on the Foreigner's freedom of movement without establishing the circumstances justifying the Foreigner's non-cooperation is subject to recognition as an unnecessary and disproportionate measure to the goals pursued (examination of the application for asylum and decision-making) and in accordance with the jurisprudence of the Court of Justice of the European Union, on this basis alone the restriction of the Foreigner's freedom of movement in the case under consideration would exceed what is strictly necessary". In light of this, the SACL assigned the foreigner an alternative measure to detention, i.e., accommodation in the FRC without restrictions on the freedom of movement.

Decision of the SACL of 31 May 2023 in Case No. A-1921-556/2023. The foreigner arrived in Lithuania in July 2021 and spent more than a year under *de facto* detention conditions until he regained his freedom of movement on 04-Aug-2023. By 09-Oct-2023, the alien left the place of accommodation and failed to return. The alien was transferred to Lithuania under the Dublin III Regulation on 17-May-2023, an alternative measure to detention by restricting the freedom of movement was imposed on him by the decision of VRDC of 19-May-2023. The foreigner appealed the said ruling. The SACL decision stated that *"Although there is no data in the case that the Foreigner poses a threat to state security and public order, it should be noted that, after Chamber of Kaunas of Kaunas District Court imposed an alternative measure to detention, i.e., accommodation at the SBGS without applying restrictions on the freedom of movement on the Foreigner by the ruling of 4 August 2022, he left the place of accommodation and went to (data not disclosed) to his close relatives. <...> Considering the aforementioned circumstances, the panel of judges decides that <...> restrictions on the freedom of movement are justified"*.

Decision of the SACL of 21 June 2023 in Case No. A-1966-1047/2023. The foreigner arrived in Lithuania in July 2021, and he was *de facto* detained by 23-May-2022. The foreigner left the place of accommodation on 06-Jun-2023 and failed to return at the set time, and on 11-May-2023 he was transferred to Lithuania from Germany under the Dublin III Regulation. The foreigner did not apply for asylum upon return to Lithuania, the previously adopted decision on expulsion to the country of origin had to be enforced in respect of him. The panel of judges at the SACL, *"having assessed the factual circumstances of the case, the duration of the measures limiting the Foreigner's freedom of movement, the reasoning of the appeal and the actions of the competent authorities, the behaviour of the Foreigner when leaving the Centre on 2 June 2022, and his return from Germany to the Republic of Lithuania under the Dublin III Regulation on 10 May 2023, concludes that, in order to prevent a possible repeated attempt by the Foreigner to illegally leave the Republic of Lithuania and in order to create prerequisites for the enforcement of the decision on expulsion of 20 September 2021, the restrictions on the Foreigner's freedom of movement meet the requirements of the legislations, they are reasonable and proportionate to the stated goals"*. Information about the foreigner's country of origin has not been made public in the publicly available depersonalised judgement. The judgement of the SACL does not provide data on whether Lithuania actually carries out and has the ability to carry out expulsions to the person's country of origin.

Decision of the SACL of 21 June 2023 in Case No. A-1969-662/2023. The foreigner arrived in Lithuania legally, with a visa, in 2014, later received 8 temporary residence permits at different periods. Upon the expiry of the residence permit, the foreigner left Lithuania and was transferred to Lithuania from Sweden under the Dublin III Regulation on 09-Mar-2023. On 10-Mar-2023 he applied for voluntary return to the country of origin and on 16-Mar-2023 he submitted an application for asylum. An

alternative measure to detention, i.e., accommodation in the FRC without restrictions on the freedom of movement, was imposed on the foreigner by the decision of VRDC of 17-Mar-2023. The foreigner left the centre on 07-Apr-2023 and failed to return at the appointed time, and on 08-May-2023 he was detained in Kaunas. VRDC satisfied the FRC's filing on 10-May-2023 and decided to impose an alternative measure to detention, i.e., accommodation with restrictions on the freedom of movement on the foreigner. The foreigner appealed the ruling issued by VRDC, but the judgement issued by the SACL stated that *"Having assessed the fact that the Foreigner tends to violate the requirements of the legislations, i.e. has arbitrarily left the Republic of Lithuania and has been returned to under the Dublin III Regulation, having once violated the procedure for accommodation in the Centre, the panel of judges [determines that] there is a risk that he may leave the Republic of Lithuania illegally again, therefore, states that the court of first instance reasonably decided that there is a basis apply a stricter alternative to detention"*.

Decision of the SACL of 19 July 2023 in Case No. A-2114-575/2023. The foreigner arrived in Lithuania irregularly in July 2021. Judgement issued by the SACL indicates that the official report submitted by the psychologist at the DORC of the FRC on 30 March 2023 shows that the foreigner was considered vulnerable, due to his health condition, a calm and safe environment that meets his special needs, medical aid, continuity of treatment, additional attention of social workers, regular individual counselling by a psychologist were recommended. The panel of judges noted that there was no evidence that the restriction of freedom of movement would have a negative impact on the foreigner's health. It should be noted that the authorities of Austria (from where the person was transferred to Lithuania) published a warning in the Schengen Information System to prohibit the foreigner from entering the country, because he was convicted of repeatedly committed criminal acts: *"theft, threats and extortion, use of stolen identity documents and falsification of non-cash payment instruments"*. The court concluded that the foreigner may pose a threat to public order and security. The judgement issued by the SACL also stated that, although the foreigner was recognised as a vulnerable person, taking into account his *"personality"*, the alternative measure to detention in restricting the freedom of movement was proportionate. The court stated that if the person was subjected to an alternative measure to detention without the restriction of the freedom of movement, there would be a real risk that the goal of finding out the reasons for the foreigner's application for asylum and making a final decision in his asylum case would not be met. It should be emphasised that there was no evidence in the case that the restriction of the freedom of movement would have a negative impact on the foreigner's health.

Decision of the SACL of 19 October 2023 in Case No. A-2436-822/2023. Data on the date of the person's arrival in Lithuania is not provided in the judgement issued by the SACL. It was indicated that he was subjected to an alternative measure to detention, i.e., accommodation in the FRC without restrictions on the freedom of movement on 23-Jun-2022. The person left the place of accommodation on 04-Jul-2023 and failed to return on time. The person was transferred to Lithuania from Germany under the Dublin III Regulation on 24-Jul-2023. On 27-Jul-2023 and later on 22-Sep-2023 he was subjected to an alternative measure to detention, i.e., accommodation in the FRC, with the right to move only within the centre's territory in accordance with the ruling issued by the court. The decision of 22-Sep-2023 was made upon stating that *"there is no data in the case suggesting that the Foreigner would not cooperate with the competent authorities, would pose a threat to national security or public order, but <...> after the Foreigner was subjected to an alternative measure to detention without restrictions on the freedom of movement, less than after ten days the Foreigner illegally left the Republic of Lithuania and lived*

in other countries of the European Union for more than a year, without complying with the alternative detention measure imposed on him". The aforementioned circumstances were repeated in the judgement of 19 October in the process of considering the appeal, but a different conclusion was reached: *"Although in the case under consideration it was established that the Foreigner left the Republic of Lithuania and was returned under the Dublin III Regulation, subject to the assessment of the panel of judges, the imposition of the restrictions on the Foreigner's freedom of movement without establishing the circumstances justifying the Foreigner's non-cooperation is subject to recognition as an unnecessary and disproportionate measure for the purposes pursued by the Law (examination of the application for asylum and decision making)".* Taking this into account, the asylum seeker was no longer subjected to restrictions on the freedom of movement.

Decision of the SACL of 8 November 2023 in Case No. A-2523-552/2023. The foreigner arrived in Lithuania at the end of 2021, a decision not to grant asylum was made in his asylum case. On 05-May-2022 he submitted an application for his return to his country of origin. The decision issued by the SACL noted that, following the voluntary return to the country of origin (from Lithuania), the person re-entered the EU and travelled there for more than a year. The foreigner illegally went to several European countries: Germany, Switzerland, the Netherlands, Luxembourg, Liechtenstein. Following his transfer from Austria to Lithuania, the foreigner submitted a subsequent application for asylum. The judgement issued by the SACL indicated that the identity of the foreigner has been established, there was no evidence that the person posed a threat to national security and public order. However, the panel of judges pointed out that his previous behaviour did not negate the risk that, if given the opportunity to go outside the accommodation centre, he would try to escape, hide or otherwise prevent the responsible authorities from making decisions on his asylum case. The judgement also noted that the psychologist at the DORC of the FRC at the SBGS identified the person as vulnerable on 03-Oct-2023 and indicated that he must be provided with a calm, safe accommodation environment. The panel of judges found that the explanations provided by the representative of the FRC show that the asylum seeker was provided with medical care at the FRC, and psychological assistance was provided as needed, and therefore there were grounds for concluding that the asylum seeker, as a vulnerable person, was provided with the necessary conditions at the FRC. The decision issued by the SACL stated: *"Furthermore, the most severe measure, i.e., detention, was not imposed on the Foreigner, therefore it could not be claimed that imposing certain restrictions on him would excessively limit his rights or fail to ensure his needs as a vulnerable person".* Taking into account the stated circumstances, the foreigner's freedom of movement was restricted.

Decision of the SACL of 13 December 2023 in Case No. A-2683-662/2023. The foreigner arrived in Lithuania in 2021, he was *de facto* detained for almost a year and regained freedom of movement only on 29-Jun-2022. He left the centre for a longer time than allowed twice, after the second departure he was detained in Poland and transferred to Lithuania, but later he left the centre for the third time and never returned. He was transferred to Lithuania from Germany under the Dublin III Regulation on 13-Nov-2023. The SACL stated that *"The Foreigner had illegally departed from the Republic of Lithuania even several times. Furthermore, the Foreigner has no economic, social or other ties in the Republic of Lithuania <...> there are grounds to believe that the Foreigner may try to hide in order to avoid enforcement of the decisions made regarding his legal status, if no restrictions are imposed".*



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