



# LITHUANIA: FORCED OUT OR LOCKED UP

REFUGEES AND MIGRANTS ABUSED AND ABANDONED

AMNESTY  
INTERNATIONAL



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**Cover photo:** "Scream the mind", artwork by Karrar Español, an Iraqi artist detained in Lithuania, outside of the Kybartai Foreigners' Registration Centre, 2022.

*"It is very difficult when the artist sees his paintings enjoying more freedom than him. This is very difficult. Now my paintings are in every country, in every city, and inside every house, but I am still in prison." © Karrar Español*

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# EXECUTIVE SUMMARY

**“The sad thing is, we are in a dark place, we are going through a terrible time, and we are hopeless. What hurts the most is when I follow the news and see how the world shows solidarity with Ukrainian refugees, and how they treat us here. I am very sad about what is happening there in Ukraine and what the Russian dictator is doing. Only people are affected by the war and I feel for them, because we are the ones who have experienced these moments of war and destruction, and that is very painful”.**

“Coman”, Iraqi man detained in Kybartai, Lithuania, interviewed in March 2022

**“In Iraq, we hear about human rights and women’s rights in Europe. But here there are no rights.”**

“Dilba”, Iraqi woman detained in Medininkai, Lithuania, interviewed in March 2022

A spontaneous protest unfolded on 1 March 2022 at a migration detention centre in Medininkai, Lithuania. The people held there – mostly from the Middle East and Sub-Saharan Africa -- demonstrated against their abusive treatment and poor conditions of detention. They expressed bitter disappointment at the stark contrast between their own arbitrary detention in centres not fit for habitation and the warm welcome given to Ukrainians, many housed in clean and safe accommodations in Lithuania.

In response, the authorities sent an anti-riot squad to the centre the next day. Women and men detained there would later recount how guards beat detainees with hands, batons and tasers; handcuffed and dragged them from their “rooms” in flimsy modular containers; sexually humiliated a group of Black women who were forced outside into the cold, semi-naked, with hands tied; and arrested and removed some people from the centre. Victims and witnesses to the violent police action told Amnesty International of the resulting physical and emotional trauma – and reiterated the nagging question of why they had been treated inhumanely, while others fleeing the conflict in Ukraine had been received in Lithuania with kindness and all forms of material support.

This report is a catalogue of that disparate treatment suffered by refugees and migrants who crossed from Belarus in 2021-2022 at the hands of Lithuanian border guards, the public security service, detention centre staff, lawyers, and other state and European actors. The human rights violations documented by Amnesty International include violent pushbacks; torture and other ill-treatment, including sexual violence and humiliation; excessive use of force, including by employing dogs; arbitrary detention in appalling and unhealthy conditions; denial of access to asylum; lack of effective legal aid in sham asylum procedures; a near total lack of access to justice and no access, to date, to an effective remedy. People belonging to racial and ethnic minorities, especially Black men and women, recounted how they had been subjected to overtly racist slurs and other forms of racially motivated intimidation and harassment by guards. Such abuses continue to this day.

Between November 2021 and May 2022, Amnesty International conducted dozens of interviews with refugees and migrants affected by laws, policies and practices adopted in Lithuania in response to people attempting to enter from Belarus. In March 2022, a delegation travelled to Lithuania, where

they visited two detention centres managed by the Lithuanian State Border Guard Service (Foreigners' Registration Centres at Medininkai and Kybartai), conducted interviews with people held there, spoke with relevant authorities and representatives of humanitarian and civil society organizations, and documented the profoundly negative impact of these measures on the rights of thousands of women, men and children.

The Lithuanian authorities used national security narratives to justify the adoption of a state of emergency in 2021 and of legal "reforms" and practices purposely aimed at preventing people from entering Lithuanian territory to seek asylum. The amendments introduced special rules that were and continue to be in explicit breach of international and EU law, including the principle of *non-refoulement*, the right to seek asylum and freedom from arbitrary detention.

Refugees and migrants consistently reported that Lithuanian authorities used deception and violent methods to carry out pushbacks. Several people recounted beatings by border guards with batons, and some reported the use of tasers on people, as well as the seizure of money and mobile phones. "Haidar", an Iraqi man, recounted that when his group got to the border, the Lithuanian border guards took phones and money from some of the men, put the group in military vehicles, "hit people with tasers and beat them with sticks" and eventually forced them to cross a river with chest high water as they were forced back toward Belarus.

Some people managed to enter the territory of Lithuania. But they were denied access to asylum procedures and automatically detained. The Migration Department under Lithuania's Ministry of Interior invoked "extraordinary situations" or a "state of emergency" to refuse asylum claims from people who were not "authorised" to enter Lithuania under the new legislation. The border guards exercised total discretion in deciding who might gain access to the territory.

The overwhelming majority of people in Lithuania's Foreigners' Registration Centres were detained under the new legislation in a regime of "temporary accommodation without freedom of movement", rather than under a formal detention order from a court. Depriving people of their liberty beyond the close confines of the centres amounts to detention as defined under EU and international law. By using the legal fiction of depicting detention as "temporary accommodation", Lithuanian lawmakers sought to deprive refugees and migrants of key procedural safeguards against arbitrary detention.

People who arrived from Belarus starting in July 2021 were detained in various types of facilities, including tents and containers near border crossing points, nearly all of which were inadequate and substandard. Many people were moved to the Foreigners' Registration Centers, including at Medininkai and Kybartai, which itself was a former prison for criminal convicts. These centres were highly militarized environments, surrounded by walls, fences and barbed wire; guarded in very intrusive ways, sometimes by armed military personnel and dogs. People were subjected to strict limitations on movement and the vast majority could not leave the centres, or even move freely within them.

The two centres were profoundly inadequate for human habitation, especially for prolonged periods of detention. The facilities were severely overcrowded for several months. There was a conspicuous lack of privacy, and people complained about the quality of food and water, and of the extremely limited spaces and opportunities for learning and recreational activities. People also lacked access to adequate medical and mental health care. The conditions in both centres amounted to torture or other ill-treatment under international and EU law.

In addition to the violent raid on 2 March 2022, allegations and evidence of unlawful use of force, including through the employment of tear gas and other special equipment, had already emerged in November 2021, after guards intervened following earlier protests in Medininkai.

The centre guards also put pressure on refugees and migrants in detention to accept "voluntary" returns to their home countries. This included forms of harassment and humiliation, such as the use of profoundly offensive and discriminatory slurs to address racialized people, particularly Black men and women. Returns under coercion and duress cannot be labelled as "voluntary."

The Lithuanian authorities have deprived people of any real possibility of putting an end to their ordeal by having their asylum claims fairly assessed by an independent authority, or by receiving effective legal advice to support them in their asylum or deportation procedure. Asylum procedures have been a sham, plagued by legal and practical impediments that deprive asylum-seekers of any hope of a full and effective asylum procedure.

The Migration Department contracted and paid state-sponsored lawyers to represent asylum-seekers and migrants in proceedings before and against the Migration Department, which itself made the decisions on first and, for several months, second instance asylum claims. Beyond the risk of a conflict of interest, the procurement procedure appears to have been based only on cost, incentivizing law firms to provide the most minimal service, if any – rather than sufficient, let alone good quality, representation.

People in detention communicated their desperation at the lack of help from trusted lawyers. The vast majority that requested legal aid had no real interactions with the lawyers who were supposed to provide them with legal advice and to guide them through the procedures. Most people never saw and spoke with a lawyer, and only laid eyes on them in superficial asylum proceedings, during which lawyers said nothing or very little. Some asylum-seekers recounted how their lawyers sided with the Migration Department over the interests of their client.

Authorities routinely failed to notify asylum-seekers in a timely manner so they could prepare before their interviews. Asylum applicants also were not provided with sufficient time or adequate interpretation to actively participate and make their case during the brief interviews and were obstructed in their attempts to retrieve evidence to substantiate their claims, for example from their own mobile phones that had been taken from them.

The European Union has provided Lithuania with various forms of assistance, including through the deployment of EU agencies on the ground and financial support from EU funds. By perpetrating systematic human rights violations through “push-back or lock up” legislation, policies and practices, Lithuania has breached EU laws, but has been lauded by EU actors for holding the line on migration.

This calls into question the responsibility of EU bodies, in particular the European Border and Coast Guard (Frontex) and the European Commission. The former has provided assistance to Lithuania in ways that may have facilitated the commission of human rights violations, as Frontex has not conditioned its support upon respect for human rights. The latter has forfeited its role of guardian of the Union’s Treaties by choosing political expediency over the duty to ensure compliance with EU legislation. The EU must take immediate action to hold Lithuania accountable and help it set a course correction.

One year after the introduction of the “emergency” legislation, and policies and practices that have caused so much misery and suffering, it is time for Lithuania to turn the page. This should include decisive action to: restore immediately the liberty of people still arbitrarily detained; suspend returns and readmit those unlawfully removed; ensure access to fair and effective procedures to all those wishing to seek asylum, including re-opening the cases of those asylum-seekers whose applications were unfairly rejected; provide compensation, as well as physical and psychological rehabilitation, to those who suffered torture, ill-treatment and other harm; ensure that people in detention, including women, children and LGBTQ persons, are protected from gender-based violence and receive the care they require if subjected to sexual assault or humiliation; initiate immediately impartial and thorough investigations into the abusive treatment of people in detention and at the border, as well as of violations of due process in asylum and migration proceedings; immediately repeal all legislation adopted in 2021-2022 that derogated from human rights obligations; and provide an effective remedy to all person who suffered human rights violations at the hands of Lithuanian state actors and their agents.



# METHODOLOGY

The findings of this report are based on field and desk research carried out between November 2021 and May 2022. Research visits were conducted in Lithuania in March 2022 and in Iraq in December 2021. Extensive remote interviews and desk research between November 2021 and May 2022 provided critical additional information. Interviews were conducted with 31 people detained in Lithuania as well as 16 people who had been pushed back to Belarus by the Lithuanian authorities.

During the field research in Lithuania from 8-11 March 2022, a delegation from Amnesty International visited two detention facilities managed by the Lithuanian State Border Guard Service (hereafter, SBGS or Border Guard Service): the Medininkai and Kybartai Foreigners' Registration Centres (FRCs). In Medininkai and Kybartai FRCs, the centres' management restricted the delegation's access to certain areas of sectors of the FRCs. In Medininkai, the FRC's management limited the time for and interrupted interviews several times and well ahead of the agreed timeframe, despite prior arrangements.

The SBGS denied a request for access to a third detention facility, the Pabradė FRC.

Amnesty International acknowledges the cooperation of the Lithuanian authorities, including the International Cooperation Group of the Ministry of the Interior, the International Cooperation Board of the SBGS, and the administrations of the Medininkai and Kybartai FRCs in granting Amnesty International's researchers access to the two centres and in responding to several requests for information.

In total, 47 refugees and migrants were interviewed, including 31 men and 16 women. They originally came from Iraq, Syria, Cameroon, Democratic Republic of Congo, Nigeria, Sri Lanka, and Guinea. The interviews included 12 refugees and migrants interviewed in Medininkai, and 10 people in Kybartai at the time of the research delegation's visit. In addition, researchers conducted extensive remote interviews between March and May 2021 with another 10 refugees and migrants detained in Lithuania's FRCs. Many people detained in Lithuania were transferred between different detention centres, and individual interviews often revealed information on the conditions in multiple detention facilities.

Amnesty International conducted a research visit to Iraq in December 2021 and interviewed people who were pushed back to Belarus by different European Union (EU) member states and eventually returned to Iraq. In Iraq, 14 people reported having been pushed back to Belarus by Lithuanian authorities before returning to Iraq from Minsk. In addition, two remote interviews were conducted in March 2022 with individuals who were still in Belarus after experiencing pushbacks from Lithuania.

Most interviews with refugees and migrants took place in English, French or Arabic without interpretation, others were carried out in Arabic or Kurdish with the assistance of interpreters.

In Lithuania, the Amnesty International delegation met with the Head of the Migration Board of the Lithuanian State Border Guard Service, the Head of the Medininkai FRC, the Head of the Investigation Unit of the Medininkai FRC, the Head of the Kybartai FRC, and the Head of Security of the Kybartai FRC. A meeting was also held with the Lithuanian Parliamentary (Seimas) Ombudsperson and the Head of the Human Rights Division of the Seimas Ombudsperson's Office. Prior to the visit, researchers exchanged

several written and phone communications with the International Cooperation Board of the Border Guard Service. Where relevant, the content of those communications is reflected in this report.

Representatives of civil society organisations and activists in Lithuania provided important additional information. These organisations included the Lithuanian Red Cross, the Lithuanian Human Rights Monitoring Institute, the Lithuanian Refugee Council, the Sienos Grupe (“border group”), Médecins Sans Frontières (MSF), and Diversity Development Group. Researchers also remotely interviewed the Secretary General of the Lithuanian Bar Association and consulted with Lithuanian legal experts and lawyers.

Formal written requests for official information were submitted to the Lithuanian Ministry of Interior (2 May 2022), the management of the Medininkai FRC (3 May 2022) and the management of the Kybartai FRC (3 May 2022). The management of both Medininkai and Kybartai FRCs provided partial responses on 16 May 2022. The Lithuanian Ministry of Interior also responded through several communications received on 6, 8 and 10 June 2022. Where relevant, the content of these responses is reflected in this report.

Amnesty International also submitted a request for information to the lawyer whose firm was contracted by the Ministry of Interior (the Migration Department) to provide state-guaranteed legal aid in asylum matters for people detained in Lithuania’s FRCs. No response had been received by the time of publication of this report.

This report includes legal analysis of Lithuanian legislation, in particular various versions of the Lithuanian Law on the Legal Status of Foreigners, which governs most of the legal aspects related to the treatment of refugees and migrants detained in or pushed back from Lithuania. In addition, researchers reviewed numerous detention decisions and rejections of asylum applications issued by the Migration Department, as well as decisions and other documentation from the Lithuanian Supreme Administrative Court.

Amnesty International approached the European Border and Coast Guard (Frontex) on 13 May 2022 with a request for information relating to the agency’s operations in Lithuania; no reply was received. On 22 May 2022, a formal written request was submitted to Frontex for access to documents and information. This included requests addressed to Frontex’s Fundamental Rights Officer. Due to delays in the processing of the request by Frontex, no reply was provided in time for inclusion in this report.

On 31 May 2022, Amnesty International approached the EU Agency for Asylum (EUAA, formerly EASO) with a request for information relating to the agency’s operations in Lithuania. The agency replied via email on 7 June 2022.

Research materials also included various videos taken by detainees between March and May 2022, showing conditions of detention or specific incidents, in particular in Medininkai FRC. The videos have been verified as authentic.

The names of refugees and migrants interviewed for this report have been changed and other identifying characteristics have not been included to preserve their anonymity and prevent the risk of retaliation by the authorities. Most of the people who cooperated in the research remained in detention in Lithuania at the time of publication and instances of retaliation have been previously reported.

Precisely because of this risk, Amnesty International wishes to thank those brave people in detention who decided nonetheless to share their testimonies. As one person recounted:

**“At first I was afraid to speak with you, but let them do what they want, at the end of the day it’s a prison, they have already broken us inside... [but] I care about your report, it’s important.”**

“Coman”, Iraqi man detained in Kybartai, interviewed in March 2022



# 1.BACKGROUND: VICTIMS OF POLITICAL GAMES

Thousands of people, mostly from the Middle East and Sub-Saharan Africa, began arriving in mid-2021 at the European Union's (EU) borders with Belarus with the intention of seeking asylum in various EU countries, including Lithuania, Latvia and Poland. Many people sought to escape persecution, other serious human rights violations, or precarious living conditions and had been lured into Belarus by the Belarusian government and Belarusian "tour operators" who sold them a migration story that was too good to be true. Instead of a path to safety, what they met at the EU's borders were pushbacks – illegal, often violent and repeated – from the EU to Belarus, arbitrary detention often under appalling conditions, and cruel and degrading treatment. It was a "welcome" in stark contrast to the benevolence with which Ukrainian nationals were received in the EU in 2022. The abuses for those who crossed from Belarus in 2021 continue to this day, including in Lithuania. Both Lithuania and Belarus, as well as Poland, Latvia and the wider EU, bear responsibility for playing games with the lives and safety of these people.

Starting in early 2021, Belarusian tour operators and others facilitating the journey to Belarus for a fee began advertising attractive "packages" that included regular entry into Belarus and the empty promise of safe and easy access to EU countries, including Lithuania, where people seeking asylum hoped to eventually find a safe haven. Once in Belarus, these refugees and migrants realised they had been victims of a scheme, and there would be no easy pathway into the EU. Ultimately, crossing irregularly into the EU would be the only path available to people too scared to return to their countries of origin and denied access to asylum in Belarus.<sup>1</sup>

Between late 2021 and early 2022, Amnesty International collected testimonies from people that detailed coercion and extortion at the hands of Belarusian authorities who pushed refugees and migrants out of Belarus and towards the borders of EU countries, including Lithuania, Poland and Latvia, often violently and against their will:

**"Eventually, they [Belarusian soldiers] let us out [of a truck without windows] in a place and told us to make a line to cross to somewhere [we did not know] ... We arrived to a river and [the Belarusian soldier] told me to tell everyone to cross the river. I tried to argue a bit saying how cold it was... I even offered to pay money not to be forced. The officer told me it was an order, he made us all go into the river. Once I put my legs in the river, I felt like I was freezing, my heart was freezing. We had to move on, we crossed and walked about 500 meters. It was a swamp and very dangerous and risky. We kept going and then we saw the Lithuanian flag... [A Lithuanian border guard] asked us why you came here? We told him that the Belarusian army forced us to cross the river and he brought a camera and told me to repeat what I said in front of the camera".**

"Amir", Syrian man pushed back to Belarus, interviewed in March 2022

**"They keep saying we came illegally, but we didn't know. The Belarusian police took my passport, then told us to go this way. So why is everyone saying we are illegal, we don't know."**

"Agalvili", Sri Lankan woman detained in Medininkai, interviewed in March 2022

People from around the world had become the unsuspecting victims of a cynical scheme, and subsequently of violence and inhumane treatment at the hands of the Belarusian government.

EU leaders described this as a "hybrid threat" orchestrated by the Belarusian authorities in response to the EU sanctions introduced after widespread human rights violations following the 2020

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<sup>1</sup> Amnesty International, *Poland: Cruelty Not Compassion, at Europe's Other Borders*, EUR 37/5460/2022, <https://www.amnesty.org/en/documents/eur37/5460/2022/en/>

presidential election, the official outcome of which was widely disputed and led to mass peaceful protests.<sup>2</sup>

Instead of offering protection to people fleeing serious human rights violations in their countries of origin and then ill-treatment by Belarusian forces, the Lithuanian authorities responded by further instrumentalising refugees and migrants in a political debate with Belarus, and fostered a political and legal environment that condemned the victims of Belarus' act of bad faith. Lithuanian and EU policy makers routinely portrayed refugees and migrants as the "weapons" of a "hybrid attack" by the Belarusian regime,<sup>3</sup> overlooking the fact that many had genuine protection needs; that they had been unwitting victims of the Lukashenka regime's lies; and that they had been forced into EU countries often through violent coercion.<sup>4</sup> By consistently describing refugees and migrants as "weapons", Lithuanian authorities dehumanised them and portrayed them as a threat to national security. They used this narrative to repeatedly declare states of emergency and to justify legal "reforms" and practices aimed at preventing people from entering Lithuanian territory and seeking asylum. These measures ultimately gravely undermined the right not to be subjected to *refoulement*<sup>5</sup> and the right to seek asylum, and had a profoundly negative impact on other human rights.

In the words of the Lithuanian Seimas (Parliamentary) Ombudsperson:

**"At a time when we are talking about migrants as a weapon, as an attack, we are already humiliating these people. We look at them only as an instrument and therefore there is no room for an individualized approach, there is no room to look at individual stories, individual circumstances. Here, too, we have practices that are incompatible with our international obligations: these are the pushbacks that take place without taking into account individual circumstances, without the right to apply for asylum, as well as the so-called 'accommodation' in Foreigners' Registration Centres that is de facto detention. Because of [this narrative], concepts seem to be washed out. Migrants seem to be seen by society as different, less important, less deserving, and [a part of the society] becomes quite willing to tolerate the restriction of their rights – including disproportionate, unnecessary restrictions. Stepping aside from our values is detrimental to us, as a society as a whole, and normalization of disregard for international and constitutional norms is in part exactly what those unfriendly regimes are pursuing with their hybrid strategies."**<sup>6</sup>

In this dehumanising context, on 2 July 2021 the Lithuanian government declared an "extraordinary situation" due to a "mass influx" of third country nationals.<sup>7</sup> On 13 July, the Lithuanian parliament (the "Seimas") approved a resolution portraying them as "participating in criminal activities" within the "hybrid aggression".<sup>8</sup> The same day, the Seimas approved the first of a series of regressive legislative reforms of the Lithuanian "Law on the Legal Status of Foreigners" (hereafter, Law on Foreigners).<sup>9</sup> The law aimed to curtail the right to seek asylum and led to numerous human rights abuses, including

<sup>2</sup> Amnesty International, *Belarus/EU: New evidence of brutal violence from Belarusian forces against asylum-seekers and migrants facing pushbacks from the EU*, (Press release, 20 December 2022), [www.amnesty.org/en/latest/news/2021/12/belarus-eu-new-evidence-of-brutal-violence-from-belarusian-forces-against-asylum-seekers-and-migrants-facing-pushbacks-from-the-eu](https://www.amnesty.org/en/latest/news/2021/12/belarus-eu-new-evidence-of-brutal-violence-from-belarusian-forces-against-asylum-seekers-and-migrants-facing-pushbacks-from-the-eu).

<sup>3</sup> In July 2021, the Lithuanian Foreign Minister Gabrielius Landsbergis started using such terminology at an EU's Foreign Affairs Council in Brussels, where he declared: "When refugees are used as a political weapon in order to change a country's policy... I will talk to my colleagues in order for the European Union to have a common strategy". His words were later echoed by Josep Borrell, the High Representative of the European Union for Foreign Affairs and Security Policy, who said: "To use migrants as a weapon, pushing people against the borders, is unacceptable." See Robin Emmott, Sabine Siebold and Andrius Sytas, "Lithuania, EU say Belarus using refugees as 'political weapon'", *Reuters*, 12 July 2022, [www.reuters.com/world/europe/belarus-using-refugees-weapon-must-face-more-eu-sanctions-lithuania-says-2021-07-12](https://www.reuters.com/world/europe/belarus-using-refugees-weapon-must-face-more-eu-sanctions-lithuania-says-2021-07-12).

<sup>4</sup> Amnesty International, *Belarus/EU: New evidence of brutal violence from Belarusian forces against asylum-seekers and migrants facing pushbacks from the EU*, (previously cited).

<sup>5</sup> The international legal obligation of non-refoulement prohibits states from transferring people to a place or jurisdiction where they would be at real risk of persecution or other serious human rights violations, including torture or other ill treatment.

<sup>6</sup> Interview given to Žinių radijas on 22 December 2021, "Ar gindamasi nuo hibridinės atakos Lietuva nepažeidžia žmogaus teisių?", [www.ziniuradijas.lt/laidos/svarbus-kiekvienas/ar-gindamasi-nuo-hibridines-atakos-lietuva-nepazeidzia-zmogaus-teisiu?soundtrack=1](https://www.ziniuradijas.lt/laidos/svarbus-kiekvienas/ar-gindamasi-nuo-hibridines-atakos-lietuva-nepazeidzia-zmogaus-teisiu?soundtrack=1).

<sup>7</sup> Government of the Republic of Lithuania, Resolution No 517 of the of 2 July 2021, Dėl valstybės lygio ekstremaliosios situacijos paskelbimo ir valstybės lygio ekstremaliosios situacijos operacijų vadovo paskyrimo (On the Declaration of the Extraordinary situation and the Appointment of the State Commander of National Emergency Operations), TAR, 30/07/2021, No. 15235, [e-seimas.lrs.lt/portal/legalAct/lt/TAD/ad73a4c1dc0011eb866fe2e083228059?jfwid=-1cefbc9c8](https://e-seimas.lrs.lt/portal/legalAct/lt/TAD/ad73a4c1dc0011eb866fe2e083228059?jfwid=-1cefbc9c8).

<sup>8</sup> Seimas of the Republic of Lithuania, Resolution XIV-505 2021-07-13, *Resolution on Countering Hybrid Aggression*, [e-seimas.lrs.lt/portal/legalAct/lt/TAD/1a84e440e49c11eb866fe2e083228059?jfwid=tcd2hdge](https://e-seimas.lrs.lt/portal/legalAct/lt/TAD/1a84e440e49c11eb866fe2e083228059?jfwid=tcd2hdge).

<sup>9</sup> IX-2206, Republic of Lithuania, Law on the Legal Status of Foreigners (LSoF). The text of the law is available in English at: <https://e-seimas.lrs.lt/portal/legalAct/lt/TAD/d7890bc0fa2e11e4877aa4fe9d0c24b0?jfwid=>

violations of the principle of *non-refoulement*, collective expulsions, denial of access to asylum, arbitrary detention, inhumane treatment, and denial of due process.

Invoking these reforms, the Ministry of Interior instructed the Lithuanian State and Border Guard Service (SBGS) to reject third-country nationals at the border. As of 3 August 2021 – immediately after a visit to Lithuania by the European Commissioner for Home Affairs, Ylva Johansson – Lithuanian law enforcement authorities started pushing back refugees and migrants who reached Lithuania's borders, in violation of international law.<sup>10</sup> In a disturbing display of solidarity with Lithuania, Johansson had publicly congratulated the Lithuanian government during her trip for its “exemplary” reaction to the “threat” and emphasized the need to “make clear that there is no free access to the EU territory” and “to prevent non-authorized access to the Schengen area.”<sup>11</sup> Although pushbacks are illegal under international law, as of 11 June 2022 Lithuania has pushed back refugees and migrants at least 10,023 times, including 8,106 times in 2021 and 1,917 in 2022.<sup>12</sup>

Prior to August, in 2021 the Lithuanian authorities had recorded the entry of at least 4,000 refugees and migrants in the country.<sup>13</sup> Virtually all those detected by the authorities were automatically detained in several facilities across the country. Since then, only a small percentage of those who reached Lithuania's borders have been exceptionally allowed into the country, and in most cases, under the new rules, they also have been automatically detained. Many spent weeks held at border crossing posts, in temporary detention facilities, or on military bases, such as Rūdininkai, before being transferred to other detention facilities.

As the authorities restricted people's access to asylum and undermined asylum procedures, in 2021 only 451 people received asylum out of 3,751 decisions.<sup>14</sup> The situation seemed to improve in 2022, as 138 decisions to grant asylum were issued out of 425 decisions (as of 10 June 2022).<sup>15</sup> In 2021–2022 (as of 29 May), 1,080 people were forcibly returned from Lithuania to their countries of origin or signed “voluntary” return papers.<sup>16</sup>

The vast majority of these refugees and migrants was locked up in overcrowded detention facilities for prolonged and repeatedly extended periods of time.

As of 6 June 2022, 2,647 people, including at least 592 minors,<sup>17</sup> remained detained in Lithuania, most arbitrarily. People are living in degrading conditions and suffering inhumane treatment, unlawful and excessive use of force and harassment at the hands of Lithuanian guards. Many are in despair and hopeless, with no access to a fair asylum procedure or a fair process to challenge their detention, and with no idea of when or how their ordeal will come to an end. Indeed, as many people were approaching the end of their six-month maximum period of detention in early 2022, Lithuania had already approved new legislation in December 2022 further extending the maximum periods of detention for migrants and asylum-seekers.<sup>18</sup>

<sup>10</sup> European Council on Refugees and Exiles (ECRE), *Extraordinary responses: legislative changes in Lithuania*, 2021, <https://ecre.org/ecre-legal-note-11-extraordinary-responses-legislative-changes-in-lithuania-2021/>

<sup>11</sup> Visit of Ylva Johansson, European Commissioner, to Lithuania: joint press briefing with Ingrida Šimonytė, Lithuanian Prime Minister, Vilnius, 2 August 2021, <https://audiovisual.ec.europa.eu/en/video/I-209802>

<sup>12</sup> “Per parą pasieniečiai į Lietuvą neleidė 25 migrantų, iš viso jau apgrižta 10 tūkst. atėjų”, *Lithuanian Radio and Television (LRT)*, 11 June 2022, [www.lrt.lt/naujienos/lietuvoje/2/1716809/per-para-pasienieciai-i-lietuva-neleido-25-migrantu-is-viso-jau-apgrezta-10-tukst-atejunu](http://www.lrt.lt/naujienos/lietuvoje/2/1716809/per-para-pasienieciai-i-lietuva-neleido-25-migrantu-is-viso-jau-apgrezta-10-tukst-atejunu).

<sup>13</sup> “Lithuania takes a tougher line on the migrant influx from Belarus”, *Euronews*, 03 August 2021, [www.euronews.com/my-europe/2021/08/03/eu-pledges-aid-to-lithuania-as-migrants-pour-in-from-belarus](http://www.euronews.com/my-europe/2021/08/03/eu-pledges-aid-to-lithuania-as-migrants-pour-in-from-belarus).

<sup>14</sup> Including 2768 decisions to refuse asylum and 532 decisions to “terminate the examination of the asylum application”. Ministry of Interior, email to Amnesty International, 10 June 2022, email on file with Amnesty International.

<sup>15</sup> Including 197 decisions to refuse asylum and 90 decisions to “terminate the examination of the asylum application”. Ministry of Interior, email to Amnesty International, 10 June 2022, email on file with Amnesty International.

<sup>16</sup> Ministry of Interior, email to Amnesty International, 6 June 2022, email on file with Amnesty International.

<sup>17</sup> The number of minors could be underestimated, as the age of certain detainees is disputed. Data extracted from: Ministry of Interior, email to Amnesty International, 6 June 2022, email on file with Amnesty International.

<sup>18</sup> Nerijus Adomaitis, “Lithuania extends migrant detention limit to a year”, *Reuters*, 23 December 2021, [reuters.com/world/europe/lithuania-extends-migrant-detention-limit-year-2021-12-23/](https://www.reuters.com/world/europe/lithuania-extends-migrant-detention-limit-year-2021-12-23/)

The Lithuanian authorities invoked an “extraordinary situation” or a state of emergency to justify unjustifiable measures, such as the pushbacks and arbitrary detention of thousands of people. At the level of public debate, to make those measures appear more palatable, Lithuanian and European leaders suggested that the people attempting to access the EU from Belarus were not “real” refugees,<sup>19</sup> a highly problematic characterisation. According to international and EU law, every person, irrespective of the manner of their arrival, has a right to seek asylum at any country’s border and a right to have their case adequately registered, processed and assessed based on the individual’s personal circumstances. No state can establish whether an individual is a refugee before a fair and effective asylum system has determined their individual case.

The assertion that the people pushed back to Belarus or locked in Lithuania’s detention centres may be generally undeserving of international protection is also baseless. Many of the people interviewed by Amnesty International presented compelling reasons for their fear of persecution and/or the real risk of serious human rights violations if returned to their country of origin. “In Syria I am wanted to do the military [service], but I don’t want to fight”, one man recounted.<sup>20</sup> “When I was in Iraq, I worked as a journalist ... I entered the political field in 2015... I was subjected to several arbitrary arrests, physical torture and psychological damage due to my political activity”, explained another man, who provided credible evidence of his activities.<sup>21</sup> A Tamil woman highlighted the risk she would face if returned to Sri Lanka: “In my country I had problems before leaving, [which are] not finished. Some people came to my home, tortured us, said bad words to us because the brother of my mother was in the ‘LTTE’.”<sup>22</sup>

Ill-treatment and persecution in their home countries have scarred not only the memories, but also the bodies of many people held in detention centres, as confirmed by medical organisations operating there. Since January 2022, when it began providing support in Lithuania, Médecins Sans Frontières (MSF) has identified over 50 people – among those detained in either Medininkai FRC or Kybartai FRC – who experienced torture or sexual and gender-based violence in their country of origin before they fled. MSF also reported having referred protection cases to UNHCR, including psychiatric patients lacking appropriate care.<sup>23</sup>

Some people had travelled and hoped to reach the EU in anticipation of reuniting with family members who had sought international protection in previous years. “Dilba”, a young Yazidi woman from Iraq, recalled:

**“I came from Iraq to go to another country, Germany, because all my family are there – my mother, father, one sister and three brothers. But they arrested us here [in Lithuania].”**

“Dilba”, Iraqi woman detained in Medininkai, interviewed in March 2022

Whether for family reunification, fear of persecution or other reasons, a few thousand women, men and children have knocked at Europe’s doors in the last year, coming through Belarus, in the hope of receiving asylum and living a dignified life. This report details how the Lithuanian authorities have

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19 “Serious doubts arise, as to whether the irregular migrants at issue fulfil the criteria contained in the definition of the Convention Relating to the Status of Refugees of 1951.” Prime Minister of the Republic of Lithuania, “Reply to the letter of the Commissioner for Human Rights, Council of Europe”, 24 August 2021, <https://rm.coe.int/reply-of-the-prime-minister-of-the-republic-of-lithuania-ms-ingrida-si/1680a39439>; Andrius Balčiūnas, “Situation in Belarus closer to military action than migrant crisis – Finnish FM”, *Lithuanian Radio and Television (LRT)*, 17 November 2021, <https://www.lrt.lt/en/news-in-english/19/1543747/situation-in-belarus-closer-to-military-action-than-migrant-crisis-finnish-fm>; Visit of Ylva Johansson, European Commissioner, to Lithuania: joint press briefing with Ingrida Šimonytė, Lithuanian Prime Minister, Vilnius, 2 August 2021, <https://audiovisual.ec.europa.eu/en/video/I-209802>

20 Interview in person with “Saleh” (name changed for security reasons), Syrian man detained in Kybartai, March 2022.

21 Interview by voice call with “Bahir” (name changed for security reasons), Iraqi man detained in Kybartai, March 2022

22 Interview by voice call with “Sabitha” (name changed for security reasons), Sri Lankan woman detained in Pabradė, April 2022. LTTE refers to the Liberation Tigers of Tamil Eelam (or Tamil Tigers), an armed group long involved in Sri Lanka’s internal armed conflict with the Sri Lankan government forces. Since the end of the conflict in 2009, individuals belonging to the Tamil ethnic minority continue to face systematic discrimination in Sri Lanka, and Tamils with real or suspected affiliations with the LTTE have been subjected to prolonged arbitrary detention, torture and other ill-treatment.

23 Médecins Sans Frontières (MSF), *People detained in Lithuania are experiencing abuse, violence and mental health distress*, (Press release, 6 May 2022), <https://www.msf.org/prolonged-detention-over-2500-migrants-lithuania-must-end-now>

failed them by responding to their legitimate expectations with pushbacks; forced returns; torture and other cruel and degrading treatment; arbitrary detention and a range of other abuses.

## DISCRIMINATORY DOUBLE STANDARDS IN TREATMENT OF PEOPLE SEEKING PROTECTION

**“It’s going to be worse now [after seeing the treatment promised to Ukrainians], because people here cannot take it anymore. We are under horrible pressure [to go back to our countries]. Is this the humanity they are talking about? We also want to help people coming from Ukraine, because we already saw that, we already lived that, we already felt that”**

“Marwa”, young Iraqi woman detained in Medininkai, interviewed in March 2022

The ongoing arbitrary detention and abusive treatment of people who crossed from Belarus into Lithuania and other EU member states, including Poland and Latvia, stand in stark contrast to the open border approach and welcoming attitude displayed by the EU and these governments toward people fleeing from Ukraine in 2022. The remarkable difference in treatment shows that an approach that restricts, rather than respects, the rights of refugees and migrants is a matter of political choice, rather than a necessary “emergency” response to increased arrivals. It also reveals the extent to which the EU and its member states have applied double standards in their treatment of migrants and refugees based on their race, ethnicity, nationality or origins.

EU member states have granted Ukrainian nationals temporary protection and assisted them in addressing their immediate humanitarian needs, including transportation, access to housing, employment, and education opportunities. In Lithuania, over 50,000 Ukrainians were registered by late May 2022.<sup>24</sup>

Many refugees and migrants in detention centres in Lithuania can easily relate to the plight of people fleeing a country at war, but their frustration has only grown with the realization of the double standards at play. Even after months spent in arbitrary detention and being denied access to international protection, interviewees, including people who fled conflict in their countries of origin, were heartened to see the Lithuanian government’s responses to Ukrainian arrivals. But they were equally daunted by the abysmal differences in treatment, feeling that their liberty was taken from them as a result of a purely racist approach.

**“The sad thing is, we are in a dark place, we are going through a terrible time, and we are hopeless. What hurts the most is when I follow the news and see how the world shows solidarity with Ukrainian refugees, and how they treat us here. I am very sad about what is happening there in Ukraine and what the Russian dictator is doing. Only people are affected by the war and I feel for them, because we are the ones who have experienced these moments of war and destruction, and that is very painful”.**

“Coman”, Iraqi man detained in Kybartai, interviewed in March 2022

That realization led in part to a protest at the Medininkai FRC in March 2022 with refugees and migrants calling for similar accommodations for themselves as those provided to Ukrainians (see section below on “2 March Raid at Medininkai”). Similarly, Amnesty International’s April 2022 research on refugees and migrants who crossed into Poland from Belarus in 2021 revealed that people still in detention there also expressed disappointment and anger at the differential treatment

<sup>24</sup> Lietuvos Statistika, “Karo pabėgėliai iš Ukrainos”. (14 June 2022), [osp.stat.gov.lt/ukraine-dashboards](https://osp.stat.gov.lt/ukraine-dashboards). More information on social support services for Ukrainian nationals in Lithuania can be found on the website of the Municipality of Vilnius at <https://vilnius.lt/en/2022/03/26/ukrainian-war-refugees-in-lithuania-what-social-support-are-they-entitled-to>.

that people fleeing Ukraine enjoyed. Some people still trying to access Polish territory in March 2022 – while people fleeing Ukraine were pouring into Poland – continued to be violently pushed back to Belarus, often having to live in the border zone area for days, without food or water.<sup>25</sup>

The real potential of how Lithuania and other EU member states can quickly and compassionately respond to people fleeing conflict and danger is on full view in the context of the Ukraine crisis. While state authorities have much more to do to ensure the full safety and all required forms of assistance to those fleeing Ukraine, the contrast with the hostility and abuse by Lithuanian state actors targeting those who have arrived from Belarus – as reflected in the numerous testimonies in this report – could not be sharper. The Lithuanian and other EU governments’ approach to protection for those fleeing Ukraine indicates the state’s potential to fulfill its obligations under EU, international human rights and refugee law – while its approach to refugees and migrants who crossed from Belarus smacks of racism and hypocrisy – and is marked by serious human violations, including torture and other ill-treatment.

**“It’s not normal that they imprisoned us for 10 months, because we are from Africa, because we are Black. You know, I am a Black woman, it’s not my fault.”**

“Ada”, young Cameroonian woman detained in Medininkai, interviewed in March 2022

**“Here, they treat us like animals, not like people... They tell us that we have to return to Congo, and that they don’t need us here [in Lithuania]”**

“Elise”, young woman from Sub-Saharan Africa, interviewed in March 2022

**“The guard said: ‘We send you in the forest to hunt’... Everything here is racist, they are very racist, all the guards. When you are sick and ask for an ambulance, they say only if you faint they call it. We don’t like it here. Why no one likes black people?”**

“Josephine”, young woman from Sub-Saharan Africa, interviewed in March 2022

## **2. CODIFYING ILLEGALITY: BORDER PUSHBACKS, DENIAL OF ASYLUM AND ARBITRARY DETENTION INTRODUCED BY LAW**

Following the declaration of an “extraordinary situation” due to a “mass influx” of third country nationals on 2 July 2021,<sup>26</sup> the Lithuanian parliament (the “Seimas”) amended its Law on Foreigners

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<sup>25</sup> Amnesty International, Poland: Cruelty Not Compassion, at Europe’s Other Borders, (previously cited).



several times (including major legislative reforms in July, August and December 2021). The reforms openly stripped the law of safeguards ensuring refugees' and migrants' rights, including the prohibitions on *refoulement*<sup>27</sup> and collective expulsion, the right to seek and access asylum, and the freedom from arbitrary detention.

The amendments introduced special rules that are now codified in Chapter X<sup>2</sup> of the Law on Foreigners, and that apply "in the event of declaration of martial law, a state of emergency or a declaration of an emergency due to a 'mass influx' of foreigners". The most problematic provisions are in explicit breach of international and EU law that safeguards the rights of refugees and migrants. In particular, they include rules imposing the denial of access to asylum and automatic detention both for people who have submitted an asylum application and those considered irregular migrants. In practice, the "emergency" rules codified:

- the practice of pushbacks at the border (see section 2.1 in this report)
- the denial of access to asylum procedures for people who entered the country in an irregular manner (section 2.2), and
- a blanket policy of automatic and therefore arbitrary detention both for people seeking asylum and those considered to be irregular migrants (section 3.1)

In February 2022, the Lithuanian Supreme Administrative Court questioned the legality of certain "emergency measures" introduced in 2021 and submitted a request for a preliminary ruling to the Court of Justice of the European Union (CJEU). The Court is called to decide on the legality under EU law of Lithuanian rules that have prevented people from seeking asylum, and allowed Lithuanian authorities to justify detention of asylum-seekers solely on the basis of their irregular entry during times that the government labels as "emergency" situations.

The decision is imminent at the time of publication of this report, but the Advocate General of the CJEU, Nicholas Emiliou, has already anticipated a ruling that would restore legality under EU law and fundamental rights frameworks.<sup>28</sup> The Advocate General found the rules in Lithuania to be contrary to the right to seek asylum, the principle of non-refoulement,<sup>29</sup> and the right to liberty,<sup>30</sup> as protected respectively under Articles 18, 19 and 6 of the EU Charter of Fundamental Rights. The Advocate General also found that "exceptional circumstances" do not permit derogation from EU rules on asylum that safeguard those rights.

Although these rules were supposed to apply in situations of "emergency", in practice, they were still the norm at the time of writing, about a year after their introduction. They have been applied continuously since their introduction in July 2021 to date. Following the declaration of the "extraordinary situation" in July 2021, the Lithuanian Parliament ("the Seimas") declared its first-ever "state of emergency" on 9 November 2021<sup>31</sup> which was repeatedly extended, aside from a short break in January and February 2022, when Lithuania reintroduced a state of emergency following Russia's invasion of Ukraine. Even during the break between states of emergency, Lithuanian authorities continued to apply the "emergency legislation" to (non-Ukrainian) refugees and migrants. This is despite a relatively modest average number of arrivals from Belarus. During the peaks, there

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<sup>26</sup> Government of the Republic of Lithuania Resolution No 517 of 2 July 2021, *Dėl valstybės lygio ekstremaliosios situacijos paskelbimo ir valstybės lygio ekstremaliosios situacijos operacijų vadovo paskyrimo* (On the Declaration of the Extraordinary situation and the Appointment of the State Commander of National Emergency Operations), TAR, 30/07/2021, No. 15235, <https://e-seimas.lrs.lt/portal/legalAct/lt/TAD/ad73a4c1dc0011eb866fe2e083228059?jfwid=-1cefbqu9c8>

<sup>27</sup> The practice of transferring someone to a place or jurisdiction where they would be at real risk of persecution or other serious human rights violations, including torture or other ill treatment.

<sup>28</sup> Advocate General of the CJEU, Nicholas Emiliou, *Conclusions de l'avocat général M. N. Emiliou, présentées le 2 juin 2022*, ECLI:EU:C:2022:431, 2 June 2022, [eur-lex.europa.eu/legal-content/en/TXT/?uri=CELEX:62022CC0072](http://eur-lex.europa.eu/legal-content/en/TXT/?uri=CELEX:62022CC0072). The CJEU's preliminary ruling is scheduled for release on 30 June 2022.

<sup>29</sup> Advocate General of the CJEU, Nicholas Emiliou, *Conclusions de l'avocat général M. N. Emiliou, présentées le 2 juin 2022*, (previously cited), para. 136-142.

<sup>30</sup> Advocate General of the CJEU, Nicholas Emiliou, *Conclusions de l'avocat général M. N. Emiliou, présentées le 2 juin 2022*, (previously cited), para. 144-148.

<sup>31</sup> Benas Gerdžiūnas, "Lithuania declares state of emergency on border with Belarus", *Euractiv*, 10 November 2021, [www.euractiv.com/section/justice-home-affairs/news/lithuania-declares-state-of-emergency-on-border-with-belarus/](http://www.euractiv.com/section/justice-home-affairs/news/lithuania-declares-state-of-emergency-on-border-with-belarus/)

were 93 daily arrivals from Belarus detected on average in July 2021<sup>32</sup> and those numbers plummeted to approximately 12 daily arrivals detected on average in 2022 (as of early June).<sup>33</sup> These numbers are far from constituting a “mass influx of foreigners”.

Under international law a state of emergency allows a state to restrict certain human rights in extreme circumstances where there is a “threat to the life of the nation”.<sup>34</sup> No such threat exists in Lithuania where the authorities have attempted to cynically exploit such exceptional powers to target certain groups of refugees and migrants. Even where such a state of emergency is properly declared, states are only provided leeway to implement measures “that are limited to the extent strictly required by the exigencies of the situation.”<sup>35</sup> In addition, they can last no longer than is strictly necessary.<sup>36</sup> Plainly the measures introduced by Lithuania fail these requirements because they are not justified by the exigencies of the situation.

The Advocate General of the CJEU also confirmed this view by opining that the situation in Lithuania could not justify the state’s derogation from EU law<sup>37</sup>: “without wanting to minimize the seriousness of the situation facing Lithuania at its border, such a situation does not, in my view, fall under the ‘serious internal disturbances affecting public order’.”<sup>38</sup>

## 2.1 PUSHBACKS AT THE LITHUANIA-BELARUS BORDER

On 3 August 2021, the Lithuanian authorities started pushing back and denying access to asylum to people who crossed the Lithuanian border from Belarus.<sup>39</sup> Since then, Lithuania has carried out pushbacks at least 10,023 times,<sup>40</sup> while only 381 people have been exceptionally admitted into Lithuanian territory.<sup>41</sup>

The amendments to the Law on Foreigners introduced in August 2021 – and still in force today – deprived anyone crossing in an irregular manner the Lithuanian border from Belarus of the right to apply for asylum. The new rules prescribed that asylum applications in Lithuania should not be accepted, unless they were submitted at specific locations or under specific conditions that were, in fact, inaccessible or not feasible for virtually the totality of those who found themselves at the mercy of the Belarusian immigration scheme.

The amendments provided that “in the event of a declaration of martial law, a state of emergency or also [sic] a declaration of an emergency due to a[n unspecified] mass influx of foreigners”, asylum

<sup>32</sup> 2,900 arrivals from Belarus were detected in Lithuania in July 2021. See Frontex, “Migratory situation at EU’s borders in September: Increase on the Central Mediterranean and Western Balkan routes”, 15 October 2021, [frontex.europa.eu/media-centre/news/news-release/migratory-situation-at-eu-s-borders-in-september-increase-on-the-central-mediterranean-and-western-balkan-routes-RZRnEH](https://frontex.europa.eu/media-centre/news/news-release/migratory-situation-at-eu-s-borders-in-september-increase-on-the-central-mediterranean-and-western-balkan-routes-RZRnEH)

<sup>33</sup> This number is an approximation calculated on the basis of the total number of people detected at the borders of Lithuania (2,028) divided by the number of days passed between 31 December 2021 and 10 June 2022 (160). The total number of people detected at borders was calculated adding the number of people detected at borders in 2022 who were pushed back to Belarus as of 10 June (1917) (source LRT.lt, previously cited) to the number of people who were admitted as of 6 June (111) (source: Lithuanian Ministry of Interior, previously cited). The number is approximate also because people may have been pushed back more than once, therefore the same person might be counted several times, suggesting that the actual number of daily detected arrivals may be less than 12.

<sup>34</sup> Article 4, UN International Covenant on Civil and Political Rights, Article 4; Article 15, European Convention on Human Rights.

<sup>35</sup> Article 4, UN International Covenant on Civil and Political Rights, Article 4, Para. 4.

<sup>36</sup> Article 4, UN International Covenant on Civil and Political Rights, Article 4.

<sup>37</sup> The Advocate General’s Opinion accordingly discards the possibility that Lithuania could derogate to the EU asylum acquis on the basis of its declaration of a state of emergency. See, for example, paras. 107–119 and 153. Advocate General of the CJEU, Nicholas Emiliou, *Conclusions de l’avocat général M. N. Emiliou, présentées le 2 juin 2022*, (previously cited).

<sup>38</sup> Unofficial translation from French; Advocate General of the CJEU, Nicholas Emiliou, *Conclusions de l’avocat général M. N. Emiliou, présentées le 2 juin 2022*, (previously cited), para. 113.

<sup>39</sup> Based on an order of the Ministry of Interior adopted following the July 2021 amendments to the LSoF. See ECRE, “Extraordinary responses: legislative changes in Lithuania”, 2021 (previously cited).

<sup>40</sup> As the same person might be pushed back several times, this number refers to the pushbacks and not that of people who have been pushed back. Source: “Per parą pasieniečiai į Lietuvą neįleido 25 migrantų, iš viso jau apgręžta 10 tūkst. aėjų”, *Lithuanian Radio and Television (LRT)*, 11 June 2022, [www.lrt.lt/naujienos/lietuvoje/2/1716809/per-para-pasienieciai-i-lietuva-neileido-25-migrantu-iso-viso-jau-apgrezta-10-tukst-atejunu](https://www.lrt.lt/naujienos/lietuvoje/2/1716809/per-para-pasienieciai-i-lietuva-neileido-25-migrantu-iso-viso-jau-apgrezta-10-tukst-atejunu).

<sup>41</sup> Ministry of Interior, email to Amnesty International, 6 June 2022

applications could only be accepted if lodged “at border crossing points or in transit zones” (at Lithuania’s international airports) with the State Border Guard Service, or outside of Lithuania at designated diplomatic missions or consular posts of the Republic of Lithuania.<sup>42</sup> Asylum applications anywhere else in the territory of Lithuania could only be submitted to the Migration Department under the Ministry of Interior by foreigners who were authorised to enter (e.g., with a visa). Exceptionally and at its own discretion, the border guard service could accept the application of a foreigner who crossed Lithuania’s borders irregularly based on a person’s vulnerability or other specific circumstances.<sup>43</sup> These criteria were not further defined, thus leaving this option to the full discretion of border guards. The Lithuanian Supreme Administrative Court has noted that the border guards’ discretion in this respect is unspecified, and it is impossible to determine its limits and effectiveness.<sup>44</sup>

Data provided by the Lithuanian Ministry of Interior show that the number of those able to access asylum under these conditions has been extremely limited. For instance, only 15 applications have been accepted at the Lithuanian Embassy in Minsk, Belarus, including from nationals of Syria, Iraq, Cuba and Russia.<sup>45</sup>

In full disregard of Lithuania’s obligations under international and EU law,<sup>46</sup> these measures attempted to legalise, under the auspices of national legislation, the practice of pushbacks, i.e. summary expulsions at the border without any individual assessment of protection needs of people affected or other procedural guarantees. Pushbacks are always illegal under both international law and EU legislation. They violate the right to seek asylum and the prohibition against collective expulsions, and breach the non-derogable legal principle of *non-refoulement*, which absolutely prohibits transferring anyone to a territory where they would be at real risk of persecution, torture and other ill-treatment, or other serious human rights violations.<sup>47</sup> The principle of *non-refoulement* is a customary rule of international law. It is also enshrined in a number of human rights treaties to which Lithuania is a state party, including the UN Refugee Convention of 1951,<sup>48</sup> International Covenant on Civil and Political Rights,<sup>49</sup> European Convention on Human Rights,<sup>50</sup> and UN Convention Against Torture.<sup>51</sup>

## LITHUANIA’S PUSHBACKS VIOLATED AN ORDER OF THE EUROPEAN COURT OF HUMAN RIGHTS

In at least one case, Lithuanian authorities pushed back a group of Cuban asylum-seekers in direct violation of a decision of the European Court of Human Rights (ECtHR) that specifically prohibited their removal from Lithuania. According to the Sienos Group, local activists that have assisted people in

<sup>42</sup> Article 140<sup>12</sup>(1) LSoF. Republic of Lithuania, Law on Legal Status of Foreigners (LSoF), IX-2206, (as amended on 11 January 2022), <https://e-seimas.lrs.lt/portal/legalAct/lt/TAD/555481808b0d11ecb8b0fe92fb660e20?fwid=-81nf5j4xh>

<sup>43</sup> Art. 140<sup>12</sup>(2) LSoF. Republic of Lithuania, Law on Legal Status of Foreigners (LSoF), IX-2206, (as amended on 11 January 2022), <https://e-seimas.lrs.lt/portal/legalAct/lt/TAD/555481808b0d11ecb8b0fe92fb660e20?fwid=-81nf5j4xh>

<sup>44</sup> Lietuvos vyriausiosios administracinės teisios (Supreme Administrative Court of Lithuania), C-72/22 PPU – 1, *Summary of the request for a preliminary ruling pursuant to Article 98(1) of the Rules of Procedure of the Court of Justice*, 04 February 2022, para 11.

<sup>45</sup> Ministry of Interior, email to Amnesty International, 6 June 2022, email on file with Amnesty International

<sup>46</sup> See, for example, European Parliament, *Pushbacks at the EU’s external borders*, March 2021, [www.europarl.europa.eu/RegData/etudes/BRIE/2021/689368/EPRS\\_BRI\(2021\)689368\\_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/BRIE/2021/689368/EPRS_BRI(2021)689368_EN.pdf)

<sup>47</sup> The prohibition of torture is absolute and has *jus cogens* status under international law, which means it is universally applicable and cannot be subject to derogation. It is also enshrined in Article 7 of the International Covenant on Civil and Political Rights, Article 3 of the European Convention on Human Rights, and the UN Convention Against Torture. When a person is in danger of being tortured, the principle of non-refoulement accepts no exceptions on security grounds, European Court of Human Rights, Grand Chamber: *Chahal v UK* (22414/93), (1996) §80; *Saadi v Italy* (37201/06), (2008) §127; *Ramirez Sanchez v France* (59450/00), (2006) §116; *Labita v Italy* (26772/95), (2000) §119.

<sup>48</sup> Convention Relating to the Status of Refugees, Article 33(1): “No Contracting State shall expel or return (“refouler”) a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion.”

<sup>49</sup> International Covenant on Civil and Political Rights, Article 7.

<sup>50</sup> European Convention on Human Rights, Article 3.

<sup>51</sup> Convention Against Torture, Article 3: “No State Party shall expel, return (“refouler”) or extradite a person to another State where there are substantial grounds for believing that he would be in danger of being subjected to torture.”

distress at the borders of Lithuania, the Cuban asylum-seekers had been shuttled back and forth via pushbacks at least eight times at the Lithuania-Belarus border before the court decision.<sup>52</sup> In the course of these pushbacks, members of the Cuban group suffered injuries and were stranded in the forests in freezing temperatures, without food or water.<sup>53</sup> On 8 April 2022, the ECtHR issued a legally-binding<sup>54</sup> order for interim measures under Rule 39, ruling that the group should not be removed from Lithuania.<sup>55</sup> In complete disregard of the ECtHR order, Lithuanian border guards pushed the Cuban nationals back to Belarus on 9 April. The State Border Guard Service reported that the group was pushed back because the guards could not authenticate the ECtHR decision and the Cuban asylum-seekers themselves could not provide a copy of it. According to the Sienos Group, its members had produced and shown a copy of the ECtHR decision to the border guards before the pushback occurred. The Ministry of Interior and the State Border Guard Service ultimately acknowledged the requirement to enforce the ECtHR decision, but by then the Cuban group had already been forced out of Lithuania. The Ministry of Interior blamed the incident on miscommunications between institutions, given that the Lithuanian Minister of Justice had confirmed that the Lithuanian government had received the ECtHR decision on 8 April, the evening before the Cuban group was pushed back.<sup>56</sup> On 14 April, five days after the pushback, the State Border Guard Service reported that the group of Cubans was later readmitted into Lithuania and allowed to apply for asylum there.<sup>57</sup>

## PUSHED BACK TO TORTURE IN BELARUS

Asylum-seekers pushed back to Belarus from EU countries were and continue to be subjected to a range of abuses, including torture and other ill-treatment, at the hands of Belarusian forces.<sup>58</sup> Belarusian forces have regularly beaten people at the borders with the EU, collected and held people at multiple sites within Belarus' "exclusion zone" bordering the EU, and violently and repeatedly forced them to re-attempt to cross the borders, often *en masse*, in an inhumane game, playing with people's lives. People in the "exclusion zone", including families with small children, have been deprived of food, water, shelter and sanitation, and subjected to theft or extortion for bribes by members of the Belarusian forces. Earlier in 2022 (January – March), people stranded at the border also reported that the Belarusian authorities had stepped up violence and demands for money, particularly as more and more people were pushed back to Belarus from EU countries, including Lithuania, Poland, and Latvia.<sup>59</sup> Despite these practices having now been widely reported, Lithuanian authorities continue pushing people back to torture and other ill-treatment in Belarus, including brutal physical treatment.<sup>60</sup>

By pushing back refugees and migrants to Belarus, Lithuanian authorities breached the absolute prohibition of returning any person to a country where they are in danger of being tortured, which has

<sup>52</sup> "Nevyriausybinkai praneša apie j Lietuvą atvykusius kubiečius: tvirtina – nors turi teisę pasilikti, Lietuvos pasieniečių buvo apgręžti bent aštuonis kartus", *Lithuanian Radio and Television (LRT)*, 09 April 2022, <https://www.lrt.lt/naujienos/lietuvoje/2/1668799/nevyriausybinkai-pranesa-apie-i-lietuva-atvykusius-kubiecius-tvirtina-nors-turi-teise-pasilikti-lietuvos-pasienieciu-buvo-apgrezti-bent-astuonis-kartus?fbclid=IwAR1FWzeNux7pkk7eubqKuPa7fda6weAl601zi7kyK6Pg7q-haZCrKP40to>

<sup>53</sup> Sienos Group, Facebook post, 9 April 2022, <https://www.facebook.com/sienosgrupe/posts/166759539146166>.

<sup>54</sup> In the *Mamatkulov and Askarov v. Turkey* decision (1999), the European Court of Human Rights ruled that interim measures are legally binding on member states of the Council of Europe. In particular, failure to comply with interim measures indicated under Rule 39 of the Rules of Court may entail a breach of Article 34 of the European Convention on Human Rights. See *Mamatkulov and Askarov v. Turkey* [GC] - 46827/99, Judgment 4.2.2005 [GC], European Court of Human Rights, <https://hudoc.echr.coe.int/fre?i=002-4000>.

<sup>55</sup> European Court of Human Rights, *Y.R.B. and others v. Lithuania*. A copy of the communication of the decision to the applicant was shared on the Sienos Group's facebook page, available at: <https://www.facebook.com/sienosgrupe/photos/a.108036638351790/166757745813012/>.

<sup>56</sup> Margiris Meilutis, "Strasbūro nurodymas migrantų neapsaugo: keturi kubiečiai išsiųsti iš Lietuvos", *15 min*, 10 April 2022, [www.15min.lt/naujiena/aktualu/lietuva/strasburo-nurodymas-migrantu-neapsaugo-keturi-kubieciai-issiuisti-is-lietuvos-56-1664946?copiedwww.15min.lt/naujiena/aktualu/lietuva/strasburo-nurodymas-migrantu-neapsaugo-keturi-kubieciai-issiuisti-is-lietuvos-56-1664946](http://www.15min.lt/naujiena/aktualu/lietuva/strasburo-nurodymas-migrantu-neapsaugo-keturi-kubieciai-issiuisti-is-lietuvos-56-1664946?copiedwww.15min.lt/naujiena/aktualu/lietuva/strasburo-nurodymas-migrantu-neapsaugo-keturi-kubieciai-issiuisti-is-lietuvos-56-1664946)

<sup>57</sup> World Organisation Against Torture (OMCT), "Lithuania: Criminalisation of solidarity as people on the move are pushed back", 21 April 2022, [www.omct.org/en/resources/statements/lithuania-criminalisation-of-solidarity-on-the-rise-as-people-on-the-move-are-pushed-back](http://www.omct.org/en/resources/statements/lithuania-criminalisation-of-solidarity-on-the-rise-as-people-on-the-move-are-pushed-back)

<sup>58</sup> Amnesty International, *Poland: Cruelty Not Compassion, at Europe's Other Borders*, (previously cited); Amnesty International, Belarus/EU: New evidence of brutal violence from Belarusian forces against asylum-seekers and migrants facing pushbacks from the EU, (previously cited).

<sup>59</sup> Amnesty International, *Poland: Cruelty Not Compassion, at Europe's Other Borders*, (previously cited); Amnesty International, Belarus/EU: New evidence of brutal violence from Belarusian forces against asylum-seekers and migrants facing pushbacks from the EU, (previously cited).

<sup>60</sup> Amnesty International, Belarus/EU: New evidence of brutal violence from Belarusian forces against asylum-seekers and migrants facing pushbacks from the EU, (previously cited).

*jus cogens* status under international law, and provides no exceptions, including on national security grounds.<sup>61</sup>

## DECEPTION AND ILL-TREATMENT AT THE HANDS OF LITHUANIAN BORDER AUTHORITIES

Refugees and migrants consistently reported that Lithuanian authorities used deception and violent methods to carry out pushbacks. Several people recounted beatings with batons by border guards, and at least three interviewees reported that Lithuanian border guards used tasers and stun guns on people at the border. Lithuanian guards often took money and the mobile phones of migrants and refugees before pushing them back to Belarus. People also reported being forced into freezing rivers while being pushed back to Belarus.

Amnesty International spoke to 16 people who had been pushed back from Lithuania to Belarus, including 14 Iraqi nationals who, after being pushed back, eventually returned from Belarus to Iraq without ever having had the chance to lodge an asylum application. The group recounted instances that constitute torture or other cruel, inhuman degrading treatment or punishment ('other ill-treatment') at the hands of Lithuanian guards.

"Adil", a Syrian asylum-seeker who had been pushed back to Belarus in November 2021, recounted how he witnessed a Lithuanian border officer inserting an electric stun baton into the mouth of a sick man who travelled in the same group. The man was stunned and lost consciousness before being forced back to Belarus. According to "Adil":

**"The Lithuanian army came, and they had an electric stick that they used against us. They put us in a white van, six Syrian men. It was very small so there was no space. One of the guys had a blood sugar issue and his situation was very bad. He told us and one of the guys spoke a bit of English and he asked for help from the Lithuanian army. They stopped the car and got out, they asked who had the blood sugar issue. The soldier then put the stick in his mouth and used the electricity in his mouth and he [the man] lost consciousness. He was shaking so much and we thought he was dead. They drove us to the border and beat us more and pushed us across the border. He couldn't even walk when they pushed us across, and we had to carry him."**

"Adil", Syrian man pushed back to Belarus, interviewed in March 2022

Other testimonies from people who returned to Iraq also revealed the use of tasers and beatings with batons. One man reported that he "got caught immediately [after crossing the border] by Lithuanian forces. They took two families [from the group] and hit me and the other guys with tasers and forced us back into the river back to [Belarus'] no-man's land".<sup>62</sup> "Haidar", a man from Iraq in his early thirties, also recounted the use of tasers and batons while people were transported in military trucks ahead of being forced to cross a river to enter Belarus:

**"When we got to the Lithuanian border, we crossed the fence but were caught. We were 37: about seven families and the rest were guys. They took phones, power banks and money from the men, not from women. They damaged the phones' charge and SIM ports and destroyed SIM cards. They did not take money from me, but took some from others. They put us in several military vehicles and took us to another place. They hit people with tasers and beat them with sticks while in the vehicles. They told us to go straight to Belarus, but before we could reach the Belarusian fence we had to cross a river with chest-level water."**

"Haidar", Iraqi man, interviewed in Iraq in December 2021

<sup>61</sup> The prohibition of torture is absolute and has *jus cogens* status under international law, which means it is universally applicable and cannot be subject to derogation. It is also enshrined in Article 7 of the International Covenant on Civil and Political Rights, Article 3 of the European Convention on Human Rights, and the UN Convention Against Torture. When a person is in danger of being tortured, the principle of non-refoulement accepts no exceptions on security grounds.

<sup>62</sup> Interview in person with "Zaid", (name changed for security reasons), Iraqi man, December 2021

“Amir”, from Syria, described how Lithuanian border guards deceived the group of people he was travelling with to force them back to Belarus. The group followed Lithuanian guards who told them that they would take the group to Poland, but instead forced them into Belarusian territory.

**“They put us in a military truck. I asked them where they were taking us, they said to the Polish border. I told them, we need some food and clothes, we can pay you. They gave us a small bag for each of us, a bottle of water and enough food for one day. They drove us between villages, then we arrived to a place. An officer came and told us you are going to walk for 5km and then you will reach the Polish territory [...]. We walked about 100 meters and I saw the Belarusian flag, so I looked back at the officer and said this is the Belarusian flag. He said, ‘No, no, keep going, it will be Poland.’ They gave us back the mobile phones so we used it, and we found ourselves 50 km far away from the Polish border, in Belarusian territory”.**

“Amir”, Syrian man pushed back to Belarus, interviewed in March 2022

Also in this case, “Amir” reported being beaten by the guards.

**I was outside the military truck and I fell down on the ground so one of the soldiers came and beat me, the officer came and told him not to. The officer asked what had happened and told me again to walk 5 kms to get to Poland”.**

“Amir”, Syrian man pushed back to Belarus, interviewed in March 2022

“Waleed” and “Kawan”, two Iraqi men in their twenties, recounted how Lithuanian authorities pushed them back to Belarus four times in late 2021, and beat them on two occasions. Each time, the border guards took their money and smartphones. In total, the guards took 2000 USD and two smartphones from them. On two occasions, “Waleed” and “Kawan” presented themselves to Lithuanian authorities – each time after spending about a week in the Lithuanian woods in cold temperatures and without food – but were forced back to Belarus. Eventually, both men – who had also been repeatedly pushed back by Poland – returned to Iraq from Belarus on a flight organised by the Iraqi government, without ever having been able to file an asylum application in the EU.<sup>63</sup>

“Yousef”, also from Iraq, recounted how once, during the winter, when the temperatures in Lithuania were extremely low, the Lithuanian guards forced the single men in their group to enter a creek and wait in the freezing cold water for some time. Subsequently, “Yousef”’s group was forced back into Belarus. “Yousef” also saw the Lithuanian guards using batons to beat other men in the group on their legs.<sup>64</sup> “Haidar”, “Karim”, “Avdar” and “Zaid”, all from Iraq, also reported on three separate events where people had been forced to cross cold rivers with water up to the chest or the abdomen during freezing winter temperatures.<sup>65</sup>

Lithuanian authorities have used torture or other ill-treatment at the border, left refugees and migrants in extremely dangerous conditions and pushed them back to torture in Belarus. By doing so, Lithuania is in violation of international law and standards, including multiple violations of the principle of *non-refoulement* and the absolute prohibition of torture and other ill-treatment.<sup>66</sup>

<sup>63</sup> Interview in person with “Waleed” and “Kawan” (names changed for security reasons), Iraqi men, interviewed in December 2021.

<sup>64</sup> Interview in person with “Yousef” (name changed for security reasons), Iraqi man, interviewed in December 2021

<sup>65</sup> Interview in person with “Karim”, “Avdar” and “Zaid”, (names changed for security reasons), Iraqi men, interviewed in December 2021.

<sup>66</sup> International law prohibits torture and other cruel, inhuman or degrading treatment or punishment absolutely, in all circumstances and without exception. In addition to the Convention against Torture (CAT), Lithuania is also a party to the International Covenant on Civil and Political Rights (ICCPR), and the European Convention on Human Rights (ECHR), which, like the Convention against Torture prohibits torture and other ill-treatment in all circumstances and without exception, as well as other treaties that apply to specific contexts (Art. 7 ICCPR; Art. 3 ECHR; Art. 37(a) and 39, Convention on the Rights of the Child; Art. 15, Convention on the Rights of Persons with Disabilities). The prohibition against torture and other ill-treatment is also a rule of customary international law binding on all nations; see, for example, International Criminal Tribunal for the Former Yugoslavia, *Prosecutor v. Anto Furundžija*, Trial Chamber Case No. IT-95-17/1-T (Judgement), 10 December 1998, paras. 153-154; International Court of Justice, *Case Concerning Ahmadou Sadio Diallo (Republic of Guinea v Democratic Republic of the Congo)*, Judgement of 30 November 2010, para. 87. According to Article 1(1) of the UN Convention against Torture, an act constitutes torture if four elements are present: (1) intention, (2) infliction of severe physical or mental pain or suffering, (3) a purpose such as coercion, intimidation, obtaining information or a confession, or discrimination and (4) a degree of official involvement. In contrast, cruel, inhuman or degrading treatment or punishment is not defined under international law. In line with the position of many international and regional human rights monitoring bodies, Amnesty International considers that cruel, inhuman or degrading treatment or punishment may be defined negatively in relation to torture in that it lacks one or more of the above-mentioned elements of the torture definition; see Convention against Torture, Article 16. See also Committee against Torture, General Comment 2, Implementation of Article 2 by States Parties, 24 January 2008, UN Doc. CAT/C/GC/2 (2008), para. 10. For example, an act of ill-treatment would



## 2.2 DENIAL OF ACCESS TO ASYLUM FOR PEOPLE IN DETENTION

While Lithuania pushed back the majority of those detected when trying to enter the country irregularly after July 2021, some people did manage to enter the territory of Lithuania. Yet people who expressed the intention to seek asylum in Lithuania were still denied access to asylum procedures and automatically detained.

As noted above, under the “emergency” legislation, the Migration Department “shall” refuse to accept asylum claims from people who were not authorised to enter Lithuania, aside from exceptional cases and at the discretion of the border guards.<sup>67</sup> Accordingly, the Migration Department has refused to consider asylum applications on the pretext that these applications were submitted without complying with the requirements established by law. Authorities thus have left people seeking protection in a dangerous legal limbo for several months, denying their status as asylum-seekers, and instead considering them as irregular migrants.

Amnesty International spoke with several people who were detained without ever having had access to an asylum procedure, despite declaring their wish to obtain international protection. Many had presented themselves to the authorities voluntarily in the hope of applying for asylum, but instead were taken into custody and locked up in detention for several months.

**"When I arrived here in October, I made many asylum applications and I also submitted applications for asylum via e-mail, but unfortunately they rejected [to consider] all the applications. After being here [in detention] for five months, I had a private lawyer who applied for asylum and the application was [also returned] on the pretext that I should apply for asylum at the border."**

"Saleh", Syrian man detained in Kybartai, interviewed in March 2022

Denying access to asylum procedures is a violation of the right to seek asylum, a right to which everybody is entitled irrespective of their migration status or mode of entry into a country. Additionally, denying such access to asylum is a violation of the right of those in need of international protection to have that need recognised.

Lithuanian authorities have also denied access to asylum procedures to people with prima facie valid asylum claims. Amnesty International spoke with five Syrians who were denied access to asylum procedures for several months, despite the risks of persecution and other human rights violations for people in Syria.

**"In Syria I am wanted to do the military [service], but I don't want to fight. The court ordered to arrest us for two months and we were brought to Kybartai, it was... October [2021]. I bought a phone and filled the asylum application by phone. First, I [had written it] on paper and gave it to the officer. One week later, another officer came and told me 'Why are you here? Go back home!' Every time, the same officer tells me my application was rejected and I should go back to my country. But I can't, there is war."**

"Saleh", Syrian man detained in Kybartai, interviewed in March 2022

One Syrian man was able to produce evidence that he was already recognised as a refugee by UNHCR in Lebanon, but after months in detention in Lithuania, he was not even able to say whether the Lithuanian authorities had accepted his asylum application for consideration:

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constitute cruel, inhuman or degrading treatment or punishment rather than torture if it lacks the required intention or the required purpose, or if the pain or suffering it causes is not "severe".

<sup>67</sup> Article 140<sup>12</sup> (1) and Article 140<sup>12</sup> (2) LSoF, Republic of Lithuania, Law on Legal Status of Foreigners (LSoF), IX-2206, (as amended on 11 January 2022), <https://e-seimas.lrs.lt/portal/legalAct/lt/TAD/555481808b0d11ecb8b0fe92fb660e20?jfwid=-81nf5j4xh>

**“I have been detained here for five months and I don’t know why I am being detained. I don’t even know if I was able or not to submit an asylum application. I have a paper from UNHCR recognising me as a refugee in Lebanon. I have applied [for asylum] and gave all the documents to the police and the border guards when I came here in October, but since then I received no replies. They didn’t give me any document.”**

“Jamal”, Syrian man detained in Kybartai, interviewed in March 2022

By having denied them access to asylum procedures, the Lithuanian authorities have treated these Syrians and other people in similar situations as irregular migrants, and put them at risk of forced removal from Lithuania and of serious human rights violations if returned to Syria.<sup>68</sup>

Faced with repeated refusals to accept their applications and related decisions to extend their detention, the Syrian men said they were concerned that they could be detained indefinitely or that they could be deported to war-torn Syria without ever being able to prove their asylum claims. As a consequence, they have reported suffering from severe mental health distress.

In June 2022, the Lithuanian Ministry of Interior clarified that “Lithuania has suspended returns to Syria and with a view of the current situation is not planning to resume them. There were no expulsions to Syria in 2021 and in 2022”.<sup>69</sup>

This clarification brings important reassurance against refoulement to Syria. At the same time, it raises additional concerns as to the legal status of these refugees and the legal basis for keeping them in detention. Under international and EU law, where there are no real prospects of removal of a third-country national, that person must be immediately released from migration related detention.<sup>70</sup>

This convoluted situation of legal limbo is at odds with international law and the EU asylum and migration acquis on several fronts.

Under international law “everyone has the right to seek and enjoy in other countries asylum from persecution”,<sup>71</sup> irrespective of their irregular entry in a country. According to EU law, any third-country national or stateless person has the right to make an application for international protection to one of the authorities referred to in Directive 2013/32 (the Asylum Procedure Directive, or APD), which includes the police, border guards, immigration authorities and personnel of detention facilities.<sup>72</sup> The CJEU has previously concluded that under Article 7 APD member states are required to guarantee the right of any third-country national or stateless person to make an application for international protection; and that while member states may require asylum applications to be “lodged” at designated places, such a requirement cannot prevent asylum applications from being made at all. The CJEU also clarified that asylum applications are deemed to have been made as soon as the person concerned has declared their wish to receive international protection, without the declaration of that wish being subject to any administrative formality whatsoever. In fact, a third-country national

<sup>68</sup> Amnesty International has documented detailed information from people who had left Syria during the conflict there, which illustrates that these people are at real risk of suffering persecution upon return to Syria; thus, Syrians are prima facie refugees. As such, they should have immediate access to full and effective asylum procedures and should not be detained. Returns to Syria would constitute a violation of the legal principle of non-refoulement, which prohibits returning anyone to a country where they would be at real risk of persecution or other serious human rights abuses. Amnesty International, *You’re going to your death – Violations against Syrian refugees returning to Syria*, 7 September 2021, Index: MDE 24/4583/2021, available at: [www.amnesty.org/en/documents/mde24/4583/2021/en](http://www.amnesty.org/en/documents/mde24/4583/2021/en).

<sup>69</sup> Ministry of Interior, email to Amnesty International, 6 June 2022, email on file with Amnesty International.

<sup>70</sup> By detaining people who have sought asylum (but whose application was not admitted for consideration) under the detention regime established for irregular migrants, Lithuania is also violating EU rules on migration-related detention under the Return Directive, establishing that detention of irregular migrants would only be justifiable if there are real prospects of removal, and a detained person must be released immediately when it appears that, for legal or other considerations, a reasonable prospect of removal does not exist. The detention of Syrians, who cannot nevertheless be returned to Syria and therefore lack of any prospects of removal, is consequently illegal also under the detention regime of the Return Directive. See Article 15(4) of Directive 2008/115; Kadzoev, 2009, paragraph 63. The Lithuanian Ministry of Interior on 6 June 2022 wrote to Amnesty International that “Foreigners who cannot be returned to their countries of origin are issued with the temporary residence permit (74 such permits were issued between in 2021 and 2022, including 67 for AFG [Afghan] nationals)”. No information was provided as to the status of Syrian nationals.

<sup>71</sup> Universal Declaration of Human Rights, Art 14.

<sup>72</sup> *European Commission v Hungary*, C-808/18, EU:C:2020:1029, Judgment of 17 December 2020, Court of Justice of the European Union (CJEU), paragraph 98.

should be considered and treated as an applicant for international protection “as soon as he or she makes such an application”.<sup>73</sup>

**“[In] November I was in the border guard station, and there I went to a court [online]. There I applied for asylum. In the court decision, it says that I asked for international protection and asylum, but in Kybartai they ignored this request, until March... [when I found] the email address of the Supreme [Administrative] Court of Lithuania and submitted request for asylum to them by email. Only after doing that, in March, the Migration Department accepted my asylum request, but before March the guards in Kybartai were saying I had no right to apply for asylum”.**

“Yasser”, Syrian man detained in Kybartai, interviewed in May 2022

In February 2022, the Lithuanian Supreme Administrative Court referred the amended Lithuanian Law on Foreigners to the Court of Justice of the European Union. In its request for a preliminary ruling, the Lithuanian Court challenged the possibility of implementing domestic legislation that derogates from EU rules establishing any person’s right to have their asylum claims assessed.<sup>74</sup>

The CJEU’s decision is expected at the end of June 2022. In the meantime, the Advocate General of the CJEU has opined that the Lithuanian legislation violates the Asylum Procedures Directive, which enshrines in EU law the rights to make an asylum application (Art. 6) and effectively access asylum procedures (Art. 7). Importantly, the Advocate General also found violations of the EU Charter of Fundamental Rights:

**“Firstly, a provision such as article 140<sup>12</sup> of the Law on Foreigners, which does not allow, in practice, and with some exceptions, a third-country national to have access to a procedure for granting international protection when he entered Lithuanian territory illegally, is not, in my view, compatible with the fundamental rights guaranteed by the [EU] Charter [on Fundamental Rights], even in the event of a “mass influx” of migrants. Indeed, on the one hand, such a provision is, in my view, contrary to the right to asylum, guaranteed, as such, in Article 18 of the Charter. I emphasize, in this regard, that the effectiveness of this right depends on access to a relevant procedure. [...] [P]reventing, in practice, a third-country national from applying for international protection undermines the “essential content” of that same right [...]. On the other hand, refusing to accept for examination an asylum application submitted by a third-country national in an irregular situation on the national territory would also be contrary to the principle of non-refoulement, as provided for in Article 19, paragraph 2, of the Charter.”<sup>75</sup>**

<sup>73</sup> *European Commission v Hungary*, C-808/18, EU:C:2020:1029, Judgment of 17 December 2020, Court of Justice of the European Union (CJEU), paragraphs 92-100.

<sup>74</sup> The national court opined: “it is not possible [...] to consider the application for international protection to be inadmissible on the ground that it was not submitted in compliance with the procedure prescribed by the legislation. According to the referring court, the refusal to accept an application for international protection lodged in breach of the procedure laid down in the [domestic] legislation cannot be justified by the fact that a mass influx of foreigners might impair the effective performance of functions of the authorities dealing with migration. Although it is indeed for Member States to ensure, inter alia, that external borders are crossed legally, compliance with such an obligation cannot, however, justify an infringement of Article 6 of Directive 2013/32.” Lietuvos vyriausiosios administracinės teisiosios (Supreme Administrative Court of Lithuania), C-72/22 PPU – 1, *Summary of the request for a preliminary ruling pursuant to Article 98(1) of the Rules of Procedure of the Court of Justice*, para. 16.

<sup>75</sup> Unofficial translation from French; Advocate General of the CJEU, Nicholas Emiliou, *Conclusions de l’avocat général M. N. Emiliou, présentées le 2 juin 2022*, (previously cited), Para. 136-138

# 3. ARBITRARY DETENTION

## 3.1 UNLAWFUL NATURE OF DETENTION

In July 2021, Lithuanian lawmakers introduced automatic de facto detention for refugees and migrants who irregularly crossed the borders into Lithuanian territory. As a result, thousands of people, including many in need of international protection, have been arbitrarily deprived of their liberty for prolonged periods of time; living in substandard and inhumane conditions; and subjected to daily psychological and physical abuse by Lithuanian guards. From 3 August 2021 onward, the majority of people attempting to enter Lithuania have been pushed back. The Lithuanian authorities have applied automatic detention to those who entered Lithuania before that date or to those who were exceptionally allowed into the country at the discretion of border guard officers.

Amendments to the Law on Foreigners in July 2021 provided that during a declaration of martial law, a state of emergency, or “an emergency due to a mass influx of foreigners”, both asylum-seekers (i.e. people who have been allowed to lodge an asylum application) and irregular migrants shall be “temporarily accommodated...without granting them the right to move freely in the territory of the Republic of Lithuania” by the State Border Guard Service at border crossing points, transit zones, facilities of the SBGS, the “Refugee Reception Centre”<sup>76</sup> or other accommodation centres or premises<sup>77</sup> (hereafter, “temporary accommodation without freedom of movement”).<sup>78</sup>

The overwhelming majority of people held in Lithuania’s Foreigners’ Registration Centres, detention facilities managed by the SBGS, are detained under the regime of “temporary accommodation without freedom of movement”, rather than under a formal detention order issued by a court. In 2022, the Migration Department issued 2,511 decisions on temporary accommodation for people who requested asylum (out of 2,647 detained across the country).<sup>79</sup> According to a communication from the Medininkai FRC to Amnesty International, [all] “persons accommodated in the FRC are either asylum-seekers or illegal migrants who have been given an alternative to detention [sic], such as accommodation in a centre”,<sup>80</sup> although as of 13 May 2022, only six out of the 498 people in the FRC were allowed to leave the facility.<sup>81</sup> The majority of those detained in Kybartai FRC is also under the same regime, with only 11 people out of approximately 450 people held there (as of 16 May 2022) being detained following a detention order issued by a court.<sup>82</sup>

Lithuanian authorities consider “temporary accommodation without freedom of movement” as non-custodial in nature and as such, an “alternative to detention”. This approach is not only deeply cynical, it is wrong as a matter of law.

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<sup>76</sup> Facility under the administration of the Ministry of Labour and Social Affairs of the Republic of Lithuania.

<sup>77</sup> Art. 140<sup>8</sup> LSoF, Republic of Lithuania, Law on Legal Status of Foreigners (LSof), IX-2206, (as amended on 11 January 2022), <https://e-seimas.lrs.lt/portal/legalAct/lt/TAD/555481808b0d11ecb8b0fe92fb660e20?fwid=-81nf5j4xh>

<sup>78</sup> Under the Law on Foreigners, “temporary accommodation” with freedom of movement is never an option for those considered irregular migrants but may be granted to asylum-seekers (Art. 140<sup>19</sup> LSoF). However, as the 2021 reforms prevented new arrivals from submitting asylum applications, those who were apprehended and detained after the reforms have often been treated as irregular migrants regardless of whether they expressed their wish to apply for international protection.

<sup>79</sup> Ministry of Interior, email to Amnesty International, 6 June 2022, on file with Amnesty International.

<sup>80</sup> State Border Guard Service (Medininkai), email to Amnesty International, 16 May 2022, on file with Amnesty International

<sup>81</sup> State Border Guard Service (Medininkai), email to Amnesty International, 16 May 2022, on file with Amnesty International

<sup>82</sup> State Border Guard Service (Kybartai), email to Amnesty International, 16 May 2022, on file with Amnesty International

Depriving asylum-seekers and migrants of their liberty and freedom of movement beyond the close confines of the FRCs amounts to detention as defined under EU<sup>83</sup> and international law. The CJEU has confirmed that detention is “a coercive measure that deprives [an individual] of his or her freedom of movement and isolates him or her from the rest of the population, by requiring him or her to remain permanently within a restricted and closed perimeter”.<sup>84</sup> The Lithuanian law providing for “temporary accommodation without freedom of movement” meets this definition, irrespective of the specific facility used. Migrants and refugees are coercively transferred to FRCs, they cannot leave the perimeter of the FRCs (or more often, even their sectors within the FRC) and are therefore isolated from the rest of the population.

These measures have been equated with de facto detention by Lithuania’s Parliamentary Ombudsperson,<sup>85</sup> Lithuania’s Supreme Administrative Court,<sup>86</sup> and by the Advocate General of the CJEU. The fact that at least one of the facilities used for “temporary accommodation” is a former prison (Kybartai) – where criminal inmates were imprisoned before the transfer of asylum-seekers and migrants – is particularly emblematic of the custodial nature of this measure, although other centres too should be considered detention facilities in all respects.

The CJEU’s Advocate General has noted that: “In essence, it seems [...] that the ‘territory’ in which the person concerned is required to reside permanently is limited to the perimeter of the accommodation centre, from which he would not be entitled to leave without authorisation – which the Lithuanian Government, moreover, confirmed [...]. This perimeter therefore appears to be ‘restricted and closed’. Furthermore, [the asylum-seeker] appears to be ‘isolated from the rest of the population’, having a very limited possibility of maintaining contact with the outside world. [...] [T]he measure in question therefore appears to deprive the latter of his freedom of movement and therefore constitute ‘detention’, within the meaning of the [Asylum] ‘[P]rocedures’ and ‘[R]eception’ [Conditions] directives”.<sup>87</sup>

Most of the people interviewed in March 2022 had been detained for around nine months, without ever having been given a chance to leave the facilities and move freely outside an FRC’s broader perimeters.

In 2022, the Lithuanian Supreme Administrative Court quashed the practice of using “temporary accommodation without freedom of movement” as an alternative to detention in several individual cases. Any alternative to detention should be less coercive in nature than court-ordered deprivation of liberty. The Court issued rulings in favour of several individuals detained in Kybartai, recognising their right to leave the “accommodation facilities” without any restriction on their freedom of movement within Lithuania. The Court supported and agreed with the findings of the Lithuanian Parliamentary Ombudsperson that illustrated the de facto custodial nature of “temporary accommodation without freedom of movement” for people in Kybartai FRC, and asserted that due to this, it cannot be considered as a less coercive “alternative to detention”.<sup>88</sup> Related decisions of the Supreme Administrative Court have had only individual scope and have not had the effect of ending the practice for all detainees. Nevertheless, these decisions are proof of the illegality of this detention regime. Lithuanian authorities should take note of the Court’s reasoning and immediately release anyone detained under the “temporary accommodation without freedom of movement” regime.

<sup>83</sup> Article 2(h) of the Reception Conditions Directive defines detention as “confinement of an applicant by a Member State within a particular place, where the applicant is deprived of his or her freedom of movement”, see Directive 2013/33/EU of the European Parliament and of the Council of 26 June 2013 laying down standards for the reception of applicants for international protection (recast), Article 2(h).

<sup>84</sup> Court of Justice of the European Union, 14 May 2020, Judgement in joined cases C-924/19 PPU and C-925/19 PPU, EU:C:2020: p. 223.

<sup>85</sup> The Seimas Ombudsmen’s Office of the Republic of Lithuania, Report on ensuring human rights and freedoms of foreign nationals in the Kybartai Aliens Registration Center under the Ministry of the Interior of the Republic of Lithuania, 24 January 2022, Chapter II, para 3.

<sup>86</sup> See for instance, Lietuvos Vyriausiosios Administracinės Teismas (Supreme Administrative Court of Lithuania), Judgment of 3 February 2022 in Administrative Case No. A-1221-520 / 2022; Judgment of 9 March 2022 in Administrative Case No A-1512 552/2022.

<sup>87</sup> Unofficial translation from French, Advocate General of the CJEU, Nicholas Emiliou, *Conclusions de l’avocat général M. N. Emiliou, présentées le 2 juin 2022*, (previously cited), para. 88.

<sup>88</sup> See for instance, Lietuvos Vyriausiosios Administracinės Teismas (Supreme Administrative Court of Lithuania), Judgment of 3 February 2022 in Administrative Case No. A-1221-520 / 2022; Judgment of 9 March 2022 in Administrative Case No A-1512 552/2022..

Under international and EU law, the right to liberty can only be restricted in specific and the most exceptional of circumstances. Detention should be used only as a measure of last resort. Routine or automatic migration-related detention is, by definition, arbitrary, and therefore illegal. Immigration detention should only be used where it is necessary and proportionate, and it should never be imposed on children. States must conduct individualised assessments of each individual's personal circumstances and any decisions restricting their right to liberty must be based on a case-by-case assessment.<sup>89</sup> Detention should not be imposed for the sole purpose of assessing an individual's asylum claim.

## 3.2 DETENTION WITHOUT PROCEDURAL SAFEGUARDS

By using the legal fiction of calling de facto detention “temporary accommodation”, the Lithuanian authorities have artfully avoided the requirement of providing migrants and asylum-seekers with procedural guarantees against arbitrary detention, including the possibility of challenging detention and complaining about conditions of detention.

Decisions regarding the application of “temporary accommodation without freedom of movement” and their extensions are not issued by a judicial authority,<sup>90</sup> but by officials of the Migration Department or the SBGS<sup>91</sup> for up to one year.

People who have submitted an asylum application are put in the “temporary accommodation” regime by the SBGS “pending a decision to admit” their asylum application. If a decision to admit the asylum application is taken, the Migration Department “shall” still extend their deprivation of liberty.<sup>92</sup> After six months, the Migration Department “shall” extend the deprivation of liberty for another six months.<sup>93</sup> People considered as irregular migrants are also put in temporary accommodation by the SBGS<sup>94</sup> and if they are not forcibly returned to their countries of origin, after six months the SBGS “shall” extend their “temporary accommodation” for another six months or apply to a court for a decision on formal detention or an alternative to it<sup>95</sup> (which again includes the possibility of “temporary accommodation without freedom of movement”).<sup>96</sup>

In practice, both people who have submitted asylum applications and those considered irregular migrants are being detained through decisions of administrative authorities for up to one year.

Considering the regime of “temporary accommodation without freedom of movement” as an “alternative to detention” has also allowed the SBGS to request extensions of detention from local courts, by disguising these as applications for an “alternative to detention”. In practice, this requires the SBGS to demonstrate that a detainee has cooperated and poses no threat, only for the detainee then to be subjected to a detention regime as coercive as formal detention but with significantly fewer safeguards.

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<sup>89</sup> Universal Declaration of Human Rights (UDHR), Arts 9 and 14; Convention Relating to the Status of Refugees (Refugee Convention), Art. 31; International Covenant on Civil and Political Rights (ICCPR), Arts 2 and 9(1); Convention on the Protection of the Rights of Migrant Workers and Members of their Families (Migrant Worker Convention), Art. 16; UN Human Rights Committee, General Comment 35: Article 9, Right to Liberty and Security of Persons (HRC General Comment 35); UN Committee on the Elimination of Racial Discrimination, General Recommendation 30 on Discrimination against Non-Citizens; European Convention on Human Rights (ECHR), Art. 5(1); UN High Commissioner for Refugees (UNHCR), Guidelines on the Applicable Criteria and Standards relating to the Detention of Asylum-Seekers and Alternatives to Detention (2012), (UNHCR Detention Guidelines), Guidelines 1, 2 and 3. Under EU law, see among others, Charter of Fundamental Rights of the EU, Article 47; Reception Conditions Directive, Article 9 Asylum Procedures Directive, Article 26.

<sup>90</sup> Unless the measure is decided by a court as an “alternative to detention” under Article 115(2), Republic of Lithuania, Law on Legal Status of Foreigners.

<sup>91</sup> Art. 140<sup>8</sup>, Republic of Lithuania, Law on Legal Status of Foreigners.

<sup>92</sup> Art. 140<sup>8</sup>(6), Republic of Lithuania, Law on Legal Status of Foreigners.

<sup>93</sup> Art. 140<sup>8</sup>(5), Republic of Lithuania, Law on Legal Status of Foreigners.

<sup>94</sup> Art. 140<sup>8</sup>(3), Republic of Lithuania, Law on Legal Status of Foreigners.

<sup>95</sup> Art. 140<sup>8</sup>(7), Republic of Lithuania, Law on Legal Status of Foreigners.

<sup>96</sup> Art. 140<sup>19</sup>, Republic of Lithuania, Law on Legal Status of Foreigners.



International and EU standards on migration-related detention establish the right to a judicial review by a court, without delay, on the lawfulness of detention and its necessity and proportionality. A court should grant unconditional release if the detention is not lawful, or individually assess the possibility of less coercive measures, if warranted. Further reviews of the continued necessity, proportionality and lawfulness of detention should be carried out at regular intervals or at the detainee's request by a judge or other officer authorized by law to exercise judicial oversight. Detention should always be for the shortest possible time necessary to achieve a legitimate purpose and must not be prolonged or indefinite.

Lithuanian lawmakers introduced in December 2022 the possibility to appeal to a judicial court against the decisions of the State Border Guard Service or the Migration Department on “temporary accommodation without freedom of movement”.<sup>97</sup> Before then, no such possibility existed in law since the introduction of the “emergency” legislation. Therefore, between July 2021 and December 2022, people in “temporary accommodation” had no means for a judicial review of their detention for up to six months.

While the introduction of the possibility to appeal to a court is an important improvement, the Law on Foreigners still falls short of ensuring sufficient procedural safeguards against arbitrary detention. The appeal must be lodged within 14 days from the notification of the decision imposing “temporary accommodation without freedom of movement,” but there is no process to further review its continued necessity and proportionality, and therefore its legality. While the Law on Foreigners establishes reviews both at regular intervals of at least three months (Art. 114 and 140<sup>18</sup>) and at the request of the detained individuals (Art. 118 and Art. 140<sup>21</sup>) in line with EU law, these reviews are limited to “formal detention” and do not apply to “temporary accommodation”, whether this is applied by administrative authorities or by a court order as an “alternative to detention”.

## PROLONGED DETENTION

Many people interviewed for this report were desperate to know how long their detention could be extended. The possibility to extend “temporary accommodation without freedom of movement” up to one year was introduced in law only in December 2022, when most refugees and migrants were approaching the end of the then six-month limit of detention. Given the widespread lack of information or access to effective legal counsel (see section 6), detainees often only learnt of the possibility for their detention to be extended when they were served with the related decisions. This has caused significant mental distress for people who fear that their detention could be extended unexpectedly and indefinitely.

**“In the state of Lithuania I was treated as if I were not human. I was tortured and imprisoned for 8 months, and I do not know why and what I did.”**

“Bahir”, young Iraqi man detained in Kybartai, interviewed in March 2022

Under EU law, the detention of asylum-seekers should be for “as short a period as possible.”<sup>98</sup> The European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) is of the view that “the prolonged detention of persons under aliens legislation [sic], without a time limit and with unclear prospects for release, could easily be considered as amounting to inhuman treatment”.<sup>99</sup>

On 26 May 2022 the Minister of Interior told Lithuanian media that the Ministry is not planning to propose further extending “existing movement restrictions” beyond the 12-month limit currently

<sup>97</sup> Art. 140<sup>9</sup>(9), Republic of Lithuania, Law on Legal Status of Foreigners.

<sup>98</sup> Directive 2013/33/EU of the European Parliament and of the Council of 26 June 2013 laying down standards for the reception of applicants for international protection (recast), Art. 9.

<sup>99</sup> European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), *Immigration Detention (Factsheet)*, March 2017, [rm.coe.int/168066bf12](https://rm.coe.int/168066bf12).

established by domestic legislation.<sup>100</sup> In a 6 June 2022 communication to Amnesty International, the Ministry of Interior stated that “After the expiry of 12 months [in ‘temporary accommodation without freedom of movement’] the State Border Guard Service (SBGS) will request the court to consider application of an alternative measure to detention for **irregular migrants** (e.g. accommodation of the foreigner at the Foreigners’ Registration Centre without restricting his freedom of movement; reporting to the SBGS or the Migration Department or notification of one’s whereabouts at fixed times; entrusting the care of the foreigner to a citizen of the Republic of Lithuania or a foreigner legally residing in the Republic of Lithuania, if this person has undertaken to take care of the foreigner and to maintain him/her, etc.). **Asylum applicants** will be accommodated without restriction of movement by the decision of the Migration Department. In exceptional cases (where the individual poses a threat to public order or security, or maliciously fails to cooperate) the court will be asked to detain him/her”.<sup>101</sup>

Regarding the maximum period of 18 months in pre-removal detention set by EU law,<sup>102</sup> the Ministry stated that “18 months is the maximum period provided for by law. According to the Law on the Legal Status of Foreigners, upon expiration of the detention period, the foreigner must be released immediately”.

Amnesty International calls for the immediate release of all people detained under the “temporary accommodation” regime, as this measure constitutes arbitrary detention. “Temporary accommodation without freedom of movement” should not be considered an alternative to detention under any circumstances.

## 4. ABYSMAL CONDITIONS OF DETENTION

In mid-2021, the Lithuanian authorities started placing people arriving from Belarus in de-facto detention in various types of facilities, nearly all of which were inadequate and substandard. Such facilities included tents or modular containers positioned in empty fields near a number of border crossing points. In some cases, people were held in these facilities for several weeks without judicial order.

Although these structures were meant to be temporary, some operated for several months, including into the cold Lithuanian winter, as in the case of the temporary detention camp of Rudininkai. People detained there described abysmal conditions of detention:

**“I surrendered myself to the Lithuanian police, as I thought that they were like other European countries and had humanity. I surrendered myself to seek asylum. We were taken to a military point on the border, where they took my mobiles, my wallet, and my journalist’s ID... I stayed at the border point for 10 days and then we were transferred to the Rudininkai camp, in which we lived terrifying days. It was very cold, and we suffered from extreme hunger. After a period of two months, they transferred us to Kybartai prison.”**

“Bahir”, young Iraqi man detained in Kybartai, interviewed in March 2022

People held in temporary facilities or makeshift camps such as Rudininkai suffered a range of abuses related to their alarmingly substandard conditions of detention.<sup>103</sup>

<sup>100</sup> “Lithuania not to extend detention of asylum-seekers – minister”, *Lithuanian Radio and Television (LRT) - English*, 26 May 2022, [Irt.lt/en/news-in-english/19/1703347/lithuania-not-to-extend-detention-of-asylum-seekers-minister?fbclid=IwAR2aoYKKV1xRFOsu-USaa0hdFaQBmSOqDZH0Lj3Qr7MLgc3vEzZV46bY](https://www.lrt.lt/en/news-in-english/19/1703347/lithuania-not-to-extend-detention-of-asylum-seekers-minister?fbclid=IwAR2aoYKKV1xRFOsu-USaa0hdFaQBmSOqDZH0Lj3Qr7MLgc3vEzZV46bY)

<sup>101</sup> Ministry of Interior, email to Amnesty International, 6 June 2022, on file with Amnesty International. Emphases present in the original communication.

<sup>102</sup> Directive 2008/115/EC of the European Parliament and of the Council of 16 December 2008 on common standards and procedures in Member States for returning illegally staying third-country nationals, Article. 15,

<sup>103</sup> Vidmantas Balkūnas, “Migrantų stovyklose Lietuvoje – reketas, prostitucija ir seksualinis išnaudojimas”, *15Min*, 3 September 2021, [https://www.15min.lt/naujiena/aktualu/migrantu-stovyklose-lietuvoje-reketas-prostitucija-ir-seksualinis-isnaudojimas-55-1556980?fbclid=IwAR2K4VF76eah3Yc-qZsM\\_iC2\\_4II0HFzWPY8VRR\\_hMVoEHbod6eypqclKBU](https://www.15min.lt/naujiena/aktualu/migrantu-stovyklose-lietuvoje-reketas-prostitucija-ir-seksualinis-isnaudojimas-55-1556980?fbclid=IwAR2K4VF76eah3Yc-qZsM_iC2_4II0HFzWPY8VRR_hMVoEHbod6eypqclKBU).

In the second half of 2021, the Lithuanian government gradually transferred refugees and migrants to the three detention centres (Foreigners' Registration Centres - FRCs) under the responsibility of the Ministry of Interior and managed by the State Border Guard Service (SBGS): Medininkai, Kybartai and Pabradė.

Additional detention centres, including Rukla and Naujininkai, managed by the Ministry of Social Security and Labour, were used mainly to hold families – including minors – and other people believed to have specific vulnerabilities.

As of March 2022, the three FRCs managed by the SBGS held about 2,600 people and centres run by the Ministry of Social Security and Labour held about 1,500 people.<sup>104</sup> The number of people in detention decreased in successive months due to returns and releases.

The Lithuanian authorities provided on 6 June 2022 the following numbers of people in detention in each centre:<sup>105</sup>

Centre	Persons	Of which minors
Pabradė	605	34
Medininkai	532	0
Kybartai	386	0
Rukla	636	304
Naujininkai	449	244
Jieznas	39	10
Total	2,647	592

Amnesty International has focused its research on the FRCs managed by the SBGS, which are particularly problematic.

## INHUMAN AND DEGRADING CONDITIONS

An Amnesty International delegation visited the Medininkai FRC on 9 March and the Kybartai FRC on 10 March 2022, but was denied authorization by the SBGS to visit the Pabradė FRC. In both the centres where access was granted, refugees and migrants were held in abysmal conditions of detention, and in a state of fear due to the highly militarized environment and management of the facilities. People had spent months surrounded by walls, fences, and barbed-wire, and guarded in very intrusive ways by armed military personnel and dogs.

Both centres – one of which is a modular container park, the other a former prison – are profoundly inadequate, especially for prolonged periods of detention.

For several months in late 2021 and early 2022, the centres were severely overcrowded. The number of people placed in centres was significantly in excess of the maximum capacity, as highlighted,

<sup>104</sup> Interview in person with SBGS Head of Migration Board, Medininkai, 9 March 2022

<sup>105</sup> Ministry of Interior, email to Amnesty International, 6 June 2022, on file with Amnesty International.

among many other issues, in a report published in January 2022 by Lithuania's Seimas Ombudsperson after a visit to Kybartai FRC: "Material conditions of accommodation of foreign nationals in Sector A of the Kybartai ARC (significantly less than the established minimum living space per person; lack of private space; lack of furniture, equipment and other inventory; extremely strict restrictions on movement; lack of personal and environmental hygiene; insufficient sanitation, lack of cleanliness and hygiene in the common use areas, inadequate ventilation, etc.) are equivalent to inhuman or degrading treatment prohibited under the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment."<sup>106</sup>

Due to a subsequent decrease in the number of new arrivals since late 2021 and an increasing number of people returned to their countries of origin or released, the centres have become less overcrowded. Should there be a resurgence of crossings into Lithuania at some point, however, such severe overcrowding would be a real concern, particularly if the authorities engage in automatic detention practices as they did in 2021-2022.

As also highlighted in the January 2022 report by Lithuania's Seimas Ombudsperson, the facilities present various structural shortcomings, starting with the glaring absence of or limited access to adequate toilets and bathrooms – with people forced to walk in the open air to reach toilets or hot water, even at night and during Lithuania's long and punishing winters. Overall, there is a conspicuous lack of privacy, both in cells/rooms and in the bathrooms. People held in the centres complained about the quality of the water supplied by taps, and about the lack of cooking facilities.

**"The place is very overcrowded, as you may have noticed and as it is clearly stated in the Ombudsman official report, a large number in one room, there is no privacy... We only can go to shower once a week, the bathroom is dirty, and each 10 persons go together... The food looks like you do not want to eat... We tried so hard to demand that they make us cook ourselves but they don't allow it."**

"Coman", young Iraqi man detained in Kybartai, interviewed in March 2022

The availability of spaces and opportunities for learning and recreational activities appeared extremely limited, as was the opportunity to practice religious beliefs or receive information or goods from the outside world.

**"We want to do something, study, work, let us be able to do something. If not out, at least in. We are teaching English to other girls, it was our idea, the Red Cross supported it. There are useful, helpful people, give us a chance!"**

"Marwa", young Iraqi woman detained in Medininkai, interviewed in March 2022

Amnesty International delegates who visited Medininkai FRC and Kybartai FRC were struck by the oppressive nature of the highly militarised facilities, the strict limitations on freedom of movement, even inside the centres, and the imposition of other strict rules and practices, resulting in the dehumanization of people held there.



### MEDININKAI

Based in the South of the country, near the border with Belarus, the Medininkai FRC is comprised of a set of modular containers fenced off within the former football field of the Lithuanian SBGS School. The centre was created in September 2021 to detain asylum-seekers and migrants transferred from temporary facilities. Due to the modular units, Medininkai FRC resembles a temporary camp itself, rather than a permanent, stable reception or detention facility.

The Head of the Migration Board of the SBGS has admitted that the conditions in Medininkai are not

<sup>106</sup> The Seimas Ombudsmen's Office of the Republic of Lithuania, Report on ensuring human rights and freedoms of foreign nationals in the Kybartai Aliens Registration Center under the Ministry of the Interior of the Republic of Lithuania, (previously cited), Para. 11.3

adequate: “We don’t have good conditions for vulnerable people... this camp is different because it’s made of very cramped buildings, we don’t have enough space”.<sup>107</sup>

Roughly 900 people were initially brought to Medininkai, including about 200 children. When Amnesty International visited the camp on 9 March 2022, 587 people were held there, including 242 men, 337 women and 8 children. The decrease in numbers followed active efforts either to return people to their countries of origin or to transfer children and others to other FRCs, in particular to Pabradė, where material conditions were reportedly more adequate.<sup>108</sup>

Detainees in Medininkai were mostly Iraqis (330 people) and African nationals (in particular, people from Democratic Republic of Congo, Cameroon and Guinea, and smaller groups from Togo and Nigeria), and some people from Sri Lanka. Virtually all had been held there for at least eight months, having been initially apprehended in June or July 2021.<sup>109</sup>

Those detained in Medininkai were mostly people whose asylum applications had been rejected in the first instance and who were appealing against the decision. According to the authorities, detainees also included 21 people for whom the rejection had been finally confirmed or who had not applied for asylum.<sup>110</sup> The groups were held in the same accommodations and treated in the same ways in everything except the attribution of pocket money (12.90 Euro per month), reserved to asylum-seekers only, according to the administration of the centre.<sup>111</sup> For those outside of asylum procedures, the centres’ administrations worked with relevant consular authorities to initiate deportation procedures.<sup>112</sup> Meanwhile, officials encouraged detainees to engage in voluntary return programmes.

Amnesty International was not allowed access to the modular containers to assess their suitability. As of May 2022, the administration of Medininkai declared that 498 people were accommodated in containers (with 5.19 m<sup>2</sup> of living floor-space per person) while 43 people were accommodated in a dormitory (with 9.6 m<sup>2</sup> of living floor-space per person). As noted, the much higher number of detainees registered in previous months had led to severe overcrowding in the centre. According to the Lithuanian Refugee Council, normal containers had a surface of about 15sqm and housed four people, which would breach the legal limit of 4 m<sup>2</sup> per person provided in Lithuanian domestic legislation.<sup>113</sup>

**“In my room we are five women, I think the length is 20 feet [i.e. 6 meters]”**

“Agalvili”, Sri Lankan woman detained in Medininkai, interviewed in March 2022.

The number of toilets and showers confirmed by authorities – 74 of each – appeared adequate. However, in the “container town”, both toilets and showers were placed in separate containers, meaning that people had to walk in the open air to reach them, even at night and when it was snowing. In Medininkai, average high temperatures are below 0° C for three months a year, and a typical year counts 87 days of snowfall and 165 days of rain.<sup>114</sup>

The centre is surrounded by fences and is heavily guarded by SBGS officers. As stated by the SBGS, “People cannot leave this camp, [they] can only move inside sectors”.<sup>115</sup> The camp is divided into five sectors, fenced

<sup>107</sup> Interview in person with SBGS Head of Migration Board, Medininkai, 9 March 2022

<sup>108</sup> Interview in person with SBGS Head of Migration Board, Medininkai, 9 March 2022

<sup>109</sup> Interview in person with SBGS Head of Migration Board, Medininkai, 9 March 2022

<sup>110</sup> Interview in person with SBGS Head of Investigation Unit, Medininkai, 9 March 2022

<sup>111</sup> Interview in person with SBGS Head of Migration Board, Medininkai, 9 March 2022

<sup>112</sup> Interview in person with SBGS Head of Migration Board, Medininkai, 9 March 2022

<sup>113</sup> The Seimas Ombudsmen’s Office of the Republic of Lithuania, Report on ensuring human rights and freedoms of foreign nationals in the Kybartai Aliens Registration Center under the Ministry of the Interior of the Republic of Lithuania, (previously cited), section 4.3.1.5, referring to Hygiene Standard HN 61: 2020

<sup>114</sup> Weather Atlas, Monthly weather forecast and climate – Medininkai, Lithuania, <https://www.weather-atlas.com/en/lithuania/medininkai-climate#temperature>

<sup>115</sup> Interview in person with SBGS Head of Migration Board, Medininkai, 9 March 2022

off from each other: one for single women, one for single men, one for families, one for couples without children, plus one that has been used in the past for quarantine, when necessary, or to house LGBTQ people before their transfer to Pabradė. Sectors, made of small groups of containers, are of limited size and do not provide spaces for physical or cultural activities.

According to the authorities, detainees could use a gym and sport grounds for basketball and football, but other internal sources have indicated that access to such facilities was often limited by guards. The SBGS admitted the lack of educational and recreational activities, also linked to the absence of adequate spaces.<sup>116</sup>

No cooking facilities were available in the containers. Pre-packaged cooked meals were distributed three times per day and consumed by people either inside the containers or in the open air.

In April 2022, Lithuanian authorities announced that they were considering closing the Medininkai FRC later in the year.<sup>117</sup>



### KYBARTAI

Based in the far West side of the country, near the border with the Russian enclave of Kaliningrad, the Kybartai detention centre occupies the premises of a former prison. The premises were not modified despite the change in use of the facility, in September 2021, for immigration detention purposes.<sup>118</sup> Prison conditions were exemplified by the barred windows, security doors, and high perimeter wall covered with barbed wire. Prison guards had been retained to work in the centre, albeit having been formally re-hired as border guards and provided with different uniforms.<sup>119</sup> The facility looks like and essentially operates as a prison. People held in Kybartai consistently complained about the facility and the sense of being detained in a prison and treated like dangerous criminals, despite having committed no crime.

**“I want to thank Lithuania for receiving us... But here they don’t treat us well. This is a prison, not a camp. Everywhere I look there is barbed wire, why? I am not a criminal, I am a refugee.”**

“Saleh”, Syrian man detained in Kybartai, interviewed in March 2022

The centre only houses adult men and there were 445 present on the day Amnesty International visited, 10 March 2022. About half the men were Iraqis, by far the most populous nationality, with the other men comprising 22 different nationalities. According to the administration, most people were transferred to Kybartai in September 2021 from the Rudininkai detention camp and were distributed in different sectors based on their “nationality, ethnic group, and legal status”.<sup>120</sup>

According to the administrators of Kybartai FRC, residents had 24-hour access to common areas and were free to move around the grounds of the centre from 8 to 20 hrs.<sup>121</sup> In reality, for most of their time in detention

<sup>116</sup> Interview in person with SBGS Head of Migration Board, Medininkai, 9 March 2022

<sup>117</sup> “It is planned to close the migrant camp in Medininkai and expand the center in Pabradė”, *Baltics News*, 13 April 2022, <https://baltics.news/2022/04/13/it-is-planned-to-close-the-migrant-camp-in-medininkai-and-expand-the-center-in-pabrade/>

<sup>118</sup> The Seimas Ombudsmen’s Office of the Republic of Lithuania, Report on ensuring human rights and freedoms of foreign nationals in the Kybartai Aliens Registration Center under the Ministry of the Interior of the Republic of Lithuania, (previously cited), Section 4.3.1

<sup>119</sup> Interview in person with SBGS Head of Security of the Kybartai FRC, Kybartai, 10 March 2022

<sup>120</sup> State Border Guard Service (Kybartai), email to Amnesty International, 16 May 2022, on file with Amnesty International

<sup>121</sup> State Border Guard Service (Kybartai), email to Amnesty International, 16 May 2022, on file with Amnesty International



people were subjected to strict limitations on movement, prohibited from moving between floors or to open air without the permission of officers. Most people were held in a five-storey structure called Building A, where the one bathroom available on each floor did not supply hot water. To have hot showers, people had to cross a courtyard and go to another building, which until recently they were authorized to do only once or twice per week. Stricter restrictions applied to 11 people who were in detention based on a court order, not as asylum-seekers but as irregular migrants.<sup>122</sup>

When in use as a correctional facility, Kybartai could legally hold up to 450 inmates,<sup>123</sup> which was roughly the number of persons held there at the time of the visit by Amnesty International. However, the Seimas Ombudsperson's Office reported that in previous months the detention centre held up to 645 people at times, and that up to 18 people were held in rooms measuring 36sqm, in breach of the legal limit of 4sqm per person provided in Lithuanian domestic legislation.<sup>124</sup> Information provided by the administration of Kybartai FRC indicated that there were 79 rooms, between 14 and 36 square metres in surface, and a total of 430 beds. Authorities also indicated that there were 15 showers and 59 toilets.<sup>125</sup>

In general, the Amnesty International delegation noted that the conditions of rooms, bathrooms/toilets and kitchenettes were squalid and clearly inadequate, with decrepit sinks, toilets and showers. People complained about the quality of tap water and food provided.

**"Here they brought us spoiled food to eat, it smells. Bad bread, already expired."**

"Peter", young man from Sub-Saharan Africa, interviewed in March 2022

The management of Kybartai admitted that the facilities needed refurbishment, and mentioned plans for renovations of kitchenettes and toilets, to be completed "hopefully this year, though it might take longer".<sup>126</sup> This would mean that adequate facilities would only be available by the time the maximum period of detention had been reached for the vast majority of the detainees.

At the time of Amnesty International's visit, Kybartai offered little space for activities. Courtyards were small compared to the number of people held in the relevant sections. Books, radios and televisions did not seem available. Guards also showed a room allegedly used as a gym, but it was unequipped and locked, with no one using it at the time of the visit – although apparently this has changed in more recent months. A chapel was available for Christians, and the same chapel and the gym were also sometimes used by Muslim detainees to pray. Apart from English and Lithuanian language lessons, coordinated by social workers, a very limited number of social activities were available. The Lithuanian Red Cross, which was present daily in the facility, organized a painting activity, with paintings later displayed to the public thanks to the efforts of the Sienos Group.<sup>127</sup> The Red Cross also appeared to be the only organization to provide some legal support, but was not able to take up cases formally. A small Médecins Sans Frontières (MSF) team was also present on a daily basis, mostly to provide medical and psycho-social support.

Multiple people told Amnesty International that the conditions showed to external visitors were significantly better than what would be the case ordinarily.

**"Every time they change everything before organizations come. Now all the doors are open, because you are here. When you go, they will close them.... We noticed that always, when SBGS invite TV channels to come over, things start to be soft and overwhelmingly different. Everything changes, the doors between floors open, doors of market and shower and gates to them are open, they provide us with tasty food, the behaviour of the guards sounds that they [are] in love with us... Last**

<sup>122</sup> State Border Guard Service (Kybartai), email to Amnesty International, 16 May 2022, on file with Amnesty International

<sup>123</sup> The Seimas Ombudsmen's Office of the Republic of Lithuania, Report on ensuring human rights and freedoms of foreign nationals in the Kybartai Aliens Registration Center under the Ministry of the Interior of the Republic of Lithuania, (previously cited), Section 4.3.1.2

<sup>124</sup> The Seimas Ombudsmen's Office of the Republic of Lithuania, Report on ensuring human rights and freedoms of foreign nationals in the Kybartai Aliens Registration Center under the Ministry of the Interior of the Republic of Lithuania, (previously cited), Section 4.3.1.5, referring to Hygiene Standard HN 61: 2020

<sup>125</sup> State Border Guard Service (Kybartai), email to Amnesty International, 16 May 2022, on file with Amnesty International

<sup>126</sup> Interview in person with SBGS Head of the Kybartai FRC, Kybartai, 10 March 2022

<sup>127</sup> Benas Gerdzūnas, "I don't want to paint like this again." Exhibition highlights condition of asylum-seekers in Lithuania", *Lithuanian Radio and Television (LRT)*, 28 May 2022, <https://www.lrt.lt/en/news-in-english/19/1702852/i-don-t-want-to-paint-like-this-again-exhibition-highlights-condition-of-asylum-seekers-in-lithuania>

**time the media TVs were invited to visit to check the hunger strike, [this] happened mainly in the second floor and fifth floor, [but] guards led the media to the third floor... The guards provided new kettles, cookers, and lots of information on the information board in the floors, when media came over after the report of the Ombudsman... When media leaves, everything is back to the way it always is."**

"Coman", young Iraqi man detained in Kybartai, interviewed in March 2022

According to the most recent interviews, conditions have been improving, due to the lifting of restrictions to access some common areas and the fact that some people have successfully challenged detention orders in court and are therefore being allowed to leave the premises daily. Still, problems remain.

**"The toilet is still for the whole floor resident [on each floor], which is about 100 people. We are not allowed to visit other floors... We still cannot get laptops in. [We are] still about 10-12 people in the room... [There is] lack of financial support and lack of a good satisfying food. Still, we cannot open bank accounts. There is definitely no privacy by any means. We [are] still perceived not as asylum-seekers or migrants, but more as border violators, criminals in a hidden description."**

"Tarik", young Iraqi man detained in Kybartai, interviewed in March 2022

The European Committee for the Prevention of Torture has stated that "in those cases where it is deemed necessary to deprive persons of their liberty for an extended period under aliens legislation, they should be accommodated in centres specifically designed for that purpose, offering material conditions and a regime appropriate to their legal situation and staffed by suitably qualified personnel." The CPT has stated that, on this basis, "a prison is by definition not a suitable place in which to detain someone who is neither suspected nor convicted of a criminal offence".<sup>128</sup> The Committee has also maintained that "ready access to proper toilet facilities and the maintenance of good standards of hygiene are essential components of a humane environment."<sup>129</sup> Failure to uphold such hygiene standards is likely to result in conditions that subject detainees to inhuman or degrading treatment in violation of international law and standards.

All this confirms that the inhumane and degrading conditions of detention denounced by the Lithuanian Seimas Ombudsperson in January 2022, in relation to Kybartai FRC at least, continued to be of concern as of March 2022.<sup>130</sup> While Amnesty International acknowledges some limited improvements in recent months, people held in both Kybartai and Medininkai have faced not only prolonged arbitrary detention, but also conditions of detention amounting to inhumane and degrading treatment.

All persons deprived of their liberty must be treated with humanity and with respect for the inherent dignity of the human person. This right is applicable regardless of the material wealth of a country – all states must at least ensure certain basic standards for persons deprived of their liberty. Conditions in detention must as far as possible reflect those existing in the community at large. Poor or harsh conditions of detention may constitute cruel, inhuman or degrading treatment or torture. While there is a clear definition of torture under international law, no such definition exists for cruel, inhuman or degrading treatment or punishment.<sup>131</sup> In line with the position of many international and regional human rights monitoring bodies, Amnesty International considers that cruel, inhuman or degrading treatment or punishment may be defined negatively in relation to torture in that it lacks one or more elements of the torture definition. Accordingly, even where some of the suffering experienced in

<sup>128</sup> CPT, Report to the Government of Ireland on the visit to Ireland carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 16 to 26 September 2014, CPT/Inf (2015) 38, 18 March 2015, <https://rm.coe.int/1680696c9a>

<sup>129</sup> CPT Standards, CPT/Inf/E (2002) 1 - Rev. 2015, p. 18, §49

<sup>130</sup> The Seimas Ombudsmen's Office of the Republic of Lithuania, Report on ensuring human rights and freedoms of foreign nationals in the Kybartai Aliens Registration Center under the Ministry of the Interior of the Republic of Lithuania, (previously cited), Section 4.4

<sup>131</sup> According to Article 1(1) of the UN Convention against Torture, an act constitutes torture if four elements are present: (1) intention, (2) infliction of severe physical or mental pain or suffering, (3) a purpose such as coercion, intimidation, obtaining information or a confession, or discrimination and (4) a degree of official involvement. See above, footnote 66.

detention may not reach the threshold of ‘severe pain or suffering’, there can be little doubt that the other elements of the definition are present.

Accordingly, through holding individuals in conditions that violate the prohibition of torture or other cruel, inhuman or degrading treatment or punishment, Lithuania is in violation of the Convention Against Torture, among many other binding international treaties to which it is a party.<sup>132</sup>

## 4.2 INADEQUATE ACCESS TO MEDICAL AND MENTAL HEALTH CARE

On top of the structural issues described above, FRCs managed by the SBGS were under-resourced to ensure adequate access to medical and mental health care. FRCs lacked medical and social welfare staff, including doctors, nurses, psychologists and social workers. Relevant services were mostly provided by external actors, with limitations on their availability.

Neither Medininkai nor Kybartai directly employed any doctors or psychologists at the time of Amnesty International’s visit. Medical services were provided by a limited number of personnel coming in turns from hospitals and made available by local municipalities.<sup>133</sup> These professionals were only present during office hours (usually 9-17) on working days. According to the authorities, detainees could also be accompanied to outside hospitals for medical assistance and ambulances were routinely called in.<sup>134</sup> Several people, however, complained that they were not authorized to access medicines or adequate healthcare institutions:

**“They treat us badly, don’t help us, even if we need an ambulance... We asked for an ambulance to stay here 24hrs, but they refused. There is a hospital here, but closes at 5pm and Saturday and Sunday”**

“Bermal”, young Iraqi woman detained in Medininkai, interviewed in March 2022

**“I received a painkiller today from a doctor, after 15 days with symptoms. I have a problem with my lungs”**

“Jamal”, Syrian man detained in Kybartai, interviewed in March 2022

The situation appears equally problematic in the Pabradė FRC, according to the testimony of two people detained there, who have extremely serious medical conditions.<sup>135</sup> A young man from a Western African country said in April 2022:

**“I needed medications, but they would not take me seriously, I had to tell them all the time that I needed drugs for my disease. At some point, Caritas took charge of my case, they took me to the hospital, where they tested me and confirmed that, yes, I suffer from that disease. The doctors said I would need to go to the hospital every three months. Since then, the doctors call me to tell me that I must go to appointments, but no one takes me to the hospital. I feel bad.”<sup>136</sup>**

Similar issues were reported by a woman from an Asian country, also interviewed in April 2022:

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<sup>132</sup> Convention Against Torture, Article 16. See, inter alia, European Convention on Human Rights, Article 3, and International Covenant on Civil and Political Rights, Article 7. While the SBGS denied Amnesty International the authorization to visit Pabradė FRC, the organization received some complaints about conditions of detention there too.

<sup>133</sup> Ministry of Interior email to Amnesty International, 6 June 2022, on file with Amnesty International.

<sup>134</sup> According to information provided by the administration of Kybartai FRC, “Persons that leave FRC. 1,280 persons left the centre briefly in 2021, and 1,506 in 2022, “temporarily to go to a health care institution or for another valid reason”. State Border Guard Service (Kybartai), email to Amnesty International, 16 May 2022, on file with Amnesty International.

Similarly, the administration of Medininkai stated that “approximately 60 foreign nationals from Medininkai FRC are taken for routine examinations at health care institutions each month. Approximately 14 foreigners are taken to hospitals by ambulance service. In April of 2022, 71 foreigners were taken to health care institutions for investigation and treatment. On average, 26 foreigners receive help from ambulance service teams in the registration centres every month.” State Border Guard Service (Medininkai), email to Amnesty International, 16 May 2022, on file with Amnesty International.

<sup>135</sup> Details of the medical conditions are not disclosed to protect people’s identity. The two individuals were interviewed by voice call.

<sup>136</sup> Interview by voice call, April 2022

**"I have a medical problem, but here I am not allowed to go to the hospital. I have a medical report, the doctor said I should have an operation after 3 months, but the border guards didn't allow me."**<sup>137</sup>

Prolonged detention in extremely harsh conditions had also taken a serious toll on the mental health of people held in FRCs.

**"We have psychological problems and attempted suicides... We don't know exactly how many, but there have been many suicide attempts"**

"Bermal", young Iraqi woman detained in Medininkai, interviewed in March 2022

Given the absence of psychologists provided by the state in FRCs, non-governmental organizations such as MSF and the Red Cross have provided relevant assistance. For example, between January and March 2022, MSF's psychologists treated 98 patients in either Medininkai FRC or Kybartai FRC.<sup>138</sup> However, due to the limited number of psychologists available, the centres are not able to cope with the demand and specific needs.

**"I have mental health problems. I became aggressive here. After 9 months [in detention], I don't sleep anymore. My eyes hurt so much. If you lock up people, then at least you need to take care of us. I need a psychologist. Please, send a psychologist for me. I keep on asking for one, but I have never seen one. I feel like we are in a grave."**

"Stéphanie", young woman from Cameroon detained in Medininkai, March 2021

**"I had asked to see a psychologist, they eventually provided me with a man psychologist, but I wasn't comfortable to speak to a man about what I went through. I just want to talk with a female psychologist."**

"Clémence", young woman from Cameroon detained in Medininkai, March 2021

By May 2022, MSF reported nine cases of attempted suicide and many more cases of self-harm. It also indicated that 60 per cent of the people being treated by MSF psychologists had anxiety-related complaints, with people referring to poor conditions of detention, uncertainty about their future and limited access to legal aid (see section 6) as main stressors. Noting that "[c]onditions of detention are inadequate for the health and protection needs of people being detained", MSF stated that it was "extremely concerned about the impact of prolonged detention on asylum-seekers' and migrants' mental health".<sup>139</sup>

States have an obligation to provide adequate medical and psychological care to people in their custody.<sup>140</sup> Access to medical examinations is essential to ensure that detainees enjoy their right to health, and also plays a crucial role in preventing torture and other ill-treatment. Any detainees who have underlying medical problems or display signs of mental illness, should have access to appropriate medical or psychosocial care, including, where necessary, transfer to specialist facilities.

## **TORTURE AND OTHER ILL-TREATMENT AND PUNISHMENT OF DETAINEES, INCLUDING SEXUAL HUMILIATION AND VIOLENCE**

A significant number of people reported to Amnesty International that they were victims of or witnesses to abuses by SBGS guards, including torture and other ill-treatment and unnecessary or

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<sup>137</sup> Interview by voice call, April 2022

<sup>138</sup> MSF, "People detained in Lithuania are experiencing abuse, violence and mental health distress", (previously cited).

<sup>139</sup> MSF, "People detained in Lithuania are experiencing abuse, violence and mental health distress", (previously cited).

<sup>140</sup> UN General Assembly, United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules), Resolution adopted by the General Assembly on 17 December 2015, A/RES/70/175, Rules 24 and 25

excessive use of force, as well as use of racist language, harassment and intimidation to convince people to return to their countries of origin.

Such claims were entirely consistent with accounts from other organizations that have had direct access to FRCs in recent months. For example, in May 2022 MSF publicly stated that many people had reported “degrading treatment and violence by the guards managing the two detention facilities where MSF works”, that is, Medininkai FRC and Kybartai FRC.<sup>141</sup>

## 5.1 PUNISHING PEACEFUL PROTESTS AND OTHER LAWFUL BEHAVIOURS

Given the heightened state of frustration of people arbitrarily detained and subjected to other human rights violations, it is hardly surprising that people held in the Lithuanian detention centres sometimes engaged in protests. Detainees claimed the protests were conducted in a way that did not pose a threat to the safety of guards or others. Many people interviewed by Amnesty International painted a disturbing picture of how authorities reacted to such demonstrations. They described instances where border guards, particularly in Medininkai, used force to punish people who had engaged in peaceful protests, and committed acts of collective punishment meting out abuse to other detained people who had not participated.

The testimonies, collected through separate interviews, were consistent in describing the SBGS guards, at times together with a squad of anti-riot officers belonging to the Public Security Service,<sup>142</sup> committing acts against people which amount to torture or other ill-treatment. These include kicks and beatings, sometimes with batons or other weapons; the use of pepper spray and the release of multiple electric charges through taser guns; forcing individuals to remain handcuffed and in stress positions for extended periods of time; withholding food as a form of punishment as well as the placement in isolation for several days of individuals perceived by the guards as “troublemakers”. As “Gabriel” described to Amnesty International researchers:

**“In the previous camp Verebiejai we received many threats, they refused to give us food for days any time we protested. The last time we protested in Verebiejai, they didn’t give us food for 2 or 3 days. They had called the special forces, they beat us and took some people away...”**

“Gabriel”, man from Sub-Saharan Africa detained in Medininkai, interviewed in March 2022

Operators working for independent organizations in detention centres have confirmed that they have also collected multiple testimonies describing ill-treatment by guards against detainees, including leaving people on the ground with their hands tied for unnecessarily long periods of time, withholding food, and putting people in isolation in a cold room – again, as forms of punishment against people who had participated in protests or attempted to escape.<sup>143</sup>

### THE 2 MARCH 2022 RAID IN MEDININKAI

Following a protest on the evening of 1 March, the SBGS at Medininkai FRC called in an anti-riot squad of the Public Security Service in the early morning of 2 March to conduct an operation targeting detainees.

The protest was borne out of anxiety generated by Russia’s invasion of Ukraine, which

<sup>141</sup> MSF, “People detained in Lithuania are experiencing abuse, violence and mental health distress”, (previously cited).

<sup>142</sup> The Public Security Service is a law enforcement agency, operating under the Lithuanian Ministry of Interior, whose mission is “to restore public order, to ensure public security during extreme and emergency situations; to organize and conduct conveying; to ensure the protection of important state objects; to defend the state of Lithuania in case of war”, <https://vstarnyba.lrv.lt/en/about-the-service/areas-of-activities>

<sup>143</sup> Information from multiple, separate interviews with local operators who requested confidentiality, March 2022.

started just the previous week, on 24 February. The Medininkai detention centre is located only a few kilometres from the border with Belarus – whose government has supported Russia’s aggression in Ukraine – and some detainees were afraid that they might be stuck in a dangerous area in case of a similar incursion in Lithuania.

Unrest among refugees and migrants started after the provocations of an SBGS officer who reportedly told them: “If the Belarusians attack Lithuania, we will give you weapons to fight.”<sup>144</sup> People also protested against the double standards employed by the Lithuanian authorities that resulted in disparate treatment of those held at Medininkai as opposed to incoming Ukrainian refugees. Those fleeing the war in Ukraine had been widely and warmly welcomed and provided with a range of assistance not available to the detainees at Medininkai (see “Background” section above regarding discriminatory double standards). The protesters called for their transfer to the same reception facilities used for people fleeing Ukraine, as acknowledged by the Head of the Migration Board of the SBGS.<sup>145</sup> According to the Head of the Investigation Unit of the SBGS, however, detainees “just look for excuses to demonstrate”.<sup>146</sup>

The protest continued for several hours, with people moving from one sector to the other, demanding their release. According to SBGS officials, attempts to calm the situation down and convince protesters to return to their sectors went on for hours, but failed. The SBGS decided to call the Public Security Service anti-riot squad, with the stated intention of arresting the leaders of the protest and transferring them to other FRCs (the women to Pabradė, the men to Kibartai), mainly because Medininkai had no areas for isolation.<sup>147</sup>

In the early morning of 2 March, officers belonging to the SBGS and the Public Security Service, wearing full anti-riot gear, entered the camp and raided several containers, allegedly looking for the individuals who had instigated the protest. At that time, many people were still sleeping in the containers. The guards searched several containers and arrested at least 10 women and 6 men, all from countries in Africa, including Democratic Republic of Congo, Guinea, and Nigeria.

“Josephine” described what happened that morning:

**“They went to all the African men and women. They pointed guns at us, on our forehead, real guns... There was a woman [officer] with a paper, she had everyone's pictures and was saying ‘take this one, take that one’”**

“Josephine”, young woman from Sub-Saharan Africa, interviewed in March 2022

Other victims shared their experience of being beaten, tasered or sprayed with gas:

**“As I was on the ground, they kicked me on my tummy, and said I should lie on the ground. [The guard] put his foot on my head and wanted to handcuff me. Then a lady [officer] said: ‘This is not the guy’. She was trying to fish the guys who did the protest. In Medininkai it is the same thing. Every time they call the special forces, who treat us badly. Each time there’s a protest, they beat us off, they take some of us away... When the special forces come, they hit you with the rifles’ handle. They say: ‘You have to obey!’ and they kick you. They point guns at people, and they make the sound, ‘click, click’, as if they are opening the secure [i.e. releasing the safety], like if they are going to shoot you. They make you lie down, they check you, and if you do a mistake, they kick you. They drag you from the bed and put you on the ground. Sometimes they drag you from the upper bed of a bunk bed, directly to the ground, and you smash on the floor.”**

<sup>144</sup> Interview with “Jean” (name changed for security reasons), young man from Sub-Saharan Africa, interviewed in March 2022.

<sup>145</sup> Interview in person with SBGS Head of Migration Board, Medininkai, 9 March 2022

<sup>146</sup> Interview in person with SBGS Head of Investigation Unit, Medininkai, 9 March 2022

<sup>147</sup> Interview in person with SBGS Head of Investigation Unit, Medininkai, 9 March 2022



“Gabriel”, man from Sub-Saharan Africa detained in Medininkai, interviewed in March 2022

**“I was lying on the ground, I was doing nothing because I know how things go in these situations. I was lying on the ground and still they have used tasers on me three times, and at the same time they beat me with the batons. Again, on our way to the cell in Medininkai they beat me with batons about five times.”**

“Jean”, young man from Sub-Saharan Africa, interviewed in March 2022

**“I have a scar on the left arm, because they dragged us away from the floor, with the hands back... The officer put my head down and kicked me on the chest while I was lying down.”**

“Peter”, young man from Sub-Saharan Africa, interviewed in March 2022

**“They sprayed gas into our eyes, they beat us with batons. We said we were innocent and they were shouting ‘Shut up! Don’t talk!’”**

“Elise”, young woman from Sub-Saharan Africa, interviewed in March 2022

Some victims described how the violence was random and indiscriminate. For example, “Marie” told Amnesty International:

**“They did not use the tasers on me, but they put a weapon on my forehead and told me ‘Shut up or I will shoot you!’... They put the weapon on my head even if I had done nothing. Then the woman checked the photos and said that I had not participated in the demonstration, but the police anyway hit me with the weapon on my head”.**

“Marie”, woman from Sub-Saharan Africa, interviewed in March 2022

While investigating these events in March, Amnesty International interviewed victims and witnesses who described how Black women and teenage girls were subjected to torture including sexual humiliation. Women reported being beaten by SGBS guards and anti-riot squad members who used their hands and batons, and being sprayed with pepper spray. Some women were beaten whilst semi-naked. Victims and witnesses described the subsequent deliberate degrading and humiliating treatment of the women and girls at the hands of guards and police who forced them to remain semi-naked, put them in handcuffs, and compelled them to go outside – still semi-naked and handcuffed – in cold and wintry weather conditions and in front of other guards and detainees.

**“On 2 March, in the morning, the police entered my room. They handcuffed us, they hit us. I was without clothes – I still have bruises on my body. They took me to the forest [outside], all naked. I spent five hours locked up, handcuffed and without clothes. But I hadn’t even been to the demonstration, I told them that I wasn’t there.”**

“Elise”, young woman from Sub-Saharan Africa, interviewed in March 2022.

A video that was widely circulated in the weeks following the police action shows a group of Black women, inside a container.<sup>148</sup> They had their hands tied behind their backs, some of them were semi-naked from the waist up or trying to cover themselves by using blankets or crouching.

As a young woman witness to the events shared with Amnesty International researchers:

**“Many soldiers came to the camp and beat the girls, and brought them outside without clothes... The police came inside all the rooms. They got into my room, though they didn’t touch me... They were looking for the girls who are now in Pabradė. [My friend] was sleeping in her room... The police came and took her by force... She asked the police ‘What is the problem?’ The police got her and beat her, slapping her and kicking her on the legs... I was outside the room, but she shouted, so all**

<sup>148</sup> Some of the people appeared young and may have been minors, but Amnesty International was unable to independently verify their ages.

**of us came to see what was happening. The police slapped another girl on the mouth, tied the hands of the girls, gave them an electric shock with a tool, and took them away.”**

“Ada”, young woman from Sub-Saharan Africa, interviewed in Medininkai in March 2022

Some other women, who had not participated in the protest and were not targeted by the guards, testified as to the actions of the anti-riot unit against the women and the physical harm they suffered.

**“Until now, the guards haven’t done anything bad to us personally, but we have seen special forces come here in this camp three times. Last week [i.e. the week of 1 March 2022] a protest happened, African refugees broke a fence. After the protest, the commando came to our rooms, holding guns... They took [the girls] in the morning and brought them back in the afternoon. When they took them from the rooms they were naked, and other girls tried to put a jacket on them. When they came back, they could not walk well, and before [being taken] they could walk well.”**

“Marwa”, young Iraqi woman, interviewed in Medininkai in March 2022

**“I saw guards beat some African people. They [had] created problems, so the guards arrived in the morning, [there was] plenty of police, [they] beat some Africans and arrested them. Male police went for African women.”**

“Agalvili”, Sri Lankan woman detained in Medininkai, interviewed in March 2022.

**“They went there and they held the neck of an African girl... We were looking through the window, then the forces saw us and ordered to close the window. What we have seen is that they put hands on the neck, but we heard the crying and the sound of beating... The girls didn’t do anything to the forces, they were just crying.”**

“Bermal”, young Iraqi woman detained in Medininkai, interviewed in March 2022

Some men also separately confirmed seeing women being subjected to sexual humiliation by guards:

**“The girls were in their rooms and they were naked [when they brought them out]. I could see their breasts and I asked an officer if I could give them my jacket, but he said no.”**

“Sekou”, young man from Sub-Saharan Africa, interviewed in March 2022

**“They went to the women’s room and put pepper spray... They brought the girls outside naked, we saw their breasts.”**

“Jean”, young man from Sub-Saharan Africa, interviewed in March 2022

Authorities denied using any excessive force and said that “during the riots, foreigners committed violations of the Code of Administrative Violations 115 (Intentional Destruction or Damage to Property), 488 (Disturbance of Public Seriousness), 506 (Failure to comply with lawful instructions or requirements of statutory civil servants, military police, security services or intelligence officers of the Republic of Lithuania) and 508 (Humiliation of the Honor and Dignity of a Statutory Civil Servant, Military Police or Intelligence Officer)”.<sup>149</sup>

However, Amnesty International understands that a court subsequently dismissed allegations against those arrested, as they were not substantiated by evidence.

**“The officers went to court to say that we had tried to run [away] and were responsible for disturbances. But the court said there was no evidence. So, yesterday they allowed us to go out of the [isolation] room.”**

<sup>149</sup> Ministry of Interior, email to Amnesty International, 6 June 2022, on file with Amnesty International.

Young man detained in Kybartai, interviewed in March 2022

**“The border guards had asked the court to give us 6 months of imprisonment. I asked the court: ‘Go and check the movie [from internal cameras], if you see me doing what they accuse me of, I will take the 6 months’.”**

Young man detained in Kybartai, interviewed in March 2022

According to SBGS officers who spoke with Amnesty International, the management at Medininkai called in the anti-riot forces while the protest was still going on. This version of events is at odds with the numerous and consistent testimonies of many people who experienced or witnessed these events. The official version also would not explain why and how some of the handcuffed women would be undressed if they were still protesting. Nor does it clarify why the entrance of a fully suited anti-riot unit and the use of force would have been deemed necessary and proportionate at that time on 2 March, considering that people were in their rooms and not engaged in any activities that would threaten the safety or rights of either the guards or other detained people.

Six men and six women were subsequently transferred from Medininkai to other detention centres, Kybartai FRC and Pabradė FRC respectively,<sup>150</sup> and put in isolation.<sup>151</sup> One young woman decided to return to her country of origin, allegedly voluntarily.

**“They handcuffed and beat a girl, who had bruises... Then, she decided to return... Her mum told her to return, because there was too much pain here.”**

“Marie”, woman from Cameroon detained in Medininkai, March 2022

The fact that the young woman may have decided to return to Cameroon only after being beaten and handcuffed indicates that such a decision was hardly “voluntary”. Coercion involving such violence rarely leaves a person with real options. Any decision to escape such abuse should be considered as having been taken under extreme duress and cannot conveniently be labelled by a government as “voluntary.”

## TORTURE AND OTHER ILL-TREATMENT

International law absolutely prohibits torture and other cruel, inhuman or degrading treatment or punishment, in all circumstances and without exception.

In addition to the Convention against Torture, Lithuania is also a party to the International Covenant on Civil and Political Rights (ICCPR), and the European Convention on Human Rights, which, like the Convention against Torture, prohibits torture and other ill-treatment in all circumstances and without exception, as well as other treaties that apply to specific contexts.<sup>152</sup> The prohibition against torture and other ill-treatment is also a rule of customary international law binding on all nations.<sup>153</sup>

Women, girls, and lesbian, gay, bisexual and transgender persons are at particular risk of torture and ill-treatment when deprived of liberty. Women and girls are at particular risk of sexual assault and abuse in detention contexts, including rape, insults, humiliation and unnecessary invasive body searches.<sup>154</sup> Forced nudity and public humiliation are long recognised as breaches of international

<sup>150</sup> Interview in person with SBGS Head of Investigation Unit, Medininkai, 9 March 2022

<sup>151</sup> MSF, *Detention in Lithuania*, Briefing paper, May 2022, on file with Amnesty International

<sup>152</sup> International Covenant on Civil and Political Rights (ICCPR), Article 7; European Convention on Human Rights, Article 3; Geneva Conventions, 12 August 1949; Convention on the Rights of the Child, Articles 37(a) and 39; Convention on Rights of Persons with Disabilities, Article 15.

<sup>153</sup> See, for example, *Prosecutor v. Furundžija*, International Criminal Tribunal for the Former Yugoslavia, Trial Chamber Case No. IT-95-17/1-T (Judgement), 10 December 1998, paras. 153-154; *Case Concerning Ahmadou Sadio Diallo (Republic of Guinea v Democratic Republic of the Congo)*, International Court of Justice, Judgement of 30 November 2010, para. 87.

<sup>154</sup> UN Special Rapporteur on Torture, Gender perspectives on torture and other cruel, inhuman and degrading treatment or punishment, A/HRC/31/57, (5 January 2016), para 19.

human rights law, in particular the right to be free from torture and other ill-treatment, and are often particularly gendered in intent and effect on the victim.<sup>155</sup> Sexual humiliation may occur when male guards watch female prisoners in intimate moments such as dressing or showering. As the UN Special Rapporteur on Torture has underlined: “Body searches, in particular strip and invasive body searches, are common practices and can constitute ill-treatment when conducted in a disproportionate, humiliating or discriminatory manner. [...] These practices have a disproportionate impact on women, particularly when conducted by male guards. [...] When conducted for a prohibited purpose or for any reason based on discrimination and leading to severe pain or suffering, strip and invasive body searches amount to torture.”<sup>156</sup>

## SEXUAL VIOLENCE

Cases of sexual violence and harassment have also been reported in FRCs, particularly in Medininkai. A representative of the Lithuanian Refugee Council stated that: “In Medininkai, some guard had sex with female detainees, giving in exchange the possibility to go out of the centre”. SBGS officials initially dismissed allegations of sexual violence, suggesting that they were made up.<sup>157</sup> However, in April 2022, the Vilnius Regional Prosecutor's Office launched a pre-trial investigation against a psychologist operating in Medininkai, charged with sexually assaulting a male detainee who was supposedly under his care while in detention.<sup>158</sup> According to humanitarian organizations operating in the camp, as well as media, additional people reported having suffered similar assaults by the same person.<sup>159</sup> Following this case, authorities wrote to Amnesty International that “sexual harassment and violence are criminal offenses and, like any other crime, are intolerable by the SBGS and all such cases are dealt with immediately”.<sup>160</sup> The psychologist was suspended, however the Medininkai administration did not immediately move victims to a more appropriate facility or provide them with adequate remedy for the abuses they suffered.<sup>161</sup>

## UNNECESSARY OR EXCESSIVE USE OF FORCE

While the 2 March raid at Medininkai reflects a particularly brutal state response to detainee concerns, it was not an isolated incident. Allegations of unlawful use of force, including through the use of tear gas and other special equipment, emerged after border guards and Public Security Service squads intervened to “put under control” a situation in Medininkai FRC on 8 November 2021, also following protests in the centre.<sup>162</sup> The indiscriminate use of anti-riot equipment was on full display in a video circulated in April 2022, showing a guard using pepper spray against a young child who was watching from the window.<sup>163</sup> The Lithuanian police have opened a pre-trial investigation into the incident.<sup>164</sup>

<sup>155</sup> As the UN Special Rapporteur on Torture stated in 2008, “[c]ustodial violence against women very often includes rape and other forms of sexual violence such as threats of rape, touching, ‘virginity testing’, being stripped naked, invasive body searches, insults and humiliations of a sexual nature”. See Human Rights Council, Seventh Session, *Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Manfred Nowak*, A/HRC/7/3, 15 January 2008, paras 34-35.

<sup>156</sup> UN Special Rapporteur on Torture, *Gender perspectives on torture and other cruel, inhuman and degrading treatment or punishment*, A/HRC/31/57 (5 January 2016), at para 23.

<sup>157</sup> Interview in person with SBGS Head of Investigation Unit, Medininkai, 9 March 2022

<sup>158</sup> Jurga Bakaitė, “Prokurorai pradėjo tyrimą dėl galimo ilgalaikio migrantų seksualinio prievartavimo viename VSAT užsieniečių registravimo centre”, *Lithuanian Radio and Television (LRT)*, 26 April 2022, <https://www.lrt.lt/naujienos/lietuvoje/2/1679317/prokurorai-pradejo-tyrima-del-galimo-ilgalaikio-migrantu-seksualinio-prievartavimo-viename-vsata-uzsienieciu-registravimo-centre>

<sup>159</sup> Linas Jegelevičius, “Lithuania’s Border Guard Service psychologist allegedly preys on migrants in registration centre facility”, *Baltic News*, 28 April 2022, <https://bnn-news.com/bnn-analyses-lithuanias-border-guard-service-psychologist-allegedly-preys-on-migrants-in-registration-centre-facility-234323>  
Vilma Danauskienė, “Medininkuose galimai seksualiai išnaudoti migrantai detalių neslepia: baisūs įtarimai psichologą lydi ir kitose stovyklose”, *Delfi*, 6 May 2022, [https://www.delfi.lt/news/daily/lithuania/medininkuose-galimai-seksualiai-isnaudoti-migrantai-detaliu-neslepia-baisus-itarimai-psichologa-lydi-ir-kitose-stovyklose.d?id=90145655&fbclid=IwAR2Adoh1rCMZac\\_tytUPwd3JO-pCz1mx17u-lsbZQ\\_OeuhCUhHFcYHgR8aE#](https://www.delfi.lt/news/daily/lithuania/medininkuose-galimai-seksualiai-isnaudoti-migrantai-detaliu-neslepia-baisus-itarimai-psichologa-lydi-ir-kitose-stovyklose.d?id=90145655&fbclid=IwAR2Adoh1rCMZac_tytUPwd3JO-pCz1mx17u-lsbZQ_OeuhCUhHFcYHgR8aE#)

<sup>160</sup> Ministry of Interior, email to Amnesty International, 6 June 2022, on file with Amnesty International.

<sup>161</sup> MSF, “People detained in Lithuania are experiencing abuse, violence and mental health distress”, (previously cited).

<sup>162</sup> “Protests in Lithuania’s migrant camps ‘coordinated’ with events on Polish border – VSAT chief”, *Lithuanian Radio and Television (LRT)*, 9 November 2021, <https://www.lrt.lt/en/news-in-english/19/1537121/protests-in-lithuania-s-migrant-camps-coordinated-with-events-on-polish-border-vsata-chief>

<sup>163</sup> Facebook post, Vytautas Bakas, 12 April 2022, <https://www.facebook.com/vytautas.bakas/posts/10221875828946219>

<sup>164</sup> “Tear gas used during the riots in the migrant camp in Medininkai, pre-trial investigations are being considered”, *Baltic News*, 8 November 2021, <https://balticnews.com/2021/11/08/tear-gas-used-during-the-riots-in-the-migrant-camp-in-medininkai-pre-trial-investigations-are-being-considered>

SBGS officials have confirmed that big demonstrations have taken place in a few instances, in particular in November 2021 and March 2022, in response to the authorities denying people asylum and extending their detention.<sup>165</sup> They said that, in such instances, attempts were made to negotiate with detainees in order to prevent escalation, and when this did not work, the SBGS called in anti-riot units of the Public Security Service, including to arrest people deemed responsible for disturbances, such as breaking fences or throwing objects. SBGS officials claimed that such interventions have always complied with Lithuanian law, using force (and special equipment, such as tasers, pepper-spray and batons) only when necessary to respond to attacks from detainees. They also stated that in the last year no officer has ever reported having used a taser, while pepper-spray was used in about five cases in Medininkai.<sup>166</sup>

However, local NGOs confirmed receiving reports of unlawful use of force by police against asylum-seekers and migrants in detention centres.

“The two centres where MSF is present are heavily militarised contexts, where people have restricted movement and are under the constant scrutiny of SBGS, who use violent approaches to de-escalation, including tasers, pepper spray and the use of dogs for intimidation. Since January 2022, MSF has documented 18 cases of violence, aggression and mistreatment while in detention, two of these by other asylum-seekers and migrants, and the remainder by SBGS. The number of violent events is likely higher. We have documented solitary confinement for over 24 hours, groups of individuals put in prison cells for periods of one week, the confiscation of phones, and beatings. MSF psychologists have heard of people being strip-searched, handcuffed, and verbally abused by the SBGS while in detention.”<sup>167</sup>

According to reports from detainees, SBGS officers have also used excessive force when responding to attempts by people to escape from detention centres, in particular through the deployment of dogs. Dog-bites were confirmed not only by asylum-seekers and migrants but also by doctors working locally, as well as through photographic evidence received by Amnesty International.<sup>168</sup>

International law and standards require that law enforcement officials respect and protect human dignity, maintain and uphold the human rights of all persons, and use force “only when strictly necessary and to the extent required for the performance of their duty.”<sup>169</sup> This means that they must, where possible, avoid any use of force, and if there is no alternative to the use of force, any such use should be subject to principles of strict necessity and proportionality, with the minimum amount of force exerted and only as a last resort where no less forceful measures are available. Officers should be adequately trained, required in practice to avoid resorting to unnecessary or excessive use of force, and also required to proactively seek resolution of problems by means other than the use of force.

## **PUNITIVE USE OF ISOLATION IN DETENTION**

Acts of abuse mark the daily lives of many detainees, including in other detention centres. Kybartai FRC had special secure cells, a typical feature of a prison, which have been routinely used as disciplinary cells. People placed in the secure cells are isolated from the rest of the detainees and cannot access the courtyard or other common areas. The management at Kybartai FRC confirmed that people can be locked in cells if they have violated internal regulations, but declined to provide Amnesty International access to those regulations. It is therefore unclear on what specific grounds such isolation would be ordered, and whether such grounds could include actions reflecting the legitimate exercise of human

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<sup>165</sup> Interview in person with SBGS Head of Migration Board, Medininkai, 9 March 2022

<sup>166</sup> Interview in person with SBGS Head of Investigation Unit, Medininkai, 9 March 2022

<sup>167</sup> MSF, *Detention in Lithuania*, (previously cited)

<sup>168</sup> “In February, MSF provided medical care to two individuals who were attacked by SBG dogs, after trying to escape detention. One of the individuals later required treatment in the emergency department.” MSF, *Detention in Lithuania*, (previously cited)

<sup>169</sup> UN General Assembly, Code of Conduct for Law Enforcement Officials, Adopted by General Assembly resolution 34/169 of 17 December 1979, Articles 2 and 3.

rights, such as freedom of expression and assembly, including the right to protest. Indeed, some of the people detained in Kybartai said that people can be placed in isolation simply for speaking out about the conditions of detention.

**“The main reasons for punishment are talking to press or media or human rights organisations. Once someone goes down to isolation floor, they take their mobile phones”.**

“Yasser”, Syrian man detained in Kybartai, interviewed in May 2022

**“I was locked, with no chance to go out. They were giving me food from a small window, like a criminal”**

“Coman”, young Iraqi man detained in Kybartai, interviewed in March 2022

Another man also reported that he had been “taken down” for no other reason than the fact that he had been actively speaking out on human rights issues. He suggested that the transfer to the isolation cell was purposely timed – on a Friday afternoon before a long weekend – to ensure that NGO workers and others who are present in the centre only on working days were not around.<sup>170</sup>

## LACK OF ACCOUNTABILITY

Beyond the suspension of the psychologist operating in Medininkai, it appears that no routine efforts are taken by authorities to effectively investigate reports of abuse, hold staff and guards accountable for human rights violations, or provide victims with an effective remedy. According to the authorities, “the Ministry [of Interior] and SBGS has a weekly meeting to discuss relevant news, including unrests in FRCs if there were any. If there is a need, the Minister can instruct to carry out an official inspection regarding what measures the officials took”.<sup>171</sup> However, local NGOs confirmed that whenever they have shared reports of abuses with authorities, they have committed to initiate investigations, but such investigations never lead to any accountability. Indeed, in relation to the events in Medininkai in March, the authorities confirmed that “on April 20, 2022, the Legal Division of the SBGS initiated an official inspection regarding the possible use of excessive force by officials”, and that, once this was completed, “no irregularities were found in the actions of the officials”. However, the Vilnius County Police Commissariat launched a pre-trial investigation into actions in Medininkai by law enforcement officials on 2 March 2022 for “possibly causing physical pain to foreigners”.<sup>172</sup>

Authorities reported that “according to the activity plans prepared by the Reception Conditions Unit of the [Medininkai] Centre, social workers are engaged in preventive activities, informing foreigners about the obligation not to violate the rights and legitimate interests of other foreigners accommodated in the Centre, as well as the need to report possible or suspected cases of sexual exploitation and violence”.<sup>173</sup> However, in March 2022 the centre administrators told Amnesty International that they had yet to hire any social workers.<sup>174</sup>

The individuals who reported to Amnesty International of having suffered abuses did so while still in detention. In order to preserve their safety and protect them from retaliation, many details regarding their identities, locations and stories have been obscured. However, the consistency across these testimonies – coupled with corroborating information provided by local actors – is extremely worrying as it depicts a pattern of unnecessary and excessive use of force as well as torture and other ill-treatment committed against refugees and migrants.

<sup>170</sup> Interview in person with “Tarik” (name changed for security reasons), young Iraqi man detained in Kybartai, interviewed in March 2022.

<sup>171</sup> Ministry of Interior, email to Amnesty International, 6 June 2022, on file with Amnesty International.

<sup>172</sup> Ministry of Interior, email to Amnesty International, 6 June 2022, on file with Amnesty International.

<sup>173</sup> Ministry of Interior, email to Amnesty International, 6 June 2022, on file with Amnesty International.

<sup>174</sup> Interview in person with SBGS Head of Investigation Unit, Medininkai, 9 March 2022



## 5.2 MAKING LIFE IMPOSSIBLE TO FORCE RETURNS

Lithuanian authorities have widely characterized the people who crossed from Belarus as people undeserving of international protection who should be returned to their countries of origin.<sup>175</sup> However, in many cases, the authorities have faced problems in securing the cooperation of the countries of origin, which is typically necessary to effect forced returns. One important example was mentioned by the Head of the Investigation Unit of SBGS: “We have a problem with people from Iraq: if people don’t accept voluntary return, we cannot return them.”<sup>176</sup> In view of these limitations, Lithuanian authorities have put pressure on refugees and migrants in detention to accept “voluntary” returns.

### DETENTION AS A FORM OF PRESSURE

The whole detention system in Lithuania for those who crossed from Belarus appears designed to force people to leave. People are kept in detention for prolonged periods – despite the unlikelihood that a forcible return will follow – and face not only unbearable conditions of detention, but also a situation of constant fear, uncertainty and humiliation.

**“If you go to detention centres for asylum-seekers, you see that states create them to put pressure on people to go back voluntarily. It is a strategy, and it’s not new.”**

“Tarik”, young Iraqi man detained in Kybartai, interviewed in March 2022

To achieve the dual objectives of deterring new arrivals and also returning people currently in the country, the Lithuanian authorities focus most of their communications on the need for people to leave Lithuania, showcasing the assistance made available from the state for those willing to return “voluntarily”.

**“One week later, another officer came and told me ‘Why are you here? Go back home!’ Every time, the same officer tells me my application was rejected and I should go back to my country. But I can’t, there is war! So he says: ‘Choose another country, Belarus, Ukraine, Russia, Turkey... I will give you a thousand euro and the ticket to go back’. But I left my country under the war, why do you want to send me back?”**

“Saleh”, Syrian man detained in Kybartai, interviewed in March 2022

### HARASSMENT, INTIMIDATION, THREATS AND RACIST INSULTS

Several people reported having been addressed by border guards in disparaging, offensive and racist ways, in a clear effort to harass and humiliate them with the intention of forcing people to decide to go back to their countries of origin

Racialized people, particularly Black men and women, have reported being the targets of profoundly offensive and discriminatory slurs.

**“In Medininkai, the guards called us ‘rapists’ and ‘criminals’.”**

“Peter”, young man from Sub-Saharan Africa, interviewed in March 2022

**“They treat us like animals. Police comes every morning and night to count us and they say ‘how many animals are here?’”**

“Stéphanie”, young woman from Cameroon detained in Medininkai, interviewed in March 2021

<sup>175</sup> Prime Minister of the Republic of Lithuania, “Reply to the letter of the Commissioner for Human Rights, Council of Europe”, 24 August 2021, <https://rm.coe.int/reply-of-the-prime-minister-of-the-republic-of-lithuania-ms-ingrida-si/1680a39439>.

<sup>176</sup> Interview in person with SBGS Head of Investigation Unit, Medininkai, 9 March 2022

Threats by border guards in Medininkai appear to have exacerbated anxiety about the potential impact of Russia's aggression in Ukraine, rising tensions that culminated in the demonstration of 1 March 2022 at the Medininkai FRC and the raid the following morning.

**"Before the demonstration, a guard told the women that one day they'd put us in the forest and bomb us and say it was the Belarusians. The girls got scared."**

"Jean", young man from Sub-Saharan Africa, interviewed in March 2022

## TRICKING PEOPLE INTO ACCEPTING RETURN

Authorities also appeared to be using the various failings in the asylum system (see section 6) to make people accept "voluntary" returns without their effective consent.

**"They told me I should sign a form in Lithuanian language, but I don't understand Lithuanian so I refused to sign. I didn't understand what was written. They said it was a document stating that I received the decision [on my asylum]. I tried to translate [it] in my room and I realised it was a form for deportation. I don't want to go back."**

"Gabriel", man from Sub-Saharan Africa detained in Medininkai, interviewed in March 2022

Sometimes, authorities deny detainees the possibility to access rights that are or should be available to people.

**"A woman in military uniform told me 'Why did you come to this country? If you want a lawyer you can pay for it'... Many guards often say: 'This is Lithuania, not EU'".**

"Jean", young man from Sub-Saharan Africa, interviewed in March 2022

## COOPERATION WITH CONSULAR AUTHORITIES

In order to encourage returns, Lithuanian authorities also engage with relevant consular authorities from detainees' countries of origin. This is a standard procedure when a state tries to arrange returns of people who that state has determined have no protection needs. However, for as long as an asylum application is under consideration, states must refrain from revealing to representatives of the countries of origin the identity of people who are in their custody and who may belong to groups being persecuted.

**"Asylum [procedures] should be between us and the immigration [office]. Instead, they send us to our consulates or bringing consular staff to speak to us, but we never asked for that."**

"Peter", young man from Sub-Saharan Africa, interviewed in March 2022

The Medininkai administration has stated that "Foreigners that are accommodated at the centre receive information about the scheduled visits [of consular representatives] and only those foreigners that have expressed a wish to meet with a representative of their country are provided with such an opportunity (regardless of the foreign national's legal status)."<sup>177</sup> However, according to testimonies from detainees, people are sometimes taken to meet the consular representatives of their country of origin against their will.

**"One day in February they dragged a lady on the floor, on the snow, to bring her to speak to the consular representative [of her country]. They had told us it was not mandatory [to speak to them], but as nobody wanted to go, they forced us. They beat us all, the Congolese, to convince us to go speak with the consular representatives"**

"Jean", young man from Sub-Saharan Africa, interviewed in March 2022

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<sup>177</sup> State Border Guard Service (Medininkai), email to Amnesty International, 16 May 2022, on file with Amnesty International.

This claim appears to be confirmed by a video shared with Amnesty International, showing a woman being taken away by guards in Medininkai, despite her strenuous attempts to resist.<sup>178</sup>

### **“VOLUNTARY” RETURNS AS DISGUISED FORCIBLE RETURNS**

The pressure exerted by authorities has had some results. According to figures provided by Lithuanian authorities, 456 returns were carried out in 2021, out of which 400 were characterized as voluntary. As of 29 May 2022, Lithuania had removed another 624 foreigners, with 599 of the returns labelled as voluntary.<sup>179</sup> The pressure to return “voluntarily” has caused immense psychological stress for many people in detention who are forced to choose between remaining in a situation of abuse or returning to face persecution and violence.

**“We asked medicines from doctors to be able to sleep, because we are always ‘overthinking’, we are under a lot of psychological pressure. They keep on visiting us and telling that we need to go back to Syria. We get pressure here and we ‘overthink’. If our country was safe, we would go”.**

“Abdul”, young Syrian man detained in Kybartai, interviewed in March 2022

**“I asked for medical care for my back but they said no. I was interrogated three times by the military, and I told them [that] we are Yazidis, but they said ‘not our problem’... After two months I saw that [there was] no hope so I asked to be deported, and they took me to another place for a month where there were some 35 people, mostly Iraqi Kurds and some Arab Iraqis, and every week 10 or so would leave.**

“Arman”, Iraqi man, Iraq, interviewed in December 2021

Many people are deciding whether to return to their country of origin while experiencing conditions that may be so dire as to leave little if any alternative to return – conditions resulting from the practices, actions and policies of the Lithuanian authorities and taken with the apparent intention of forcing the departure of people from its territory. A return under such coercive conditions and in the context of intimidation and harassment can never be considered voluntary. Depending on individual circumstances, such returns may amount to breaches of the prohibition of *refoulement* and collective expulsion.

## **A PROCESS DESIGNED TO FAIL PEOPLE**

Refugees and migrants are not only detained arbitrarily and subjected to inhumane treatment. Lithuanian authorities have also been depriving them of any real possibility of putting an end to their ordeal by having their asylum claims effectively assessed by an independent authority, or by receiving effective legal advice to support them in their asylum or deportation procedure.

### **6.1 LACK OF INDEPENDENT AND IMPARTIAL DECISION-MAKERS**

Lithuanian legislation allows the Migration Department during situations of “emergency” to impose custodial measures on asylum-seekers and decide in the first instance on their asylum claims.

From July to December 2021, the Migration Department also decided in the second instance on appeals against the department’s own decisions on asylum. It was only with appeals in the third instance that asylum-seekers had access to an independent authority, a local Administrative Court. That appeal had no suspensive effect, however, in practice enabling the Migration Department to

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<sup>178</sup> Videoclip on file with Amnesty International

<sup>179</sup> Ministry of Interior, email to Amnesty International, 6 June 2022, on file with Amnesty International.

forcibly return an asylum-seeker before any independent authority could assess their appeal.<sup>180</sup> In addition, this procedure denied the possibility to appeal in the last instance to the Supreme Administrative Court of Lithuania. Introduced in summer 2021, this procedure was eventually abandoned at the end of the year given the obvious shortcomings in terms of independence of the decision-making authorities and due process rights for asylum-seekers.

Since January 2022, appeals against the Migration Department's first instance asylum decisions can be submitted directly to local courts and in the third instance to the Supreme Administrative Court.<sup>181</sup>

It is impossible to determine how many asylum-seekers were forcibly returned to their countries of origin between July and December 2021 despite being in genuine need of international protection. As a form of reparation for the violations of the obligation of *non-refoulement* and related procedural rights, Lithuanian authorities should open for re-consideration all the asylum claims that were treated under the former procedure to ensure everyone has access to independent, impartial and effective reviews of their asylum claims.

Despite the January 2022 legal improvement, the process to assess a person's asylum claim is still plagued with other concerning legal and practical impediments that deprive asylum-seekers of any hope to enjoy a fair and effective asylum procedure (see next sections).

Under EU law, asylum applications must be examined impartially by the national authorities.<sup>182</sup> Member states must ensure that asylum applicants have access to an effective appeal before a court or tribunal against rejection decisions, decisions finding asylum applications inadmissible and, among others, decisions not to conduct an examination of asylum claims. At least in appeals procedures, the effective remedy should provide "for a full and ex nunc examination of both facts and points of law, including, where applicable, an examination of the international protection needs [...] before a court or tribunal of first instance."<sup>183</sup>

## 6.2 LEGAL AID SYSTEM: A SHAM

**"Since we came, we had different lawyers, every time. We didn't even know their names, some mornings they come and say that we have a meeting with immigration [officers]. There, there's a lawyer, but we don't even know them. They are there and the only thing they say is 'I have nothing to say'. I was never able to spend 10 minutes with them. Never, and every time it was a different person"**

"Josephine", young woman from Sub-Saharan Africa, interviewed in March 2022

The Migration Department contracts with and pays for the state-guaranteed lawyers to represent asylum-seekers and migrants' claims in the proceedings before and against the Migration Department itself.

People in detention communicated to Amnesty International their desperation at the lack of help from lawyers they could trust. Only those who could afford to pay expensive fees to hire a private lawyer received effective legal support. Those who requested state-sponsored legal aid consistently reported that they had no real interactions with the lawyers who were supposed to provide them with legal advice and to guide them through the procedures, either to seek asylum or appeal against deportation

<sup>180</sup> Domantė Platūkytė, "Situaciją dėl prieglobsčio prašymo vadina iškreipta: apskystus Migracijos departamento sprendimus nagrinėja pats departamentas", *Lithuanian Radio and Television (LRT)*, 22 September 2021, [lrt.lt/naujienos/lietuvoje/2/1498648/situacija-del-prieglobscio-prasymo-vadina-iskreipta-apskystus-migracijos-departamento-sprendimus-nagrineja-pats-departamentas](https://www.lrt.lt/naujienos/lietuvoje/2/1498648/situacija-del-prieglobscio-prasymo-vadina-iskreipta-apskystus-migracijos-departamento-sprendimus-nagrineja-pats-departamentas)

<sup>181</sup> Mano vyriausybė (My Government portal - Lithuanian Government), "Vyriausybė iš esmės pritarė pataisoms dėl Užsieniečių teisinės padėties, keičiasi tik apskundimo tvarka", 20 October 2021, [lr.lt/naujienos/vyriausibe-is-esmes-pritare-pataisoms-del-uzsienieciu-teisines-padeties-keiciasi-tik-apskundimo-tvarka](https://www.mano-vyriausibe.lt/naujienos/vyriausibe-is-esmes-pritare-pataisoms-del-uzsienieciu-teisines-padeties-keiciasi-tik-apskundimo-tvarka)

<sup>182</sup> Art. 10(3) a), 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

<sup>183</sup> Art. 46, 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

or detention. In some cases, asylum-seekers even said that they felt that their state-sponsored lawyers were actively acting against them.

### **A LEGAL AID SYSTEM DESIGNED TO FAIL PEOPLE**

The detainees interviewed for this report were either awaiting a decision on their asylum application or facing a return procedure. In both cases, they have a right to legal counsel in their proceedings before relevant authorities, as well as the right to challenge decisions concerning their detention, asylum or return. If they cannot afford a private lawyer – the case for most people in such a situation – they have a right under domestic legislation “to use state-guaranteed legal aid in accordance with the procedure established by the Minister of the Interior of the Republic of Lithuania”.<sup>184</sup>

Legal aid is provided by Lithuanian law, but legal aid provided by the state for asylum-seekers and migrants is an exception to the rules on legal aid for any other matters, including any civil or criminal matters. While legal aid in Lithuania is normally managed by an independent institution (the “State Guaranteed Legal Aid Service”) under the Ministry of Justice, legal aid services for asylum and migration matters are exceptionally organised and coordinated by the Migration Department.

The Migration Department is in charge of selecting and contracting with legal aid providers through a public procurement procedure funded by the EU through the EU Asylum, Migration, and Integration Fund (AMIF).<sup>185</sup> In practice, this means that the same institution that decides on asylum-seekers’ and migrants’ legal claims is also the one selecting and paying the lawyers expected to challenge its own decisions.

This presents a risk of conflict of interest, exemplified by a testimony collected by the Seimas Ombudsperson from a legal aid service provider, which revealed that “in most cases the service provider avoids appealing against the Migration Department’s asylum decisions or stepping up legal protection for aliens for fear of losing the procurement of legal services organised by the Migration Department and whose asylum decisions are being appealed because the main contract with one of the service providers shall be re-awarded each year following a renewed tendering procedure.”<sup>186</sup>

The procurement procedure appears to be based only on cost,<sup>187</sup> incentivizing law firms to provide the most minimal service. The evidence indicates that state-sponsored lawyers provide little, if any, relevant services, let alone sufficient to high quality representation.

The Secretary General of the Lithuanian Bar Association, Paulius Griciūnas, shared with Amnesty International his concerns about this flawed legal aid system:

**“Who pays for the lawyer? The Migration Department or the State Border Guard Service. So, who should a lawyer in this system be acting against? The Migration Department or the client? In [the normal] legal aid framework, the State Guaranteed Legal Aid Service [under the Ministry of Justice] is not part of the trial. Here instead, we have a situation creating the obvious possibility of conflict of interest. It is not publicly discussed, but it is obvious... I don’t see any reason why the system should be different from [normal] state-legal aid”.**<sup>188</sup>

<sup>184</sup> Ministry of Interior of the Republic of Lithuania, *Sprendimas Dėl Užsieniečių apgyvendinimo vietų administravimo, vidaus tvarkos ir procedūrinių veiksmų atlikimo taisyklių* (Decision on rules for the administration, internal order and procedural action of places for accommodation of foreigners), 14 August 2021, No. 10V-31, Article 24.4, e-seimas.lrs.lt/portal/legalAct/lt/TAD/Oaa48eb0fd3611ebb4af84e751d2e0c9?jfwid=-vsw52885t

<sup>185</sup> Ministry of Interior of the Republic of Lithuania, *Įsakymas Dėl Prieglobsčio Lietuvos Respublikoje suteikimo ir panaikinimo tvarkos aprašo patvirtinimo* (Order on the approval of the description of the procedure for granting and withdrawing asylum in the Republic of Lithuania), 24 February 2016, No. 1V-131, Para. 176, <https://e-seimas.lrs.lt/portal/legalAct/lt/TAD/Oa918630dc0311e59019a599c5cbd673/asr>

<sup>186</sup> The Seimas Ombudsmen’s Office of the Republic of Lithuania, Report on ensuring human rights and freedoms of foreign nationals in the Kybartai Aliens Registration Center under the Ministry of the Interior of the Republic of Lithuania, (previously cited), Section 7.3.6.

<sup>187</sup> The Seimas Ombudsmen’s Office of the Republic of Lithuania, Report on ensuring human rights and freedoms of foreign nationals in the Kybartai Aliens Registration Center under the Ministry of the Interior of the Republic of Lithuania, (previously cited), Section 7.

<sup>188</sup> Interview by video call with Paulius Griciūnas, Secretary General of the Lithuanian Bar Association, 9 May 2022.

With respect to contracting with legal aid providers, the Migration Department organises a tender for legal aid to asylum-seekers, while the State Border Guard Service manages the tender for legal aid to irregular migrants and unaccompanied minors.<sup>189</sup>

Amnesty International has viewed two contracts signed by the Migration Department in 2021 with the law firm in charge of assisting asylum-seekers.<sup>190</sup> In the contracts, the Migration Department is described as the “client” of the lawyer. These contracts are valid for six months, but the Migration Department can terminate them unilaterally, including without any requirement to provide a justification for the termination. This undoubtedly may put pressure on lawyers to comply with the wishes of their “client” for fear of being sacked.

The law firm was contracted to provide legal aid for thousands of asylum-seekers. Only two “specialists” were named in the contracts signed by the law firm with the Migration Department. The contracted firm has not responded to a request for information regarding the exact number of lawyers (including potential subcontractors) working with asylum-seekers, and asking how the law firm is protected from incurring in a conflict of interest.<sup>191</sup> Other lawyers have suggested the law firm has fewer than ten employees, and the Chairman of the Lithuanian Bar Association revealed to local media that “an extremely small number of attorneys provide this service”.<sup>192</sup>

Despite a limited capacity and time frame (six months per contract), the Migration Department contracted with the law firm to provide legal aid in an enormous number of cases, including preparing and submitting “procedural documents related to the exercise of the right to asylum” 7,500 times, assisting during first-instance asylum procedures 2,750 times or assisting asylum-seekers in appeal procedures another 7,150 times.<sup>193</sup>

A lawyer from another law firm, noted that “three law firms won the initial tender for asylum-seekers in 2018, but that was when there were only 300 migrant arrivals per year. We were one of the three, but when the migrants were not anymore 300 [per year], but 4,000, we were sure we would not be able to provide good quality legal services for the same price. If you have 4,000 cases, you need more funding and to hire more people in your law firm. So, we got out, and so did another company. Eventually, only one law firm was left”.<sup>194</sup>

The order of the Ministry of the Interior establishing this legal aid system requires the legal aid to be organized and carried out in accordance with key principles: equality; “the protection of the rights and interests of all persons protected by law”; and quality, efficiency, and cost-effectiveness. The Ministry of Interior, in a written communication to Amnesty International, stated that the Migration Department monitors the quality and efficiency of state-guaranteed legal aid,<sup>195</sup> “[b]oth on general grounds (by conducting independent inspections) and in individual cases (after receiving complaints regarding the provision of legal services).”<sup>196</sup>

<sup>189</sup> Ministry of Interior, email of 8 June 2022, on file with Amnesty International.

<sup>190</sup> The two contracts signed by the Migration Department with the law firm (on 29 July 2021 and 23 November 2021) are publicly available (in Lithuanian) at: [www.cvpp.lt/index.php?option=com\\_vptpublic&task=sutartys&Itemid=109&filter\\_show=1&filter\\_limit=10&vpt\\_unite=&filter\\_tender=TEISIN%C4%96S&filter\\_number=&filter\\_proctype=&filter\\_authority=&filter\\_jarcode=188610666&filter\\_purchaseCode=&filter\\_cpv=&filter\\_valuefrom=&filter\\_valueto=&filter\\_contractdate\\_from=&filter\\_contractdate\\_to=&filter\\_expirationdate\\_from=&filter\\_expirationdate\\_to=&filter\\_supplier=&filter\\_supplier\\_jarcode=&filter\\_agreement\\_type=&fbclid=IwAR2WljBdUymGNti40bMNJ2m930gCFqL8fMatpvrwPc5XqG0zLM7ouxuQrY](http://www.cvpp.lt/index.php?option=com_vptpublic&task=sutartys&Itemid=109&filter_show=1&filter_limit=10&vpt_unite=&filter_tender=TEISIN%C4%96S&filter_number=&filter_proctype=&filter_authority=&filter_jarcode=188610666&filter_purchaseCode=&filter_cpv=&filter_valuefrom=&filter_valueto=&filter_contractdate_from=&filter_contractdate_to=&filter_expirationdate_from=&filter_expirationdate_to=&filter_supplier=&filter_supplier_jarcode=&filter_agreement_type=&fbclid=IwAR2WljBdUymGNti40bMNJ2m930gCFqL8fMatpvrwPc5XqG0zLM7ouxuQrY). A third contract with the same law firm was signed on 24 May 2022, only a few days after the publication of an exposé named “Scandalous profit-making scheme for migrants: hundreds of thousands of euros from the state - into the pocket of a shrewd lawyer” denouncing the flaws of the arrangements; Vytenis Miškinis, “Skandalinga pasipelnymo iš migrantų schema: šimtai tūkstančių eurų iš valstybės – į apsu kraus teisininko kišenę”, *Delfi*, 15 May 2022, [www.delfi.lt/news/daily/lithuania/skandalinga-pasipelnymo-is-migrantu-schema-simtai-tukstanciu-euru-is-valstybes-i-apsukraus-teisininko-kisene.d?id=90176489](http://www.delfi.lt/news/daily/lithuania/skandalinga-pasipelnymo-is-migrantu-schema-simtai-tukstanciu-euru-is-valstybes-i-apsukraus-teisininko-kisene.d?id=90176489)

<sup>191</sup> The request was sent by e-mail on 9 May 2022, on file with Amnesty International.

<sup>192</sup> Vytenis Miškinis, “Skandalinga pasipelnymo iš migrantų schema: šimtai tūkstančių eurų iš valstybės – į apsu kraus teisininko kišenę”, *Delfi*, 15 May 2022, <https://m.delfi.lt/lietuvoje/article.php?id=90176489>

<sup>193</sup> These numbers were calculated by adding homologous services extracted from the two initial contracts signed with the Migration Department and available at: [www.cvpp.lt](http://www.cvpp.lt).

<sup>194</sup> Interview by voice call with lawyer at the Spectrum Legis law firm, 5 May 2022.

<sup>195</sup> The question from Amnesty International and answered by the Ministry of Interior asked: “Is the Migration Department and/or any Lithuanian institution monitoring the quality and efficiency of state-guaranteed legal aid provided to migrants and asylum-seekers? How?”

<sup>196</sup> Ministry of Interior, email to Amnesty International, 6 June 2022, on file with Amnesty International.



The Ministry of Interior, however, did not respond to Amnesty International's question on how the government ensures that the provision of legal aid is organised and carried out in accordance with the principles of equality, the protection of rights and interests of refugees and migrants, the prohibition of abuse of state-guaranteed legal aid, and substantive or procedural rights.<sup>197</sup> The contracts viewed by Amnesty International did not include any details about how the parties must ensure the rights and interests of the refugees and migrants or what mechanism would monitor the guarantee of those principles.

When asked by Amnesty International, the Ministry of Interior did not clarify what safeguards are in place to ensure the impartiality of lawyers and prevent conflicts of interest. Instead, the Ministry of Interior limited its response to commenting that "State-guaranteed legal aid lawyers are impartial. The Migration Department orders a service (e.g. preparation of a complaint, representation at a court hearing), and upon receipt of this order, the lawyers act independently, they do not coordinate these complaints with the Migration Department".<sup>198</sup>

Article 16 of the 1951 Geneva Convention on Refugees establishes that a refugee "shall enjoy in the Contracting State in which he has his habitual residence the same treatment as a national in matters pertaining to access to the Courts, including legal assistance". Instead, Lithuania has created a parallel legal aid system for matters of asylum and migration which is marred by a lack of impartiality and independence, and carries the risk of creating a conflict of interest for lawyers representing people in asylum and migration matters. As shown in the next section, within this system state-sponsored lawyers abstain from defending the rights of asylum-seekers and migrants, or even act against them.

#### **STATE-SPONSORED LAWYERS NOT ASSISTING ASYLUM-SEEKERS AND MIGRANTS OR ACTING AGAINST THEM**

Despite the formal presence of state-sponsored lawyers in asylum and immigration proceedings, the quality of legal aid is a key concern. According to dozens of refugees and migrants, lawyers are always present at hearings but seldom, if ever, provided any effective legal services or legal representation. As a result, the legal support provided is not only inadequate, but also damaging for asylum-seekers and migrants, as it allows for procedures to formally take place, without actual representation of their interests.

Peoples' testimonies about legal aid painted a disheartening picture. All those interviewed confirmed that they had never met or spoken with their state-appointed lawyer before their crucial interview for their asylum case, and that they were not even made aware of the date of such interview until the day it took place, therefore having no time to prepare for it. Those who request legal aid are not even made aware of their lawyer's name or contact details. The state-sponsored lawyers never directly communicated with their clients, and people wishing to contact a lawyer had no possibility to do so. According to protocol, the detention centres' management should inform asylum-seekers and migrants of an appointment with a lawyer within one working day,<sup>199</sup> but in practice this appears never to happen.

<sup>197</sup> The question from Amnesty International said: "How is the government ensuring the implementation of paragraph 185 of Description of the Procedure for Granting and Revoking Asylum in the Republic of Lithuania, approved by Order No. 1V 131 "On the Approval of the Description of the Procedure for Granting and Revoking Asylum in the Republic of Lithuania" of the Minister of the Interior of the Republic of Lithuania of 24 February 2016? In particular, how is the government ensuring that the provision of state-guaranteed legal aid is organized and carried out in accordance with the following principles under paragraph 185 Equality and the protection of the rights and interests of all persons protected by law; the quality, efficiency and cost-effectiveness of state-guaranteed legal aid; the prohibition of abuse of state-guaranteed legal aid and substantive and procedural rights?"

<sup>198</sup> The question from Amnesty International said: "Conflict of interest and safeguards: What safeguards are in place in proceedings to ensure the impartiality of lawyers and prevent the legal service provider(s)'s conflict of interest in proceedings managed and decided by the Migration Department (e.g. asylum, temporary accommodation without freedom of movement) considering that the decisions are taken by the same institution (the Migration Department) that is contracting the state-guaranteed legal aid provider(s)?"

<sup>199</sup> Ministry of Interior of the Republic of Lithuania, *Įsakymas Dėl Prieglobsčio Lietuvos Respublikoje suteikimo ir panaikinimo tvarkos aprašo patvirtinimo* (Order on the approval of the description of the procedure for granting and withdrawing asylum in the Republic of Lithuania), 24 February 2016, No. 1V-131, Para. 182, <https://e-seimas.lrs.lt/portal/legalAct/lt/TAD/0a918630dc0311e59019a599c5cbd673/asr>.

Providing access to legal assistance for asylum-seekers and irregular migrants is an obligation under EU law, at least in appeals procedures.<sup>200</sup> In asylum cases, EU member states must ensure that free legal assistance includes, at minimum, the preparation of the required procedural documents and participation in the hearing before a court or tribunal of first instance on behalf of the applicant.<sup>201</sup>

Asylum-seekers and migrants in detention in Lithuania instead recounted how they only saw their lawyers on a computer screen at their immigration hearings, which take place online, thus leaving no opportunity for any private interaction before, during or after the proceedings.

**"They wake you up one morning and tell you 'you have immigration court'. There [in the online court room], there is a lawyer. I have never spoken to any lawyer. You can only see them through the screen [at the online hearing], but we don't even know them. The lawyer never even asked me my story, never."**

"Marie", Cameroonian woman detained in Medininkai, interviewed in March 2022

**"Immigration [proceedings] are always online. The day of the interview for the asylum, they tell you 'This is your lawyer', but I had never seen the lawyer before."**

"Jean", young man from Sub-Saharan Africa, interviewed in March 2022

**"The court is always on skype, you enter the [online] room and they say 'he is your lawyer', I never had a one-to-one."**

"Josephine", young woman from Sub-Saharan Africa, interviewed in March 2022

To prepare their clients' cases, lawyers can request from the administration of the FRCs access to their clients' personal files. Yet, communications from the FRCs' managements revealed that lawyers seldom or never asked for access to people's personal files. The Medininkai FRC management revealed that, as of 16 May 2022, only two case files were presented to lawyers upon a lawyer's request, despite the centre detaining approximately 500 individuals. The administration of Kybartai FRC stated that they "have not received any requests from lawyers for access to the files of asylum-seekers or illegal [*sic*] migrants".<sup>202</sup>

Asylum-seekers consistently reported that even during formal proceedings their lawyers made no meaningful comments and usually remained silent throughout or responded with "I have nothing to say" when directly asked whether they had any comment by the presiding authorities.

**"I have never met my lawyer before [immigration hearings]. You enter the online room and they tell you 'this is your lawyer'. Then the lawyer doesn't say anything."**

"Jean", young man from Sub-Saharan Africa, interviewed in March 2022

**"The lawyer never speaks. They don't know anything about you."**

"Sekou", young man from Sub-Saharan Africa, interviewed in March 2022

In some cases, detainees also reported that their assigned lawyers made comments that did not align with the interests of the person they were supposed to represent but were instead defensive of the Migration Department's arguments against their client.

One of the men detained following the raid in Medininkai on 2 March told Amnesty International:

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<sup>200</sup> Return Directive (2008/115/EC of the European Parliament and of the Council of 16 December 2008 on common standards and procedures in Member States for returning illegally staying third-country nationals), Art. 13; Asylum Procedures Directive (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), Art. 20.

<sup>201</sup> Asylum Procedures Directive (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), Art. 20.

<sup>202</sup> State Border Guard Service (Kybartai), email to Amnesty International, 16 May 2022, on file with Amnesty International

**“During the court [hearing] I asked the lawyer whether he knew my situation, he said ‘I know that you tried to run away from the camp’.”**

“Jean”, young man from Sub-Saharan Africa, interviewed in March 2022

In another case, an asylum-seeker who appealed against his detention reported that when he asked for his lawyer’s help, the lawyer accused his client during a hearing with the Migration Department of planning to abscond should he be released.

**“I have had a lawyer whom I have never met. I have seen him for the first time at the [online] interview and during the interview the lawyer was saying that I have no right to freedom. [...] He was saying ‘no, you have no right to freedom, you are going to stay six months more in detention...’ It was during the interview with immigration officers and the ‘judge’ that my lawyer was saying this, that ‘you are going to flee if we set you free...’”**

“Simon”, young man from a Western African country, April 2022

In another case, an asylum-seeker wishing to challenge the Migration Department’s decision not to consider his asylum application reported how his lawyer and the interpreter tried to persuade him to withdraw his challenge:

**“I don’t know any name of state lawyers, they never discussed with me any details of my case. I see them only when there is court ... When I applied for asylum to the immigration department, and the immigration department refused [to consider my asylum request], I wanted to file a complaint. The lawyer was there, and he tried to convince me not to sue the immigration department for ignoring my request. The interpreter was also telling me ‘you should withdraw the complaint’”.**

“Yasser”, Syrian man detained in Kybartai, May 2022

Even after the interview and the decision by relevant authorities to either deny international protection or authorize detention, people had no interactions with or communications from their assigned lawyers, and little or no support in filing appeals.

Written decisions were always delivered in Lithuanian, with only scant information being included in English and other languages, making it extremely difficult for people to understand the reasoning behind them, particularly when lawyers did not provide follow-up support.

These claims are entirely consistent with the findings of the Lithuanian Parliamentary Ombudsperson, at least one member of the Lithuanian parliament,<sup>203</sup> and other organisations with continuous access to detention facilities. A survey conducted by the Lithuanian Red Cross, found that 96% out of 150 surveyed detainees did not know who the state-sponsored legal aid lawyer representing them was. The survey found that foreigners “do not even receive a copy of the court decisions from the lawyer representing them, let alone acquaintance with such decision”. Referring to domestic legislation establishing that a lawyer should notify and provide access to all procedural documents related to a case to the people they are representing, the Red Cross concluded that “it is likely that [legal aid] providers do not fulfil this obligation towards the foreigners they represent”.<sup>204</sup>

## 6.3 DISREGARD FOR DUE PROCESS

Lithuanian authorities have actively exploited the lack of oversight from judicial reviews of detention and a compromised legal aid system to implement practices that amply disregard due process and

<sup>203</sup> Vytautas Bakas, “Seimo nario Vytauto Bako pranešimas: parlamentaras kreipėsi į Lietuvos advokatūrą dėl valstybės garantuojamos teisinės pagalbos kokybės”, (Press release, 25 April 2022), [sc.bns.lt/view/item/424151](https://sc.bns.lt/view/item/424151).

<sup>204</sup> Lithuanian Red Cross, “Stebėsenos ataskaitos apie užsieniečių prieigos prie prieglobsčio procedūrų ir valstybės garantuojamos teisinės pagalbos apgyvendinimo centruose santrauka”, 2022, [www.redcross.lt/sites/redcross.lt/files/temine\\_stebesena\\_prieiga\\_prie\\_proceduru\\_santrauka.pdf](https://www.redcross.lt/sites/redcross.lt/files/temine_stebesena_prieiga_prie_proceduru_santrauka.pdf)

deprive asylum-seekers and migrants of any real chance to assert their rights. Multiple testimonies included information about numerous violations of due process in asylum, detention and return proceedings

Rather than effectively examining the claims of people seeking asylum, including by enabling them to present all relevant evidence, officials appeared to deal with cases in a superficial and prejudicial way – often bypassing procedural safeguards – in order to secure decisions against the applicants. As a representative of Diversity Development Group reported to Amnesty International, “When people started arriving from Belarus, the Immigration Department labelled these people as *illegals* to be deported, not people worth asylum.”<sup>205</sup>

Amnesty International has documented serious shortcomings in the way asylum and deportation proceedings were conducted or information was gathered, interpreted, translated, or processed.

### INSUFFICIENT TIME DURING THE INTERVIEWS

The authorities routinely failed to notify asylum-seekers in a timely manner so they could prepare before their interviews. Asylum-seekers also were not provided with proper tools and time to actively participate and make their case. Complex interviews with asylum-seekers would last only 15-30 minutes, clearly not enough time to detail one’s asylum claims. Technical problems related to the online format and poor interpretation further impaired applicants’ chances to argue their case. As one man recounted:

**“I don’t know where to start to say what is wrong with the system, the interviews are all wrong. Timing is not enough, internet is weak. And the interpretation, there are two interpreters here and they never told the story the way I meant it”**

“Samer”, young man from Iraq detained in Kybartai, interviewed in March 2022

The proceedings are not only deficient in time and manner, but the utter lack of respect for the dignity of asylum-seekers is often on full display. As a representative of the Lithuanian Refugee Council confirmed: “The interview for the asylum lasts between 15 and 30 minutes, I have seen it. Officers are very negative, they yell at asylum-seekers.”<sup>206</sup>

A former staff member of the Migration Department who used to interview asylum applicants also reported to Lithuanian media that “the formalities with the migrants last less than 20 mins, during which the employees of the Migration Department have to quickly decide whether they put the person in the ‘illegal’ or ‘asylum-seeker’ category. This decision impacts the course of their asylum request, and the result is often dependent solely on the morals of the employees themselves... We are deceiving them in the process because... the real goal is to get rid of them”.<sup>207</sup>

### ASYLUM-SEEKERS PREVENTED FROM ACCESS TO INFORMATION TO DETAIL THEIR CLAIMS

People do not appear to receive assistance in retrieving evidence to substantiate their claims, including in accessing the material resources necessary to submit the relevant information.

Several people stated that their phones, seized from them at the beginning of their detention, were not even temporarily returned to them when they clarified with the authorities that crucial evidence saved there would substantiate their asylum claim. The Kybartai administration claimed that “mobile phones are only

<sup>205</sup> Interview in person with representative of the Diversity Development Group, Vilnius, 11 March 2022.

<sup>206</sup> Interview in person with representative of the Lithuanian Refugee Council, Vilnius, 11 March 2022.

<sup>207</sup> Domantė Platūkytė, “Situaciją dėl prieglobsčio prašymo vadina iškreipta: apskūstus Migracijos departamento sprendimus nagrinėja pats departamentas”, *Lithuanian Radio and Television (LRT)*, 22 September 2021, [lrt.lt/naujienos/lietuvoje/2/1498648/situacija-del-prieglobscio-prasymo-vadina-iskreipta-apskustus-migracijos-departamento-sprendimus-nagrineja-pats-departamentas](https://www.lrt.lt/naujienos/lietuvoje/2/1498648/situacija-del-prieglobscio-prasymo-vadina-iskreipta-apskustus-migracijos-departamento-sprendimus-nagrineja-pats-departamentas)

taken away from [persons] that have been detained [by a decision] of the Court".<sup>208</sup> The Medininkai administration clarified that, in addition, "a mobile telephone may be seized for up to 7 days in case of disciplinary violations".<sup>209</sup>

In one case, Lithuanian authorities seized the phone of "Simon", an asylum-seeker from a Western African country who is escaping persecution based on his sexual orientation. During asylum proceedings, the authorities alleged that "Simon" lied about his sexual orientation. "Simon" had asked the authorities several times to retrieve his phone where he kept crucial documents proving that he had been imprisoned in his country of origin because of his sexual orientation. However, "Simon" was never given his phone back.

**"At the interview, they told me that I am lying, that I am not gay. The Immigration Department was saying that I lie. They asked that I give them proofs, so I gave them pictures of my boyfriend, I couldn't give proof that I was imprisoned in [country in Africa] [for being gay]. I have many proofs on my phone, but when I got arrested in Lithuania, they took my phone and the authorities never gave it back to me. I had a document on my phone showing that I was in prison in [country in Africa] in 2014. I asked them to give me my phone back, but they never gave it back to me".**

"Simon", young man from a Western African country, interviewed by voice call in April 2022

The Migration Department eventually rejected "Simon"'s asylum application and the decision stated that his accounts could not be considered as credible evidence because it was probable that his "declared homosexuality" was "fictitious".<sup>210</sup>

In another case, "Coman" was denied release from detention based on the Migration Department's argument to a regional court that he had not produced his passport at the time he sought asylum, allegedly "proving" he had been uncooperative. In fact, at that time, the Migration Department was holding his passport. "Coman"'s statements to the court that he had given his passport to the Migration Department authorities were deemed not credible. Weeks later, when he requested that the Migration Department provide information about the whereabouts of his passport, they confirmed in writing that they had it in their possession.

**"When I went to court, everything was in my favour... But after a day I got a reply. The judge's decision was to refuse me [release to] an open camp. The reason was that the Department of Immigration claimed that I did not hand over my original passport to them, and they consider that I did not cooperate with them. But that is not true. I handed them all my original documents and my passport. I was shocked by it... After I saw the decision, I sent an email to the Department of Immigration to check whether my passport is with them now or not."**

"Coman", young Iraqi man detained in Kybartai, interviewed by voice call in May 2022

Amnesty International has reviewed the Migration Department's reply sent via email to "Coman" and it confirmed that the passport and other documents were in fact in the department's possession.<sup>211</sup>

Subsequently, "Coman" appealed the decision to the Supreme Court and in May 2022 was granted a new hearing to consider the matter.

**"I asked the judge to ask the representative of the Department of Immigration [whether] my passport is with them or not. And she answered yes, his original passport is with us. And I told her then why in the previous court [decision] it was written that I did not hand [them] a passport. At the end, when she felt trapped, she claimed that my asylum file is closed, that I did not appeal the first refusal. That is not true, I appealed the decision. But now they are quickly closing your asylum file before you complete a year in detention, they are afraid that you will go out after the year."**

<sup>208</sup> State Border Guard Service (Kybartai), email to Amnesty International, 16 May 2022, on file with Amnesty International

<sup>209</sup> State Border Guard Service (Medininkai), email to Amnesty International, 16 May 2022, on file with Amnesty International

<sup>210</sup> The decision of the Migration Department was viewed by Amnesty International researchers (details withheld for security reasons), on file with Amnesty International.

<sup>211</sup> Migration Department, Email to "Coman" (name changed for security reasons), May 2022, on file with Amnesty International

“Coman”, young Iraqi man detained in Kybartai, interviewed by voice call in May 2022

## MISTAKES IN THE PROCEEDINGS AND IN MIGRATION DEPARTMENT DECISIONS

Superficial proceedings inevitably result in superficial decisions. In some cases, Migration Department decisions were so similar to each other that they appeared to have been copy-pasted. Some decisions contained or were based on obvious mistakes, giving credence to the concern that there was no careful and thorough individual assessment of many asylum claims.

Such mistakes included errors concerning the nationality of asylum applicants. Amnesty International has reviewed one Migration Department decision concerning the expulsion of an asylum applicant from a sub-Saharan country stating that the applicant “does not wish to return to the Republic of Iraq”, despite the applicant having never had any link to Iraq. According to a man interviewed in one of the FRCs, similar mistakes are common, as he was aware of another decision misrepresenting a Somali national as Eritrean.<sup>212</sup>

“Samer” was an asylum-seeker whose initial asylum application had been rejected because the Migration Department believed he had fled from Lithuania thus abandoning the asylum procedure. In fact, Lithuanian authorities had transferred “Samer” from one detention facility to another within Lithuania just a couple of days before the asylum decision was issued. When “Samer” challenged the decision, he was sent a new decision of refusal on other grounds four days later.

**“I have applied for asylum immediately when I entered Lithuania. Back then I was in another camp, then they transferred me to here [other detention centre, i.e. Kybartai]. Then, I received an e-mail saying I would not get asylum because I was not anymore in Lithuania, that I had escaped the asylum procedure, just because I was transferred! I then replied [explaining that I had been transferred] and only four days later they sent me a new refusal [of my asylum application].”**

“Samer”, young man from Iraq detained in Kybartai, interviewed in March 2022

Other decisions also betray lack of due diligence, precision and thoroughness. Many asylum-seekers and migrants reported that details and stories mentioned in the decisions were directly at odds with the stories they shared during the interviews.

**“I read the decision on my asylum case, using Google Translate, and it was completely different [from what I had said]. I came because of problems in Biafra, I never mentioned Boko Haram, but in the decision they mentioned Boko Haram [...] All the decisions are in Lithuanian. We Google Translate them and the story is always different from the one you had told them.”**

“Sekou”, young man from Sub-Saharan Africa, interviewed in March 2022

EU law requires that decisions on applications for international protection be taken following an appropriate examination, and that applications be examined and decisions taken individually, objectively and impartially.<sup>213</sup> Even within the context of accelerated procedures, the Council of Europe’s relevant guidelines establish that “throughout the proceedings, decisions should be taken with due diligence”.<sup>214</sup> The superficial nature of decisions taken by the Migration Department, and even more so the obvious mistakes included in such decisions show that Lithuania is not living up to its international obligations.

<sup>212</sup> Interview with “Sekou” (name changed for security reasons), young man from Sub-Saharan Africa, interviewed in March 2022

<sup>213</sup> Asylum Procedure Directive, Art. 10.3

<sup>214</sup> Council of Europe, Human rights protection in the context of accelerated asylum procedures - Guidelines and Explanatory Memorandum, Guideline n. 9, Adopted by the Committee of Ministers on 1 July 2009 at the 1062nd meeting of the Ministers’ Deputies, <https://rm.coe.int/16806aff8b>.



## INADEQUATE INTERPRETATION AND TRANSLATION

Several asylum-seekers and migrants also reported that interpretation during the interviews and proceedings was of poor quality or totally inadequate, making it virtually impossible to understand what was being said or properly assert one's claims and facts.

**"The lawyer does not speak French or English. The interpreter does not interpret well French, we don't understand each other. When I finished my interview and I looked at the decision, this says something completely different from what I had said [in the interview]. So, I assume that we have a hard time communicating with the interpreter"**

"Simon", young man from a Western African country, interviewed by voice call in April 2022

**"The [interpreter] had a different accent and was unprofessional and throughout the interview he was wandering around his house. When I got the rejection, I found a lot of different things."**

"Coman", young Iraqi man detained in Kybartai, text message, interviewed by voice call in May 2022

In at least one case, an asylum-seeker reported how an interpreter refused to interpret certain parts of the proceedings:

**"[In] the court [hearing] about my complaint against the immigration department [...] the interpreter asked me to ask the judge what benefits I get from this complaint, and the harm I may get if something bad happened. The interpreter kept on telling me 'you should withdraw the complaint' and did not even want to translate what I was saying".**

"Yasser", Syrian man detained in Kybartai, interviewed by voice call in May 2022

Once decisions are taken, they are only issued in Lithuanian. The only parts that were also in English concerned the "Substance of the Decision". For instance, in decisions on asylum the part in English simply mentioned if asylum was granted or not and informed of the possibility to appeal and to request a state-sponsored lawyer, but no other details were given. Nevertheless, asylum-seekers were asked to sign and declare that "this decision was read and explained to me". The decisions were normally delivered by SBGS officers in the detention centres. When asylum-seekers and migrants asked the officers what the decision said, officers tended to limit themselves to simply stating whether asylum was granted or not or whether the decision imposed detention. Migrants and asylum-seekers were often left to use their mobile phones to try and translate complex legal language with online tools, such as Google Translate.

**"Every document is in Lithuanian, they don't explain us well, just a few things and then they say that we have to sign."**

"Peter", young man from Sub-Saharan Africa, March 2022

## LACK OF CERTAINTY AND OTHER IMPACTS ON MENTAL HEALTH

Without adequate legal counsel or information and with little to no possibility to understand the procedures they are going through, virtually all people in detention shared that they felt powerless and at the mercy of abusive practices and unfair procedures.

People said that they feared their detention could be endless, because they did not know its duration. Many felt hopeless that their asylum claims would be assessed fairly. After spending several months in detention in abysmal conditions and lacking any perspective or clarity on what to expect from their immigration proceedings, many complained about their mental wellbeing. The Lithuanian Parliamentary Ombudsperson has also noted the mental health impacts and stated that "such long-

term uncertainty about the future due to lack of information may have a negative impact on the psychological condition of foreign nationals.”<sup>215</sup>

**“[They] never told us why we were being transferred. [They] just told us to get our stuff. Everything they wanna do, they don’t tell us. They just tell us ‘Get ready and we go’, and took us to this place.”**

“Gabriel”, man from Sub-Saharan Africa detained in Medininkai, March 2022

**“This is the big problem of this country. They never tell us the truth. Why am I being detained? They need to tell us for how long we are gonna be here.”**

“Jean”, young man from Sub-Saharan Africa, March 2022

## THE OPAQUE ROLE OF EU INSTITUTIONS

As a member of the European Union (EU), Lithuania can avail itself of the support of EU institutions, including in addressing challenges related to border management, but it must also comply with EU legislation on migration and asylum.

Lithuanian authorities have enjoyed assistance from the EU, including through the deployment of EU agencies and financial support from EU funds. At the same time, by perpetrating systematic human rights violations through “push-back or lock up” legislation, policies and practices, Lithuania has breached EU laws.

This calls into play the responsibility of EU institutions, in particular Frontex and the European Commission. The former has provided assistance to Lithuania in ways that may have facilitated the commission of the human rights violations described in previous sections. Frontex assistance has not been conditioned on Lithuania’s respect for human rights. The European Commission has forfeited its role as “guardian of the EU Treaties” by choosing political expediency over the duty to ensure that Lithuania complies with EU legislation.

### THE ROLE OF FRONTEX

Despite widespread and well-documented instances of violent pushbacks by Lithuanian border guards, EU institutions continued providing assistance to the Lithuanian government, in the second half of 2021 and the first half of 2022, without ensuring that its legislation and practices complied with international and EU human rights law.

In July 2021, when crossings from Belarus reached significant proportions, the European Border and Coast Guard Agency (Frontex) rapidly intervened in support of the Lithuanian authorities. Ten officers and patrol cars were deployed on the Lithuanian borders starting on 1 July.<sup>216</sup> On 12 July, the then Executive Director of Frontex, Fabrice Leggeri, launched a *Rapid Border Intervention* at Lithuania’s border with Belarus, “to assist with the growing migration pressure”, following a request by the

<sup>215</sup> “One of the most common complaints heard from many of the interviewed foreign nationals was a lack of understanding of their legal status in Lithuania and a lack of information about it. Foreign nationals accommodated in the Kybartai ARC complained that they did not understand and receive answers about what migration procedures were being carried out on them, what was waiting for them in the future, what were the maximum time limits for their detention in the Kybartai ARC. Those who complained claimed that they did not receive this information either from the Kybartai ARC administration or when contacting the Migration Department. It should be noted that such long-term uncertainty about the future due to lack of information may have a negative impact on the psychological condition of foreign nationals”; The Seimas Ombudsmen’s Office of the Republic of Lithuania, *Report on ensuring human rights and freedoms of foreign nationals in the Kybartai Aliens Registration Center under the Ministry of the Interior of the Republic of Lithuania*, (previously cited), Section 6.3.1.3.

<sup>216</sup> Frontex, “Frontex provides support for Lithuania, Latvia at their borders with Belarus”, (Press release, 1 July 2021), <https://prd.frontex.europa.eu/document/frontex-provides-support-for-lithuania-latvia-at-their-borders-with-belarus/>

Lithuanian government.<sup>217</sup> After Greece, Lithuania was only the second EU member state to receive such an intervention on its territory. By 30 July, Frontex had 100 officers, 30 patrol cars and two helicopters deployed in Lithuania.<sup>218</sup>

In launching these activities, Frontex stated that its resources would support Lithuania “in border surveillance and other border management functions”,<sup>219</sup> and in particular that its officers would “work alongside their Lithuanian colleagues and help them with border checks, border surveillance, as well as the registration, identification and screening of the irregular migrants crossing the border.”<sup>220</sup> Additional activities included “conducting interviews with migrants to gather information on criminal networks involved”,<sup>221</sup> and discussing potential additional support through different “types of return operations coordinated by the agency”.<sup>222</sup> Frontex officers would be deployed at “selected border crossing points”<sup>223</sup> and would work “under the command of national authorities”.<sup>224</sup>

A public review by Frontex of its activities in 2021 included a quote from Rustamas Liubajevs, Head of the Lithuanian State Border Guard Service: “I would like to thank Frontex very much for providing professional assistance to both border and migration authorities in Lithuania to overcome this crisis, and to prevent the influx of irregular migrants caused by a hybrid attack by the Belarusian regime.”<sup>225</sup>

After the July 2021 *Rapid Border Intervention* deployed in Lithuania, renewed once in October 2021, Frontex has implemented activities in Lithuania in the framework of Joint Operation Terra 2022, which covers 12 Member States along the EU’s Central and East European external land borders, including the deployment of more than 450 Frontex officers as of March 2022.<sup>226</sup> The operation focuses on “border management, detection of fraudulent documents and prevention of cross-border crime, keeping a sharp eye on migrant smugglers and human traffickers.”<sup>227</sup>

The Lithuanian authorities have in the meantime continued to employ a systematic pushback policy, raising concerns that Frontex officers are likely to have been involved in sightings of people attempting to cross borders into Lithuania and who would have been subsequently detained and/or returned to Belarus by Lithuanian border guards in patent breach of international and EU law. Frontex officers themselves have shared numerous internal “Serious Incident Reports” with Frontex Headquarters and have flagged cases where they had witnessed potential violations of human rights: as of October 2021, at least 17 such reports had been filed in connection with potential collective expulsions.<sup>228</sup>

According to Lithuanian media, Frontex’s Fundamental Rights Office shared recommendations in December 2021 with the Lithuanian authorities, proposing that the Lithuanian government substantially change its policy of pushbacks.<sup>229</sup> However, the Lithuanian Ministry of Interior responded that, while it would take the recommendations into account, it would not stop denying entry to foreigners crossing the forest from Belarus.<sup>230</sup>

<sup>217</sup> Frontex, “Frontex launches rapid intervention in Lithuania”, (Press release, 12 July 2021), <https://prd.frontex.europa.eu/document/frontex-launches-rapid-intervention-in-lithuania/>

<sup>218</sup> Frontex, “EU solidarity in Lithuania”, (Press release, 30 July 2021), <https://prd.frontex.europa.eu/document/eu-solidarity-in-lithuania/>

<sup>219</sup> Frontex, “Frontex provides support for Lithuania, Latvia at their borders with Belarus”, (previously cited)

<sup>220</sup> Frontex, “EU solidarity in Lithuania”, (Press release, 30 July 2021), <https://prd.frontex.europa.eu/document/eu-solidarity-in-lithuania/>.

<sup>221</sup> Frontex, “Frontex launches rapid intervention in Lithuania”, (previously cited).

<sup>222</sup> Frontex, “EU solidarity in Lithuania”, (previously cited).

<sup>223</sup> Frontex, “EU solidarity in Lithuania”, (previously cited).

<sup>224</sup> Frontex, “Frontex and Lithuania agree on service weapons delivered to Frontex standing corps officers”, Press release, 9 December 2021, <https://prd.frontex.europa.eu/document/frontex-and-lithuania-agree-on-service-weapons-delivered-to-frontex-standing-corps-officers/>

<sup>225</sup> Frontex, “2021 in brief”, 17 January 2022, p.24, <https://prd.frontex.europa.eu/document/2021-in-brief/>

<sup>226</sup> Frontex, “Joint Operation Terra 2022”, Video, 2 March 2022, <https://prd.frontex.europa.eu/document/joint-operation-terra-2022/>

<sup>227</sup> Frontex, “Joint Operation Terra 2022”, Video, 2 March 2022, <https://prd.frontex.europa.eu/document/joint-operation-terra-2022/>

<sup>228</sup> Nicolaj Nielsen, “EU borders chief: More ‘violations’ in Lithuania than reported”, EU Observer, 13 October 2021, <https://euobserver.com/migration/153202>

<sup>229</sup> Saulius Jakučionis, Augustas Stankevičius, “Frontex says Lithuania should scrap pushback policy, as it violates migrants’ rights”, *Lithuanian Radio and Television (LRT)*, 28 December 2021, <https://www.lrt.lt/en/news-in-english/19/1572019/frontex-says-lithuania-should-scrap-pushback-policy-as-it-violates-migrants-rights>

<sup>230</sup> Saulius Jakučionis, Augustas Stankevičius, “Frontex says Lithuania should scrap pushback policy, as it violates migrants’ rights”, *Lithuanian Radio and Television (LRT)*, 28 December 2021, <https://www.lrt.lt/en/news-in-english/19/1572019/frontex-says-lithuania-should-scrap-pushback-policy-as-it-violates-migrants-rights>

According to the EU Regulation governing Frontex, the Executive Director shall withdraw the financing, or suspend or terminate any activity by the Agency, “if he or she considers that there are violations of fundamental rights or international protection obligations related to the activity concerned that are of a serious nature or are likely to persist”.<sup>231</sup> If such conditions exist before the launch of new activities, the Executive Director shall decide not to launch any activity by the Agency.<sup>232</sup> In making such assessments, the Executive Director must consult the Fundamental Rights Officer of the Agency and consider “the number and substance of registered complaints that have not been resolved by a national competent authority, reports of serious incidents, reports from coordinating officers, relevant international organisations and Union institutions, bodies, offices and agencies”.<sup>233</sup>

Despite the systematic violations of international and EU law perpetrated by the Lithuanian authorities, who have benefited from Frontex’ assistance in the last 12 months, Frontex continues implementing Joint Operation Terra in Lithuania as of June 2022. Questions about the compatibility of the revised Lithuanian law with EU legislation have been raised by former Frontex Executive Director Leggeri himself,<sup>234</sup> but have yet to be conclusively answered by the European Commission.

## THE ROLE OF THE EU AGENCY FOR ASYLUM

The EU Agency for Asylum (EUAA, formerly EASO) is also active in Lithuania, on the basis of an operational plan agreed with the Lithuanian government in July 2021, amended in September 2021 and in force until 30 June 2022.<sup>235</sup> At the time of writing, EUAA and Lithuanian authorities were negotiating the possibility of extending EUAA’s deployment.<sup>236</sup>

The current plan foresees the provision of “immediate support to the local asylum and reception systems through the rapid deployment of operational personnel and interpreters, together with a medium-term intervention focusing on enhancing the capacity of Lithuanian authorities to cope with the changed migratory context.”<sup>237</sup> According to publicly available information, the EUAA deployed a total of 17 field support officers and 61 personnel, including interpreters, in 2021, mostly working in Foreigner Registration Centres.<sup>238</sup>

Activities carried out by the EUAA include the provision of support to Lithuanian authorities in the registration of applications for international protection, in conducting asylum interviews, drafting relevant opinions, accessing Country of Origin Information, and managing reception facilities.<sup>239</sup>

Despite such efforts, information provided in this report demonstrates that the situation of people entering Lithuania – or attempting to enter Lithuania – from Belarus continues to be bleak.

In early June 2022, Amnesty International requested that the EUAA share its assessment of the human rights impact of Lithuanian legislation and policies on refugees and migrants. The EUAA provided the following response:

**“As a result of a request for operational support from the Lithuanian authorities, the EUAA has been present in the country since July 2021. Since then, in the course of the EUAA’s ongoing implementation of the operating plan,**

<sup>231</sup> Regulation (EU) 2019/1896 of the European Parliament and of the Council of 13 November 2019 on the European Border and Coast Guard, Article 46.4

<sup>232</sup> Regulation (EU) 2019/1896 of the European Parliament and of the Council of 13 November 2019 on the European Border and Coast Guard, Article 46.5

<sup>233</sup> Regulation (EU) 2019/1896 of the European Parliament and of the Council of 13 November 2019 on the European Border and Coast Guard, Article 46.6

<sup>234</sup> Nicolaj Nielsen, “EU borders chief: More ‘violations’ in Lithuania than reported”, (previously cited).

<sup>235</sup> EUAA, “Operating plan agreed by EASO and the Ministry of the Interior of the Republic of Lithuania”, 15 July 2021, [https://euaa.europa.eu/sites/default/files/operating\\_plan\\_lithuania\\_2021.pdf](https://euaa.europa.eu/sites/default/files/operating_plan_lithuania_2021.pdf); EUAA, Operating plan agreed by EASO and the Ministry of the Interior of the Republic of Lithuania and the Ministry of Social Security and Labour of the Republic of Lithuania, 14 September 2021, [https://euaa.europa.eu/sites/default/files/Amendment\\_Operating%20Plan\\_EASO\\_Lithuania\\_14.09.2021.pdf](https://euaa.europa.eu/sites/default/files/Amendment_Operating%20Plan_EASO_Lithuania_14.09.2021.pdf)

<sup>236</sup> EUAA, email to Amnesty International, 7 June 2022, on file with Amnesty International

<sup>237</sup> EUAA, “Member States Operations / Lithuania”, (accessed on 14 June 2022), <https://euaa.europa.eu/operations/member-states-operations>

<sup>238</sup> EUAA, “Member States Operations / Lithuania”, (accessed on 14 June 2022), <https://euaa.europa.eu/operations/member-states-operations>

<sup>239</sup> EUAA, “Operating plan agreed by EASO and the Ministry of the Interior of the Republic of Lithuania and the Ministry of Social Security and Labour of the Republic of Lithuania”, 14 September 2021, [https://euaa.europa.eu/sites/default/files/Amendment\\_Operating%20Plan\\_EASO\\_Lithuania\\_14.09.2021.pdf](https://euaa.europa.eu/sites/default/files/Amendment_Operating%20Plan_EASO_Lithuania_14.09.2021.pdf)

there were some changes to Lithuania's legislation. The EUAA does not have a mandate to assess Member State national legislation or monitor practices. In light of the circumstances and potential impact on the Agency's operations, the EUAA has maintained continuous discussions with the Lithuanian authorities, and with the European Commission as guardians of the Treaties."<sup>240</sup>

## THE INACTION OF THE EUROPEAN COMMISSION

The Lithuanian legal "reforms" and related pushback practices have been strongly condemned by numerous international institutions, including the Council of Europe's Commissioner for Human Rights<sup>241</sup> and UNHCR.<sup>242</sup>

These condemnations stand in stark contrast to the mild, supportive approach displayed by the European Commission, at least in the first few months of the Belarus/EU border crisis. As highlighted in section 1, initially the European Commission emphasized the need to protect borders, rather than fundamental rights. During a hearing in the Lithuanian Parliament in September 2021, Deputy Interior Minister Arnoldas Abramavičius reported that Lithuania's policies had been discussed and coordinated with EU institutions and that the EU had "no complaints".<sup>243</sup>

In January 2022, a full six months after congratulating Lithuania for its exemplary actions on migration, the Commissioner for Home Affairs, Ylva Johansson, joined Members of the European Parliament (MEPs) in taking a more critical stance towards Lithuania, stating that "Pushbacks are clearly illegal. People have the right to apply for asylum",<sup>244</sup> and that Lithuania, together with Poland and Latvia, "have to have legislation where pushbacks are not accepted and not legalised".<sup>245</sup>

Despite these statements, the European Commission has failed to initiate any formal procedure to bring Lithuania's legislation and practices in line with EU law. Under EU Treaties, when a Member State adopts legislation that is not in line with EU laws, it is the responsibility of the European Commission to initiate infringement proceedings to pursue a course-correction.<sup>246</sup>

With almost a year passed since the reforms of the Law on the Status of Foreigners, and thousands of people pushed back by Lithuania or arbitrarily held in its detention centres, the European Commission's inaction on Lithuania's illegal practices and legislation is indefensible.

In May 2022, asked to explain the reasons of the Commission's inaction vis-à-vis allegations of abuse at various European borders, Vice-President of the European Commission, Margaritis Schinas, stated that there is "hardly any hard evidence" to substantiate accusations, and that migration is "largely a Member State competence", as opposed to an EU competence.<sup>247</sup>

These arguments sound particularly hollow in relation to Lithuania, as it is the country's own national legislation that enables pushbacks and other unlawful limitations on the right to seek asylum and is therefore at complete odds with the EU acquis. The same concerns have arisen in Poland and Latvia with respect to their unlawful actions regarding pushbacks and denial of meaningful access to asylum.

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<sup>240</sup> EUAA, email to Amnesty International, 7 June 2022, on file with Amnesty International

<sup>241</sup> Council of Europe Commissioner for Human Rights, "Letter to the Prime Minister of Lithuania", 10 August 2021, <https://rm.coe.int/letter-to-ms-ingrida-simonyte-prime-minister-of-lithuania-by-dunja-mij/1680a37aee>

<sup>242</sup> UNHCR, "Acknowledging the extraordinary situation in Lithuania, UNHCR raises concerns about legislative response and accommodation conditions", Press statement, 11 October 2021, <https://www.unhcr.org/neu/68731-acknowledging-the-extraordinary-situation-in-lithuania-unhcr-raises-concerns-about-legislative-response-and-accommodation-conditions.html>

<sup>243</sup> Benas Gerdžiūnas, Artūras Morozovas, "'The main goal is to get rid of them.' Lithuania's asylum system cracks under pressure", *Lithuanian Radio and Television (LRT)*, 13 September 2021, <https://www.lrt.lt/en/news-in-english/19/1493583/the-main-goal-is-to-get-rid-of-them-lithuania-s-asylum-system-cracks-under-pressure>

<sup>244</sup> "EU interior ministers balance migrant rights and strong borders", *Deutsche Welle*, 21 January 2022, <https://www.dw.com/en/eu-interior-ministers-balance-migrant-rights-and-strong-borders/a-60519034>

<sup>245</sup> European Parliament, EP Committee on Civil Liberties, Justice and Home Affairs: exchange of views on provisional emergency measures for the benefit of Latvia, Lithuania and Poland, with the participation of Margaritis Schinas and Ylva Johansson, 13 January 2022, <https://audiovisual.ec.europa.eu/en/video/1-216368>

<sup>246</sup> Treaty on European Union, Article 17

<sup>247</sup> Marc Peepker, "Europees commissaris Margaritis Schinas: 'We zijn getuige van het einde van Poetins macht'", *De Volkskrant*, 27 May 2022, <https://www.volkskrant.nl/nieuws-achtergrond/europees-commissaris-margaritis-schinas-we-zijn-getuige-van-het-einde-van-poetins-macht~b89f1765/>

The Lithuanian authorities clearly perceive the lack of action on the part of the European Commission as support for the government's approach, undercutting concerns raised by international and national human rights bodies and stifling the voices of authorities in other countries who are rightly concerned about the profound and long-lasting negative impact on the right to asylum in Europe.

### **PROPOSALS FOR NEW EU MEASURES PENALISING REFUGEES AND MIGRANTS**

EU member states' commitment to upholding the right to seek asylum risks being further weakened by the European Commission's proposed derogations to the EU's asylum rules in situations of 'instrumentalisation of migrants' – a concept that describes the role of state actors in creating and facilitating irregular migration with a view to destabilising the EU. In response to the actions by the Belarusian regime, on 1 December 2021 the Commission proposed temporary measures, based on Article 78(3) of the Treaty on the Functioning of the European Union (TFEU), for the benefit of Latvia, Lithuania and Poland, which would allow these three countries to derogate from registration requirements and limit rights in accessing asylum procedures and receiving material support.<sup>248</sup>

Amnesty International called for firm rejection of these measures.<sup>249</sup> The Commission subsequently extended similar provisions to all EU member states through a proposed Regulation aimed at equipping the EU against future "hybrid threats" that include the instrumentalisation of migrants.<sup>250</sup> This proposal is currently under negotiation in the Council and the European Parliament, alongside a revision of the Schengen Borders Code, which amongst others includes a proposed definition of "instrumentalisation of migrants".<sup>251</sup> Agreement on these measures would lead to the codification in EU law of a vague concept of a political nature rather than based on objective elements, which member states can use to invoke a range of derogations from the asylum acquis. It is objectionable that asylum-seekers should be penalised with substandard procedures and reception conditions as a result of their being victimized by the actions of a third state.

## **CONCLUSIONS AND RECOMMENDATIONS**

**"In Iraq, we hear about human rights and women's rights in Europe. But here there are no rights."**

"Dilba", young Iraqi woman detained in Medininkai, March 2022

Lithuania has failed refugees and migrants who crossed into the country from Belarus in 2021-2022. "Push-back or lock-up" strategies pursued by Lithuania from 2021-2022 have resulted in a catalogue of serious and systematic human rights violations. Lithuanian lawmakers codified unlawful measures that allowed Lithuanian authorities to illegally push-back people at the borders with Belarus, arbitrarily detain refugees and migrants for prolonged periods of time, and subject them to abysmal conditions of detention, torture and other ill-treatment at the hands of the Lithuanian State Border Guard Service. People have been trapped in an asylum system designed to fail them, to cheat them through a

<sup>248</sup> Proposal for a Council Decision on provisional emergency measures for the benefit of Latvia, Lithuania and Poland, COM(2021) 752 final, 1 December 2021. The European Commission proposal was meant to appease these three countries and meet requests for adaptation of the legislative framework to deal with what the explanatory memorandum terms a "hybrid attack" by Belarus representing a "real threat and present danger to the Union's security". However, the Council eventually did not adopt the measures as, in the view of the Polish government, they were not going far enough.

<sup>249</sup> Amnesty International, *Letter to Mr Charles Michel, President of the European Council*, 7 December 2021, [https://www.amnesty.eu/wp-content/uploads/2021/12/TIGO\\_IOR\\_10\\_2021\\_2469\\_-\\_Temporary-Measures-on-Asylum-and-Return-Must-be-Rejected.pdf](https://www.amnesty.eu/wp-content/uploads/2021/12/TIGO_IOR_10_2021_2469_-_Temporary-Measures-on-Asylum-and-Return-Must-be-Rejected.pdf)

<sup>250</sup> Proposal for a Regulation of the European Parliament and of the Council addressing situations of instrumentalisation in the field of migration and asylum, COM(2021) 890 final, 14 December 2021.

<sup>251</sup> Proposal for a Regulation of the European Parliament and of the Council amending Regulation (EU) 2016/399 on a Union Code on the rules governing the movement of persons across borders, COM(2021) 891 final, 14 December 2021. New Article 2(27) defines "instrumentalisation of migrants" as "a situation where a third country instigates irregular migratory flows into the Union by actively encouraging or facilitating the movement of third country nationals to the external borders, onto or from within its territory and then onwards to those external borders, where such actions are indicative of an intention of a third country to destabilise the Union or a Member State, where the nature of such actions is liable to put at risk essential State functions, including its territorial integrity, the maintenance of law and order or the safeguard of its national security."



fundamentally flawed legal aid system, and ultimately to force them to return to where they came from, no matter the risks they would be exposed to.

Recent statements by the Minister of Interior, suggesting that the Ministry will not propose further extending detention of asylum-seekers and irregular migrants beyond 12-months, and slight improvements in conditions of detention, do not represent the end of the authorities' responsibilities towards people whose human rights have been repeatedly violated over the last year.

The glaring shortcomings in the asylum procedure, compounded by the absence of adequate legal assistance, have trapped thousands of asylum-seekers in a Kafkaesque system never intended to provide them the right to a fair and effective asylum procedure, among other rights. International and European human rights law establishes the right of any person whose rights or freedoms have been violated to have an effective remedy.<sup>252</sup> Refugees and migrants whose rights and freedoms have been violated by Lithuanian authorities should have prompt access to remedy, including effective access to justice and reparation for the harms suffered, through restitution, compensation,<sup>253</sup> rehabilitation, satisfaction and guarantees of non-repetition.<sup>254</sup>

One year after the introduction of the “emergency” legislation, policies and practices that have caused so much misery and suffering, it is time for Lithuania to turn the page. The Lithuanian Parliament, government, border guards and law enforcement are all responsible in some measure for the human rights violations documented in this report. The state must be held accountable and individuals alleged to have committed serious violations, such as torture, must be investigated and held accountable.

Other EU member states can also play a part. If the prospects expressed by the Minister of Interior are confirmed – that is, that asylum-seekers and irregular migrants, once released, will eventually leave for other EU countries – they would do so following a year of arbitrary detention, often brutal physical and psychological abuse and resulting trauma, and flagrantly flawed procedures in Lithuania. It would then be the responsibility of other EU member states not to return people back to trauma in Lithuania, but rather accept their asylum claims for re-consideration under their jurisdiction, considering the deeply flawed nature of their asylum procedures in Lithuania.

Lithuania legitimately expects assistance from the EU. However, such assistance cannot consist in the complacent support – including by Frontex – for border control measures designed to violate the rights of women, men and children. Lithuania has and continues to act in breach of its obligations under international and EU law, and it is the European Commission's responsibility to intervene and force a course-correction.

In light of the findings described in this report, Amnesty International makes the following recommendations.

## TO LITHUANIA:

- Halt immediately pushbacks of refugees and migrants to Belarus and ensure respect of the principle of *non-refoulement* by not transferring anyone to a place where they would be at real risk of persecution or other serious human rights violations, or where they would risk onward *refoulement*.

<sup>252</sup> International Covenant on Civil and Political Rights, Article 2(3); European Convention on Human Rights, Article 13; EU Charter, Article 47.

<sup>253</sup> In the words of the CJEU's Advocate General in relation to an asylum-seeker detained in Lithuania: “The fact that the first measure [detention] was subsequently repealed did not eliminate its effects which had already been achieved. [The asylum-seeker] was deprived of his liberty at least from November 20, 2021 to February 2, 2022. He therefore still has an interest in seeing that the possible illegality of this measure is found in court. Such a finding could serve as the basis for a future claim for damages”; unofficial translation, Advocate General of the CJEU, Nicholas Emiliou, *Conclusions de l’avocat général M. N. Emiliou, présentées le 2 juin 2022*, (previously cited), para. 53.

<sup>254</sup> United Nations General Assembly, Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law, UNGA Resolution 60/147, 16 December 2005, <https://www.ohchr.org/en/instruments-mechanisms/instruments/basic-principles-and-guidelines-right-remedy-and-reparation>

- Release immediately all asylum-seekers and irregular migrants who are subjected to arbitrary detention, including those who were detained under the regime of “temporary accommodation”, and ensure their liberty and freedom to move within Lithuania unless measures restricting their rights are proven to be necessary and proportionate within the circumstances of each individual case.
- Remove as a matter of urgency all persons from Kybartai FRC and Medininkai FRC, and refrain from sending any new arrivals to these centres, as the conditions there are not suited for any form of accommodation or detention.
- Ensure that all asylum-seekers have access to a fair and effective asylum procedure in Lithuania, including an assessment of their claims for international protection on their merits through an individualized procedure, irrespective of the conditions of entry into Lithuania’s territory.
- Provide access to independent appeals to all asylum-seekers whose asylum application was decided in the first and second instances by the Migration Department without independent review between July and December 2021.
- Re-open for immediate consideration all the asylum, removal and detention procedures of individuals who were assigned state-sponsored lawyers under the current legal aid system, and ensure they have access to independent and effective legal aid in full and fair asylum and other legal procedures.
- Ensure that an adequate number of doctors, nurses, and psychologists are available in detention centres and that detainees who remain in detention and who require medical care are able to access it in a timely fashion.
- Identify in an appropriate and sensitive manner possible victims of torture, trafficking and other people with specific protection and assistance needs who require specialized accommodation and care.
- Provide refugees and migrants with information on their rights, including how to complain against border guard and law enforcement misconduct, in a language they understand and if required, with expert and effective interpretation.
- Improve as a matter of urgency conditions inside of all migration-related detention facilities to ensure that detainees are treated in accordance with international law and standards, including the provision of adequate space; access to proper toilet facilities and a good standard of hygiene; access to adequate health care, information, legal assistance and advice; access to outdoor spaces and recreational activities; and effective means of communication with the outside world.
- Conduct prompt, effective, independent investigations on allegations of serious abuse against people detained by SBGS, including potentially through an ad hoc (parliamentary) independent commission of inquiry, and ensure accountability and adequate protection of victims and witnesses.
- Promptly provide access to effective remedy, including access to justice and reparation for the harms suffered by any person, through restitution, compensation, rehabilitation, satisfaction and guarantees of non-repetition, to all refugees and migrants whose rights and freedoms have been violated by Lithuanian state actors or their agents.
- Ensure that all laws, policies, practices and procedures in the migration and asylum context strictly adhere to the principle of non-discrimination.
- Immediately repeal all legislation adopted in 2021-2022 that permitted derogation from human rights safeguards for asylum-seekers and irregular migrants and review all legislation,

policies and practices from that time period and to the present to ensure that they comply with Lithuania's international human rights commitments, including:

- Review all measures adopted and implemented during 2021-2022 in relation to migration and border management to ensure that a human rights-compliant approach is at the core of relevant legislation, policies and practices, that people's right to access to asylum, both in law and practice, is immediately restored, and that all measures that prevent people from accessing EU territory to lodge an asylum application are brought to an end.
- Immediately repeal all the provisions derogating from standard asylum, migration and detention processes and practices in the event of declaration of martial law, a state of emergency or a declaration of an emergency due to a "mass influx" of foreigners, which requires at a minimum, repealing Chapter X<sup>2</sup> of the Law on Foreigners.
- End the policy of automatic, prolonged, arbitrary detention under the regime of "temporary accommodation" without the right to move freely within the territory of the Republic of Lithuania and ensure that migration-related detention is only imposed as a matter of last resort and when legal, proportionate and necessary.
- Ensure that people in need of international protection are admitted to Lithuanian territory and that those attempting to cross a border or crossing a border irregularly (e.g., between designated border crossing points, without document, or on false documents) in order to seek international protection are not interdicted from exercising their right to seek asylum and other rights, in line with international law.
- Amend any provisions or regulations for the legal aid system for asylum-seekers and irregular migrants in a way that ensures:
  - Prevention of potential conflict of interests for lawyers employed by the Migration Department.
  - Quality legal services by a sufficient number of lawyers.
  - Mechanisms to monitor and ensure the accountability of lawyers, and the protection of the rights and interests of asylum-seekers and irregular migrants
- Establish an effective independent monitoring and oversight system to ensure that the Lithuanian authorities' activities on border protection do not violate human rights.
- Ensure that abusive practices, including unnecessary or excessive use of force, disrespectful behaviour, racist remarks, harassment and intimidation, are halted without delay and that the guards and staff in the detention centres treat people detained there in full respect of their human rights and dignity.
- Ensure that NGOs and lawyers assisting refugees and migrants have unhindered access to detention and reception places, and other places where refugees and migrants are located, including in the border zone.
- Ensure that voluntary returns are based strictly on the free and informed consent of the individual, without coercion of any kind.
- Respect, protect and fulfil the right of women to be free from gender-based violence and torture in the detention sites, including by complying with and implementing the United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (Bangkok Rules).

## TO THE EUROPEAN COMMISSION

- Initiate without delay infringement proceedings against Lithuania in relation to the elements introduced in its national legislation to stop spontaneous arrivals of refugees and migrants from Belarus by employing practices that contravene EU and international human rights and refugee law.
- Assess the legality of the automatic and prolonged detention of asylum-seekers and irregular migrants in Lithuania and the compliance of detention conditions with EU standards.
- Subject the provision of any further border management or other migration-related assistance to Lithuania to the condition that Lithuania halt illegal pushbacks of refugees and migrants to Belarus, refrain from engaging in forced returns in violation of the prohibition of *refoulement* and ensure that accommodation and (when detention is lawful, necessary and proportionate) detention conditions comply with international law and standards.
- Establish an independent and effective monitoring mechanism for human rights oversight of operations on Lithuania's border with Belarus.
- Ensure that any EU funds made available to Lithuania for migration-related programmes, including with regard to access to legal aid, do not contribute to human rights violations and are used in ways compatible with European legislation, and that monitoring mechanisms fully assess the potential human rights risks prior to the provision or extension of such funding.
- Invest in increasing capacity of legal professionals in the area of migration in Lithuania.

## TO THE COUNCIL AND THE EUROPEAN PARLIAMENT:

- Reject the Commission proposal for a Regulation addressing situations of instrumentalisation in the field of migration and asylum and any other attempts at codification of this concept in EU law.
- Refrain from further using dehumanising expressions such as 'hybrid threat' or 'hybrid attack' in relation to the instrumentalisation of refugees and migrants for political purposes by state and non-state actors.
- Contribute to accountability for systemic human rights violations at EU's borders by agreeing that Member States must, as a matter of EU law, establish an effective independent border monitoring mechanism which has a broad scope and fulfils the requirements of independence and transparency.

## TO FRONTEX:

- Initiate proceedings in accordance with Article 46(4) of Regulation (EU) 2019/1896, which provides that the Executive Director should immediately suspend all operational activities in Lithuania until steps are taken by the Lithuanian authorities which guarantee that people arriving at EU borders are duly registered by the competent national authorities; given access to an individualised procedure and to asylum, if they so wish; and are not summarily returned.

## **TO ALL OTHER EU MEMBER STATES / PARTIES OF THE DUBLIN REGULATIONS**

- Suspend Dublin transfers to Lithuania and take responsibility for pending asylum applications under discretionary clauses while allowing the reopening of applications if asylum-seekers had received a final rejection in Lithuania.
- Share with Lithuania the responsibility for assisting refugees and migrants currently in Lithuania, including those currently in detention there, by offering at a minimum humanitarian admission and family reunification opportunities.

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