



14/07/2023

RAP/RCha/LTU/20(2023)

EUROPEAN SOCIAL CHARTER

Comments submitted by
the United Nations High Commissioner for Refugees
concerning the 20th National Report on the implementation of
the European Social Charter

submitted by
THE GOVERNMENT OF LITHUANIA
Articles 7, 8, 16, 17, 19, 27 and 31
for the period 01/01/2018 – 31/12/2021

Comments registered by the Secretariat
on 14 July 2023

CYCLE 2023



**Comments by the United Nations High Commissioner for Refugees
to the European Committee of Social Rights**

**Examination of the 20th National Report on the implementation
of the European Social Charter
submitted by the Government of LITHUANIA
Articles 7, 8, 16, 17, 19, 27 and 31
for the period 01/01/2018 – 31/12/2021**

RAP/Cha/LTU/20(2023)¹

Compared to other EU member states, Lithuania previously received a relatively low number of asylum-seekers.² In 2021, the number of arrivals of asylum-seekers and migrants drastically increased: almost 4,300 asylum applications were lodged, including by approximately 1,100 children. Most of these applicants had entered Lithuania through the border with Belarus. As of 31 December 2021, Lithuania hosted 1,892 refugees and beneficiaries of subsidiary protection, as well as 2,721 stateless persons.

Article 7. Protection of children, including migrant, refugees, and displaced children, from sexual exploitation and abuse

In Lithuania, unaccompanied or separated children without identity documents are often subject to medical examinations to determine their age. In accordance with Article 123(1) of the Foreigners Law, an *age determination test* (*Lith.* amžiaus nustatymo tyrimas) is done where there is “reasonable doubt” about the age indicated by a foreigner. While Article 123(4) of the Aliens Law requires that the person’s dignity be respected and the least invasive tests be selected, relevant bylaws explicitly refer to X-ray examinations as the only method to be used for age determination purposes.³

UNHCR is concerned about such practice. In UNHCR’s view, (i) age assessments may be conducted only in cases when a child’s age is in doubt and need to be part of a comprehensive assessment that takes into account both the physical appearance and the psychological maturity of the child;⁴ (ii) a young person claiming to be a minor should be assumed to be a child, while States should appoint a qualified legal

¹ Government of Lithuania, *European Social Charter 20th National Report on the implementation of the European Social Charter submitted by the Government of Lithuania articles 7, 8, 16, 17, 19, 27, and 31 for the period 01/01/2018 – 31/12/2021*, 12 January 2023, available at: <https://rm.coe.int/rap-rcha-ltu-20-2023/1680aa1816>.

² 423 persons applied for asylum in 2018, 646 – in 2019, and 331 – in 2020 - Migration Department under the Ministry of the Interior of the Republic of Lithuania (“Migration Department”), *Migration Yearbook 2022*, available in Lithuanian at: <https://bit.ly/3JH7NyN>.

³ Order No IV-131 of 24 February 2016 of the Minister of the Interior, paras 148-149, available at: <https://e-seimas.lrs.lt/portal/legalAct/lt/TAD/0a918630dc0311e59019a599c5cbd673/asr>; Joined Order No A1-538/IV-780/V-1067 of 18 September 2019 of the Minister of Social Security and Labor, Minister of the Interior and Minister of Health, paras 16-18, available at: <https://e-seimas.lrs.lt/portal/legalAct/lt/TAD/3bf36e03d9e811e9a85be81119c7a8fa>.

⁴ UN Committee on the Rights of the Child (CRC), *CRC General Comment No. 6 (2005): Treatment of Unaccompanied and Separated Children Outside their Country of Origin*, 1 September 2005, CRC/GC/2005/6, para. 31(i), available at: <http://www.refworld.org/docid/42dd174b4.html>; *Guidelines on International Protection No. 8: Child Asylum Claims under Articles 1(A)2 and 1(F) of the 1951 Convention and/or 1967 Protocol relating to the Status of Refugees*, 22 December 2009, HCR/GIP/09/0 para. 75, available at: <http://www.refworld.org/docid/4b2f4f6d2.html>.

representative as soon as possible on arrival;⁵ and (iii) States should refrain from using medical methods based on bone and dental examination, which may be inaccurate, with wide margins of error.⁶

In 2021, in the context of the increased irregular arrivals through Belarus, some 250 young persons claimed to be children.⁷ By 26 October 2021, 214 young persons had been referred for X-ray examinations. As a result, 33 persons were found to be children, while 181 persons were found to be 18 years old and above.⁸ Both UNHCR and the child rights authorities are aware of cases where children deemed adults based on the X-ray examinations, eventually managed to obtain documentary evidence confirming their childhood.⁹

In addition, information about unaccompanied children was not systematically passed to the child rights authorities. Instead, referrals to the child protection system were only conducted where the person concerned was determined to be a child after the age determination test. As a result, the child rights authorities were deprived of the possibility to attend registration interviews and proceed with childcare and guardianship arrangements. Consequently, some unaccompanied and separated children were staying in temporary accommodation sites among adults in dire conditions for several months.¹⁰ As a result, these children were deprived of the timely protection and assistance they are entitled to pursuant to international law and national legislation of Lithuania.

Article 17. Reduction of statelessness and facilitation of birth registration, particularly for vulnerable groups, including asylum-seekers and children in an irregular situation)

Lithuania has implemented several initiatives aimed at reducing statelessness in line with its pledges at the High-Level Segment on Statelessness (HLS).¹¹ This included the adoption of amendments to the Citizenship Law broadening automatic access to Lithuanian citizenship for children born to stateless parents who are lawful residents¹² and a campaign to analyse the situation of stateless persons in the country and provide individual counselling on access to citizenship procedures.¹³

While supporting these efforts, UNHCR considers that additional guarantees may need to be introduced in the national legislation to secure access to nationality for all children born in the territory who would otherwise be stateless. This is essential for ensuring a correct and complete implementation of applicable provisions of the *1961 Convention on the Reduction of Statelessness (1961 Convention)* and the *Convention on the Rights of the Child (CRC)*. In this respect, UNHCR notes that the current legislative framework on automatic access to citizenship for stateless children focusses on the statelessness of the parents, rather than the statelessness of the child, and does therefore not encompass children who are born in Lithuania to foreign parents who cannot pass on their nationality, e.g., because of gender discrimination in or conflict

⁵ Committee on the Rights of the Child, *Views adopted by the Committee on a communications procedure, concerning communication No. 16/2017*, 31 May 2019, para. 12.8, available at: <https://bit.ly/44G7FIm>.

⁶ UN Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families (CMW), *Joint general comment No. 4 (2017) of the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families and No. 23 (2017) of the Committee on the Rights of the Child on State obligations regarding the human rights of children in the context of international migration in countries of origin, transit, destination and return*, 16 November 2017, CMW/C/GC/4-CRC/C/GC/23, para. 4, available at: <https://www.refworld.org/docid/5a12942a2b.html>.

⁷ Office of the Ombudsperson for Child's Rights, *Certificate on the Investigation of the Situation of Unaccompanied Children Foreigners Conducted on the Initiative of the Child Rights Ombudsperson*, 16 November 2021, No. (6.7-2021-42)PR-142, paras 2 and 15.5, available at <http://vtaki.lt/lt/teisine-informacija/vaiko-teisiu-padeties-vertinimas/atlikti-tyrimai-ir-apibendrinimai>.

⁸ *Ibid.*, page 20.

⁹ *Ibid.*, para. 4.4.

¹⁰ *Ibid.* para. 15.9. During UNHCR's monitoring visits to accommodations sites, applicants who appeared to be children were found among adults. Similar concerns were expressed by the Lithuanian child rights authorities. See also the above cited report by the Office of the Ombudsperson for Child's Rights on page 9.

¹¹ UN High Commissioner for Refugees (UNHCR), *High-Level Segment on Statelessness: Results and Highlights*, May 2020, page 63, available at: <https://www.refworld.org/docid/5ec3e91b4.html>.

¹² Lietuvos Respublikos pilietybės įstatymo Nr. XI-1196 2, 7, 12, 15, 16, 18, 21, 23, 24, 26, 27, 33, 37, 40, 41, 41-1 ir 42 straipsnių pakeitimo ir įstatymo papildymo 21-1 straipsniu įstatymas, TAR, 2020-12-23, Nr. 28359. Available in Lithuanian at: <https://bit.ly/3wnkXbj>.

¹³ UNHCR, *Campaign Update, January 2021 - March 2021*, 15 April 2021, page 7, available at: <https://www.refworld.org/docid/607852747.html>.

of nationality laws. While such children may still apply for Lithuanian citizenship after 5 years of continuous lawful residence, this procedure is essentially of discretionary nature and the applicable preconditions for granting citizenship are broader than the exhaustive list of possible requirements that States are permitted to impose under Article 1 (2) of the *1961 Convention*.¹⁴ Moreover, the condition of lawful residence is not in accordance with Article 1(2)(b) of the *1961 Convention*, by which States may impose a habitual residence requirement on the child, but not a lawful residence requirement.¹⁵ It should further be noted that according to Article 2(2) of the Convention on the Rights of the Child, States Parties shall take all appropriate measures to ensure that the child is protected against all forms of discrimination on the basis of, *inter alia*, the status of the child's parents.¹⁶

UNHCR considers that the risk of leaving certain children stateless remains. In this regard, additional measures may be required to prevent child statelessness. In particular, introducing provisions that clearly provide for automatic grant of Lithuanian citizenship at birth to children born in the territory who would otherwise be stateless could ensure a full alignment with the provisions of the *1961 Convention* and the *CRC*.

Article 31 - adequate housing for vulnerable groups, including refugees and asylum-seekers

Due to high influx of new arrivals in 2021, the regular reception capacity of Lithuania (some 500 places in the Pabradė Foreigners Registration Centre and the Rukla Refugee Reception Centre) was quickly exhausted, leading to the placement of asylum-seekers and migrants, including children, in border guard units and municipal sites that lacked adequate reception conditions. The persons concerned were accommodated in tents, abandoned schools and other buildings unsuitable for a longer stay. Lack of safe and dignified accommodation, supplies, and services – alongside with other gaps – made the humanitarian situation in the newly established accommodation sites highly problematic, notably as far as children and other vulnerable persons are concerned. In particular, in some sites children were not regularly provided with hot meals and season appropriate clothes.¹⁷ In many facilities, in-site management was not in place leading to serious protection risks such as assault and gender-based violence (GBV).¹⁸ The situation of unaccompanied and separated girls and boys was particularly difficult, as many sites that lacked psychosocial services, privacy as well as GBV prevention and response measures, they stayed alongside adults for up to 3 months.¹⁹

Over 30 such sites were set up by September 2021. All these sites were essentially detention facilities, as the persons concerned were required to remain permanently within a restricted and closed perimeter guarded by law enforcement officers. The policy of large-scale detention of all irregular arrivals was further

¹⁴ UN High Commissioner for Refugees (UNHCR), Guidelines on Statelessness No. 4: Ensuring Every Child's Right to Acquire a Nationality through Articles 1-4 of the 1961 Convention on the Reduction of Statelessness, 21 December 2012, HCR/GS/12/04, available at: <https://www.refworld.org/docid/50d460c72.html>, para. 36-37.

¹⁵ UN High Commissioner for Refugees (UNHCR), Guidelines on Statelessness No. 4: Ensuring Every Child's Right to Acquire a Nationality through Articles 1-4 of the 1961 Convention on the Reduction of Statelessness, 21 December 2012, HCR/GS/12/04, available at: <https://www.refworld.org/docid/50d460c72.html>, para. 41; UNHCR, *Mapping Statelessness in Lithuania*, May 2016, part 4.3.1, available at: <https://www.refworld.org/docid/580f649c4.html>.

¹⁶ Also, according to UNHCR Guidelines on Statelessness No. 4, para. 33, “Any distinction in treatment of different groups must serve a legitimate purpose, cannot be based on discriminatory grounds and must be reasonable and proportionate.”

¹⁷ Office of the Ombudsperson for Child's Rights, *Certificate on the Investigation of the Situation of Unaccompanied Children Foreigners Conducted on the Initiative of the Child Rights Ombudsperson*, 16 November 2021, No. (6.7-2021-42)PR-142, para. 15.8.2., available at <http://vtaki.lt/lt/teisine-informacija/vaiko-teisiu-padeties-vertinimas/atlikti-tyrimai-ir-apibendrinimai>.

¹⁸ Office of the Equal Opportunities Ombudsperson, *Ensuring Equal Opportunities for Persons Crossed the Belarussian and Lithuanian Border, Report (in Lithuanian)*, December 2022, pages 49, 70-74, available at: https://www.lygybe.lt/data/public/uploads/2023/01/2022-12-30_nepriklausomos-stebesenos-ataskaita.pdf; Lithuanian Red Cross, *Annual Monitoring Report, 2021*, page 26, available at: <https://redcross.lt/veiklos/prieglobscio-ir-migracijos-programa/stebesena-2/>.

¹⁹ Office of the Ombudsperson for Child's Rights, *Certificate on the Investigation of the Situation of Unaccompanied Children Foreigners Conducted on the Initiative of the Child Rights Ombudsperson*, 16 November 2021, No. (6.7-2021-42)PR-142, para. 15.8.1., available at <http://vtaki.lt/lt/teisine-informacija/vaiko-teisiu-padeties-vertinimas/atlikti-tyrimai-ir-apibendrinimai>.

endorsed by the adoption of two sets of amendments to the *Foreigners Law*,²⁰ introducing special legislative provisions governing the situation of asylum-seekers and migrants arriving irregularly in the time of a declared emergency. This legislative framework *inter alia* provided for the mandatory stay of the persons concerned in closed accommodation sites for a maximum 6-month period which could be further extended for 6 more months. In UNHCR's view, the introduced emergency provisions were at variance with international law and EU asylum legislation.²¹

Since late September 2021, UNHCR has observed certain improvements as regards reception conditions. First, asylum-seekers and migrants have been relocated from border guard units and municipal sites to 5 accommodation centers equipped with housing arrangements (regular buildings and/or container type housing units) appropriate for a longer stay. Secondly, families with children and some other vulnerable groups have been referred to the Rukla and Vilnius centers under the supervision of the Ministry of Social Security and Labour (MSSL). This allowed for streamlining access to psychosocial services and support tailored to the specific needs of the individuals concerned.

However, high accommodation density and delayed referrals to the MSSL facilities, in combination with the security-oriented regime and detention like environment caused depression and tensions in all accommodation sites affecting the well-being of the persons concerned.²² This also affected the emotional well-being of children as reported by the child rights authorities monitoring the accommodation sites.²³

UNHCR
14 July 2023

²⁰ Amendments to the Aliens Law of 13 July 2021 (No XIV-506), available at: <https://bit.ly/3pQMWmq>; Amendments to the Aliens Law of 23 December 2021 (No. XIV-816), available at: <https://bit.ly/43lvq09>.

²¹ UNHCR, *UNHCR legal observations on the amendments to the Law of the Republic of Lithuania on Legal Status of Aliens (No XIV-506)*, 28 July 2021, see in particular paras 6 -15, available at: <https://www.refworld.org/docid/610d26971a1.html>; *UNHCR observations on draft Amendments to the Law of the Republic of Lithuania on Legal Status of Aliens (No 21-29207)*, 27 September 2021, see in particular paras 21 - 26, available at: <https://www.refworld.org/docid/615322844.htm>.

²² Lithuanian Red Cross, *Annual Monitoring Report 2022 (in Lithuanian)*, pages 3 and 29, available at: <https://redcross.lt/veiklos/prieglobscio-ir-migracijos-programa/stebesena-2/>.

²³ Office of the Ombudsperson for Child's Rights, *Certificate on the Investigation of the Situation of Unaccompanied Children Foreigners Conducted on the Initiative of the Child Rights Ombudsperson*, 16 November 2021, No. (6.7-2021-42)PR-142, paras 6, 9.7 and 12, available at: <http://vtaki.lt/lt/teisine-informacija/vaiko-teisiu-padeties-vertinimas/atlikti-tyrimai-ir-apibendrinimai>. Based on UNHCR monitoring activities, most asylum-seekers and migrants who arrived irregularly in 2021, including children were subjected to the 12-month mandatory stay in the closed facilities. MSF reported exacerbated mental health issues due to prolonged detention in Médecins Sans Frontières (MSF), *A 'hierarchy of suffering' exacerbates asylum seekers' mental health in Lithuania*, 30 August 2022, available at: <https://www.msf.org/discriminatory-and-cruel-migration-practices-compound-suffering-lithuania..>