

Lietuvos Respublikos Ministras Pirmininkas
Prime Minister of the Republic of Lithuania

Vilnius, 23 August 2021

Dear Madam Commissioner,

I am writing in response to your letter dated 10 August 2021 regarding the human rights situation of third-country migrants encouraged and/or forced by the Belarus regime to illegally cross the border from Belarus into Lithuania/EU.

I appreciate your attention to the situation and assure you that protection of human rights is our common value and priority. At the same time, let me draw your attention to the extraordinary nature of organised irregular migration into the EU via Belarus-Lithuania border, which requires adequate reactions and measures.

The recent migration influx to Lithuania is a hybrid attack launched by the Belarusian regime. There are evident reasons to state that officials of Belarus facilitate the smuggling of migrants. The Belarus regime allows and encourages migrants to legally enter Belarus and afterwards supports the illegal crossing of the Belarus-EU border. The State Border Guard Service of Lithuania under the supervision of the Prosecutor General's Office of the Republic of Lithuania have started an investigation regarding possible organisation of migrant groups and organised irregular border crossings and are collecting reliable evidence.

Lithuania has repeatedly expressed its deep concern over instrumentalisation of migrants by the Lukashenka regime, aiming to exert political pressure on Lithuania and the European Union in retaliation for the support to the Belarusian people struggling for freedom, and for the EU sanctions, imposed for the harsh violations of human rights in Belarus.

Indeed, after Mr Alexander Lukashenka's public statement that he will "*feed Lithuania and other neighbouring states with migrants and drugs*" on 26 May 2021, the influx of irregular migrants via Belarus-Lithuania border peaked sharply. In two months of June and July alone, 3357 migrants illegally crossed the Lithuanian state border from Belarus. As of 23 August, 4137 irregular migrants were apprehended in 2021. Such an influx is a challenge for Lithuania, as we have never encountered irregular migration of this extent. In comparison, the usual numbers of irregular arrivals in 2020 and 2019 were 74 and 37, respectively.

Therefore, Lithuania faced a need to significantly increase its institutional reception capacities. In response, a state-level emergency situation was declared on 2 July 2021.

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. There is no objective threat to Iraqis, citizens of African countries or other third country nationals in Belarus. While being interviewed at the temporary reception facilities, the majority of migrants reveal that they come to Europe for economic purposes and through organised channels.

That said, Lithuania remains committed and determined to fully live up to its international human rights and humanitarian obligations in regard to all people within its jurisdiction, irrespective of their legal status. Therefore, all the people are treated in compliance with Lithuania's international commitments, and we are managing the situation to the best of our abilities. No human right may become subordinate to political or geopolitical considerations.

All persons who arrived at Lithuania's border by the beginning of August 2021 were allowed to enter the State's territory of Lithuania and were given the possibility to apply for asylum. I believe this demonstrates exclusive solidary and empathetic approach of Lithuania towards the people affected.

In order to ensure the proper management of the migration flows and prevent the abuse of the asylum system by the Belarus regime, a new domestic law No XIV-515 amending the Law on the Legal Status of Aliens was adopted on 10 August 2021, requiring to submit applications for asylum at designated points. At the same time more public entities were authorised to accept applications in particularly dedicated points. The law mentioned above was drafted in line with the Directive 2013/32/EU that allows the Member States of the EU to determine specific places where applications for asylum may be made, and with the judgment of the European Court of Human Rights in case *ND and NT v. Spain* [GC] (Applications nos. 8675/15 and 8697/15, 13 February 2020).

I would like to stress that the amended law stipulates an exception for vulnerable foreigners, allowing them to submit applications for asylum to the State Border Guard Service also if they have irregularly crossed the state border.

In the context of this organised irregular immigration, Lithuania faces serious unprecedented challenges not only in controlling our state border, but also in creating necessary logistics for examination of asylum claims, assistance to migrants, and accommodation. In dealing with those challenges, the Government of Lithuania strives for the best and welcomes any support from the EU and the Council of Europe as well as their Member States.

Allow me to further address some of your concrete concerns. I would like to underline that the principle of non-refoulement is the cornerstone of Lithuania's response to irregular arrivals. In all cases the principle of non-refoulement is fully ensured: safeguards are implemented against removal of persons without a proper evaluation of the risks as enshrined in Articles 2 or 3 of the ECHR. This also applies in respect of the persons who crossed the

state border irregularly. Even in exceptional temporary circumstances Lithuania is currently facing, an asylum seeker is granted fair and effective procedure, comprising state-guaranteed legal aid, in order to ensure proper consideration of each and every individual situation. In practice no asylum seeker has been expelled from Lithuania prior to examination of the request for asylum and adoption of the final decision. According to the domestic law, the court may suspend execution of any expulsion case. In other words, an effective remedy is ensured in practice, as well as in law, at the national level in accordance with Article 13 of the ECHR.

As regards your concern about the newly adopted amendments to the domestic law No XIV-506 of 13 July 2021, let me emphasise that it was adopted with the aim to make the examination of asylum requests more effective in the best interests of the asylum seekers. To speed up final decisions on asylum applications, a mandatory pre-trial procedure for appeals against negative decisions has been introduced at the Migration Department. An effective judicial remedy remains fully guaranteed. It is of the utmost importance that following the pre-trial procedure at the Migration Department, its decision may be appealed at court. During the entire asylum procedure, the state-guaranteed legal aid and interpreting are ensured.

Newly arrived asylum seekers and migrants cannot be considered as in *de facto* detention. They all are temporarily accommodated at the border control points, transit zones, premises of the State Border Guard Service or other permanent or temporary accommodation facilities until a decision is made to allow entry to Lithuania. Together with NGOs, we are working on to ensure that all accommodation premises are suitable for living, and meet hygiene standards and needs. We provide food supplies, and ensure medical, legal, and social assistance in every individual case based on personal needs. Vulnerable persons, women, and minors are accommodated separately, seeking to guarantee them conditions satisfying their specific needs. The persons concerned are not deprived of their liberty within the meaning of the Article 5 of the ECHR, the accommodation is a temporal and necessary measure before the screening of every individual is complete.

The capacities and human resources of the Migration Department have been increased significantly. 56 officials have been additionally hired to avoid backlogs in processing asylum applications and ensure proper attention to screening of every person and individual assessment of their situation. The European Asylum Support Office has also delegated staff to conduct interviews with asylum seekers. Mobile teams are meeting with the migrants directly, providing them relevant information and legal assistance. I assure you that all asylum applications are and will be examined professionally and following the recommendations by the UNHCR.

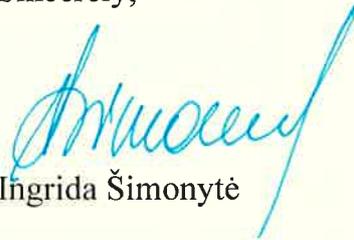
Let me also note that Lithuanian authorities are working not only under unprecedented conditions of a mass migrant influx, but also under conditions of the ongoing COVID-19 pandemic. Therefore, each newly arrived person must be tested for COVID-19, and relevant migration procedures may be started only after the test results are obtained and/or applicable isolation period ends.

It is important to emphasise that the entire responsibility for this artificially formed flow of irregular migration and its consequences lies solely with the Belarus regime, as their state institutions and border services are directly involved in organizing it. Therefore, in this situation, the Council of Europe, the Member States, and our partners must join forces in solidarity.

I am particularly grateful to you, Madam Commissioner, for noting the importance of solidarity. Lithuania welcomes any help or assistance in the face of unprecedented events.

Please accept, Madam Commissioner, the assurances of my highest consideration. I look forward to continuing our constructive dialogue and fruitful cooperation.

Sincerely,



Ingrida Šimonytė

Dunja Mijatović
Commissioner for Human Rights
Council of Europe
Strasbourg