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COMPARATIVE REPORT ON THE INFLUX OF IRREGULAR MIGRANTS ACROSS THE BORDER OF BELARUS: THE RESPONSE BY THE GOVERNMENTS OF LITHUANIA AND LATVIA



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Annotation

This report provides an overview of the measure taken by the Lithuanian and Latvian governments in response to the sudden influx of irregular migrants across the Belarussian border in the period of June 2021 – January 2022. The analysis of the situation reveals that the response of the Governments was in many ways similar, while the main differences were caused by a considerably different number of irregular migrants received by these countries.

The comparative regional analysis was conducted as part of the project “The National Integration Evaluation Mechanism (NIEM)”¹. NIEM establishes a mechanism for a biennial, comprehensive evaluation of the integration of beneficiaries of international protection to provide evidence on gaps in integration standards, identify promising practices and evaluate the effects of legislative and policy changes.

¹ For more information please see: <http://www.forintegration.eu/>

1. LITHUANIAN CASE

1.1 Introduction

In 2021, Lithuania witnessed an influx of irregular migrants across the border of the Republic of Belarus. The number of people crossing the Lithuania-Belarus border increased more than thirtyfold compared to the previous year. Between 1 January 2021 and 31 January 2022, 4 150 irregular migrants (including 2 891 persons in July 2021 alone) were *de facto* detained in Lithuania¹ compared to 81 apprehended during the entire year of 2020.² One quarter of them (about 25 per cent) were minors.³ The majority of migrants (about 65 per cent) were citizens of Iraq, then of Congo, Syria, Belarus, Cameroon, Afghanistan, Russia, Iran, Guinea, Sri Lanka, and other countries. According to the Lithuanian Border Guard Service, 8 245 migrants were prevented from entering Lithuania between 3 August 2021 and 31 January 2022.⁴

The first signs foretelling a possible influx of irregular migrants the beginning of June 2021, when the first larger groups of irregular migrants entered Lithuania from Belarus. Due to this situation, “Lithuania’s Border Guard Service reinforced controls on the border with Belarus, mobilised the Public Security Service and the Riflemen’s Union to assist border guards”, and initiated cooperation with the relevant agencies in Latvia and Poland.⁵

Irregular migration into Lithuania started to grow after the EU imposed new targeted economic sanctions⁶ that Lithuania had lobbied for on government officials in the neighbouring Belarus. Responding to this, the illegitimate president of Belarus Alexander Lukashenko threatened to flood the European Union with migrants.⁷ On 1 July, Lukashenko signed a decree allowing citizens of 73 countries to come without visas and stay in Belarus for up to five days supposedly to get COVID-19 vaccine shots.⁸ A few weeks later journalists revealed how migrants coming primarily from Iraq ended up at the Belarusian-Lithuanian border with the support of Belarusian travel agencies.⁹ On 2 July, responding to the rapid increase of undocumented migrants, the Government of the Republic of Lithuania declared an ‘extraordinary situation’ in the country.¹⁰

1.2 *Mass de facto detention*

On 13 July, the Seimas of the Republic of Lithuania adopted a resolution stating that countries hostile towards Lithuania had been waging hybrid aggression against the Republic of Lithuania and portraying the undocumented migrants as participants in ‘hybrid aggression’ against Lithuanian sovereignty.¹¹ On the same day, following new amendments to the Law on the Legal Status of Aliens, *de facto* detention of asylum seekers having entered the country undocumented in an extraordinary situation (or state of war, or emergency) was legalised. The amendments to the Law allowed to keep irregular migrants in detention for up to six months without an individual assessment of each case, with no exceptions for vulnerable persons, including unaccompanied minors. Such amendments are not in line with the international and EU requirements, including the United Nations Convention on the Rights of the Child, the EU Charter of Fundamental Rights and the EU Reception Conditions Directive which provide for “the application of detention to minors only as a last resort after establishing that other less coercive alternative measures cannot be applied effectively, and only for the shortest possible period of time”¹². In addition, the amendment to the Law implies that an asylum seeker may be detained for the sole reason of illegal entry, which is incompatible with Article 8 of the EU Reception Conditions Directive, that establishes an exhaustive list of grounds for detention, in which illegal entry alone is not appropriate grounds for detention.¹³

On 23 December 2021, the Seimas of the Republic of Lithuania voted in favour of the new amendments to the Law on the Legal Status of Aliens. As provided for by the new amendments, in case asylum applications of the irregular migrants are rejected or irregular migrants themselves fail to apply for asylum and the authorities are unable to expel them from Lithuania during the initial detention period, their right to free movement may be restricted for another six months.¹⁴

1.3 (Material) Conditions in places of (temporary) accommodation of de facto detained irregular migrants

The assessment of (material) conditions in places of (temporary) accommodation of *de facto* detained irregular migrants was carried out by the Seimas Ombudsperson (in cooperation with independent experts) on 2-6 and 24–26 August 2021, 15 September 2021, 14-16 and 22-23 December 2021 and 12 January 2022. The results of the assessment were released in two reports, published on 7 October 2021¹⁵ and on 25 January 2022¹⁶. In both of them, the Seimas Ombudsperson concluded that the totality of conditions applied to *de facto* detained foreigners are equivalent to inhuman or degrading treatment, prohibited under the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

The assessment of living conditions in places of temporary accommodations and the units of the State Border Guard Service carried out in the period of August-September 2021 revealed that proper conditions were not ensured and were equal to inhuman or degrading treatment. As noted in the report, migrants were not provided with warm food in almost all border guard stations (4.2.1); there was a lack of dairy products for minors (6.2.5); sufficient cleanliness and order was not ensured in tents and some of the premises, and there were only partial conditions for foreigners to maintain proper personal hygiene due to limited supply of hygiene items; showers and toilets were shared by men and women (3.2.5); locks in some toilets were broken; showers were separated by curtains, which does not ensure privacy; the interviewed women said they did not feel safe (3.2.5); health care was not adequately guaranteed (10.3); psychological assistance was not provided (6.2.8), etc.

In addition, the Ombudsperson noted that the procedure for assessing the vulnerability of migrants is not clear and uniform. As stated in the report, an initial vulnerability assessment was performed by visually inspecting the person and interrogating him or her. The interviewed officials said that they identified families, minors, pregnant women and people with disabilities as vulnerable persons. Vulnerability for possibly

experienced violence or belonging to sexual minorities was not assessed. A person's vulnerability due to his or her belonging to some ethnic group was also not always assessed.

Persons who belong to the LGBTQ+ community were also not classified as vulnerable persons. Furthermore, their security was not ensured as they were accommodated in a common area with other foreigners who were supposedly intolerant towards this group.

As stated in the Lithuanian Red Cross Monitoring Report 2021, the conditions under which foreigners were accommodated spontaneously, "with actually no regard for sensitive ethnic, religious or racial aspects, nor for the risks arising from gender, age, sexual orientation" cause a higher risk of tensions, conflicts or outbreaks of violence.¹⁷

From September 2021, irregular migrants, temporarily accommodated during the summertime in tents, premises provided by municipalities and the units of the State Border Guard Service, started to be transferred into six long-term migrant accommodation centres in Kybartai, Medininkai, Vilnius (Naujininkai), Jieznas, Pabradė and Rukla. The Lithuanian Red Cross provided an assessment on how living conditions of irregular migrants changed and noted that even though there were some improvements, problems remain.¹⁸ The biggest concerns are related with overcrowded the camps, followed by bad hygiene conditions in sanitary units and common areas, lack of privacy and limited mobility in accommodation areas. Besides, there is a shortage of specialists such as psychologists, health care professionals, social workers, etc. Meanwhile, the ones who already work in the long-term accommodation centres lack the competence to work with migrants and asylum seekers. The greatest concerns were expressed about the living conditions of migrants in the former correctional facility in Kybartai, where, in addition to the above-mentioned problems, certain prison practices are in place.¹⁹

The Seimas Ombudsperson's latest report²⁰, published on 25 January 2022, after a visit to Kybartai Foreigners' Reception Centre (*hereinafter Kybartai FRC*), also confirms the above-mentioned concerns. The Seimas Ombudsperson notes that the nature and degree of the actual restrictions imposed on the foreigners accommodated in Kybartai FRC are equivalent to those of detention.



Photo 1. Kybartai Foreigners' Reception Centre. Source: © Vytenis Miškinis

The material conditions are significantly smaller than the minimum living space per person; there is a lack of private space and hygiene; and strict restrictions on movement are applied (11.1-11.4). In addition, the right of foreigners to be informed about their rights and obligations, the decisions made against them, and access to legal aid is not adequately guaranteed; therefore, foreigners are often in ignorance (11.6). The report also points out the circumstances related to the availability of personal health care services access to health care is not adequately ensured (11.8). In addition, the vulnerability and special needs of migrants and asylum seekers are not properly assessed (11.9). Finally, it is stated that officials of Kybartai FRC carry out multiple night-time alerts and use psychological pressure on aliens to return to their countries of origin as soon as possible (11.10).

1.4 Accelerated examinations of asylum applications and limited right to appeal against asylum decisions

Between 1 January 2021 and 3 January 2022, 84 positive decisions and 2 699 negative decisions were taken with regard to the newly arrived asylum applicants who had come to the country via Belarus in 2021.²¹ Such statistics have raised concerns regarding the quality of the asylum procedures and bias against the newly arrived asylum seekers.

In accordance with the amendments to the Law on the Legal Status of Aliens of 13 July 2021, a new practice of accelerated examination of applications of asylum seekers who have entered the territory from Belarus came into force. Such conditions are applied for all asylum seekers, including vulnerable persons and unaccompanied migrants who were not subject to the accelerated examination of asylum applications or to border procedures before. As the UNHCR noted, such amendments imply that “asylum applications of unaccompanied minors and survivors of torture, rape or other forms of serious physical or sexual violence may now be examined under the accelerated procedure, including the accelerated border procedure, within 10 working days from the lodging of the asylum application”.²²

In addition, the adopted amendments introduced an administrative appeal stage against asylum decisions. The appeal should be lodged within seven days from the date of asylum seekers’ acquaintance with the decisions and the Migration department (the same institution that makes decisions on asylum applications) examines the appeal and takes a decision within seven days from the receipt of appeal. Such regulations were widely criticised by national experts²³, with international organisations stating that a restricted right of appeal may “in turn result in asylum seekers being sent to countries where they face risk”²⁴. In addition, the UNHCR critically emphasised that such practice does not envisage an automatic suspensive effect even for cases of asylum seekers whose applications were examined under the regular procedure²⁵. Besides, the lack of automatic suspensive effect of the appeal may undermine access to an effective remedy and lead to a violation of the principle of *non-refoulement*, contrary to the Geneva Convention, the EU Charter of Fundamental Rights and the European Convention on Human Rights.

Following the amendments of the Law on the Legal Status of Aliens of 23 December 2021, the practice of the Migration department examining appeals of asylum applications was adjusted by providing the possibility to appeal the decision of the Migration department to the Supreme Administrative Court of Lithuania. However, the problem due to extremely short deadlines to appeal asylum decisions remains, notably by taking into consideration that the process is aggravated by the complexity and specificity of the cases, lack of legal representation and interpretation services.

After assessing human rights of irregular migrants in places of temporary accommodation, the Seimas Ombudsperson submitted a report²⁶ to the Seimas, on 7 October 2021. The report states that migrants were not properly informed about their rights and obligations, as well as about the consequences of their non-fulfilment during the examination of their asylum application. The inspections confirmed that information on the asylum procedure and access to free legal services for foreigners was hardly available.² The testimonies of irregular migrants reveal that the interviews of asylum seekers were conducted only by an officer and an interpreter without the attendance of a lawyer (except for interrogation of unaccompanied minors). As stated in the report, foreigners “were unaware of the fact that they had to express a wish for the lawyer to participate in their interviews, because no one informed them thereof.”²⁷ Moreover, the foreigners whose asylum applications were rejected claimed that they were not aware about the procedure for bringing appeals against such decisions.

The Seimas Ombudsperson’s latest report²⁸, published on the 25 January 2022, after a visit to Kybartai FRC, reveals that the situation has not changed and the right of foreigners to be informed about their rights and obligations, the decisions made against them, as well as access to legal aid is still not adequately guaranteed. Besides, interviewed migrants stated that they receive the decisions on asylum applications of the Migration department in the Lithuanian language. Even though there is a possibility for asylum seekers who intend to appeal the decision to be granted a lawyer free of charge, the interviews with migrants during the visit to Kybartai FRC reveal many of them did not have a solicitor

² For more information check the paragraph 7.2.2 (p. 22), 7.2.8 (p. 24) and 8.2 (p. 27) of the Report.

representing them and were not even aware of such a possibility. As stated in the report, only a very small proportion out of 650 foreigners held in Kybartai FRC have met and consulted a lawyer. And the ones who had been assigned a solicitor as state-guaranteed legal aid “complained that they had never met live or communicated with their assigned solicitor by telephone or other means of communication”.²⁹

Lithuanian mass media also reported about the cases of improperly conducted asylum procedures. In one of them, the officer who had to interview asylum seekers claimed that the process took less than 20 minutes and the outcome of the interviews depended on the interviewer’s moral codes and values – “they would have to make a quick call whether to register the migrant as an “illegal” or an “asylum seeker”, putting them in one of the two boxes that will determine the future of their claim for refuge”.³⁰ Another officer who participated in the interrogations shared the experience that due to the lack of time individual interviews with asylum applicants were abandoned. In addition, only templates with negative decisions were provided for the staff.³¹ Non-public negative asylum decisions for the members of the LGBTQ+ community were also widely reported in the mass media.³²

1.5 Introduction of push-back practice

The Law on the Legal Status of Aliens was amended on 10 August 2021 by inserting Paragraph 1 to Article 67, providing for specific places where an application for asylum may be lodged following the declaration of a state of war, state of emergency or an extraordinary situation, or an extraordinary event due to a mass influx of foreigners: (i) at border crossing points or transit zones submitted to the State Border Guard Service; (ii) in the territory of the Republic of Lithuania, when a foreigner entered the Republic of Lithuania legally, submitted to the Migration Department; and (iii) in a foreign state submitted to the diplomatic missions or consulates of the Republic of Lithuania specified by the Minister of Foreign Affairs.

The provisions of the amended Law imply that the right to asylum is not guaranteed. The only legal means of submitting asylum applications are difficult to achieve in practice. In August 2021 – January 2022, 261 asylum applications were submitted at the border crossing points on the Belarusian-Lithuanian border³. Only 5 asylum applications were submitted at the Lithuanian Embassy in Minsk until mid-November 2021³³. No further official statistical data is available.

The amendments of the Law also stipulate the provisions that asylum applications shall not be accepted after apprehension at the border, except at official border crossing points, and, in the event of non-acceptance, the procedure for applying for asylum at these crossings must be explained. The exceptions are applied considering the vulnerability of the person or other individual circumstances.³⁴ It is worth mentioning that the provisions foreseen in the amendments have been implemented in practice since the 2nd of August based on the Order of the Minister of the Interior³⁵, when the first irregular migrants were returned at the border and not allowed to enter the territory of the Republic of Lithuania. From the 3rd to the 10th of August, between 70 and 321 migrants were refused admission every day (see Fig. 1 below).

The amendments of the Law and applied practices have created preconditions for collective expulsion or pushbacks of irregular migrants without an assessment of the individual circumstances of the person and leaving only limited possibility to apply for asylum (with a theoretical possibility to apply for asylum at the border crossing points). Rare exceptions have been applied on humanitarian grounds. From 2 August 2021 to 31 January 2022, 8 245 persons were pushed back and not allowed to enter the territory of the Republic of Lithuania.

³ Communication with Lithuanian State Border Guard Service.

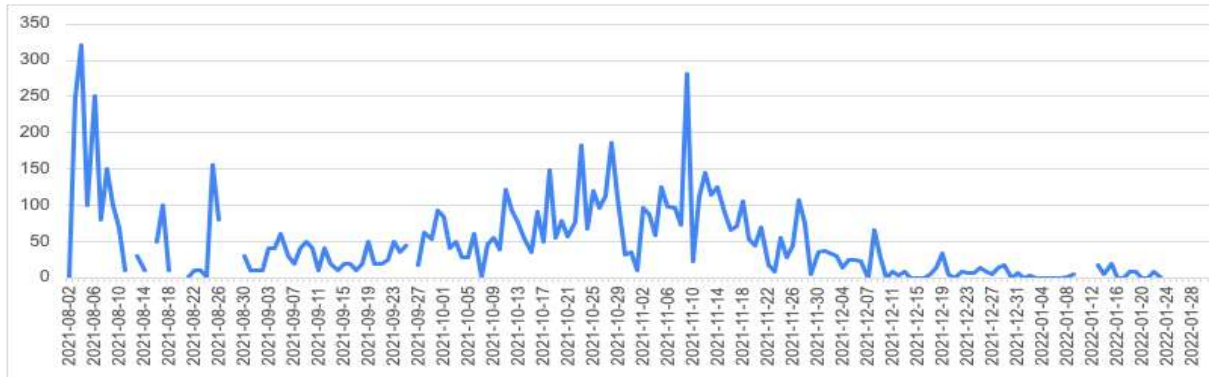


Fig. 1. Number of pushed back migrants according to the data of the State Border Guard Service⁴.

Even though the State Border Guard Service regularly issues press-releases on the number of people who were not allowed to enter the territory of the Republic of Lithuania, there is no aggregated data and details on the profile of the pushed back individuals (their age, sex, health conditions, etc.). As the media or NGOs are not allowed to properly monitor the situation at the border, there are no alternative sources to the government data. It hence remains unclear whether all vulnerable persons, such as unaccompanied minors, persons with disabilities or persons in need of medical assistance, have been allowed entry. The State Border Guard Service officials acknowledged that poor visibility has sometimes made it difficult to identify the exact number of persons to be pushed back.³⁶

Implementation of pushbacks violates the principle of *non-refoulement* – the core element of refugee protection – and is incompatible with the Refugee Convention, European Convention for the Protection of Human Rights and Fundamental Freedoms and the EU Charter of Fundamental Rights.³⁷

On 7 October 2021 Seimas Ombudsmen’s office of the Republic of Lithuania published a report which concluded that migrants are being pushed back to Belarus without certainty that they will not be subjected to torture, inhuman or degrading treatment, and

⁴ Note: on some days State Border Guard Service has released only approximate data because of poor visibility. For some days number of pushed back persons could not be found (08.12, 08.19-08.20, 08.27-29, 09.26)

that there will be no risk to life or health, including a denial of the possibility to legally apply for asylum in Lithuania, which violates the right of persons to seek and enjoy asylum from persecution in other countries, creating conditions equivalent to torture and inhuman or degrading treatment prohibited under the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.³⁸

Even though the practice of collective expulsions has raised concerns and received negative responses both from national and international actors (for more information see below *Overview of international reactions to the measures introduced by both governments*), the actions taken by the Government of the Republic of Lithuania shows that Lithuanian authorities are willing to further implement practices which violate EU standards and refugee law. Declaration of a state of emergency starting from 10 November 2021³⁹ and its extension on 7 December 2021⁴⁰ allowed the use of preventive actions, mental coercion in order to ensure a person's non-admission into the country's territory, or to use of physical violence and other special measures if a person presents a threat to life or health of the officers.⁴¹

At the end of December, Frontex's Fundamental Rights Office released recommendations⁴², which concluded that an asylum claim at the official border checkpoints does not work in practice and instead of collective expulsions Lithuanian officers should take migrants to border checkpoints where they could legally apply for asylum. In addition, recommendations placed special focus on the lack of a system identifying vulnerable persons. As stated in the recommendations, there may be people with severe diseases, parents with young children, elderly people, pregnant women, and victims of human trafficking among migrants pushed back to Belarus.⁴³ As a response to Frontex recommendations, Deputy Interior Minister Arnoldas Abramavičius stated that “*We will continue our policy of denying entry to irregular migrants at least until the physical barrier is in place and the entire border is controlled by modern video surveillance equipment*”.⁴⁴

At the end of October 2021, in view of deteriorating weather conditions and potential risks to migrants' health, the Ministry of the Interior made the decision to distribute

humanitarian aid packages to migrants that are being pushed back.⁴⁵ Such distribution was delegated to public officials and NGOs were not allowed to provide humanitarian aid themselves. According to the representatives of some non-governmental organizations, the distributed packages lacked items necessary for survival if the person(s) was/were trapped on the Lithuanian-Belarusian border, especially in harsh outdoor conditions.⁴⁶

1.6 Introduction of the state of emergency

On 10 November 2021, in response to the arrival of some 5 000 migrants at the Belarusian-Polish border, the state of emergency was declared for a one-month period.⁴⁷ Later, on 7 December 2021 Seimas of the Republic of Lithuania passed the second resolution, which extended the state of emergency until 15 January 2022.⁴⁸

The state of emergency was imposed in the entire border zone at the Lithuanian border with Belarus and 5 kilometres inland from the border area, in the accommodation facilities of *de facto* detained migrants and asylum seekers and 200 metres around them.

As a result, all persons not covered by the exceptions due to the place of residence, work, or other circumstances, were banned from entering the border zone with Belarus. The situation remains to be more difficult for the NGO workers and volunteers providing humanitarian aid⁵, as they can be denied access to enter the 5 kilometres zone.

In addition, the declaration of a state of emergency restricted the rights of migrants and asylum seekers in the accommodation facilities, including their right to receive and disseminate information, the right to correspondence, as well as the right to telephone and internet access unless such persons use these means of communication to contact state institutions and agencies of the Republic of Lithuania.⁴⁹ This resulted in a situation where it became easier to confiscate the means of communication owned by migrants and to limit their connections with the outside world by restricting sales of SIM cards and possibilities to top them up.⁵⁰

⁵ The main organiser of humanitarian aid at the border is *Sienos Grupė*, for further information please see <https://www.facebook.com/sienosgrupe>

1.7 Media and NGOs access to the border

After the push-back policy was started in August 2021, access to the border zone for journalists and NGOs was restricted. Although representatives of non-governmental organizations and journalists had *de jure* possibility to apply for such access, issuing of such permits was delayed. Besides, attempts by the border guards to obstruct the work of journalists were recorded.⁵¹ On 6 September, Lithuanian media outlets issued a joint statement calling on the authorities to allow them near the border with Belarus amid the ongoing migration crisis.⁵²

The introduction of the state of emergency has further complicated the media and NGO access. Journalists were initially denied the opportunity to work closer than one kilometre from the border but were later allowed to work up to 100 metres from the border⁵³, following the criticism of such regulations.

It is very worrying that in 2021 some representatives of state institutions opposed the discourses of human rights and state security and criticized organizations protecting human rights⁵⁴ and / or providing humanitarian aid⁵⁵ as potentially acting against the interests of the state. During the period under review, the State Border Guard Service launched two pre-trial investigations into the provision of humanitarian aid, accusing persons providing aid of smuggling and hiding migrants. In the first case, the pre-trial investigation was terminated, explaining that the Lithuanian residents, who allowed 5 Afghan citizens to stay in a homestead near the Belarusian border, did not carry out active covert operations, in addition, they acted without payment.⁵⁶ The next day, however, a new pre-trial investigation was initiated for a similar case.⁵⁷ During this period, administrative fines of 100 EUR were also imposed on members of NGOs *Siena* and *Médecins Sans Frontières* for the provision of humanitarian support for the Syrian national at the border without formal permission.⁵⁸

1.8 Overview of international reactions

International organizations have widely criticized Lithuanian government response to the increased migration on the border of Lithuania and Belarus the implemented actions related to the *de facto* detention, litigation of asylum cases and implementation of collective expulsion. Lithuania was criticized by the UN Committee against Torture (CAT)^{59,60}, UNHCR⁶¹, the Council of Europe Commissioner for Human Rights Dunja Mijatović⁶², European Council on Refugees and Exiles (ECRE)⁶³.

In October, the EU border agency Frontex announced that between 17 and 20 Serious Incident Reports concerning violations of fundamental rights were reported in Lithuania and that the situation raises concerns about the compatibility between the EU legislation and the revised Lithuanian law⁶⁴. Later FRONTEX also provided recommendations on the practices of asylum applications at official border check.⁶⁵ Responding to the increased tensions and migrant deaths at the Belarusian-Polish border, the UN Refugee Agency (UNHCR) and the International Organization for Migration (IOM) called for Lithuanian, Polish and Latvian governments to ensure that the safety and human rights of migrants and refugees are upheld, and that access to humanitarian assistance as well as access to asylum are guaranteed⁶⁶. The concerns about pushbacks of children were also expressed by UNICEF⁶⁷.

2. LATVIAN CASE

2.1 *Introduction*

Like in Lithuania, the actions of Lukashenko regime triggered an unprecedented influx of irregular migrants across the Latvian – Belarussian border in summer 2021, resulting in the highest number of asylum applications – 582 – since 1998 when the registration of asylum applications started in Latvia. There was more than a fourfold increase in asylum applications in 2021, compared to 2020.⁶⁸

The arrival of migrants in Latvia started a month later than in Lithuania, in July 2021. From 26 July when the first nine persons were registered as detained for irregular border-crossing at the Latvian–Belarussian border till 31 January 2022 (the period of this analysis), a total of 455 persons were detained for irregular border-crossing by the State Border Guard of Latvia (hereafter – the Border Guard). The majority of irregular migrants came from Iraq (403 individuals or 88 per cent), followed by 4 per cent or 19 persons from Afghanistan, 2 per cent or 11 persons from Sri Lanka, and less than 1 per cent from Syria, Turkey, Cuba, Iran, India, Egypt, Belarus, and Pakistan. More than one-third – 32 per cent – of the detained irregular migrants were minors.⁶

The number of persons detained for irregular border crossing was almost 15 times higher in 2021, compared to 2020, amounting to 446 and 30 detainees respectively.⁶⁹

From 10 August 2021 when the emergency situation was introduced in the Latvian territory bordering Belarus until 31 January 2022, 5506 instances of border-crossing deterrence (i.e. push-backs) were recorded: 4045 in 2021 and 1461 in January 2022.⁷

2.2 *Early introduction of the emergency situation*

Following the arrival of a large number of irregular migrants in Lithuania across the Lithuanian-Belarussian border in July 2021 and encountering the increase of migrants

⁶ According to the statistics summary provided by the State Border Guard to the Operations Management Centre established under the Ministry of the Interior to coordinate actions during the situation of emergency at Latvia's border with Belarus. Figures cited hereafter likewise draw on the daily statistics summaries provided by the Border Guard.

⁷ As will be explained below, these figures point to the instances of pushbacks, not the total number of individuals deterred from border crossing, as many of them tried to cross the Latvian–Belarussian border and were pushed back multiple times.

attempting to irregularly cross the Latvian–Belarussian border at the beginning of August 2021, the Latvian government proceeded swiftly with the introduction of an emergency situation in the areas bordering Belarus. On 10 August 2021, emergency situation was declared for three months, until 10 November 2021, in four administrative territories of Latvia: Ludza municipality, Krāslava municipality, Augšdaugava municipality, and the city of Daugavpils.⁷⁰ The Decree on Emergency Situation No. 518 prescribed the prevention of irregular border crossing in the above-mentioned territories by the Border Guard in cooperation with the National Armed Forces and the State Police. The decree stipulated that any person who had irregularly crossed the Latvian–Belarussian border or attempted to do so should be returned to the country wherefrom the border was crossed (i.e. Belarus) by use of relevant means and procedures, including the use of physical force and special means in cases of extreme necessity. The decree also stipulated that no applications for asylum should be accepted in the area where the situation of emergency applied.

While the representatives of authorities claimed that applications for asylum could be submitted at other official border crossing points or at Latvia’s embassies abroad and at the airport after arriving in Latvia with officially obtained visas,⁷¹ it was hardly possible in practice. Thus, the right to asylum was effectively suspended in the areas where the emergency situation had been introduced.

This became a matter of concern for the Ombudsman of Latvia Juris Jansons who sent a letter to the Latvian government and the Parliament (*Saeima*) on 12 August 2021, stating that the introduction of emergency situation precluded the possibility for irregular border-crossers to follow a legal route to claim asylum.⁷² The Ombudsman noted Latvia’s obligation to ensure that persons have the possibility to apply for asylum and that they are not deported to a country where they may face persecution, inhuman treatment or torture. The Ombudsman emphasized that collective expulsion was not allowed and that, if persons were pushed back from the border, some other legal and effective possibility to turn to the responsible state authorities and still apply for asylum had to be offered. Referring to the case-law of the European Court of Human Rights (hereafter ECtHR), the Ombudsman pointed out that if a state intended to return an asylum seeker to a third country without

examining his or her application for asylum, it had to ensure that the individual would have access to an adequate asylum procedure, and that the principle of *non-refoulement* would be respected in that third country.

The Ombudsman also noted that no alternative lawful ways to apply for asylum were *de facto* available to migrants coming to Latvia via Belarus:

“... [B]y denying the possibility to lodge an asylum application in the entire territory referred to in the Order (including on arrival at the border crossing points), there are reasonable doubts as to whether persons have a real and effective chance to follow this legal route to claim asylum. In particular, such possibilities would only exist for persons entering Latvia on a specific legal basis, such as a visa or residence permit, but in the specific context of asylum law it should be noted that such a possibility is virtually non-existent for the majority of persons. This should be taken into account in particular in the light of the obstacles to the functioning of Latvian diplomatic and consular missions in Belarus. This may lead to a situation where persons who, in the absence of a visa or other equivalent documents, cross the Latvian border on arrival from Belarus *de facto* have no real possibility of applying for asylum and are returned to Belarus without any individual assessment.”⁷³

On 16 August 2021, the Ombudsman met with the Minister of Interior Marija Golubeva to discuss the situation on Latvia’s border with Belarus.⁷⁴ The Ombudsman stressed once again Latvia’s obligation to ensure that persons in need of protection had the possibility to apply for asylum, emphasising in particular the need to conduct individual assessments and pay special attention to the rights of vulnerable groups.

However, suspension of the asylum procedure in the territory of emergency situation remained in force. In October 2021, the Latvian government decided to extend the emergency situation in the border areas for three more months, until 10 February 2022 thus extending also the suspension of asylum applications in the area.⁷⁵

2.3 *Irregular migrants stranded at the border*

The deterrence or pushbacks of irregular border-crossers started on the very day the emergency situation was introduced, on 10 August 2021.⁷⁶ Unable to re-enter the Belarussian territory due to the measures taken by the Belarussian forces, border crossers remained literally stranded at the border⁸. After 56 persons were deterred from border crossing on 11 August 2021 and 101 persons the next day, around 100 people, divided into several groups, stayed in the area between the border posts, initially without any food or water.⁷⁷



Photo 2. People stranded at the border. Source: the State Border Guard

On 16 August 2021, a group of nongovernmental organisations (hereafter NGOs) issued a public letter to the higher authorities, urging them to ensure that all people who

⁸ Another three-month extension was passed on 1 February 2022, just after the period covered by this analysis, see <https://www.vestnesis.lv/op/2022/24.13>. While the suspension of asylum process in border areas was lifted in April 2022, through amendments allowing for submission of applications at border checkpoints and at the Accommodation Centre for Detained Foreigners in Daugavpils, the situation of emergency was recently extended for another three months, until 10 August 2022. See <https://likumi.lv/ta/id/331452-grozijums-ministru-kabineta-2021-gada-10-augusta-rikojuma-nr-518-par-arkartejas-situacijas-izsludinasanu->; <https://www.vestnesis.lv/op/2022/90A.1>

had entered the Latvian territory could apply for asylum.⁷⁸ NGOs also stressed the need to deliver humanitarian aid to people stranded in the border zone and to involve NGOs in the provision of humanitarian assistance, as well as in the monitoring of political situation and advising on operational activities.

Some days later, one of the groups stranded at the border, consisting of 41 Kurdish-ethnic Iraqi nationals, turned to the ECtHR assisted by a Latvian lawyer. On 25 August 2021, the ECtHR indicated an interim measure in the case of *H.M.M. and Others v. Latvia* (application no. 42165/21) requesting the Latvian authorities to provide all the applicants with food, water, clothing, adequate medical care and, if possible, temporary shelter, yet not obliging them to allow the applicants enter the territory of Latvia.⁷⁹ On 1 Sept 2021, amendments were adopted to the Decree on Emergency Situation,⁸⁰ ordering the Border Guard to supply the border-crossers with food and first-necessity items and instructing the State Emergency Medical Service and the state and municipal hospitals to provide medical aid to the migrants upon request by the Border Guard. From August 2021 to January 2022, 124 persons were assisted at the border by the Emergency Medical Service, while 55 persons were taken to different hospitals in the region.⁹

On 20 August 2021, a coalition of NGOs, led by the organisation “I Want to Help Refugees,” started a cooperation with the Border Guard in providing humanitarian aid to people at the border. NGOs procured food and first-necessity items and supplied them to the Border Guard, which then handed them over to the stranded persons. NGOs were not allowed to access the border area, a restriction which remained intact throughout the period considered in the current analysis (see below) and is still in force.

The daily provision of humanitarian aid by NGO coalition, however, lasted only for four days, until 24 August 2021, when the Border Guard informed “I Want to Help Refugees” that neither food nor other items would be needed at the border the next day. NGOs had initially provided humanitarian aid to 94 people, including 30 children, and – after 11 persons (three families with children) were admitted into Latvia on humanitarian grounds on 20 Aug – to 83 people, including 27 children. From 24 August, these people

⁹ According to the statistics provided by the State Emergency Medical Service in written communication with Providus on 9 May 2022.

disappeared from the border areas and were not reachable on their mobile phones by their relatives. They did not communicate with NGOs either. Importantly, both NGOs and the stranded border-crossers had been previously notified of the UNHCR delegation's visit to the border area expected on 24 August.

On 26 August, a group of NGOs issued a public letter asking the Border Guard, the Ministry of Interior, and the Ministry of Defence to explain what had happened to the missing people, what their location was, and whether they needed humanitarian assistance.⁸¹ In particular, NGO representatives asked for a clarification and confirmation of the Defence Minister Artis Pabriks' announcement shared on Twitter on 25 August that "food, water, medical assistance are provided to these people"⁸²

NGOs noted that the last piece of information they had received from a representative of the largest group of people stranded at the border was that the Border Guard had asked one of the groups to move to another location near the border so that food and medical aid could be delivered to them more efficiently. Yet the daily statistical summaries provided by the Border Guard indicated no irregular migrants admitted into Latvia in the following days. According to the testimonies of the stranded people later collected and cited in an independent report by Aleksandra Jolkina, *Trapped in a Lawless Zone: Humanitarian Crisis at the Latvia–Belarus Border*, the stranded border-crossers were brought to two tents in the Latvian territory, later split into smaller groups, driven back to different border posts and made to cross the border into Belarus by use of force.⁸³ Most of these persons remained stranded in the border area for a period of several weeks up to several months and were daily pushed across the border from Latvia to Belarus and back, without a possibility to stay in either country.¹⁰

On 15 September 2021, the ECtHR lifted the interim measures in the case *H.M.M. and Others v. Latvia* (application no. 42165/21).⁸⁴ The Court noted that 11 members of the group (six adults and five children) had been allowed to enter Latvia for humanitarian reasons, mainly for health problems and the presence of minors. The Court added that the

¹⁰ These allegations are currently investigated by the Internal Security Bureau, upon the instructions from the General Prosecutor of Latvia, following a recent NGO letter urging the Prosecutor to consider an appropriate investigation of the events at the border.

other applicants were no longer found at or near the border zone. However, the case *H.M.M. and Others v. Latvia* (application no. 42165/21) was continued and is still pending before the ECtHR. The case contains similar claims about continuous pushbacks, denial of asylum applications, and use of force as discussed in the report by Aleksandra Jolkina.¹¹

2.4 *Situation of detained persons*

Since the introduction of emergency situation in the border areas, the only persons allowed onto the territory of Latvia were the ones considered in need of entry for humanitarian reasons. In total 113 persons, including 31 children, entered Latvia on humanitarian grounds from 10 August 2021 until 31 January 2022. All of them were detained in compliance with the procedure prescribed by the Immigration Law. (Children were *de facto* confined together with their parents, but not legally detained, as the Immigration Law does not allow for the detention of minors under the age of 14.)⁸⁵

However, there was no information about the criteria applied in individual assessments, based on which the vulnerability of irregular migrants and the humanitarian grounds for their entry into Latvia were judged. Despite requests for transparency by the involved NGOs and media, the Border Guard and the Ministry of Interior did not share any concrete information. According to the adviser of the Interior Minister, the higher Border Guard officials had provided oral guidelines for individual assessment to border guards.⁸⁶ Thus, individual assessments and decisions on persons to be admitted in Latvia were left solely at the discretion of the Border Guard, with no possibility for independent monitors to either know the assessment criteria or monitor the assessment procedure.

¹¹ On 23 May 2022, the ECtHR notified the Latvian government of the application. The applicants are twenty-six Iraqi nationals of Kurdish origin. They complain about the denial of their asylum claims, regular pushbacks from Latvia to Belarus in the period lasting from several weeks to several months, lack of access to food, water and shelter in the border zone, as well as the lack of basic amenities in the tent they had to stay in while on the Latvian territory. Some applicants claim to have received beatings from the guards and to have had their personal things taken away and mobile phones destroyed. Some other applicants complain about their detention in the Accommodation Centre for Detained Foreigners in Daugavpils.

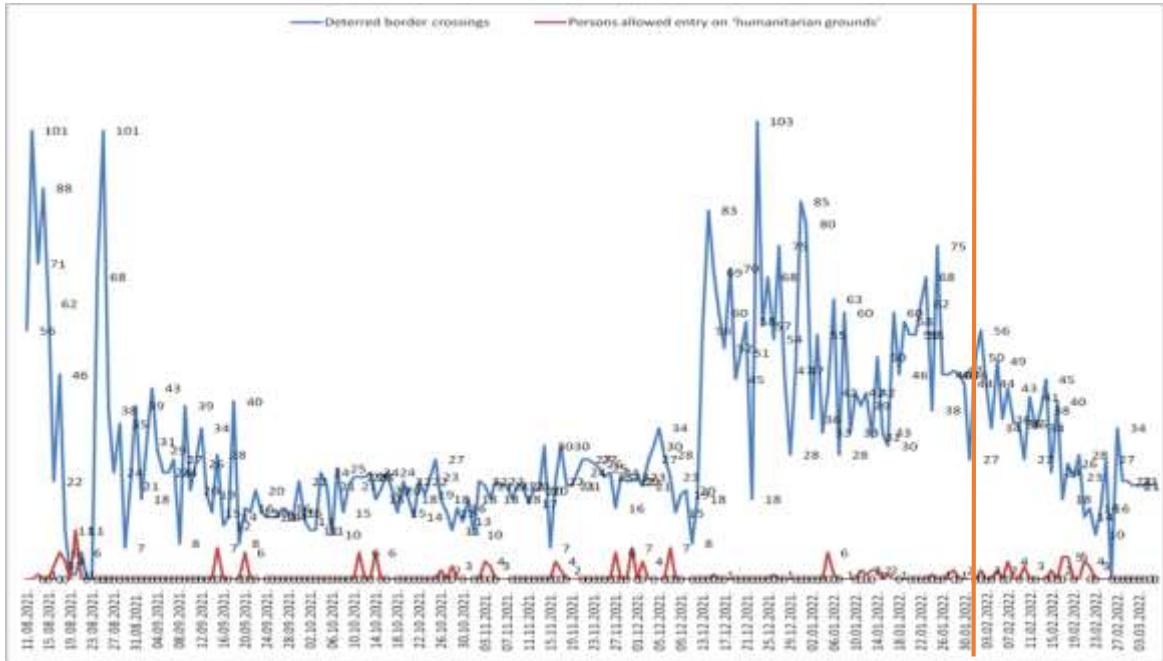


Fig. 2. Number of deterred border crossings and persons allowed entry. Source: Jolkina 2022, based on the statistics by the State Border Guard, available at: <https://www.rs.gov.lv/lv/jaunumi>.

Moreover, no information could be obtained from the authorities about the fate of persons who had experienced health problems while in the border zone and had been assisted by the medics either *in situ* or taken to the hospital. Their identities were not disclosed, and it was not clear whether they were admitted into Latvia on humanitarian grounds after receiving medical treatment or taken back to the border zone/made to return to the territory of Belarus.

Neither could any information initially be obtained from the authorities on how many of the detained persons had been able to apply for asylum. As claimed by several such persons cited in Aleksandra Jolkina's report⁸⁷ as well as by some applicants in the ECtHR case H.M.M. and Others v. Latvia (application no. 42165/21), they were allowed to enter Latvia on humanitarian grounds only on condition that they voluntarily return to Iraq. Once admitted into Latvia, their asylum claims were not registered, and they were allegedly forced to accept the voluntary return procedure.

Responding to these allegations, the Ministry of Interior said in a letter to the Human Rights and Public Affairs Committee at the Latvian Parliament that the Border Guard had observed the principle of *non-refoulement* with regard to the irregular migrants in the area of emergency situation.⁸⁸ According to the Ministry, the Border Guard was not aware of any cases when applications for voluntary return had been submitted or signed under coercion. As reported by the Ministry, there had been cases, however, when migrants had withdrawn their applications for voluntary return after being accommodated in the Centre for Detained Foreigners in Daugavpils, thus terminating their voluntary return process.

In total, 71 persons voluntarily returned from Latvia to their countries of origin assisted by the International Organisation for Migration (IOM) in the period from August 2021 to January 2022.¹² Some detained persons, however, refused the option of voluntary return and instead turned to the court challenging the suspension of asylum procedure in the zone of emergency situation and the denial of their asylum applications. According to the Latvian Centre for Human Rights that assisted the applicants, nine such court cases were initiated by the Administrative District Court starting from 15 December 2021. In four cases, the Court ruled that the suspension of asylum applications should be annulled with regard to the applicants and that the Border Guard should accept and register their asylum applications.¹³

According to the information provided by the Border Guard at the time of writing this report, of 113 persons were allowed onto the Latvian territory from August 2021 to January 2022, 46 persons were later presented with a possibility to submit applications for asylum.

¹² According to the statistics provided by the Border Guard to the Operations Management Centre, confirmed by the IOM representative in Latvia. Several detained border-crossers withdrew their applications for voluntary return and applied for asylum instead, once the amendments to the Decree on Emergency Situation were passed on 6 April 2022, allowing for submission of applications at the border checkpoints and at the Accommodation Centre for Detained Foreigners in Daugavpils.

¹³ These rulings were issued in spring 2022, beyond the period considered in the current analysis. The remaining five cases were terminated, as there was no disagreement between the parties anymore, due to the amendments to the Decree on Emergency passed on 6 April 2022.

2.5 *Reception of asylum seekers*

From the end of July 2021 until 10 August when the situation of emergency was introduced in the border areas, 342 people managed to cross the Latvian-Belarusian border irregularly and to apply for asylum.

These asylum seekers were transferred to the Asylum Seekers Reception Centre “Mucenieki” in Ropažu district near the capital Riga. Capacity of the reception centre (maximum 450 residents) could not be used to the full due to the Covid-19-related epidemiological restrictions and was quickly exhausted. The number of residents approached 400 in mid-August 2021, with employees initially struggling to ensure the necessary basic services to the residents, meet the specific needs of vulnerable individuals and quarantine the persons infected with Covid-19. NGOs sent volunteers to help with the distribution of food and other first-necessity items in the centre.⁸⁹ Part of the newly-arrived residents were soon moved to the building of the Ministry of Interior’s Health and Sports Centre in the town of Jūrmala adjusted for reception needs.

Spread of Covid-19 further complicated the reception process. The number of infected residents kept rising, reaching 48 persons out of 364 on 24 August 2021,⁹⁰ and leading to one death. Regular testing and vaccination of residents was organised by the centres’ administration. In addition, a comprehensive quarantine was introduced at the Mucenieki centre in September 2021 without properly informing its inhabitants, which sparked their protests.⁹¹

Part of asylum seekers gradually left the country without waiting for the outcome of their applications and were later apprehended in other EU countries, mainly Germany. The number of residents in reception facilities decreased from close to 400 in August 2021 to less than 200 hundred in October 2021. In total, 124 readmission requests were filed by other EU countries in accordance with the Dublin regulation from August–December 2021, with 33 asylum seekers returned to Latvia.¹⁴

¹⁴According to the information provided by the Office of Citizenship and Migration Affairs (OCMA) in direct communication. From January–April 2022, 111 more readmission requests were filed by other EU countries, and 12 asylum seekers were returned to Latvia.

Only three or 0.008 % of the 368 asylum requests filed by persons who arrived in Latvia by crossing the Latvian–Belarussian border in an irregular manner were satisfied by granting an international protection status (refugee status in two cases, subsidiary protection status in one case) in 2021.¹⁵ By contrast, the overall annual approval rate was 21.4%: of 582 applications, 80 resulted in a refugee status, and 25 in a subsidiary protection status in Latvia.

2.6 Border reinforcement: building temporary fence and permanent infrastructure

In August–September 2021, the Latvian Parliament passed amendments to several laws – the Construction Law, the Forest Law, the State Border Law, and the Law on the Expropriation of a Public Person’s Property – to expedite infrastructure construction on the Latvian-Belarussian border and to increase the authority of the Ministry of Interior in the adjustment of border territories for infrastructure development.

By the end of November 2021, a 37-kilometres-long and 3.7 million euro worth temporary barbed wire fence was built in the areas most subjected to irregular border crossing. Construction of additional 22.8 kilometres-long, 2.3 million euros-worth section of a temporary fence began in April 2022, with a completion date set for early summer 2022.

¹⁵ According to the information provided by the OCMA to the Operations Management Centre and in direct communication.



Photo 3. Temporary barbed wire fence on the Latvian–Belarussian border in winter 2021-2022. Source: Ministry of the Interior.

Latvia's border with Belarus will be further reinforced by a 137-kilometres-long and more than three metres high permanent fence, the construction of which will start in summer 2022. The first segment to be built is 84 kilometres-long and worth 53.5 million euro. According to preliminary estimates, construction of the whole fence will require more than 100 million euros.⁹² The permanent fence is part of the new infrastructure along the entire Latvian–Belarussian border (173 kilometres) to be developed by 2024. The government has so far earmarked 44.2 million euros for infrastructure construction on Latvia's Eastern border with Belarus and Russia in the period from 2021–2024.⁹³

2.7 No NGO access, restricted media access to the border

As noted above, NGOs involved in humanitarian assistance and protection of asylum seekers and refugees were not allowed to access the border areas where the situation of emergency applied, despite repeated requests to lift the restrictions. Consequently, no independent monitoring of the situation in the border zone and detention centres could be done by nongovernmental actors, and very limited humanitarian, legal or other assistance

could be provided by NGOs to potential asylum seekers in the border areas. NGO concerns about the inaccessibility of border zone were raised also in a joint letter by Latvian, Lithuanian and Polish organisations to the officials of the European Commission on 11 October 2021.⁹⁴

Moreover, just as in Lithuania, organisations involved in humanitarian assistance and human rights protection in Latvia were criticised by state officials for failing to appreciate the security risks posed by Lukashenko regime's hybrid attack and thus ignoring or even opposing the interests of the state. For example, Foreign Affairs Minister Edgars Rinkēvičs claimed in a TV interview in January 2022 that human rights organisations were interested neither in Latvia's security nor defence and expressed hope that the statements of human rights organisations "were not written in Minsk or Moscow".⁹⁵

Restrictions on media access to the border were posed alongside the introduction of emergency situation in the border areas. While at least 30 journalists had visited the border from the middle of July till 10 August 2021, reporting, among other things, at the start of pushbacks, from 11 August, no media were allowed to the border and were instead referred to the centres for asylum seekers and detained foreigners.⁹⁶ Having no access to the border, media had to rely mainly on the information provided by authorities. As put by Delfi.lv journalist Vita Dreijere:

Were the migrants stranded at the Latvian border really provided with food, clothing and medical assistance, as stated by the Minister of the Interior, Marija Golubeva, after the indication of the interim measure by the European Court of Human Rights? We can only trust, as there is no way of verifying this. Were these people really in the Belarussian territory as claimed by the State Border Guard? We can only trust, as there is no possibility to verify this on the spot. Who were the people stuck at the border, where do they come from, what is their story? There is no way to find out. The only material available is the one produced by the Ministry of Defence's website Sargs.lv, which copies the journalistic genre of reportage but cannot be considered as work by independent journalists.⁹⁷

On 13 September 2022, the Border Guard issued guidelines on the media visits to the Latvian-Belarusian border and interviews on the current situation.⁹⁸ The guidelines stipulated that media visits should be organised by the Border Guard at a specific place and time “so as not to jeopardise Latvia's security interests, i.e. the return of offenders to the country from which they have entered or otherwise interfere with the performance of official duties.”

The guidelines further elaborated that media presence was not allowed during the implementation of national defence measures, the return of border-crossers, and the border surveillance (patrols along the state border). Media presence in the 12-metres-wide border strip was prohibited based on the Law on State Border. Journalists were allowed to come no closer than 15–20 metres to the border under strict supervision by border guards and in compliance with the instructions from the higher Border Guard officials. Thus, media were effectively prevented from gaining direct access to irregular migrants at the border and independently documenting actions of both the border guards and the persons attempting to cross the border, as well as finding out the incentives of the latter.

2.8 *International reactions*

The Latvian government faced criticism from international organisations as well as from the European Commission and the European Parliament for introducing legislative changes that allowed for pushbacks and thus violated the right to asylum secured in the EU law, and international treaties, such as the European Convention on Human Rights, and the 1951 Geneva Convention on the Status of Refugees.

Some days after the introduction of emergency situation, the UN Refugee Agency's (UNHCR) Representation for the Nordic and Baltic countries expressed concerns about the forcible return of the irregular migrants to Belarus, stressing that the right to asylum remained a basic human right, regardless of the irregular manner of border crossing.⁹⁹ These comments were echoed by the Council of Europe Commissioner for Human Rights Dunja Mijatović who emphasised the obligation of the Council of Europe member states to respect the right to asylum and not return persons to the country they have arrived from

without due asylum procedure and a sufficient consideration of risks they might face in that country.¹⁰⁰

On 30 September 2021, the Council of Europe Parliamentary Assembly (PACE) issued a resolution calling on the authorities of Latvia, Lithuania, and Poland to refrain from pushbacks and provide migrants at the border with access to asylum procedures and adequate reception, and to resort to the detention of asylum seekers as the last measure. PACE also urged the authorities to provide UNHCR and humanitarian aid organisations with unhindered access to migrants at the border.¹⁰¹

PACE Resolution was followed by the UNHCR observations on 13 October on the declaration of emergency situation by the Latvian government.¹⁰² UNHCR recommended that Latvia change the decree on emergency situation to allow irregular border-crossers to be admitted onto the Latvian territory and provide them with access to asylum procedures regardless of their mode of entry and in full compliance with the principle of *non-refoulement*. UNHCR also stressed that the state should not resort to violence against the asylum seekers because of irregular border crossing.

A week later the Group of the Progressive Alliance of Socialists and Democrats in the European Parliament sent a letter to the President of the European Commission Ursula von der Leyen, insisting on the observance of the individual right to asylum and access to asylum systems. The letter stated that the despicable abuse of vulnerable people by the Belarussian regime did not absolve the EU states from their obligations under the EU and international law and “must not lead to a general classification of vulnerable persons as security risks”.¹⁰³

On 9 November 2021, the EU Commissioner for Home Affairs Ylva Johansson told the European Parliament's Committee on Civil Liberties, Justice and Home Affairs (LIBE) that the European Commission might request Latvia, Lithuania, and Belarus to amend the recently passed laws allowing for pushbacks.¹⁰⁴ Latvian Defence Minister Artis Pabriks reacted to Commissioner's statements by saying that they were “highly irresponsible” and demonstrated the inability of some Commissioners to understand the real political situation at the EU's external borders. He added that Latvia did not intend to change anything in its

regulations, and that such statements only provoked the Belarusian regime and its Kremlin supporters to intensify the hybrid warfare.¹⁰⁵

Commissioner Johansson repeated her criticism of the response by the Latvian, Lithuanian, and Polish governments to the arrival of irregular migrants from Belarus at another session of LIBE on 13 January 2022:

We saw the member states most affected taking laws and regulations that are not complying with the European acqui, and that is not acceptable. And at the same time they asked the Commission for help. [...] Even in this difficult and dangerous situation that these three member states are in, they have to have a legislation where pushbacks are not accepted and not legalised. There has to be a situation where people have a right to apply for asylum, the right to have access to asylum process, the right to legal support, legal advice, the right for unaccompanied minors to have guardians, the right for children and vulnerable to be protected, the right to medical care and to have their basic needs covered.¹⁰⁶

Similar concerns were expressed during the debate by Sophie Magennis, Head of Policy and Legal Support at the UNHCR Representation for EU Affairs. However, no amendments were passed to the Order on the Declaration of the Emergency Situation before April 2022.

3. TIMELINE

Lithuanian events are in green.

Latvian events are in orange.

Events covering both countries are in white.

The beginning of June 2021: Due to the increase of irregular migration Lithuania's Border Guard Service reinforced controls on the border with Belarus and mobilised the Public Security Service and the Riflemen's Union to assist border guards.



14-06-2021: The first tent camp to accommodate the increased number of irregular migrants at Lithuania's Foreigners' Centre in Pabrade came into use.



24-06-2021: EU imposed new targeted sanctions on Belarusian economy. Responding to this, the illegitimate president of Belarus Alexander Lukashenko threatened to flood Europe with migrants.



June–July 2021: The State Border Guard (Latvia) follows situation at Lithuania's border with Belarus and reinforces border control.



01-07-2021: Illegitimate president of Belarus Alexander Lukashenko signed the decree allowing citizens of 73 countries to come without visas and stay in Belarus for up to five days, supposedly to get COVID-19 vaccine shots.



02-07-2021: Responding to the rapid increase of undocumented migrants the Government of the Republic of Lithuania declared an 'extraordinary situation'.



13-07-2021: The Seimas of the Republic of Lithuania adopted the resolution stating that countries hostile towards Lithuania were waging hybrid aggression against the Republic of Lithuania and portraying the undocumented migrants as participants in 'hybrid aggression' against Lithuanian sovereignty.



13-07-2021: Following the new amendments of the Law on the Legal Status of Aliens, *de facto* detention of asylum seekers having entered the country undocumented in an extraordinary situation (or state of war or emergency or an extraordinary event due to a mass influx of foreigners) and a new practice of accelerated examination of applications of all asylum seekers were legalised. In addition, an administrative appeal stage against asylum decisions was introduced.



26-07-2021: First nine persons registered as detained for irregular crossing of the border between Latvia and Belarus.



02-08-2021: The order of the Minister of the Interior after which collective expulsions of irregular migrants started to be implemented in practice.



10-08-2021: Following the new amendments of the Law on Legal Status of Aliens, the specific places where an application for asylum may be lodged in an extraordinary situation (or state of war or emergency, or an extraordinary event due to a mass influx of foreigners) were identified.



10-08-2021: The Latvian government issues the Order No. 518 on the Declaration of Emergency Situation in four administrative territories of Latvia – Ludza, Krāslava and Augšdaugava municipalities, and the city of Daugavpils – prescribing the prevention of irregular border crossing by the Border Guard in cooperation with the National Armed Forces and the State Police by use of relevant means and procedures, including the use of physical force. The decree also stipulates that no applications for asylum should be accepted in the areas of emergency situation.



12-08-2021: The Ombudsman of the Republic of Latvia sends a letter to the Cabinet of Ministers and Parliament urging to respect the right to asylum and consider individual circumstances of irregular migrants arriving at Latvia's border with Belarus.



25-08-2021: The ECtHR issues interim measure with regard to irregular migrants at the Latvia-Belarus (the case H.M.M. and Others v. Latvia, application no. 42165/21), requesting the Latvian authorities to provide all the applicants with food, water, clothing, adequate medical care and, if possible, temporary shelter.



September 2021: Irregular migrants temporarily accommodated during the summertime in tents, premises provided by municipalities and the units of the State

Border Guard Service started to be transferred into six long-term migrant accommodation centres in Kybartai, Medininkai, Vilnius (Naujininkai), Jieznas, Pabradė and Rukla (Lithuania)



15-09-2021: The ECtHR lifts the interim measures in the case H.M.M. and Others v. Latvia.



30-09-2021: The Council of Europe Parliamentary Assembly issues a resolution calling on the authorities of Latvia, Lithuania, and Poland to refrain from pushbacks and provide migrants at the border with access to asylum procedures and adequate reception, and to resort to the detention of asylum seekers as the last measure. PACE also urges the authorities to provide UNHCR and humanitarian aid organizations with unhindered access to migrants at the border.



13-10-2021: The UNHCR's Representation for the Nordic and Baltic Countries issues observations on the declaration of emergency situation by the Latvian government. UNHCR recommends that the decree on emergency situation be changed to allow irregular border-crossers onto the Latvian territory and provide them with access to asylum procedures regardless of their mode of entry. UNHCR also stresses that the state should not resort to violence against the asylum seekers because of irregular border crossing.



21-10-2021: The Latvian government extends the emergency situation by three months, until 10 February 2022.



The end of October: In view of deteriorating weather conditions and potential risks to migrants' health, the Ministry of the Interior of the Republic of Lithuania made the decision to distribute humanitarian aid packages to migrants that were being pushed back.



10-11-2021: Declaration of the state of emergency at the state border of the Republic of Lithuania with the Republic of Belarus within the entire border zone at the Lithuania-Belarus border, and five kilometres extending from the border zone deep into the country, also in the locations of and 200 metres around the migrant accommodation facilities in Pabradė, Medininkai, Kybartai, Rukla, and Naujininkai urban district in

Vilnius. This situation allowed the use of preventive actions, mental coercion in order to ensure a person's non-admission into the country's territory, or to use physical violence and other special measures if a person presents a threat to life or health of the officers.



November 2021: The first section of temporary barbed wire fence (37-kilometres-long and 3.7 million euro worth) is completed in the area bordering Belarus most subjected to irregular border crossing.



07-12-2021: Extension of the state of emergency until 15 January 2022.



23-12-2021: New amendments to the Law on Legal Status of Aliens have foreseen that in case asylum applications of the irregular migrants are rejected or irregular migrants themselves fail to apply for asylum and the authorities are unable to expel them from Lithuania during the initial detention period, their right to free movement may be restricted for another six months.



15-01-2022: The state of emergency on the Lithuania-Belarus border is set to expire.



01-02-2022: The Latvian government extends the emergency situation by another three months until 10 May 2022.

4. Comparison of the responses to the influx of irregular migrants of the Lithuanian and Latvian governments

Measures taken by the Lithuanian and Latvian governments in response to the arrival of irregular migrants across the Belarussian border were in many ways similar, the main divergences stemming from a considerably different number of incomers in these countries.

1. Differences in the scope of irregular arrivals and the ensuing detention and asylum procedure:

- **4150 persons detained for irregular border crossing in Lithuania; 446 persons detained in Latvia in 2021;**
- **different legal grounds for detention of irregular migrants in Lithuania and Latvia;**
- **temporary accommodation facilities and, later, six permanent accommodation centres for detained foreigners established in Lithuania. Existing accommodation centres for asylum seekers and detained foreigners used in Latvia, with one additional facility adjusted and used temporarily;**
- **accelerated asylum procedure introduced in Lithuania;**
- **limited or no possibility for legal support during asylum procedure in Latvia and Lithuania;**
- **very low approval rate of asylum applications in Latvia and Lithuania.**

As discussed above, Lithuania experienced the arrival of irregular migrants earlier, from June 2021, and to a much larger extent than Latvia. In addition to the existent provision of the Lithuanian Criminal Code (Article 291),¹⁶ which prescribes detention and/or sanctions for irregular border crossing, except when the border-crosser applies for asylum, amendments to the Law on the Legal Status of Aliens were passed allowing for

¹⁶A similar provision is included in the Latvian Criminal Law (Article 284, Part 1), see <https://likumi.lv/ta/en/en/id/88966>.

mass detention of irregular migrants, including vulnerable persons, without individual assessment for up to six months, with a possibility to extend it for another six months.

As more than 4000 irregular migrants were detained in Lithuania, the authorities faced challenges in offering them decent living conditions in both temporary accommodation (tents, premises provided by municipalities and the units of the State Border Guard Service) and the six permanent accommodation centres they were transferred to later. In the former, the totality of conditions was deemed equivalent to inhuman or degrading treatment by the Seimas Ombudsperson. While some improvements were introduced in the permanent accommodation centres, concerns remained about overcrowding, bad hygiene conditions, lack of privacy, mobility, social and health support in these facilities, as well as the application of prison practices at the Kybartai centre.

Importantly, an accelerated asylum procedure was introduced in Lithuania by amendments to the Law on the Legal Status of Aliens with regard to irregular border crossers during the state of emergency stipulating that the examination of asylum applications, including those from vulnerable persons and unaccompanied minors, could be completed within 10 working days from the lodging of the application.

In Latvia, no changes in asylum procedure were adopted, and no amendments to either the Asylum Law or the Immigration Law were made, while the authorities initially struggled with accommodating large groups of the newly arrived asylum seekers and meeting the needs of vulnerable persons in the context of Covid-19 pandemic. As in Lithuania, authorities were assisted by experts and interpreters from the then European Asylum Support Office (now the EU Agency for Asylum) to ensure prompt consideration of asylum applications.

The approval rate of asylum applications was, however, very low in both countries. In Lithuania, 84 or 0.03% of the 2783 asylum requests filed by persons who arrived via

Belarus in an irregular manner in 2021 were satisfied by granting a status of international protection. In Latvia, only three or 0.008 % of the 368 asylum requests were successful.

There were concerns about limited or non-existent possibilities of detained foreigners in both countries to gain sufficient information about their rights and receive legal support during the asylum procedure. In Lithuania, a new appeals procedure was introduced by the amendments to the Law on the Legal Status of Aliens, stipulating that asylum decisions should be appealed at the Migration department (the same institution that issues these decisions) within seven days from the moment of receiving them, and that the Migration department should decide on appeals in the course of further seven days. While later amendments to the Law on the Legal Status of Aliens transferred the consideration of appeals to the Supreme Administrative Court of Lithuania, the problem of very short deadlines for appeals remained.

2. Right to asylum and principle of *non-refoulement* violated by legal amendments

As discussed above, legal changes adopted in both countries effectively annulled the right to asylum for prolonged periods in several border areas. Importantly, in both countries legal changes served to legitimise prevention of people from border crossing, i.e., pushbacks that violate the principle of *non-refoulement* and are incompatible with the 1951 Geneva Convention on the Status of Refugees, the European Convention on Human Rights, and the EU Charter of Fundamental Rights. Both Latvia and Lithuania faced criticism by local as well as international actors for pushback practice applied on their borders with Belarus.

The legal grounds for suspension of asylum procedure and pushbacks were, however, different. In Latvia, no changes to the legal framework for asylum and immigration (the Asylum Law and Immigration Law) were introduced, relying instead on the Government's Decree on the Emergency Situation of 10 August 2021. The latter, recently extended until

10 August 2022, stipulated both the non-acceptance of asylum applications in the areas of emergency and the prevention of people from border crossing, including by use of force.

In Lithuania, amendments to the Law on the Legal Status of Aliens were first passed on 10 August 2021, restricting the submission of asylum applications at border-crossing points, the territory of Lithuania after a legal entry, and at the Lithuanian diplomatic missions abroad. Importantly, pushbacks were practiced already a week before the amendments were passed, based on the Order from the Lithuanian Minister of Interior. In addition, on 10 November 2021 a state of emergency was declared along the entire border between Lithuania and Belarus and five kilometres inland, as well as at the accommodation facilities of detained migrants and asylum seekers and 200 metres around them.

In force until 15 January 2022, the state of emergency allowed for the use of preventive actions and mental coercion to ensure non-admission of irregular migrants in the Lithuanian territory, as well as the use of physical violence and other special measures if persons attempting to cross the border presented a threat to border guards' life or health. It likewise restricted the rights of migrants and asylum seekers at the accommodation facilities, including their right to receive and disseminate information and access telephone and Internet, unless it was necessary for contacting Lithuanian state institutions.

3. Lack of transparency in the assessment of individual circumstances and vulnerability

Both countries lacked clear and transparent criteria for assessing the individual situations of irregular migrants at the border. As the criteria for judging the vulnerability of persons were not fully explicated and their application could not be observed in practice, it remains unclear whether all vulnerable persons were recognised and allowed to enter the territory of either Latvia or Lithuania on humanitarian grounds.

4. Restricted/suspended NGO and media access to the border areas

In both countries, NGO and media access to border areas was either restricted or fully suspended. In Lithuania, NGOs and journalists had a *de jure* possibility to apply for access to the border zones, yet the issuing of permits was *de facto* delayed. In Latvia, the applying for and issuing of special passes to access the border zone was suspended from the start of emergency situation.

In September 2021, the Latvian Border Guard issued guidelines for media visits to the border zone, which allowed journalists to come as close as 15–20 metres to the border under strict supervision by border guards, yet prohibited media presence during the implementation of national defence measures, the prevention of border-crossers from entry, and the border surveillance.

In Lithuania, journalists were initially denied the opportunity to move closer than one kilometre from the border but were later allowed to work up to 100 metres from the border. Importantly, two pre-trial investigations were launched and administrative fines imposed on the NGOs *Siena* and *Médecins Sans Frontières* for providing humanitarian aid to irregular migrants without formal permission from authorities.

In a worrying turn, NGOs involved in humanitarian assistance and human rights protection were criticised by state officials in both countries for failing to appreciate the security risks posed by the Lukashenko regime's hybrid attack and thus neglecting or even opposing and potentially acting against the interests of the state.

5. Border reinforcement started by both countries

Both Latvia and Lithuania proceeded to reinforce their borders with Belarus by building temporary and permanent fences and developing other border infrastructure.

In Latvia, a 37-kilometres-long and 3.7 million euro worth temporary barbed wire fence was completed in November 2021, with additional 22.8 kilometres-long and 2.3

million euros-worth section to be finished in summer 2022. Latvia's border with Belarus would be further reinforced by a 137-kilometres-long and more than three metres high permanent fence, the construction of which would start in summer 2022, requiring more than 100 million euros.

In Lithuania, construction of a 550-km-long and 4.9 million euros worth barbed wire fence started in summer 2021, with half of the fence completed in February 2022. The barbed wire fence would be complemented by a 508-kilometres-long and four-metres-high permanent fence, the construction of which is ongoing and set to be completed by autumn 2022. The permanent fence would cost around 152 million euros.

5. Conclusion and recommendations

Measures adopted by the Latvian and Lithuanian governments in response to the mass influx of irregular migrants in 2021 led to the violation of their human rights and dignity. A large number of migrants who arrived at borders of Latvia and Lithuania with Belarus were denied access to asylum procedure and pushed back into the Belarussian territory. Many of them allegedly experienced daily pushbacks in the border area by both Belarussian and Latvian/Lithuanian border guards for periods lasting from several weeks to several months, without sufficient possibility to meet their basic needs. These allegations are currently investigated by the ECtHR, Amnesty International (forthcoming) and local authorities.

Several thousand persons allowed to enter Lithuania were subjected to prolonged detention under inhuman and degrading conditions. Detained foreigners in both Latvia and Lithuania were not always provided with sufficient information and means to acquire legal support to protect themselves against degrading treatment and defend their rights to asylum.

No clear and transparent criteria for the assessment of migrants' individual situations were available either in Latvia or Lithuania, which raised doubts whether all vulnerable persons had been identified and allowed to enter the countries on humanitarian grounds. Appropriate identification of and support to vulnerable persons was lacking also upon their reception/detention in Latvia and Lithuania.

No independent monitoring of the situation of irregular migrants at the border and provision of humanitarian, legal and other assistance to them was possible, due to restricted or suspended access to the border areas by media and NGOs.

Thus, the response by the Latvian and Lithuanian governments violated the right to asylum and the principle of *non-refoulement*, prescribed by the EU law (the Directive

2013/32/EU on common procedures for granting and withdrawing international protection, the Directive 2008/115/E on common standards and procedures in Member States for returning illegally staying third-country nationals, and the Charter of Fundamental Rights of the EU) and by the 1951 Geneva Convention on the Status of Refugees.

In view of the above, the following **recommendations** are offered with respect to the situation of irregular migrants at Latvia and Lithuania's borders with Belarus and any migration flows that might arise in future:

- to comply with the obligations under the EU and international law (the EU Charter of Fundamental Rights, Geneva Convention Relating to the Status of Refugees, the Universal Declaration of Human Rights, etc.) to ensure right to asylum and respect the principle of *non-refoulement* with regard to all people potentially seeking asylum;
- to refrain from pushbacks and collective expulsions, and respect the human rights of people seeking entry to the country;
- to ensure thorough assessment of the individual situations of persons seeking entry to the country, paying special attention to vulnerable persons and unaccompanied minors, and to guarantee their access to asylum procedure;
- to apply alternative measures to detention of asylum seekers, using detention only as a last resort, based on thorough assessment of individual circumstances. Abstain from mass detention and detention of children;
- to provide adequate reception of asylum seekers, and ensure the necessary social and other services to them; pay special attention to the identification of and support to people with special needs;

- even in a state of emergency, to ensure the exemption of vulnerable persons, such as unaccompanied minors, survivors of torture, sexual violence, human trafficking and other forms of serious violence, and members of LGBTQ+ community, from accelerated asylum procedure. Refer these persons to safe reception facilities and provide them with the necessary psychological support;

- to ensure competent consideration of asylum applications, taking into account individual circumstances and providing legal aid, information and translation to asylum seekers in the process;

- to ensure that organizations providing humanitarian and legal aid to migrants and asylum seekers have unhindered access to them, including at the border, so as to provide assistance to the arrivals and monitor the fulfilment of their human rights;

- to guarantee that returns of migrants to third countries are not carried out without sufficient consideration of risks, including persecution and inhuman treatment, they might face in those countries;

- to ensure equal access to integration measures for those who receive residence permits on humanitarian grounds.

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