Submission by the Office of the United Nations High Commissioner for Refugees in the case of *A.S. and Others v. Lithuania* (Application No. 44205/21) before the European Court of Human Rights

1. Introduction*

1.1. The Office of the United Nations High Commissioner for Refugees ('UNHCR') has been entrusted by the General Assembly of the United Nations with the mandate to provide international protection to refugees and, together with governments, seek solutions for them.[1] UNHCR is also responsible for supervising the application of international conventions for the protection of refugees.[2] The Office welcomes the opportunity to intervene in this case, as granted by the European Court of Human Rights ('the Court') by its letter of 23 February 2024.

1.2. In this submission, UNHCR outlines the domestic legislative framework and practice regarding access to asylum in Lithuania and provides its interpretation of relevant international and European law, in particular the principle of *non-refoulement*, the prohibition of collective expulsions and the right to an effective remedy.

2. The legislative framework and practice on access to asylum in Lithuania

2.1. The relevant legislative framework

2.1.1. Until early August 2021, Lithuanian legislation included protection standards guaranteeing access to the territory and asylum procedures for persons seeking international protection. The *Law on Legal Status of Foreigners*[3] ('Law on Foreigners') and related regulations provided for the right to apply for asylum at the border or in the territory, irrespective of the mode of entry.

2.1.2. Following an increase in irregular arrivals of foreigners via Belarus, the Lithuanian Government declared an emergency due to a 'mass influx' of foreigners on 2 July 2021,[4] which is still in force at present. The Minister of the Interior was appointed as the Head of the State-Level Emergency Operations and on 2 August 2021, the Minister issued a new policy regarding irregularly arriving asylum-seekers and migrants ('MOI Decision').[5] The MOI Decision *inter alia* provides that asylum-seekers who have crossed the Belarusian-Lithuanian border irregularly and are present in the border zone (i.e. an area of up to 5 km from the border) must be refused admission into the territory and re-directed to international border crossing points or diplomatic missions of the Republic of Lithuania. The MOI Decision does not contain any provisions on procedural guarantees, such as individual decisions, interpretation services or legal counselling.

2.1.3. The Lithuanian Government also drafted amendments to the Law on Foreigners aimed at ensuring the management of irregular migration in times of emergency and allowing asylum applications to be submitted only at

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* This submission does not constitute a waiver, expressed or implied, of any privilege or immunity which UNHCR and its staff enjoy under applicable international legal instruments and recognized principles of international law. UNGA, *Convention on the Privileges and Immunities of the United Nations*, 13 February 1946: www.refworld.org/docid/3ae6b3902.html.

[1] UNGA, *Statute of the Office of the United Nations High Commissioner for Refugees*, 14 December 1950, A/RES/428(V): www.refworld.org/docid/3ae6b3628.html, para. 1.

[2] *Ibid.* para. 8(a); Article 35, *Convention relating to the Status of Refugees*, 28 July 1951, UNTS, vol. 189: www.refworld.org/docid/3be01b964.html, p. 137; Article II, *Protocol Relating to the Status of Refugees*, 31 January 1967, UNTS, vol. 606: www.refworld.org/docid/3ae6b3ae4.html, p. 267.

[3] *Law on the Legal Status of Foreigners*, No IX-2206, 29 April 2004 (subsequently amended), consolidated version valid before 12 August 2021: https://e-seimas.lrs.lt/portal/legalAct/lt/TAD/TAIS.232378/uMtWsfdrPc.

[4] Government of the Republic of Lithuania, *Resolution No. 517,* TAR, 30/07/2021, No. 15235 (subsequently amended), 2 July 2021, consolidated version: https://e-seimas.lrs.lt/portal/legalAct/lt/TAD/ad73a4c1dc0011eb866fe2e083228059/asr.

[5] Minister of Interior of the Republic of Lithuania, *Decision No. 10V-20*, 2 August 2021: https://e-seimas.lrs.lt/portal/legalAct/lt/TAD/6c0ea3a0f42811ebb4af84e751d2e0c9?positionInSearchResults=62&searchModelUUID=e28c184e-d368-4f5b-befa-20b08bd2c0af.

designated locations.[6] These amendments[7] were swiftly passed by the Lithuanian Parliament on 10 August 2021 and came into force on 12 August 2021, significantly restricting access to asylum. They foresaw that, in the event of a declared emergency, in-territory asylum applications could only be submitted to the Migration Department if a person had entered Lithuania legally. Other designated locations for submitting asylum applications included border crossing points and Lithuanian diplomatic missions or consular posts. The new provisions further specified that an asylum application submitted in violation of these rules must not be accepted.[8] As a result, persons who had crossed the border irregularly were deprived of the right to apply for asylum. At the same time, the State Border Guard Service was given discretionary powers to accept applications submitted by persons who had irregularly crossed the border, taking into account their vulnerability or 'other individual circumstances'.[9]

2.1.4. On 21 September 2021, the Minister of Foreign Affairs approved the procedure for lodging asylum applications with Lithuanian diplomatic missions and consular posts. It *inter alia* requires asylum-seekers to submit copies of a valid travel document and confirmation of legal presence in the country where an asylum application is made. The Minister of Foreign Affairs also designated the Lithuanian embassy in Belarus as the only location where asylum applications may be lodged abroad.[10]

2.1.5. Implementing regulations on the discretionary powers of the State Border Guard Service to accept asylum applications were adopted by the Minister of the Interior on 25 February 2022. They provide that when assessing whether to accept an asylum application, the State Border Guard Service must take into account whether a foreigner: (i) is an unaccompanied child; (ii) comes directly from a State where he or she faces a risk of persecution or a threat to health, security or liberty; and (iii) whether there are 'other individual circumstances'.[11]

2.1.6. On 10 March 2022, in addition to the ongoing extraordinary situation due to a mass influx of foreigners, Parliament declared a state of emergency because of the 'military aggression against Ukraine' and introduced emergency provisions which *inter alia* stated that '[p]ersons intending to cross or crossing the external border of the [EU] in places other than those designated for that purpose shall be refused admission to the territory'.[12] These measures were not subject to any geographical limitations and therefore applicable in the entire territory of Lithuania. However, the legislation states that this provision does not apply to 'foreigners who flee military aggression and/or persecution'.[13] The state of emergency was extended on a periodical basis until 2 May 2023[14] with the new legislation containing emergency provisions coming into force on 3 May 2023 (see 2.1.8. and 2.1.9. below).

2.1.7. On 30 June 2022, the Court of Justice of the European Union ('CJEU') assessed the Lithuanian emergency legislation under EU law and found that the latter precluded '*legislation of a Member State under which* […] *illegally staying third-country nationals are effectively deprived of the opportunity of access, in the territory of that Member State, to the procedure in which applications for international protection are examined*'.[15]

2.1.8. On 25 April 2023, Parliament adopted legislative amendments to both the Law on Foreigners and the Law on the State Border and the Guard thereof ('Law on the State Border'). First, to implement the CJEU judgment referred to above, Parliament re-introduced the right to apply for asylum in the territory, irrespective of the mode of entry, in the Law on Foreigners. At the same time, the Law on the State Border was amended to authorise the

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[6] Annex to the Resolution of the Government of the Republic of Lithuania No. 629, *Explanatory Note*, 6 August 2021: https://e-seimas.lrs.lt/portal/legalAct/lt/TAD/c6c582a4f6ad11ebb4af84e751d2e0c9?jfwid=-585sk4ubc, p. 1.
[7] *Law Amending Article 67 of Law No IX-2206 on the Legal Status of Foreigners*, No. XIV-515, 10 August 2021: https://e-seimas.lrs.lt/portal/legalAct/lt/TAD/baee7ea2fa7211ebb4af84e751d2e0c9?jfwid=-585sk4ubc.
[8] *Law on Foreigners No. XIV-515*, Article 67(1-1) and (1-2).
[9] *Ibid.*, Article 67(1-2).
[10] Minister of Foreign Affairs of the Republic of Lithuania, *Order No. V-393*, 21 September 2021: https://e-seimas.lrs.lt/portal/legalAct/lt/TAD/9e86bc811ad111ecad9fbbf5f006237b.
[11] Minister of the Interior of the Republic of Lithuania, *Order No. 1V-141*, 25 February 2022: https://e-seimas.lrs.lt/portal/legalAct/lt/TAD/e00fdd90967c11ec9e62f960e3ee1cb6, see specifically Amendments to Point 22 of the *Description of the Procedure for Granting and Withdrawing Asylum in the Republic of Lithuania*.
[12] Seimas of the Republic of Lithuania, *Resolution on the Introduction of a State of Emergency No XIV-932*, 10 March 2022: https://e-seimas.lrs.lt/portal/legalAct/lt/TAD/fd3593f2a43d11ecaf79c2120caf5094?jfwid=-585sk4r1t, Article 3(3).
[13] *Ibid.*
[14] Seimas of the Republic of Lithuania, *Resolution No. XIV-1044*, 21 April 2022: https://e-seimas.lrs.lt/portal/legalAct/lt/TAD/9263cc61c16e11ec9f0095b4d96fd400?jfwid=-585sk4r1t; *Resolution No. XIV-1244*, 28 June 2022: https://e-seimas.lrs.lt/portal/legalAct/lt/TAD/b8ce9f70f6e711ecbfe9c72e552dd5bd?jfwid=-585sk4r1t; *Resolution No. XIV-1413*, 13 September 2022: https://e-seimas.lrs.lt/portal/legalAct/lt/TAD/0d3a8a80340311edbf47f0036855e731?jfwid=-585sk4r1t; *Resolution No. XIV-1657*, 13 December 2022: https://e-seimas.lrs.lt/portal/legalAct/lt/TAD/dbffd5207c5e11edbdcebd68a7a0df7e?jfwid=-585sk4r1t; *Resolution No. XIV-1789*, 14 March 2023: https://e-seimas.lrs.lt/portal/legalAct/lt/TAD/5aaf73d2c25511ed924fd817f8fa798e?jfwid=-585sk4r1t.
[15] CJEU, First Chamber, *M.A. v. Valstybės sienos apsaugos tarnyba*, C-72/22 PPU, 30 June 2022: https://curia.europa.eu/juris/liste.jsf?lgrec=fr&td=%3BALL&language=en&num=C-72/22&jur=C, para. 94.

Government, in the event of a declared emergency, to deny admission to those who intend to cross or have crossed the border irregularly and are present in the border zone of the territory. The amendments further specified that such measures must be applied on an individual basis and provide exceptions for applicants fleeing certain armed conflicts where these have been explicitly designated by the government as the basis for an exception,[16] or persecution as defined in the 1951 Convention relating to the Status of Refugees ('1951 Convention'), or where they need to be admitted to the territory on humanitarian grounds.

2.1.9. In addition, the amendments created a fiction of non-presence, stipulating that foreigners who have crossed the state border irregularly and are present in the border zone are deemed not to be on the territory of Lithuania. Further, the amendments required that persons concerned must receive any urgent medical or humanitarian assistance, on the basis of an individual needs assessment. Finally, they require the Commander of the State Border Guard Service to approve a procedure for implementing non-admission decisions and needs assessments.[17] Based on information available to UNHCR, the procedure has been approved by an internal order, which has not been made public. The amendments came into force on 3 May 2023. On the same day, the Government adopted a resolution confirming the ongoing emergency situation due to a mass influx of foreigners, giving powers to border guards to proceed with the non-admission measures.[18]

2.2. The relevant practice

2.2.1. Since 3 August 2021, a systematic practice of non-admission of persons who have entered or attempted to enter Lithuania irregularly from Belarus has been developed and consistently applied by the Lithuanian authorities. Persons apprehended for crossing the border irregularly, including those seeking international protection, have been ordered by Lithuanian border guards to return to Belarus by crossing the border line outside regular border crossing points. Pursuant to the MOI Decision (see 2.1.2. above), the officers involved are authorised to use deterrent and coercive measures in respect of those opposing official orders.[19]

2.2.2. UNHCR's observations are based on written complaints received from persons who have been subject to the above measures, monitoring visits to border guard units, direct testimonies of asylum-seekers who have eventually been allowed entry into the asylum procedure in Lithuania, and reports by other organizations, including Amnesty International, Médecins Sans Frontières, and the Lithuanian Human Rights Monitoring Institute.[20] The Lithuanian authorities have openly announced and consistently defended the policy of non-admission as the only way to manage the situation of irregular arrivals from Belarus.[21] The State Border Guard Service has officially reported 21,993 instances of non-admission (comprising 8,106 in the period from 3 August to 31 December of 2021; 11,211 in 2022; 2,643 in 2023; and 33 up to early March 2024).[22] While no disaggregated data by country of origin, gender or age is available, based on UNHCR's monitoring, nationals of countries with high refugee recognition rates, such as Afghanistan, Iraq, Yemen and Syria, have been among those directly affected by these practices.

2.2.3. In early August 2021, UNHCR started receiving distress calls from persons seeking international protection, many of whom claimed that they had crossed the Belarusian-Lithuanian border and were attempting to request asylum in Lithuania but had been pushed back to Belarus by Lithuanian border guards and authorities. In most cases, the individuals, notably those stranded at the green border, i.e. the 'no man's' land consisting of a narrow strip of land surrounding the border line, claimed that they were left without food, water, shelter or basic support, and in some

[16] It is important to note that the Government has not yet designated any armed conflicts as required by the amendments.
[17] *Law Amending Articles 1, 2, 4, 10, 11, 14, 15, 16, 18, 23, 26 of Law No VIII-1666 on the State Border and the Guard thereof and supplementing the Law with Article 23-1 and Section IX, No. XIV-1891*, 25 April 2023: https://e-seimas.lrs.lt/portal/legalAct/lt/TAD/ff701250e35a11eda305cb3bdf2af4d8?jfwid=anhhay229.
[18] Resolution of the Government of the Republic of Lithuania No 21, 3 May 2023: https://e-seimas.lrs.lt/portal/legalAct/lt/TAD/11c81520e9ae11eda305cb3bdf2af4d8?jfwid=-17d3otps01.
[19] See MOI Decision, note 5 above, paras 4-5.
[20] See Amnesty International, *Lithuania: Pushbacks, illegal detention, deception and abuses against refugees and migrants*, 27 June 2022: https://www.amnesty.org/en/latest/news/2022/06/lithuania-pushbacks-illegal-detention-deception-and-abuses-against-refugees-and-migrants/; Médecins Sans Frontières, *Repeated pushbacks cause mental and physical suffering for people crossing Lithuanian border*, 16 September 2022: https://www.msf.org/repeated-pushbacks-cause-mental-and-physical-suffering-people-crossing-lithuanian-border; Human Rights Monitoring Institute, *Human Rights in Lithuania in 2020 and 2021:* http://hrmi.lt/wp-content/uploads/2022/07/HRMI_apzvalga_2022-2.pdf, pp. 136-145, and *Pushbacks legalisation is incompatible with the principles of a democratic society*, 27 April 2023: https://hrmi.lt/en/pushbacks-legalisation-is-incompatible-with-the-principles-of-a-democratic-society/.
[21] See, for example, the press statement by the Ministry of the Interior of the Republic of Lithuania released on 2 August 2021:https://vrm.lrv.lt/lt/naujienos/grieztinamas-valstybes-sienos-apsaugos-ir-atgrasymo-rezimas/.
[22] State Border Guard Service, *Statistics on illegal migrants refused entry*, 5 March 2023: https://vsat.lrv.lt/lt/naujienos/neileistu-neteisetu-migrantu-statistika/. The number of instances of non-admission is not equivalent to the number of persons not admitted, as the same individuals might be subject to multiple pushbacks.

cases subjected to violence, abuse and mistreatment. Asylum-seekers were not able to apply for asylum and in some cases, were forced to remain in dire conditions for considerable periods and to continue attempting to cross the border irregularly in the absence of an effective border procedure. Similar cases were reported by other organizations who collected direct testimonies from individuals pushed back.[23] The situation was particularly difficult in autumn and winter given the cold weather conditions. There have been cases of frostbite resulting in the amputation of limbs.[24] The Lithuanian authorities have also reported two deaths of persons who had entered Lithuania irregularly from Belarus.[25]

2.2.4. UNHCR does not have access to the border area falling under the emergency provisions. UNHCR has also not been allowed access to persons apprehended following irregular entry and temporarily placed at border crossing points until and unless the State Border Guard Service refers them to the asylum procedure. The same applies to UNHCR's partner organization, the Lithuanian Red Cross. While the Memorandum of Understanding between the State Border Guard Service, UNHCR and the Lithuanian Red Cross of 2 June 2010 ('Border Monitoring Memorandum') provides for a right for UNHCR's partner to monitor the submission of asylum applications at the border, in practice, access for the Lithuanian Red Cross, to individuals at the border has only been granted when border guards refer the asylum requests made by those individuals to the asylum procedure. These limitations on access to the border were also highlighted by the UN Committee Against Torture ('CAT'), which expressed concerns about reported restrictions on border monitoring by the national human rights institution, non-governmental organizations, and journalists.[26]

2.2.5. UNHCR has expressed its concerns regarding Lithuania's emergency legislation and the situation at the border in a series of legal observations and statements. In a press statement of 11 October 2021, while acknowledging the challenges faced by Lithuanian authorities, UNHCR stated that Lithuania's response risks eroding the integrity of the asylum system in the country, including by limiting access to asylum, in violation of Lithuania's obligations under international and European law. It further observed that:

> *'The reports of pushbacks at Lithuania's border with Belarus as well as reports of groups of people being stranded in border areas in dire and cold conditions, with no access to asylum, raise serious concerns. While States have the sovereign right to protect their borders, this must be done in accordance with human rights, including respecting the right to seek asylum.'*[27]

2.2.6. In its statement regarding amendments to the State Border Law of April 2023, UNHCR emphasised that:

> *'In light of the current practices and the situation in the border areas between Lithuania and Belarus – which tragically have resulted in at least two recorded deaths since last year, as well as multiple individuals severely injured – UNHCR remains concerned that the Law authorizes pushbacks and may lead to individuals not being granted effective access to territory and the right to seek asylum.'*[28]

2.2.7. The CAT[29] and the UN Committee on Economic, Social and Cultural Rights ('CESCR')[30] have likewise expressed concerns about reported incidents of collective expulsion of asylum-seekers by Lithuania, in which individuals, including children, were deterred from crossing the border, without having their specific circumstances

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[23] See LRT.lt, *Migrants allegedly starving in Belarus next to Lithuanian border, NGO says,* 6 October 2021: https://www.lrt.lt/en/news-in-english/19/1514398/migrants-allegedly-starving-in-belarus-next-to-lithuanian-border-ngo-says.
[24] Lithuanian Red Cross, *Monitoring Report 2022:* https://redcross.lt/veiklos/prieglobscio-ir-migracijos-programa/stebesena-2/, p. 15.
[25] See *inter alia* LRT.lt, *Media Report*, January 2023: https://www.lrt.lt/naujienos/lietuvoje/2/1865478/rasto-negyvo-migranto-zmona-tikina-kad-jis-buvo-apgreztas-zmogaus-teisiu-gynejai-abejoja-apgrezimo-politikos-skaidrumu.
[26] UN Committee Against Torture, *Concluding observations on the 4th periodic report of Lithuania*, 21 December 2021: https://documents-dds-ny.un.org/doc/UNDOC/GEN/G21/382/70/PDF/G2138270.pdf?OpenElement, para. 11(i).
[27] UNHCR, *Acknowledging the extraordinary situation in Lithuania, UNHCR raises concerns about legislative response and accommodation conditions,* 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. See also UNHCR, *Observations on the Draft Amendments to the Law of the Republic of Lithuania on Legal Status of Aliens (No XIVP-2385) and the Draft Amendments to the Law of the Republic of Lithuania on the State Border and its Protection (No XIVP-2383)*, 20 March 2023: https://www.refworld.org/docid/6419b0ee4.html.
[28] UNHCR, *Statement on amendments of State Border Law of Lithuania*, 28 April 2023: https://www.unhcr.org/neu/98669-unhcr-statement-on-amendments-of-state-border-law-of-lithuania.html.
[29] CAT, *Concluding observations,* note 26 above, para. 11(f).
[30] CESCR, *Concluding observations on the 3rd periodic report of Lithuania,* 30 March 2023: https://digitallibrary.un.org/record/4007675, para. 14(a).

reviewed; and left in dire conditions, with no access to food, water and shelter.

2.2.8. Exemptions from non-admission measures, as provided for in legislation outlined in Section 2.1., have been applied restrictively. Since 3 August 2021, there have been 21,993 instances of returns to Belarus under the emergency provisions, with only some 570 persons having been provided entry based on official government data.[31] According to information available to UNHCR, among those allowed access to the asylum procedure, the majority are Belarusian nationals who are consistently granted access to the territory and asylum procedures, despite arriving irregularly. Other groups granted entry include persons admitted for humanitarian reasons, mostly due to severe medical conditions, as well as persons who obtained interim measures from the European Court of Human Rights.[32] While in 2021, 4,214 persons applied for asylum for the first time in Lithuania,[33] most of these applicants arrived in Lithuania before 3 August 2021, i.e. before the introduction of the non-admission policy. This number also includes cases of pre-organised arrivals of some 170 Afghan nationals evacuated from Afghanistan, 17 Eritrean refugees resettled from Ethiopia, as well as asylum-seekers transferred under the Dublin III Regulation.

2.2.9. From August to mid-September 2021, the Migration Department conducted a registration exercise of asylum applications in closed accommodation sites across Lithuania. Once this exercise was completed, asylum-seekers whose applications had not been registered under this process no longer had any practical opportunity to apply for asylum and were faced with return. Following the CJEU judgment in case C-72/22 PPU (see 2.1.7. above) and case-law developed by Lithuanian courts, including the judgment of the Supreme Administrative Court of Lithuania of 28 July 2022,[34] persons already held in closed temporary accommodation sites were provided with a practical opportunity to apply for asylum. The CJEU judgment has not, however, led to any changes with respect to pushback practices at the border with Belarus. Moreover, from March 2022, based on the Resolutions of Parliament on the State of Emergency (see 2.1.6. above), persons apprehended within the territory of Lithuania were not placed in closed temporary accommodation sites but instead brought back to the green border and returned to Belarus.

2.2.10. While Lithuanian legislation allows for asylum applications to be made at border crossing points, UNHCR remains seriously concerned about the practical access to asylum procedures at the border, and continues to emphasize that persons who seek international protection at border crossing points must be proactively identified and referred to the determining asylum authority without delay.[35] The UN Human Rights Committee has expressed similar concerns referring to allegations of denial of entry into the territory and failure to receive and register asylum applications of persons seeking international protection at the border.[36] Following this Court's judgment in *M.A. and Others v. Lithuania*,[37] UNHCR and its partner organization, the Lithuanian Red Cross, have continued documenting cases of denials of entry into the territory and asylum procedure at border crossing points.[38]

2.2.11. Statistical data indicates that a relatively modest number of asylum claims have been registered at border crossing points with Belarus between 2021 and 2023. Based on the State Border Guard Service's notifications communicated to UNHCR's partner pursuant to the Border Monitoring Memorandum, only 12 asylum applications were registered in 2021; 90 applications in 2022; and 7 applications in 2023. Practical obstacles in reaching and entering from border crossing points with Belarus make it excessively difficult, if not impossible, to access asylum procedures in designated locations. This includes the almost 680 km long border and long distances between international border crossing points combined with natural barriers such as swamps, rivers, lakes and forests. As of

[31] Official Statistics Portal Lithuania, *Monitoring of illegal migration:* https://osp.stat.gov.lt/neteiseta-migracija-dashboard.
[32] See, *inter alia*, Seimas Ombudspersons Office, *Human rights monitoring report 2022:* https://www.lrski.lt/veiklos-sritys/nacionaline-zmogaus-teisiu-institucija/, p. 89.
[33] Ministry of Interior of the Republic of Lithuania, *Migration yearbook 2021:* https://migracija.lrv.lt/uploads/migracija/documents/files/2021%20m_%20migracijos%20metra%C5%A1tis_skelbimui(2).pdf, p. 59-60.
[34] Supreme Administrative Court of Lithuania, *Case No. A-1091-822/2022*, 28 July 2022: liteko.teismai.lt/viesasprendimupaieska/tekstas.aspx?id=fc9eef60-ff2b-4377-8c7d-89fae0a00a89.
[35] *UNHCR Submission on Lithuania: UPR 26th Session*, March 2016: https://www.refworld.org/docid/5a12bd2a0.html, p. 5. See also, ECtHR, *M.A. and Others v. Lithuania*, App. no. 59793/17, 11 December 2018: https://hudoc.echr.coe.int/fre#{%22itemid%22:[%22001-188267%22]}, paras 53 and 112.
[36] UN Human Rights Committee, *Concluding observations on the 4th periodic report of Lithuania,* 29 August 2018: tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CCPR%2FC%2FLTU%2FCO%2F4&Lang=en.
[37] ECtHR, *M.A. and Others v. Lithuania*, note 35 above.
[38] Lithuanian Red Cross, *Summary of monitoring reports* 2017-2020, December 2022: https://redcross.lt/veiklos/prieglobscio-ir-migracijos-programa/stebesena-2/, pp. 17-19. See also Lithuanian Red Cross, *Access to the asylum procedure at the diplomatic missions of the Republic of Lithuania and at the border checkpoints of the state border guard service*, December 2022: https://redcross.lt/veiklos/prieglobscio-ir-migracijos-programa/stebesena-2/, pp. 18-21 and 27-29.

1 March 2024, only two international border crossing points on the Belarusian border were open.[39]

2.2.12. Finally, the embassy procedure foreseen by the Lithuanian emergency provisions (see 2.1.4. above), does not offer a meaningful and safe way for entering the territory and accessing asylum. First, preconditions for lodging an asylum application with the Lithuanian embassy in Belarus include the possession of a valid travel document and legal presence in the country. Furthermore, lodging an asylum application with the embassy does not constitute a ground for entering Lithuanian territory, as the person concerned must stay outside Lithuania until a positive asylum decision is issued by the Migration Department. Lastly, since the introduction of the embassy procedure in late September 2021, long delays in delivering such decisions have been observed, leading to concerns about the efficiency of the procedure and the insecure situation of the asylum-seekers.[40] These concerns have also been confirmed by the Vilnius Regional Administrative Court and the Supreme Administrative Court in a case of an asylum-seeker who was expelled to his country of origin when his status expired, notwithstanding the fact that his asylum application had been pending for more than a year, far exceeding the time limit of six months as mandated by law.[41]

3. Relevant principles of international and European law on access to asylum

3.1. The principle of *non-refoulement*

3.1.1. The right to seek and enjoy asylum is a basic human right under Article 14(1) of the Universal Declaration of Human Rights and is supported by the legal framework of the 1951 Convention.[42] Central to the right to asylum is the principle of *non-refoulement*, most prominently expressed in Article 33 of the 1951 Convention. The obligation of States not to expel or return ('*refouler*') individuals to territories where their life or freedom would be threatened is the cornerstone of international refugee protection and constitutes an essential binding and non-derogable norm.[43]

3.1.2. Under the 1951 Convention, the prohibition of *refoulement* applies not only to recognized refugees, but also to asylum-seekers, whose status has not yet been determined.[44] This is because the determination of refugee status is declaratory in nature, meaning that asylum-seekers do not become refugees because of recognition but are recognized because they are refugees.[45] The right to be protected against *refoulement* is therefore not dependent on the formal submission or registration of the claim.[46]

3.1.3. Given its absolute nature, recognized by international and regional human rights instruments and courts,[47]

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[39] Between August 2021 – August 2023, there were six operational road border crossing points at the border with Belarus. In August 2023, the operation of two of them was suspended. As of 1 March 2024, the operation of two more road border crossing points is also suspended, and disembarkation of passengers is not generally allowed at the *Kena* railway border crossing point. At the remaining operational border crossing points (Medininkai and Šalčininkai), movement of pedestrians and bicycles is not allowed. See Government of the Republic of Lithuania, Resolution No 134 amending Resolution No 517 of 2 July 2021 *Concerning the Declaration of a State - Level Extraordinary Situation and the Appointment of the Head of the State-Level Extraordinary Situation Operations*, 21 February 2024: https://e-seimas.lrs.lt/portal/legalAct/lt/TAD/8b3645c4d17611ee9269b566387cfecb?positionInSearchResults=7&searchModelUUID=4ae2a144-074a-41e6-9ac6-00ad9d279ef5; an official map of border crossing points is available at: Map of border checkpoints (BCP) (dedikuotas.lt).

[40] Lithuanian Red Cross, *Access to the asylum procedure*, note 38 above, pp. 12-17.

[41] Vilnius Regional Administrative Court, *Case No eI2-2077-535/2023*, 16 March 2023: https://hrmi.lt/wp-content/uploads/2023/03/2023-03-16sprendimas-bylojeeI2-2077-535-2023-nuasmenintas.pdf; Supreme Administrative Court of Lithuania, *Case No eA-1663-789/2023*, 24 May 2023, liteko.teismai.lt/viesasprendimupaieska/tekstas.aspx?id=8c949c66-7e81-4732-a933-05abd47f10ac.

[42] UNGA, *Universal Declaration of Human Rights*, 10 December 1948: www.refworld.org/docid/3ae6b3712c.html.

[43] See, *inter alia*, Executive Committee of the High Commissioner's Programme ('ExCom'), *Non-Refoulement No. 6 (XXVIII)*, 12 October 1977: https://www.unhcr.org/excom/exconc/3ae68c43ac/non-refoulement.html, para. (c); as well as ExCom, *Conclusions No. 25 (XXXIII)*, 20 October 1982, para. (b); *No. 65 (XLII)*, 11 October 1991, para. (c); *No. 68 (XLIII)*, 9 October 1992, para. (f); and *No. 81 (XLVIII)*, 17 October 1997, para. (i).

[44] UNHCR, *Handbook on procedures and criteria for determining refugee status and guidelines on international protection under the 1951 Convention and the 1967 Protocol relating to the Status of Refugees*, HCR/1P/4/ENG/REV. 4, April 2019: www.refworld.org/docid/5cb474b27.html, para. 28. See also ECtHR, Grand Chamber, *N.D. and N.T. v. Spain*, App. Nos. 8675/15 and 8697/15, 13 February 2020: www.refworld.org/jurisprudence/caselaw/echr/2020/en/123134, para. 178.

[45] UNHCR Handbook, note 44 above, para. 28. This has been confirmed by well-established jurisprudence of the CJEU, see, for instance, CJEU, Second Chamber, *A. and S. v. Staatssecretaris van Veiligheid en Justitie*, C-550/16, 12 April 2018: https://curia.europa.eu/juris/liste.jsf?language=en&jur=C,T,F&num=c-550/16, paras 53-54, and CJEU, Grand Chamber, *M and X, X*, Joined Cases C-391/16, C-77/17 and C-78/17, 14 May 2019: https://curia.europa.eu/juris/liste.jsf?num=C-391/16, para. 85.

[46] See CJEU, Fourth Section, *Ministerio Fiscal v. V.L.*, C-36/20 PPU, 25 June 2020: https://curia.europa.eu/juris/liste.jsf?language=en&td=ALL&num=C-36/20%20PPU, paras 63, 72, 79 and 93-94.

[47] On the principle of *non-refoulement* as a norm of customary law, see UNHCR, *Declaration of States Parties to the 1951 Convention and or Its 1967 Protocol relating to the Status of Refugees*, HCR/MMSP/2001/09, 16 January 2002: www.refworld.org/legal/resolution/2002/en/30933, 4th Preamble, UNHCR, *Note on the Principle of Non-Refoulement*, November 1997:

the principle of *non-refoulement* cannot be derogated from even in times of emergency or 'instrumentalization', as declared by Lithuanian authorities in relation to the Belarusian border. Under the European Convention of Human Rights ('ECHR'), Article 15 allows derogations from certain rights in exceptional circumstances, but it explicitly precludes any derogation from Article 3 ECHR. Similarly, neither the 1951 Convention nor EU law provide a legal basis for derogating from the principle of *non-refoulement* in times of emergency.[48]

3.1.4. The principle of *non-refoulement* protects individuals not only from removal to their countries of origin but also to any other territory where they have reason to fear persecution or other serious harm, thereby ensuring protection from indirect (or chain) *refoulement*. Removal to a third country where a person's rights are not threatened *per se* but where no protection is available against onward transfer to a place of persecution or serious harm is therefore prohibited.[49]

3.1.5. In addition, Article 31 of the 1951 Convention recognizes that in exercising the right to seek asylum, refugees are often compelled to arrive, enter or stay in a territory without authorization or documents, or with documentation, which is insufficient, false or obtained by fraudulent means.[50] Travelling without fulfilling relevant travel and immigration requirements is often an unavoidable reality for refugees who seek international protection.[51] For this reason, UNHCR underlines that the principle of *non-refoulement* applies to any person who seeks asylum at the border, regardless of their mode of entry or of their migration status.[52]

3.1.6. This Court has consistently found violations of Article 3 ECHR where applicants requested asylum at the border and were denied entry and removed to a third country in a summary manner.[53] For instance, the Court held in *M.A. and Others* that Lithuania had violated Article 3 ECHR, as border guards had not assessed the asylum request by a Chechen family at the border and had instead forcibly removed them to Belarus without conducting an individual evaluation.[54] Similarly, in *M.K. and Others v. Poland*, the Court recalled that:

> '*in all cases of removal of an asylum-seeker* […] *to a third intermediary country without examination of the asylum request on the merits* […] *it is the duty of the removing State to examine thoroughly the question of whether or not there is a real risk of the asylum-seeker being denied access, in the receiving third country, to an adequate asylum procedure, protecting him or her against refoulement. If it is established that the existing guarantees in this regard are insufficient, Article 3 implies a duty that the asylum-seeker should not be removed to the third country concerned.*'[55]

3.1.7. In UNHCR's view, the legal principles enshrined in this established case-law are applicable to the legislation framework and practices in Lithuania. Based on the declaration of emergency, Lithuanian authorities actively deny access to both territory and asylum procedures to asylum-seekers who entered the country irregularly. The legal framework excessively restricts the possibility of seeking asylum for all persons apprehended after having crossed

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www.refworld.org/policy/legalguidance/unhcr/1997/en/36258. See also Article 3 of the 1984 Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, UNTS, vol. 1465: www.refworld.org/docid/3ae6b3a94.html, p. 85, UN Human Rights Committee, *CCPR General Comment No. 20: Article 7 (Prohibition of Torture, or Other Cruel, Inhuman or Degrading Treatment or Punishment)*, 10 March 1992: www.refworld.org/docid/453883fb0.html, para. 9, and UN Human Rights Committee, *General comment No. 31 [80]: The nature of the general legal obligation imposed on States Parties to the Covenant*, 26 May 2004: www.refworld.org/docid/478b26ae2.html, para. 12.

[48] UNHCR, *Observations on Lithuanian Draft Amendments*, note 27 above, para. 16. See also the well-established case-law of this Court according to which operational challenges with managing migration flows cannot justify non-compliance with the ECHR: ECtHR, Grand Chamber, *Hirsi Jamaa and Others v. Italy*, App. No. 27765/09, 23 February 2012: https://hudoc.echr.coe.int/fre?i=001-109231, para. 197.

[49] See, *inter alia*, ECtHR, Grand Chamber, *Ilias and Ahmed v. Hungary*, App. No. 47287/15, 21 November 2019: https://hudoc.echr.coe.int/eng?i=001-198760, paras 128-138.

[50] ExCom Conclusion No. 58 (XL) 1989, para. (a). See also UK House of Lords (Judicial Committee), R v. Asfaw, [2008] UKHL 31, 21 May 2008: http://www.refworld.org/cases,GBR_HL,4835401f2.html, para. 9. South Africa Supreme Court of Appeal, *Mahamad Arwah Abdi and Another v. Minister of Home Affairs and Others*, Case No. 734/2010, 15 February 2011: www.refworld.org/jurisprudence/caselaw/sasca/2011/en/88127, para. 22.

[51] UN Ad Hoc Committee on Refugees and Stateless Persons, *Memorandum by the Secretary-General*, E/AC.32/2, 3 January 1950, comment to paragraph 2 of then-draft Article 24: https://www.unhcr.org/publications/ad-hoc-committee-statelessness-and-related-problems-status-refugees-and-stateless. UNHCR, *Beyond Proof, Credibility Assessment in EU Asylum Systems: Full Report*, May 2013: www.refworld.org/reference/regionalreport/unhcr/2013/en/104283, p. 213.

[52] UNHCR observations on Lithuanian Draft Amendments, note 27 above, para. 15.

[53] ECtHR, Second Section, *M.K. and Others v. Poland*, App. Nos. 40503/17, 42902/17 and 43643/17, 23 July 2020: https://hudoc.echr.coe.int/fre?i=001-203840; ECtHR, First Section, *D.A. and Others v. Poland*, App. No. 51246/17, 8 July 2021: https://hudoc.echr.coe.int/fre?i=001-210855; ECtHR, Fifth Section, *O.M. and D.S. v. Ukraine*, App. No. 18603/12, 15 September 2022: https://hudoc.echr.coe.int/fre#{%22itemid%22:[%22001-219197%22]}; for a case concerning a similar factual scenario, but predating the judgment in *Ilias and Ahmed v. Hungary*, note 49 above and ECtHR, *M.A. and Others v. Lithuania*, note 35 above.

[54] ECtHR, *M.A. and Others v Lithuania*, note 35 above, para. 115.

[55] ECtHR, *M.K. and Others v. Poland*, note 53 above, para. 173.

the border irregularly.[56] Moreover, it creates a legal fiction of non-entry or non-presence by stipulating that foreigners who have crossed the state border irregularly and are present in the border zone are deemed not to be on the territory of Lithuania. As in cases of airport transit zones and other border areas, this kind of legal fiction is contrary to this Court's jurisprudence and is unlawful.[57] In addition, according to information available to UNHCR (see 2.2.8. above), the systematic use of pushback practices at the border between Lithuania and Belarus resulted in thousands of informal removals. As a consequence, many asylum-seekers were left stranded in forests for long periods of time, in harsh weather conditions and without food or shelter.

3.1.8. UNHCR stresses that the right to seek asylum does not depend on the mode of arrival of an applicant. Asylum-seekers are often forced to arrive at or enter a territory without prior authorization. Moreover, in light of the above-mentioned jurisprudence, UNHCR recalls that imposing a blanket measure to preclude the admission of asylum-seekers and refugees without measures to protect against *refoulement* would violate Article 3 ECHR, even in times of emergency. Prior to implementing any removal decision, authorities have a specific legal obligation to carry out an adequate assessment of an applicant's claim under Article 3 ECHR, thus establishing whether the person is at risk of persecution, other serious harm, or onward removal to inhuman and degrading treatment.[58] Pending the assessment of their asylum requests, applicants have the right to remain on the territory and not to be removed to a third country, such as Belarus.[59]

3.1.9. For all these reasons, UNHCR submits that the removal of individuals potentially in need of international protection carried out by Lithuanian border guards to Belarus in the absence of any assessment on the risk of direct and indirect *refoulement* is at variance with international refugee and human rights law.

3.1.10. Finally, on the possibility to lodge asylum applications in Lithuanian embassies abroad, this may complement but must not replace access to asylum procedures for individuals arriving at borders. A mechanism pursuant to which a person is summarily denied access to the asylum procedure and directed to an extraterritorial pre-entry procedure in a third country is not in line with applicable international and European obligations, as recently confirmed by the CJEU in the case of *Commission v. Hungary*.[60]

3.2. The prohibition of collective expulsions and access to territory and asylum procedures

3.2.1. In order to give effect to the legal obligations enshrined in the 1951 Convention, States must correctly identify refugees, and the primary responsibility for such identification rests with the State where protection is sought.[61] For this purpose, national authorities need to grant asylum-seekers access to territory and to fair and efficient procedures, failing which the right to seek asylum would be rendered meaningless.[62]

3.2.2. In this context, the procedural guarantees protecting aliens against collective expulsions under Article 4 Protocol No. 4 to the ECHR are crucial to prevent possible violations of the principle of non-refoulement.[63] This Court's Grand Chamber highlighted in *N.D. and N.T. v. Spain* that national authorities must ensure '*genuine and effective access to means of legal entry*' and allow those at risk of ill-treatment to submit an application for international protection. It ruled that:

> *'[i]n the absence of appropriate arrangements, the resulting possibility for States to refuse entry to their territory is liable to render ineffective all the Convention provisions designed to protect individuals who face a genuine risk of persecution.'*[64]

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[56] UNHCR, *Observations on Lithuanian Draft Amendments*, note 27 above, para. 11.
[57] See ECtHR, *Amuur v. France*, 17/1995/523/609, 25 June 1996: www.refworld.org/jurisprudence/caselaw/echr/1996/en/120333, para. 43; ECtHR, Z.A. and Others v. Russia, Grand Chamber, 21 November 2019: www.refworld.org/jurisprudence/caselaw/echr/2019/en/123065.
[58] See UNHCR, *Advisory Opinion on the Extraterritorial Application of Non-Refoulement Obligations under the 1951 Convention relating to the Status of Refugees and its 1967 Protocol*, 26 January 2007: www.refworld.org/node/49727; ExCom Conclusions Nos. 6 (1977), para. (c); No. 79 (1996), para. (j); No. 81 (1997), para. (i). See also, UNHCR, *Note on International Protection*, A/AC.96/815, 31 August 1993: www.refworld.org/policy/unhcrnotes/unhcr/1993/en/71234.
[59] UNHCR, *Observations on Lithuanian Draft Amendments*, note 27 above, para. 17.
[60] See CJEU, Fourth Chamber, *Commission v. Hungary*, C-823/21, 22 June 2023: https://curia.europa.eu/juris/liste.jsf?lgrec=fr&td=%3BALL&language=en&num=C-823/21&jur=C.
[61] UNHCR, *Note on the "Externalization" of International Protection*, 28 May 2021: www.refworld.org/docid/60b115604.html.
[62] ExCom, *Safeguarding Asylum No. 82 (XLVIII)*, 17 October 1997, para. (d)(ii). See further UNHCR, *Advisory Opinion on Extraterritorial Application of Non-Refoulement*, note 58 above, paras 26-31.
[63] See also CAT, *General Comment No. 4 (2017) on the implementation of article 3 of the Convention in the context of article 22*, 9 February 2018: www.refworld.org/legal/general/cat/2018/en/120416, para. 13.
[64] ECtHR, *N.D. and N.T. v. Spain*, note 44 above, para. 209. See also ECtHR, *M.K. and Others v. Poland*, note 533 above, paras 206-208, which makes it clear that effective access to border procedures must go beyond theoretical possibilities.

3.2.3. The Lithuanian government has referred to the *N.D. and N.T.* judgment to justify the practices described in Section 2.2. of this submission.[65] However, as has been recalled by the Council of Europe's Commissioner for Human Rights, this judgment cannot be interpreted as generally allowing to forego an individual identification in cases of unlawful border crossings.[66] Rather, the Grand Chamber underlined that the ECHR aims at protecting rights that are not '*theoretical or illusory but […] practical and effective*', and that even in the context of a national emergency, domestic rules on border control may not render inoperative the rights protected by the Convention, including the prohibition of collective expulsions.[67] Moreover, the Grand Chamber adopted a broad interpretation of the term 'expulsion' within the meaning of Article 4 Protocol No. 4 to the ECHR, affirming that it should be understood '*as referring to any forcible removal of an alien from a State's territory'*, irrespective of the lawfulness of the persons' stay or of their status.[68] Finally, the Court recalled that non-admission of refugees or asylum-seekers is to be equated in substance with their removal and does not release a State from its *non-refoulement* obligations.[69]

3.2.4. In the same vein, the CJEU's Advocate General Emiliou has recently clarified that the *N.D. and N.T.* judgment cannot be understood to justify a State's refusal to consider an asylum application merely because the asylum-seekers concerned have entered the territory irregularly in the context of a mass influx of migrants.[70] As the Advocate General recalled, *N.D. and N.T.* concerned very specific circumstances: the applicants had overcome the border fence in a dangerous manner, deliberately taking advantage of their large numbers and using force. Such factual circumstances may not be generally assumed to exist at the Lithuanian and Belarusian border.

3.2.5. Most importantly, foreigners at the Lithuanian-Belarusian border are systematically not able to obtain '*genuine and effective access to means of legal entry*'. According to information gathered by UNHCR (see Section 2.2. above), access to the asylum procedure at border crossing points (and through the embassy procedure) was not available to the vast majority of applicants.[71] As recently confirmed by the CJEU, Lithuanian rules effectively deprive irregularly staying third-country nationals of any opportunity to access the asylum procedure, in breach of EU law. The CJEU held:

> '*Member States may require that applications for international protection be lodged in person and/or at a designated place. Nevertheless,* […] *the Member States cannot exercise that option in such a manner as would, in practice, prevent third-country nationals, or some of them, from lodging an application* […] *'as soon as possible'. Any contrary interpretation would run counter to the objective* […] *of ensuring effective, easy and rapid access to the procedure for granting international protection and would seriously undermine the practical effectiveness of the right to seek asylum.*'[72]

3.2.6. Following similar considerations, this Court has found in *Shazhad v. Hungary* that '*genuine and effective access to means of legal entry*' does not exist where the only possibility to legally enter the territory was located 40 kilometres away, access to these border zones was arbitrarily limited, and the admission process was not governed by appropriate safeguards – a situation amounting to a violation of Article 4 of Protocol No. 4 ECHR.[73] Similarly, in *M.H. and Others v. Croatia*, the Court found that genuine and effective access to means of legal entry did not exist, also in light of numerous reports on summary returns carried out at Croatia's external borders.[74]

3.2.7. For all these reasons, UNHCR submits that the systemic practice of restricting access to territory and asylum procedures for all individuals crossing the border irregularly carried out by Lithuanian authorities is at variance with the prohibition of collective expulsions, as guaranteed in Article 4 of Protocol No. 4 to the ECHR.

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[65] UNHCR, *Observations on Lithuanian Draft Amendments*, note 27 above, para. 14.
[66] Commissioner for Human Rights of the Council of Europe, *Recommendation: Pushed beyond the limits, Four areas for urgent action to end, human rights violations at Europe's borders*, April 2022: https://rm.coe.int/pushed-beyond-the-limits-urgent-action-needed-to-end-human-rights-viol/1680a5a14d, p. 29.
[67] ECtHR, *N.D. and N.T.*, note 44 above, paras 170-171. See also ECtHR, *Hirsi Jamaa and Others v. Italy*, note 48 above, para. 179.
[68] ECtHR, *N.D. and N.T.*, note 44 above, para. 185.
[69] *Ibid.*, paras 186-187.
[70] CJEU, Opinion of Advocate General Emiliou, *M.A. v. Valstybės sienos apsaugos tarnyba*, C-72/22 PPU, 2 June 2022: https://curia.europa.eu/juris/liste.jsf?lgrec=fr&td=%3BALL&language=en&num=C-72/22&jur=C, para. 143.
[71] See also Amnesty International, note 20 above; Commissioner for Human Rights, note 66 above, p. 22.
[72] CJEU, *M.A. v. Valstybės sienos apsaugos tarnyba*, note 15 above, para. 65.
[73] See ECtHR, First Section, *Shahzad v. Hungary,* App. No. 12625/17, 8 July 2021: https://hudoc.echr.coe.int/fre?i=001-210853.
[74] See ECtHR, *M.H. and Others v. Croatia*, App. Nos. 15670/18 and 43115/18, 18 November 2021: https://hudoc.echr.coe.int/fre?i=001-213213.

3.3. Effective remedies

3.3.1. This Court has often reiterated that, given the importance of the principle of non-refoulement and the irreversible nature of the harm likely to be caused in the event of ill-treatment, it is the duty of national authorities to conduct a thorough and rigorous assessment of the applicant's claim of being at real risk of treatment contrary to Article 3 ECHR.[75] In order to be effective, a legal remedy must be available in law and practice, at the time the Article 3 ECHR risk first arises, i.e. when applicants are exposed to removal to a third country and potential indirect refoulement. Later remedies do not compensate for the lack of an effective remedy at this point. As this Court's Grand Chamber has underlined in *M.S.S. v. Belgium and Greece*,

> '*the effectiveness of a remedy within the meaning of Article 13 imperatively requires close scrutiny by a national authority* […], *independent and rigorous scrutiny of any claim that there exist substantial grounds for fearing a real risk of treatment contrary to Article 3* […]*, as well as a particularly prompt response* […]*; it also requires that the person concerned should have access to a remedy with automatic suspensive effect*'[76]

3.3.2. In a case concerning an alleged violation of Article 4 of Protocol No. 4 ECHR, the Court clarified that applicants claiming to have been subject to collective expulsions must be provided with an effective possibility of challenging the removal decisions, with a sufficiently thorough examination of their complaints carried out by an independent and impartial court or tribunal.[77] Applying these principles to a situation of non-access at official border crossing points, this Court further found that the absence of a remedy to complain about the applicant's informal removal violated Article 13 ECHR read in conjunction with Article 4 of Protocol No 4 to the ECHR.[78]

3.3.3. Since Lithuanian emergency legislation does not foresee any formal return order issued to those not admitted to and removed from the Lithuanian territory there is also no access to effective remedies against such removal measures. UNHCR further underlines that asylum applicants at the border experience serious challenges in accessing legal aid, which is an essential component of the right to an effective remedy under international and European law. Legal assistance is particularly important when asylum is requested at the border because of the particular vulnerability of asylum-seekers in this context, where procedures take place outside public scrutiny and in often rudimentary and stressful conditions.[79] Moreover, as detailed above, under the Lithuanian emergency legislation, border areas are not accessible either by UNHCR or the Lithuanian Red Cross.

3.3.4. For those reasons, UNHCR submits that the absence of a legal obligation to issue removal orders, combined with serious limitations to accessing legal assistance at the border, is at variance with the right to an effective remedy, as guaranteed in Article 13 ECHR in conjunction with Article 4 to Protocol No. 4 to the ECHR.

4. Conclusion

UNHCR submits that the Lithuanian legislation and practice following the declaration of an emergency in 2021 resulted in systematic removal practices that violate the rights of asylum-seekers who had crossed or attempted to cross the border in an irregularly manner under international and European law. In particular, informal removals of individuals potentially in need of international protection, in the absence of any assessment of the risk of direct and indirect *refoulement*, is inconsistent with Article 3 ECHR. Moreover, restricting access to territory and asylum procedures for all individuals crossing the border irregularly, without an individual assessment of their claims, is at variance with Article 4 of Protocol No. 4 to the ECHR. Finally, not providing individuals with removal orders and consequently making remedies against such decisions unavailable, combined with serious limitations to accessing legal assistance, is at odds with Article 13 ECHR read in conjunction with Article 3 ECHR and Article 4 to Protocol No. 4 to the ECHR.

UNHCR
14 March 2024

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[75] See, ECtHR, *Singh and Others v. Belgium*, App. No. 33210/11, 2 October 2012: https://hudoc.echr.coe.int/eng?i=001-113660, para. 103; ECtHR, Grand Chamber, *M.S.S. v. Belgium and Greece*, App No. 30696/09, 21 January 2011: https://hudoc.echr.coe.int/fre?i=001-103050, paras 387-388; ECtHR, *Hirsi Jamaa and Others v. Italy*, note 48 above, para. 200.
[76] ECtHR, *M.S.S. v. Belgium and Greece*, note 75 above, para. 293. See also ECtHR, *M.K. and Others v. Poland*, note 53 above, para. 143; ECtHR, *D.A. and Others v. Poland*, note 53 above, para. 38; ECtHR, *Hirsi Jamaa and Others v. Italy*, note 48 above, para. 199.
[77] ECtHR, Grand Chamber, *Khlaifia and Others v. Italy*, App. No. 16483/12, 15 December 2016: https://hudoc.echr.coe.int/fre?i=001-170054, para. 279.
[78] See ECtHR, *Shahzad v. Hungary,* note 73 above, paras 75-79.
[79] UNHCR, *Global Consultations on International Protection/Third Track: Asylum Processes (Fair and Efficient Asylum Procedures)*, EC/GC/01/12, 31 May 2001: www.refworld.org/policy/strategy/unhcr/2001/en/13248, paras 21-23.

UNHCR
The UN Refugee Agency

BALTIC REGION

Schengen and Reference Map

(as of 11 Mar 2024)

The boundaries and names shown and the designations used on this map do not imply official endorsement or acceptance by the United Nations.

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