



In March 2023, the EUAA organised a Thematic Workshop on Legal Assistance and Representation in the Asylum Procedure. Key stakeholders, including lawyers and civil society organisations, participated to share knowledge, good practices and challenges in the functioning of the Common European Asylum System.

The following article is based on a presentation given at the event.

Lithuania: Access to Legal Assistance at the Border and in Detention and Strategic Litigation before the ECtHR

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The Lithuanian Red Cross Society (LRC) has been working in the field of asylum for more than 20 years. The LRC's Asylum and Migration Programme provides various services to asylum seekers and beneficiaries of international protection.

The LRC legal team:

- works with strategic litigation and legal counselling;
- monitors reception conditions and prepares thematic reports (for example on access to the labour market, access to asylum procedures at the border, and access to legal aid¹);
- has mobile teams which work in the camps responding to humanitarian needs;
- helps to reach out to family members in Lithuania or foreign countries through the Restoring Family Links program (RFL); and
- Has a cultural mediator to help effectively communicate with asylum seekers from the Middle East.

This variety of different services for asylum seekers and other migrants allows the LRC to reach more people and effectively implement a referral system. Furthermore, the LRC has agreements with the State Border Guard Service under the Ministry of the Interior of the Republic of Lithuania (SBGS), which allow access to asylum seekers at border crossing points and reception facilities, including detention centres.

¹ All reports prepared by the LRC monitoring team are available at: <https://redcross.lt/veiklos/prieglobscio-ir-migracijos-programa/tebesena-2/>

1. Access to the asylum procedure

In the early summer of 2021, Lithuania faced a so-called ‘migration crisis’, when hundreds of migrants, mostly from Iraq, arrived through Belarus each day. In August 2021, the Lithuanian government announced the start of implementing a pushback policy, which is regulated by the order of the Minister of the Interior of Lithuania.² Since then, the SBGS announces daily the number of people who have been pushed back.³

According to the relevant legal regulation, the SBGS can exceptionally allow entry into the territory and accept asylum applications from vulnerable people. However, there are no publicly available documents which would clarify the practice for a vulnerability assessment (e.g. criteria, qualification required, etc.) and identification procedures at the border. In addition, there is no independent monitoring mechanism. Because of this, it is not clear what occurs at the border, but it is known that, for example, children are pushed back, so it can be presumed that they are not considered to be a vulnerable group.

Lithuanian authorities claim that migrants have a possibility to lodge asylum applications at the nearest international border crossing point or at the Lithuanian embassy in Belarus (Minsk). However, this possibility is severely restricted, as concluded by an LRC monitoring report on access to asylum procedure.⁴ The Court of Justice of European Union (CJEU) assessed this situation in *M.A. v Valstybės sienos apsaugos tarnyba* (Case C-72/22) and concluded that Articles 6 and 7(1) 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 are to be interpreted as precluding legislation of a Member State under which, in the event of a declaration of martial law or of a state of emergency or in the event of a declaration of an emergency due to a mass influx of aliens, illegally-staying third-country nationals are effectively deprived of the opportunity of access, in the territory of that Member State, to the procedure in which applications for international protection are examined.

Despite this decision, the situation at the border in Lithuania did not change. The majority of those crossing the border irregularly are pushed back, and their asylum applications are not registered. In light of the CJEU decision, the Lithuanian government submitted amendments to the Parliament that allow an asylum application to be lodged at the border even in the case of an irregular border crossing. However, these amendments are only formal and do not resolve the issue. Amendments of legal provisions, which set a basis for pushbacks, will be transferred to another law, and this is how the same restrictions will be put in place in the future.

² Lithuania, Minister of Interior and State Commander of National Emergency Operations. Decision regarding control and enforcement of the state border during influx of the of foreigners ([Lietuvos Respublikos Vidaus reikalų ministro Valstybės lygio ekstremaliosios situacijos operacijų vadovo sprendimas Dėl masinio užsieniečių antplūdžio pasienio ruožo teritorijose prie Lietuvos Respublikos valstybės sienos su Baltarusijos Respublika valdymo ir valstybės sienos apsaugos sustiprinimo](https://e-seimas.lrs.lt/portal/legalAct/lt/TAD/6c0ea3a0f42811ebb4af84e751d2e0c9?jfwid=-19h0wlp20z), available at: <https://e-seimas.lrs.lt/portal/legalAct/lt/TAD/6c0ea3a0f42811ebb4af84e751d2e0c9?jfwid=-19h0wlp20z>), No 10V-20, 2 August 2021.

³ Neįleistų neteisėtų migrantų statistika, available at: <https://vsat.lrv.lt/lt/>

⁴ LRC monitoring report "Prieiga prie prieglobsčio procedūros LR diplomatinėse atstovybėse užsienyje ir VSAT PKP", available at: <https://redcross.lt/wp-content/uploads/2022/09/LT-Prieiga-prie-prieglobscio-proceduros.pdf>, December 2022.



2. Access to legal assistance

According to the agreement between the LRC and the SBGS, access to asylum seekers at the border crossing points must be granted, but those who are pushed back are not registered. Consequently, the LRC legal team cannot meet with them and provide legal counselling. It should be emphasised that the agreement with the SBGS allows the LRC legal team to counsel only asylum seekers, and the SBGS considers a person as an asylum seeker only when they are registered in the electronic migration services system (MIGRIS).

This means that a person cannot get legal counselling from the LRC legal team in the period from lodging an asylum application until registering the application, despite being an asylum seeker according to national and international legislation. As a consequence, if a person asks for asylum but eventually is pushed back, the person has no access to legal counselling provided by the LRC.

The LRC monitoring and legal teams have noted that Belarusian, and in rare cases Russian nationals are registered as asylum seekers despite crossing the border irregularly. In such cases, LRC staff can meet with them, monitor their reception conditions at the border, and provide legal counselling. In general, access to legal services at the border is extremely limited due to policies which are implemented by the government. The main challenge at the border is to ensure access to the asylum procedure. And without access to the border crossing points, unfortunately, the LRC legal team cannot effectively address this issue.

3. Restricted freedom of movement during detention

After the migration crisis began, the Lithuanian government changed the legal regulation and applied *de facto* detention of 6 months for people who crossed the border irregularly and were admitted to the territory, without any decision and/or an individual assessment, including minors and other vulnerable groups. According to the law, in the case of an emergency, people who are not allowed to enter Lithuania (when a person crosses the border irregularly and the Migration Department issues a formal decision that the person can enter the territory) and whose asylum applications are reviewed under the accelerated procedure are accommodated at the centre without the right to leave the territory of the centre for 6 months.

This 'accommodation' does not require an individual administrative decision and is referred to as an alternative to detention. In most cases, people are not able to leave a closed sector or even a floor of the accommodation centre. So, their movement in the centre is restricted even to a specific limited territory. In spring 2022, thanks to strategic litigation at the national level implemented by the LRC legal team, the Lithuanian Supreme Administrative Court (SACL) issued first decisions stating that such an alternative measure to detention, when asylum seekers cannot leave the accommodation centre, is *de facto* detention.

The fundamental change at the national level was noticed after the CJEU decision in *M.A. v Valstybės sienos apsaugos tarnyba*, Case C-72/22. The CJEU stated that although the applicant could move within the SBGS centre in question, he could not go beyond the centre's perimeters without authorisation or being unaccompanied; consequently, it appeared that he



was isolated from the rest of the population and deprived of his freedom of movement. As such, he must be regarded as being in detention, within the meaning of Article 2(h) of Directive 2013/33.

Despite the CJEU decision and SACL jurisprudence, the Lithuanian authorities did not change its detention practice. Due to this, on 19 January 2023 in its case No A-1289-602/2023, the SACL stated: “Detention is an autonomous notion established in EU law <...> Although in national law such measure is **formally identified as an alternative measure** to detention, an applicant is separated from the rest of the population and deprived of freedom of movement; therefore, in light of the Reception Conditions Directive Article 2(H), **the applicant is detained**”. From this SACL decision, jurisprudence clearly identifies that the wording in the law does not correspond to the factual situation, and authorities are obliged to apply guarantees related to detention. Unfortunately, it is not the case in most situations.

There are two important cases which hopefully will change detention practices in Lithuania. The first case will be decided by the Constitutional Court of the Republic of Lithuania (CCLR).⁵ According to the provisions of the Law on the Legal Status of Aliens, in the event of a mass influx of foreigners during the declared extraordinary situation, a state of emergency or a state of war, all asylum seekers are obliged to be accommodated in designated places without being granted the right to move freely within the territory of the Republic of Lithuania, where the duration of such accommodation could be up to 6 months. In the absence of a decision by the competent authority that could be appealed in court, the applicant complained that this was in conflict with Article 20 of the Constitution.

If the CCLR will recognise the relevant provisions as unconstitutional, it would mean that such legal provisions can no longer be applied, and it would oblige the government to change the law immediately.

Another important case, *M.H. v Lithuania* (Application No 31050/22; communicated), is being reviewed by the European Court of Human Rights (ECtHR). This case is more complex and covers not only the first 6 months of *de facto* detention but also a later period of detention. After 6 months of *de facto* detention, the detention was prolonged for another 6 months. Although it was done by an administrative decision, the decisions for all asylum seekers were formal, without an individual assessment.

The judgments in these two cases, hopefully, will make an impact not only on relevant detention practices implemented by Lithuanian authorities, but also in the future to prevent human rights violations during migration crises.

⁵ The decision was issued on the 7 June 2022 and is available at: [The provisions of the Law on the Legal Status of Aliens relating to the temporary accommodation of an asylum seeker in an aliens’ registration centre during a s - Constitutional Court of The Republic of Lithuania \(lrkt.lt\), https://lrkt.lt/en/about-the-court/news/1342/the-provisions-of-the-law-on-the-legal-status-of-aliens-relating-to-the-temporary-accommodation-of-an-asylum-seeker-in-an-aliens-registration-centre-during-a-state-of-emergency-were-in-conflict-with-the-constitution:553](https://lrkt.lt/en/about-the-court/news/1342/the-provisions-of-the-law-on-the-legal-status-of-aliens-relating-to-the-temporary-accommodation-of-an-asylum-seeker-in-an-aliens-registration-centre-during-a-state-of-emergency-were-in-conflict-with-the-constitution:553)