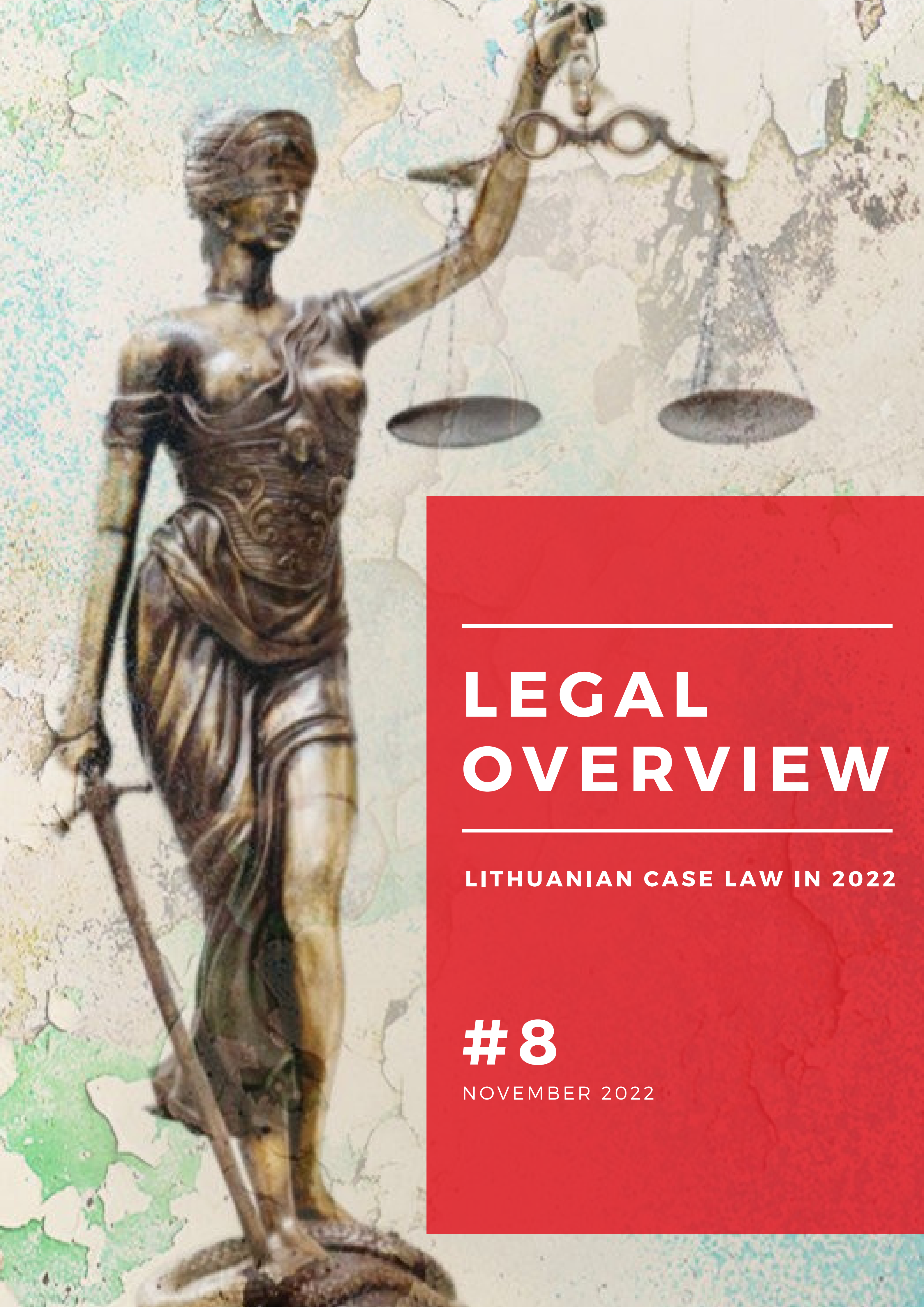

LEGAL OVERVIEW

LITHUANIAN CASE LAW IN 2022

#8

NOVEMBER 2022

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

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

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

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Lithuanian Red Cross. (November 2022). ***Legal overview #8***

DECISIONS IN THIS OVERVIEW

I. Ruling of the Supreme Administrative Court of Lithuania (hereinafter referred to as the SACL) of 10 August 2022 in administrative case No eA-3544-463/2022
KEYWORDS: age assessment test, admissibility of evidence.

II. Ruling of the SACL of 12 October 2022 in administrative case No eA-3854-1047/2022
KEYWORDS: repeated interviews while re-examining an asylum application.

III. Ruling of the SACL of 12 October 2022 in administrative case No eA-3868-556/2022
KEYWORDS: interests of the child, individual assessment of the situation.

IV. Ruling of the SACL of 4 October 2022 in administrative case No A-3878-520/2022
KEYWORDS: restriction of freedom of movement, refusal to return voluntarily, non-cooperation.

In addition to these rulings, the Overview also contains several extracts from the decisions of the SACL, where the Court addresses general issues such as the obligation to give adequate reasons for decisions and the obligation to inform about the decision-making deadlines.

I. RULING OF THE SACL OF 10 AUGUST 2022 IN ADMINISTRATIVE CASE NO EA-3544-463/2022

CASE SUMMARY: The applicant brought an action before the Court against the decision of the Migration Department refusing to grant him asylum. By Decision of 5 July 2022, the Vilnius Regional Administrative Court annulled the contested decision of the Migration Department and ordered the Migration Department to re-examine the applicant's application for asylum. The Court found, inter alia, that the applicant had identified himself as a minor and had submitted a copy of the extract from the birth record, but this had not been taken into account and the special procedural guarantees provided for unaccompanied minors had not been applied to him. The Migration Department disagreed with the aforementioned court decision and appealed against it before the SACL. The Migration Department argued that the Court of First Instance unreasonably considered the applicant's birth record to be sufficient and reliable evidence, especially given that the document submitted by the applicant is only a photograph of a copy. Moreover, the age assessment test carried out to determine the applicant's age revealed that the applicant was over 24 years old, which led to the reasonable conclusion that the applicant had given false information about his age. In view of the above, the applicant is not acting in good faith and there are reasonable doubts as to his credibility.

In this case, the SACL ruled on the following aspects relevant to the asylum law:

- on the probative value of the expert's report on age assessment;
- on the admissibility of non-original documents as evidence.

In paragraphs 33-36 of its ruling of 10 August 2022, the SACL stated:

"*33. In the present administrative case, it has been established that the applicant did not provide the Migration Department with an identity document but from the audio recording and the transcript of the interview submitted in the case it has been established that* ***the applicant presented himself as a minor*** *born on (data not to be disclosed). It is also established that the applicant was treated as a minor in the initial interview (before the expert's report) and that the interview was conducted in the presence of a representative of the State Service for Protection of Child Rights and Adoption.* ***Once there were doubts as to the applicant's age, he was subjected to a biological age assessment test, which established that the applicant's biological age was over 24 years*** *(Expert's report No MK-O 159/2021 (01)).*

34. At the hearing before the Court of First Instance, ***the applicant submitted a copy of an extract from his birth record, on the basis of which he argued that the age assessment report is inconsistent with his age****. According to the submitted extract from the birth record, the applicant was born on (data not to be disclosed) (see extract from birth record No 095).*

35. Thus, ***the applicant reiterated at the hearing of the Court of First Instance that he is a minor and submitted a copy of the extract from his birth record. In the assessment of the Panel of Judges, the expert report of 29 July 2021 of the Medical Forensic Laboratory of the State Forensic Medical Service No. MK-O 159/2021 (01), which states that the applicant's biological age is over 24 years, cannot be the sole evidence of the applicant's age****, and in situations where it is not established indisputably that the applicant is*

not a minor, measures must be taken to prevent violations of the applicant's rights as a person who is potentially vulnerable. .
36. In case of doubt as to whether a person could be a minor, the fact of age is relevant in the case because of Article 2(182) of the Law, according to which if it is established that the applicant is indeed a minor, he or she would have the status of a vulnerable person and the corresponding rights attached to that status, e.g., Article 67(5) of the Law, which would require interpreting the applicant's testimony in favour of him or her etc. Thus, in the present case, the document submitted by the applicant, even after the adoption of the Decision, is relevant to the case. Also, as regards the respondent's arguments in the appeal that the extract of the birth record submitted by the applicant is not an original, the panel of judges emphasises that ***the mere fact that the document submitted is not an original document does not imply that its content and reliability cannot be assessed****. In the view of the Panel, in this case, the respondent should reassess the newly submitted documents and clarify any uncertainties regarding the applicant's age.*"

Although the SACL does not directly contest the results of the age assessment report, it nevertheless states that it cannot be the "sole evidence" on the basis of which the applicant's age is determined and does not consider such a report as such to be evidence which would allow it to be "indisputably established" that the applicant is not a minor. These findings are very likely based on the fact that, in practice, it is very difficult to determine a person's age and that no existing method provides a result that can be trusted blindly. In fact, age assessment methods assess the maturity of a person, but not their chronological age. The EASO Practical Guide on Age Assessment [1] points out that currently there is no single method available that can determine the exact age of a person, and that the current methods can only offer an estimate of the age. Assessing a person's age requires a multidisciplinary approach, balancing physical, psychological, developmental, environmental and cultural factors. In this context and from a legal perspective, an expert opinion based solely on physiological indicators does not constitute proof of unquestionable maximum probative value and a priori superiority over other evidence.

In the given case, the SACL notes that, in addition to the expert's report, there is other evidence which provides indications as to the applicant's age, namely his testimony and the document submitted by him. Since the expert's report does not have a priori superiority over that evidence and the accuracy of the information contained therein may be disputed, at best it substantiates doubts as to the reliability of the other evidence, but it does not, in itself, negate the content of the other evidence, i.e. it does not prove the contrary. It is very likely that this is why the court concludes that the fact that the applicant is not a minor "is not established indisputably". The mere fact that the expert's report states that, according to the results of the examination, the applicant is aged between 20 and 24 does not in itself justify the Migration Department's unequivocal conclusion that the applicant "***lied*** *about his age (stated that he was a minor [...])*". In order to accuse a person of lying (which should not be the aim of the asylum procedure either way), it is not enough to doubt what he or she has said; it is necessary to prove the opposite. However, due to the limitations of the methods to be used, the expert's report on age assessment does not prove the contrary.

Another important aspect mentioned by the SACL in the present case is the admissibility of the evidence. According to the court, the mere fact that the documents submitted by the asylum

seeker are non-original (e.g. copies of documents, photos) does not affect their admissibility, i.e. the right of the asylum seeker to submit and rely on such evidence and the duty of the determining authority to accept and assess such evidence. The admissibility of non-original documents as evidence does not automatically imply that they are to be regarded as "proving" a particular material fact. The relevance, reliability and probative value of non-original documents, like any other evidence, must be established by the determining authority after it has assessed them and commented on them in its decision. The fact that the document submitted by the asylum seeker is not original may be an obstacle to a full assessment of its authenticity (and, consequently, its reliability), but not of its content (i.e., its relevance). The reliability of such evidence may be assessed with caution, for example by stating that there is some doubt as to its authenticity but insufficient evidence to conclude that it is forged. The probative value of a non-original document as a criterion summarising its relevance and reliability may be lower compared to the original document, however, such a document still has a potential evidentiary value and is not inadmissible. In this respect see also paragraph 46 of Ruling of the SACL of 11 May 2022 in administrative case No eA-2336-881/2022.

It should be noted that one of the arguments of the Migration Department for the inadmissibility of the evidence submitted by the applicant (a copy of the extract from the birth record) was that this document "*does not confirm that it was issued to the applicant and contains the applicant's data*". At the same time, the Migration Department stated that "*the document submitted by the applicant is only a photo of a copy, which makes an objective examination and evaluation of it practically impossible*". It seems almost certain that if the applicant had submitted the original of the document and "*after objective examination and assessment*" there were no reasonable doubts as to its authenticity, it would still not automatically confirm "*that it was issued to the applicant and contains the applicant's data*". In either case, a full investigation would require the determining authority to identify the original source of such evidence, to assess its path ("chain of custody") from that source to the institution, etc. And even if it could be established with certainty that the document was issued namely to the applicant and by an authority empowered to do so, this would still not guarantee the full accuracy of the content of the document. Any evidence tends to provide only fragmentary and imperfect information, and the conclusions it leads to are very rarely "indisputable". In the present case, the SACL noted that the expert's report on the determination of age is no exception to this rule.

II. RULING OF THE SACL OF 12 OCTOBER 2022 IN ADMINISTRATIVE CASE NO EA-3854-1047/2022

CASE SUMMARY: The applicant brought an action before the Court against the decision of the Migration Department refusing to grant him asylum. By Decision of 30 August 2022, the Vilnius Regional Administrative Court annulled the contested decision of the Migration Department and ordered the Migration Department to re-examine the applicant's application for asylum. The Court found, inter alia, that the applicant's interview of 13 October 2021, on which the Migration Department relied when adopting the contested decision, was not comprehensive. The Migration Department disagreed with the aforementioned court decision and appealed against it before the SACL. The Migration Department pointed out that the applicant had been given the opportunity to give a detailed account of the circumstances of his departure from the country of origin and the threats he faced in the country of origin, and had been asked clarifying questions concerning his version of events. Nevertheless, in the Migration Department's assessment, the applicant's narrative was not based on any objective data, was fundamentally flawed, contradictory and abstract, therefore the credibility of the narrative was assessed critically.

In this case, the SACL ruled on the following aspects relevant to the asylum law:

- on the need for a repeated interview while re-examining an asylum application.

In paragraph 33 of its ruling of 12 October 2022, the SACL stated:

„33. Having assessed the case materials, the Panel of Judges agrees with the conclusion of the Court of First Instance that the applicant's story is substantially consistent with the country of origin information, that the applicant has identified and named a possible persecutor, and that the applicant has stated the likely motives for persecution. It should be noted that the case concerns ***the appeal against the decision of the Migration Department taken after the Migration Department's Asylum Appeals Commission had annulled the previous decision of the Migration Department of 26 October 2021 No 21S34775 not to grant refugee status and subsidiary protection to the applicant, as the applicant's individual situation had not been fully and adequately assessed during the investigation****. The Migration Department's Asylum Appeals Commission has stated that in deciding whether the applicant belongs to one of the groups of persons at increased risk of persecution (data not to be disclosed) the decision shall be based on (data not to be disclosed). When adopting the Decision under appeal in the present case, the respondent assessed the aforementioned (data not to be disclosed) but did not carry out a full and proper assessment of the applicant's individual situation.* ***It is apparent from the case material that the applicant was interviewed only once, on 13 October 2021, i.e. prior to the Commission's annulment of the Migration Department's decision as non-individualised****. Thus, the Court of First Instance reasonably found that* ***the respondent did not take the necessary measures to properly and comprehensively clarify the applicant's individual situation by interviewing him again****. It should be agreed with the finding of the Court of First Instance that* ***the interview of the applicant on 13 October 2021 was not comprehensive, as it did not fully clarify the circumstances of the danger to the applicant, (data not to be disclosed), the circumstances of the applicant's departure from his country of origin and his***

arrival in the Republic of Lithuania, although the respondent subsequently evaluated the inaccuracies of the applicant's story to his detriment*. It should be noted that, according to the data provided by the applicant, he was under threat in the country of origin and arrived in the Republic of Lithuania when he was (data not to be disclosed). Therefore, this circumstance should also have been taken into account when assessing the applicant's explanation. In the event of any doubt as to the applicant's age, the legislation provides for the possibility of establishing the person's true age by means of an expert examination.*"

In this ruling, the SACL indirectly refers to the rule set out in paragraph 96 of the Description of the procedure for granting and withdrawing asylum in the Republic of Lithuania [2] (hereinafter referred to as the Procedure Description), according to which, if the court annuls the decision of the Migration Department not to grant asylum and obliges the Migration Department to re-examine the application for asylum, the procedural actions set out in the first Section of Chapter VII of the Procedure Description (including the interview) are to be carried out again, provided, however, that the court has established that there were shortcomings in the performance of these actions of the Migration Department. It should be noted that the Procedure Description does not mention in this context decisions which were annulled not by a court but by the Migration Department's Asylum Appeals Commission (which no longer exists). However, in the given case, the SACL applies an analogous rule and finds that since the previous decision (26 October 2021) of the Migration Department not to grant the applicant asylum was annulled by the aforementioned Commission on the grounds that the applicant's individual situation was not fully and properly assessed during the examination, a new interview of the applicant had to be carried out during the re-examination of the application.

Neither the Procedure Description nor the SACL in the present case establishes a general rule that in all cases when an asylum application is re-examined, the asylum seeker must be re-interviewed. This approach is understandable for several reasons. Firstly, the annulment of decision of the Migration Department does not automatically invalidate all the procedural steps taken during the investigation and their results, i.e. they usually remain part of the overall information on the basis of which a new decision will be taken. If the interview of the asylum seeker has been carried out properly and the asylum seeker has provided all the information relevant for the investigation, there is no need to repeat the same procedural step and collect the same information. Secondly, it is not the facts that may be at issue in a given case but exclusively the legal interpretation of the facts, i.e. a re-examination would require a legal reassessment of the facts established (following observations by the court) but not a re-establishing of the facts themselves. The Procedure Description makes a clear distinction between these different stages – the collection of information about the grounds of the application (Section 1 of Chapter VII of the Procedure Description) and the legal assessment of those grounds (Section 2 of the same Chapter). As mentioned above, paragraph 96 of the Procedure Description imposes an obligation to re-collect certain information only if the court has found deficiencies in the initial collection of information. It is important to note that in the present case, the Supreme Administrative Court does not mention that the Migration Department's Asylum Appeals Commission had explicitly stated that **the interview of 13 October 2021** was not carried out properly. However, the finding that "the applicant's individual situation was not fully and properly

assessed during the investigation", in the view of the SACL, refers to a full and proper interpretation of the individual facts, which implies, inter alia, the comprehensiveness of the interview conducted on 13 October 2021.

Although not referring directly to paragraph 96 of the Procedure Description, the SACL provides an important interpretation of the rule laid down in the said paragraph. Irrespective of whether the court which annulled the decision of the Migration Department explicitly identifies the actions referred to in Section 1 of Chapter VII of the Procedure Description and finds deficiencies in the performance of those actions, the rule in paragraph 96 of the Procedure Description is applicable as long as the court's observations are directly related to the content and the results of those actions. In the present case, the first decision of the Migration Department not to grant the applicant asylum was annulled as not individualised, i.e. taken without a proper and comprehensive examination of the applicant's individual situation. Since the applicant himself is the primary and main source of information on his situation, a repeated interview of the applicant should have been carried out in order to remedy this deficiency (clarify the situation). In the absence of such an interview, in the assessment of the Supreme Administrative Court, the deficiencies of the investigation of the Migration Department have not been remedied.

III. RULING OF THE SACL OF 12 OCTOBER 2022 IN ADMINISTRATIVE CASE NO EA-3868-556/2022

CASE SUMMARY: The applicants (a father and his minor daughter) brought an action before the Court against the decision of the Migration Department refusing to grant them asylum. During the proceedings, the Migration Department argued that the circumstances of the applicants' individual situation had been thoroughly examined and that the well-being, social development and safety of the applicant's minor daughter could be ensured in her country of origin.

In this case, the SACL ruled on the following aspects relevant to the asylum law:

- on the assessment of the individual situation of children when considering the family's application for asylum.

In paragraphs 42, 47 and 52 of its ruling of 12 October 2022, the SACL stated:

„42. As it appears from the case materials, when taking the decision not to grant asylum to the applicants (father K.S.S.S. and daughter L.K.N.N.) the Migration Department followed the legal framework, the country of origin information confirming that the protests in the country of origin had led to the persecution of well-known activists, organisers, and people playing a key role in the protests, and pointed out that the European Union Agency for Asylum had included children in the list of profiles of persons at high risk, which should be taken into account when taking a decision on granting asylum. The Migration Department, having assessed the fact that in the applicants' last place of residence (city of (data not to be disclosed) the level of indiscriminate violence is so low that it does not pose a real risk of serious harm, the applicant is a man of working age who has lived his whole life in the city of (data not to be disclosed), where his wife, mother and child have stayed, has considered that the applicant and his minor child do not meet the requirements of Articles 86 and 87 of the Law and are not eligible for asylum in the Republic of Lithuania. Since ***the Migration Department did not take into account in its decision the fact that the asylum was requested by a father with a minor child and did not provide an individual assessment of the individual situation of the applicant's child****, the Panel of Judges of the court of the appeal instance disagrees with such conclusion of the Migration Department.* ***Although the respondent in its reply to the appeal set out additional circumstances related to the minor child, in this respect the Supreme Administrative Court of Lithuania has indicated that the statement of reasons for the adoption of a contested individual administrative decision during the court proceedings should not be assessed and does not affect the legitimacy of a non-motivated decision adopted by a public administration entity*** *(see, e.g. Decision of 13 June 2013 in administrative case No A502-940/2013; Ruling of 31 March 2015 in administrative case No A-1536-662/2015; etc.).*

[...]

47. Thus, in the given case, ***the Migration Department did not address in its Decision the classification of the applicant's minor child as a beneficiary of international protection, nor did it assess whether the best interests of the child would be adequately safeguarded if international protection were not granted****, as required by the objectives of Directive 2011/95/EU, in the context of which the Law should be interpreted.*

[...]

52. The content of the Migration Department's ***Decision, in so far as it concerns the deportation***

of the applicants (father and daughter L.K.N.N.) from the Republic of Lithuania, does not confirm that the interests of the applicant's child and family life were taken into account *in the given case and that the principle of non-refoulement in this regard was respected. It is apparent from the content of the Decision that the emphasis was placed solely on the fact of the applicants' unlawful entry and stay in the Republic of Lithuania, the circumstances of their entry, the possibility of their hiding or leaving for other countries, which is not in line with the objectives of Directive 2008/115, recital 6 thereof, which states that* ***decisions should be taken on a case-by-case basis and on the basis of objective criteria, i.e. the examination should not take account of the mere fact of their unlawful entry and stay****."*

In this ruling, the SACL basically reaffirmed its case law on the assessment of the individual situation of asylum-seeking children (see Legal Overview #5). When examining the asylum application of a family with children, the special situation of children requires an individual assessment of their situation. Irrespective of whether the parents of the children point to specific circumstances relating to the children that make it unsafe for them to return to their country of origin, the determining authority has a positive obligation to properly assess the best interests of the child and to carry out an individual assessment of the child's situation. The assessment of the best interests of the child is necessary both for the purpose of deciding whether such child should be included among the beneficiaries of international protection and for the purpose of deciding whether he or she should be deported.

To summarise this case law, it is worth emphasizing, once again, a number of rules which the determining authority must follow:

- The child's situation must be assessed on an individual basis, without being limited to the exclusive qualification of the situation of the child's parents;
- In assessing the child's situation on an individual basis, the determining authority must answer the following questions:
  - Is the refusal to grant the child asylum is compatible with the child's best interests?
  - Is the return of the child to the country of origin is compatible with the child's best interests?

In addition to the above mentioned aspect, the SACL also recalls another rule, namely that the conclusions and arguments of the respondent must be reflected in the decision adopted by the respondent and not in the procedural documents addressed to the court. According to the SACL, the statement of reasons for the contested decision during the court proceedings does not affect the lawfulness of a decision adopted by a public administration body which is not reasoned. This consistent and unequivocal position of the SACL obliges the determining authority to ensure that decisions are adequately reasoned at the stage of their adoption, not expecting that deficiencies in fact-finding and legal reasoning can be remedied in the course of the court proceedings. In this respect see also paragraphs 62-63 of Ruling of the SACL of 10 August 2022 in administrative case No eA-3326-525/2022.

IV. RULING OF THE SACL OF 4 OCTOBER 2022 IN ADMINISTRATIVE CASE NO A-3878-520/2022

CASE SUMMARY: The foreigner lodged an appeal against the decision of the Vilnius Regional District Court, Šalčininkai Chamber, of 13 September 2022 to impose on him an alternative measure to detention, i.e. accommodation in the State Border Guard Service under the Ministry of the Interior of the Republic of Lithuania (hereinafter referred to as the SBGS), or in any other place suitable for that purpose, and to restrict the right of movement to the territory belonging to the place of accommodation only.

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

- on the restriction of the alien's freedom of movement due to his/her refusal to return voluntarily to the country of origin.

In paragraphs 29-34 of its ruling of 4 October 2022, the SACL stated:

„29. As mentioned above, ***the Court of First Instance based the need to extend the restrictions on the alien's freedom of movement until 13 December 2022 on the alien's refusal to voluntarily return to the country of origin and on the failure to cooperate in the process of deporting the alien from the Republic of Lithuania****.*

30. According to the case-law of the Supreme Administrative Court of Lithuania, the alien's "non-cooperation" is usually associated with malice, the alien's ill-will towards the state authorities (see, for example, Decision of 31 March 2022 in administrative case No A-1886-629/2022; Ruling of 29 April 2022 in administrative case No A-2317-442/2022).

31. The Panel of Judges found that ***the implementation of the decision of the Migration Department of 5 October 2021, i.e. the deportation of the alien, was entrusted to the SBGS. Thus, the obligation to implement the final decision and to return the alien to the country of origin was imposed on the SBGS and not on the alien****. It was not established in the case that the alien had resisted the officials of the competent authorities, disobeyed their instructions or refused to provide information about himself, had provided misleading information, had left the place of accommodation, avoiding the enforcement of the final decision.*

32. ***Considering the above, the alien's refusal to return voluntarily to the country of origin cannot be considered as a ground for prolonging the application of the restrictions on the freedom of movement on the grounds of the alien's non-cooperation in the deportation proceedings.*** *At the same time, it should be noted that* ***the Foreigners' Registration Centre did not indicate what actions were taken with regard to the deportation of the alien after the expiry of the 7 September 2022 certificate of return to the country of origin, the specific date of the alien's deportation is not established, and, as a result, the implementation of the obligation of the SBGS to deport the alien established by the final decision is of uncertain duration, thus creating a precondition for the indefinite restriction of the alien's freedom of movement, which is not allowed pursuant to Article 114(5) of the Law****.*

33. Moreover, the case does not establish that during the period of accommodation the alien has violated the rules of the place of accommodation or failed to comply with the established procedures, has endangered the security of the State or public order, or has failed to cooperate with the officials of the competent authorities.

34. *Having assessed the above-mentioned circumstances and the duration of the restrictions on the alien's freedom of movement, the Panel of Judges holds that no exceptional circumstances have been established in the present case, which would provide factual and legal grounds for concluding that, without the restrictions on the alien's freedom of movement, he might try to hide and/or abscond from the place of accommodation*."

This year the SACL has adopted a number of relevant decisions concerning the justification of the restriction of the freedom of movement (see e.g. Legal Overviews #2 and #7, as well as Ruling of 14 September 2022 of the SACL in administrative case No A-3803-463/2022). The Ruling of the SACL of 4 October 2022 is notable for the fact that the Court ruled on one of the most frequent arguments used by the authorities to justify the imposition of measures of restriction of liberty, namely the alien's refusal to return voluntarily to the country of origin.

In the given case, the Migration Department took a decision to deport the applicant from the Republic of Lithuania, stating that he should not be granted a period of voluntary departure. Thus, the Migration Department itself decided not to allow the applicant to leave voluntarily and instead instructed the SBGS to forcibly deport him. The enforcement of deportation decisions does not depend in any way on the alien's agreement or refusal to return voluntarily, since the substance of the decision is the opposite of voluntary return. Nevertheless, according to the assessment of Šalčininkai Chamber of Vilnius Regional District Court, "the alien refuses to leave the Republic of Lithuania voluntarily, despite the final and enforceable decision of the Migration Department, he wants to stay in Lithuania", and therefore restriction of his freedom of movement is necessary. The SACL critically assesses such argument and states that the obligation to execute the final decision and to deport the alien to the country of origin is imposed on the SBGS and not on the alien, therefore the alien's refusal to return voluntarily to the country of origin cannot be considered as a ground for prolonging the application of the restrictions on the freedom of movement on the grounds of the alien's non-cooperation in the deportation proceedings. Moreover, according to the information contained in the ruling, the responsible authorities of the alien's country of origin had issued a return certificate in his name, which means that the alien had provided all the necessary (and correct) personal data to the SBGS.

In case the SBGS is able to enforce a final decision of the Migration Department on the deportation of an alien, the alien's consent or refusal to return voluntarily does not affect the enforcement of this decision. Accordingly, this aspect is not relevant either to the deportation procedure itself or to the alien's "cooperation" in the framework of that procedure. On the other hand, if the SBGS is unable to enforce the deportation decision, then, in accordance with Article 15(4) of Directive 2008/115 [3], the detention is no longer justified and the person concerned is immediately released. Thus, if the SBGS is unable to deport a person, his/her consent or refusal to return voluntarily has no influence on the decision on the application of measures restricting the freedom of movement to the person to be deported. In any case, once a decision on enforced deportation has been taken, the issue of voluntary return becomes irrelevant, since such decision is enforced by the SBGS and not by the alien. The procedure of "voluntary return" is not applied in the present case, since the Migration Department has decided not to take a decision of that kind,

stating that the alien is not entitled to a period of time for his voluntary departure. Accordingly, the alien cannot “fail to cooperate” in the framework of the voluntary return procedure, as such a procedure is simply not conducted. In the context of this and many similar cases, the arguments of the authorities based on the “refusal to return voluntarily” are not legal but rather emotional, designed to cast the aliens personality in a negative light and to tendentiously create the false impression that he or she is under an obligation to “agree” to return voluntarily, while neither the applicable legislation nor the individual decisions taken in respect of him or her require him or her to do so.

In its ruling of 4 October 2022, the SACL has noted this reasoning mistake and has provided a sufficiently extended explanation on it. We hope that this case law will be further developed by the SACL and reflected in the decisions of the Court of First Instance.

V. COMMENTS BY THE SACL ON THE GENERAL PRINCIPLES TO BE FOLLOWED WHEN EXAMINING ASYLUM APPLICATIONS AND TAKING DECISIONS

In addition to the above-mentioned case law of the SACL, we would like to draw attention to several previous clarifications provided by the SACL on such general issues as the obligation to inform the person of the period of time within which a decision is expected to be taken concerning the person's application, if a decision has not been taken within the time limit prescribed by the law, and the obligation to give adequate reasons for individual administrative acts (decisions), irrespective of the form in which the decision is issued (either by a separate written decision, or by check-boxing the applicable option in the certificate of a defined form). These clarifications set out general principles which must be followed when examining and deciding on applications for asylum and are likely to be applicable in any given case, irrespective of its factual circumstances.

In its decision of 23 May 2016 in administrative case No A-3050-624/2016 the SACL stated:
*„In the given case the Court has doubts as to the proper fulfilment by the Migration Department of its duty to cooperate in the assessment of the asylum application and of the information provided by the asylum seeker in support of that application: although the very fact that the examination of the applicant's application has not been completed within the time-limits laid down in Article 81 of the Law (personal file of I.A. p. 49, 166, 256) cannot affect the validity of the conclusions of that decision, the applicant submits that he was not duly informed of the time-limits for the adoption of the decision, as a result of which some of the evidence he had collected was submitted after the contested decision had been adopted and was not taken into consideration, which is not in fact disputed by the respondent and is confirmed by material in the personal file (personal file of I.A., pp. 261-300). It should be noted that, **although the Law does not prescribe what actions should be taken in the absence of the possibility to take a decision within the time limits set out in Article 81 thereof, in such case, the Migration Department, in the proper exercise of its duty to cooperate, should provide the asylum seeker with information on the period of time within which a decision regarding his/her application is expected to be taken**. It should be noted that Article 31(6) of Directive 2013/32/EU of the European Parliament and of the Council of 26 June 2013 on common procedures for granting and withdrawing international protection, which the provisions of the Law have been aligned with, provides that, where a decision cannot be taken within a period of six months, Member States shall ensure that the applicant concerned shall: (a) be informed of the delay; and (b) receive, upon his or her request, information on the reasons for the delay and on the timeframe within which a decision on his or her application is to be expected.“*

In paragraphs 20-22 of its Ruling of 15 April 2020 in administrative case No eA-3662-968/2020 the SACL stated:
*„20. Having assessed the established factual circumstances (paragraph 17 of the Ruling) in the context of the aforementioned legal regulation (paragraphs 19, 19.1, 19.2 of the Ruling), it can be concluded that the Migration Department adopted both the decisions of 29 August 2019 on the placement of the asylum seekers in the Centre and the contested decisions of 25 October 2019 on the placement of the asylum seekers in the SBGS in accordance with the power to adopt decisions on the placement of the asylum seekers as set out in Article 79(1) of the Law. **Those decisions were duly***

__formalized by indicating them in the relevant Certificates of Acceptance of the asylum application__. Given that there is no evidence in the case that the asylum seekers were detained or subjected to alternative measures to detention (there is no dispute in this respect), it must be concluded that __the Migration Department had the discretion to take such decisions and to formalise them in the manner in which it did so__.

21. __Decisions of the Migration Department on the accommodation of asylum seekers, provided for in Article 79(1) of the Law, are individual administrative acts, i.e. one-off acts of application of the law, addressed to a specific person__ (Article 2(9) of the Law on Public Administration). Therefore, such decisions, irrespective of the specific manner in which they are formalized (paragraph 61 of the Description), must comply with the requirements for individual administrative acts (Article 8 of the Law on Public Administration). __Such decisions are subject, inter alia, to the imperatives of reasoning and clarity arising from Article 8 of the Law on Public Administration__.

22. In reply to the arguments of the appeal concerning the application of the requirements of Article 8 of the Law on Public Administration in the assessment of the contested decisions of the Migration Department of 25 October 2019 (paragraph 13.1 of the Ruling), it should be noted that __the complete absence and vagueness of the reasons for those decisions cannot be justified by the discretion of the Department to adopt such decisions or by the peculiarities of such decisions, and the mere fact that the contested decisions were drawn up by the Department on the basis of an officially approved form (in this case such form is set out in Annex 2 to the Description) does not in itself mean that they comply with the requirements of the Law on Public Administration__."

ENDNOTES

[1] European Asylum Support Office, EASO practical guide on age assessment, Publications Office, 2018, https://data.europa.eu/doi/10.2847/292263

[2] Description of the procedure for granting and withdrawing asylum in the Republic of Lithuania, approved by Order of the Minister of the Interior of the Republic of Lithuania No 1V-131 of 24 February 2016 "On the Approval of the Description of the Procedure for Granting and Withdrawing Asylum in the Republic of Lithuania"

[3] Directive 2008/115/EC of the European Parliament and of the Council of 16 December 2008 on common standards and procedures in Member States for returning illegally staying third-country nationals

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