ISSN 2029-1701
ISSN 2335-2035 (Online)

Research Journal
PUBLIC SECURITY AND PUBLIC ORDER
2023 (32)

MIGRATION PROCESSES AND PUBLIC SECURITY: THE CASE OF LITHUANIA

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DOI: 10.13165/PSPO-23-32-09

Abstract*. Migration and security (human security) is not a new idea but it has remarkable revival in last decade. In the policy world, human rights and human security are the two frameworks that most reinforce each other. The human security approach shares with human rights concerns for protecting freedom, enhancing opportunities, but additionally puts focus on protection from critical and pervasive threats.*

However, sometimes the situation becomes ambiguous and states question whether the right to migrate (in the face of large, unmanageable, irregular flows) weakens the public (human) security legal framework.
The article provides an overview of the migration situation in Lithuania in the last decade, using statistical data, and assesses the challenges of decision-making in relation to the actors involved in migration processes.

Keywords: *migration, migration processes, public security.*

Introduction

Migration has existed since prehistoric times. It is not a phenomenon exclusive to modern societies. An analysis of current migration trends suggests that the issue has grown over the last decade and will continue to do so for the foreseeable future. This means that more and more people will decide to change their place of residence, and each country will become a transit or final destination country, leading to the adoption of increasingly stringent rules by countries to regulate migration flows.

And this is natural, as national security is a state of protection of people, society and the state against internal and external threats, which allows state authorities to ensure a constitutional democratic order, a standard of living in line with human rights and freedoms and the requirements of its social development, the sovereignty of the state, its territorial integrity and its sustainable development, defence and security (Šlapkauskas, 2018). The control of national borders is considered an essential aspect of a sovereign state. The main task of the article is to show, through a content analysis approach and the case of Lithuania, that migration issues remain important in today's context and require constant attention and adaptation of common measures to manage migration flows.

Migration flows in Europe in last decade

Over the last ten years, Europe has faced a number of migration crises. Migration from the Middle East, which started in 2013. In 2015, hundreds of thousands of people fleeing war flooded into Europe, with more than 1.3 million seeking asylum in the EU. Refugees from EU asylum seekers have reached the EU (see Figure 1).

2.3 million immigrants entered the EU from non-EU countries in 2021, an increase of almost 18% compared with 2020. 1.4 million people previously residing in one EU Member State migrated to another Member State, an increase of almost 17% compared with 2020. 23.8 million people (5.3%) of the 446.7 million people living in the EU on 1 January 2022 were non-

EU citizens. In 2021, EU Member States granted citizenship to 827 300 persons having their usual residence on the EU territory, an increase of around 14% compared with 2020.

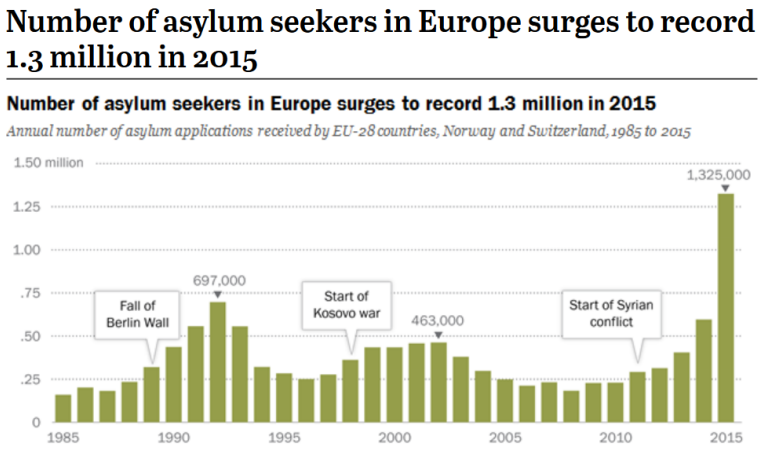


Figure 1. Asylum seekers in Europe
Sourse: Pew Research Center

According to Frontex, the overall scale of irregular migration at the 6000-kilometre-long land border between Belarus, Moldova, Ukraine, the Russian Federation and the eastern EU Member States - Estonia, Finland, Hungary, Latvia, Lithuania, Norway, Poland, Slovakia and Romania – has been much smaller than on other migratory routes (Frontex, 2023). However, this path to Europe still presents significant challenges for border control and in 2021 experienced unprecedented migratory pressure. At the Eastern land borders, a record of 8184 illegal border-crossings were detected in 2021, a more than tenfold increase in comparison to 2020. This significant increase in detections can be traced to a migrant crisis artificially created by the Lukashenko regime: there was intense migratory pressure with continuously attempted border crossings in all three EU Member States neighbouring Belarus, prompting them to declare a state of emergency.

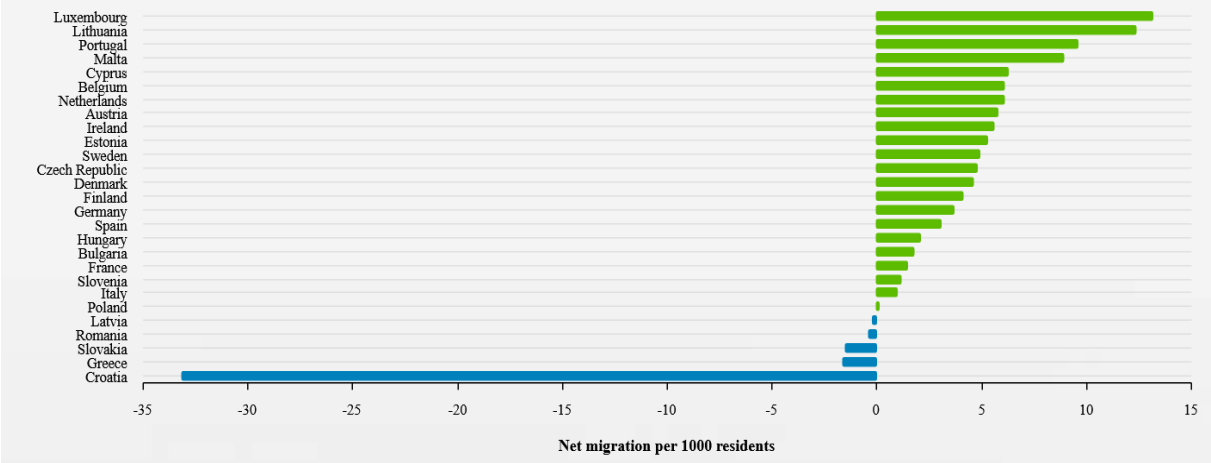


Figure 2. Lithuania in EU contects
Sourse: European Migration Network (EMN)

The number of migrants seeking to reach Europe through this route peaked in the second half of the year (Frontex, 2023).

Lithuania, as a country bordering the EU's eastern periphery, receives 12.4 thousand migrants per 1000 inhabitants (see Figure 2).

Migration crisis and its regulations in Lithuania

First of all, it is important to note that access to the Lithuania, as well as any other EU country, can be accessed through the existing border checkpoints. External borders may be crossed only at border crossing points and during the fixed opening hours. Persons wishing to enter the country must meet the following the mandatory conditions (Schengen Code, 2016).

Safety in the Schengen area is guaranteed via the enhanced control of external borders, work in close cooperation among the border guard services, police forces, and legal institutions of all Schengen Member States the implementation of a common Schengen visa policy and the functioning of the Schengen Information System. For intended stays on the territory of the Member States of a duration of no more than 90 days in any 180-day period, which entails considering the 180-day period preceding each day of stay, the entry conditions for third-country nationals have to be in possession of a valid travel document entitling the holder to cross the border; to be in possession in of a valid visa (Council Regulation (EC) No 539/2001); they justify the purpose and conditions of the intended stay; to be not persons for whom an alert has been issued in the SIS for the purposes of refusing entry; not considered to be a threat to public policy, internal security, public health or the international relations of any of the Member States, in particular where no alert has been issued in Member States' national data bases for the purposes of refusing entry on the same grounds (Schengen Code, 2016).

More than 21 thousand foreigners came to Lithuania in last year. In 2022, 189 411 foreigners lived in Lithuania. Most of them are foreigners with a temporary residence permit in Lithuania (see Figure 3). Their share in the total population of Lithuania continues to increase and accounts for 3,58%. Compared to the same period last year, the number of foreigners increased by almost 60%. The majority of foreign immigrants are citizens of Ukraine and Belarus (about 31 percent of all immigrants). The majority of EU citizens are coming from Latvia, Italy or Germany.



Figure 3. Lithuania in EU contects
Sourse: European Migration Network (EMN)

With the launch of hybrid attacks in 2021, not only Belarusian citizens, but also citizens of countries as- Iraq, Syria, Iran, etc. - are flocking to Lithuania. Although these numbers are nowhere near the previous crisis in 2015, migration flows have become a significant challenge for Lithuania, Latvia and Poland. Lithuania has also mobilised additional assistance to control migration flows and ensure national security. In the summer of 2021, Frontex deployed teams of European standing corps to Lithuania and Latvia to support the countries with responding to the increased migratory pressure (Frontex, 2022).

Officers of State Border Guard Service (further – SBGS) prevented 1 197 irregular migrants from entering Lithuania from Belarus at unauthorised locations. In 2022, Lithuanian border guards turned back 11 211 such persons trying to enter Lithuania. From 3 August 2021, when the right to turn away irregular migrants attempting to cross the border from Belarus at unauthorised locations was granted to SBGS officers, until 31 December 2021, 8 106 persons were refused entry into Lithuania. In total, since the beginning of the migration crisis caused by Belarus, Lithuanian border guards have prevented 20,514 migrants from entering the country illegally (SBGS, 2023).

The irregular migration crisis in 2021 saw a record-breaking change in the number of foreigners applying for asylum in Lithuania, with a total of 4 259 applications in 2021, which is more than 13 times the number in 2020. However, only one in ten asylum applicants was granted asylum - 451 foreigners, most of them from Afghanistan and Belarus (EMN, 2023).

Lithuania's policy of turning away migrants has stemmed the flow of irregular migrants, but statistics show that over 4,000 irregular migrants have still entered Lithuania, the vast majority of whom have applied for asylum. This is the highest number of asylum seekers since the introduction of the asylum institution in Lithuania (EMN, 2023).

As in previous years, the number of arrivals exceeded the number of departures. In 2021, the share of foreigners living in Lithuania in the total population increased to 3.57%. The largest groups of foreigners living in Lithuania were Ukrainian, Belarusian and Russian citizens.

The hybrid attack mentioned above has also influenced changes in migration management in our country. As an example, after the hybrid attack from Belarus, the introduction of a state of emergency, and later a state of emergency, led to the adoption of a decree of the Government of the Republic of Lithuania, on the basis of which SBGS officers, as representatives of the executive power, are allowed to turn away illegal migrants. This decision has once again sparked a lot of debate in the public sphere, and it is hoped that this provision will also be introduced at legislative level in the event of a state of emergency, state of emergency or state of war.

In the context of international law, states have the right to restrict certain human rights in exceptional cases in appropriate circumstances; however, certain fundamental principles must be upheld, such as: not turning away individuals in large groups, not refusing an asylum application, not deporting an individual where his or her life or health is at risk. In other words, international and European Union law does not leave absolute discretion at national level. The question is how to further develop the legal framework (Dawson, 2021).

Since the Court of Justice of the European Union (CJEU) and the Lithuanian court referring to it have ruled against the State in relation to the treatment of irregular migrants, the Ministry of the Interior, being responsible for the formulation, organisation and coordination of the State's policy in the field of migration, as well as the implementation of the control of the policy, is assessing whether to change the legal acts (Svahn, 2022).

The analysis and assessment of what changes should be made to the national legislation in order to ensure a fair balance between the protection of human rights and the national security interest of the State is currently underway.

At the end of June 2022, the CJEU ruled that Lithuanian law, which does not allow irregular migrants to apply for asylum and allows them to be detained simply for entering the country illegally, is contrary to European directives. The Court stressed that the directive on granting and withdrawing international protection prohibits Member States from applying legal rules which, even after the introduction of an emergency or a state of emergency in an EU country, "effectively deprive third-country nationals unlawfully present in the EU country of the possibility of having access to the procedure for examining an application for international protection on the territory of that Member State" (Svahn, 2022).

As the Court said, in order to justify detention, the Member State in which the illegally staying asylum seeker applies for international protection "must, in principle, prove that, in the light of the particular circumstances, he or she constitutes a threat to national security or to public policy" (Masiokaitė -Liubinienė, 2022).

On the basis of this interpretation, the Supreme Administrative Court of Lithuania (further - SACL) ruled in favour of the alien in his detention case, recognising his status as an asylum seeker and annulling the detention decision. However, there is no legal provision on the status to be granted to the alien after this judgment, and therefore, on the basis of the case referred to above, the State Border Guard Service applied for the detention of the irregular migrant pending the determination of his legal status in Lithuania. The Court of first instance granted the application in part, SACL ruled to adjourn the case and to refer the matter to the CJEU for a preliminary ruling on the regulation of international protection and other matters in the European Union Directives.

In the order of the SACL also referred to the reversal of the reversal of the prohibition of illegal migrants in Lithuania and their ability to apply for asylum.

According to the Court, an analysis of the existing legislation leads to the conclusion that third-country nationals in principle can only properly apply for asylum from abroad or near Lithuania border, and generally do not have that possibility if they enter the country illegally. Meanwhile, the CJEU states that in order to apply for international protection there should be no be subject to additional administrative formalities.

"Moreover, the the case-law of the Court of Justice shows that any third-country citizen or stateless person has the right to apply for international protection in the territory of a Member State, including its borders or transit zones, even even if he is unlawfully present in that territory. That right must be recognised, regardless of the likelihood that such an application will be granted', the Supreme Administrative Court said in the ruling.
(Svahn, 2022).

Home Affairs According to the Ministry of Interior, no such obstacles exist in Lithuania. We note that The legal regulation in force in the Republic of Lithuania, the established administrative and judicial practice does not exclude the possibility for foreigners – both to submit applications for the granting of asylum applications.

According to the data in this case, the foreigner has stated that he submitted a written request for asylum to an unidentified official of the SSAT, that he also requested asylum at the oral hearing before the court of first instance, and that he reiterated the same request during the oral hearing of the appeal.

He also submitted it in writing to the SBGS. This was forwarded to the Migration Department, but was returned on the grounds that the application was not submitted in accordance with the relevant legal provisions and was not submitted without delay. The Board of Judges considered that the alien should be considered to have lodged the application.

When deciding on the lawfulness of the migrant's detention, the Supreme Administrative Court noted that, under the current legislation, the mere fact that an applicant for international protection is unlawfully present in the territory of Lithuania cannot justify his/her detention. The Chamber also noted that although the alien was subjected to an alternative measure to detention - accommodation in the SSAT or in another place adapted for that purpose, with the right to move only within the territory of the place of accommodation, the person is separated from the rest of the population and deprived of the freedom of movement, and therefore he/she is considered to be a person who is subject to detention.

"The Extended Chamber of Judges, in accordance with the case-law of the Court of Justice referred to above, which requires the application of the provisions of European Union law and their full operation, finds that the mere fact of the alien's unlawful entry into the territory of the Republic of Lithuania does not in itself constitute a ground for his detention," reads the judgment.

The Ministry of the Interior, for its part, states that persons are detained or their freedom is restricted "on the grounds set out in the law - in the event of a threat to public order and public and state security, a possible risk of absconding, etc.".

However, according to the SACL, in order to justify the detention of an alien on the grounds of a threat to public or national security, it is necessary to indicate which specific conduct of the alien could give rise to such a threat.

The Extended Chamber of Judges held that the decision of the Court of First Instance did not properly assess the facts of the case in the context of the European Union and national legislation; therefore, the decision of the Court of First Instance is annulled and a new one is adopted - the application of the SSAT for the detention of the alien is rejected.

It is true that, on 15 July, a letter was received from the Alien Registration Centre in Kybartai stating that the migrant in question had left the Alien Registration Centre and that his whereabouts were unknown. The report seems to ask whether Lithuania was the person's country of destination, or whether Lithuania was just a transit country.

The Ministry of the Interior stated that it had no plans to abandon the measures taken against the migrants.

"As long as the geopolitical situation remains tense and the risk of illegal migration at the Lithuanian border with Belarus continues, Lithuania does not intend to abandon the measures of enhanced state border protection and prevention of illegal migration," it said.

The Ministry plans to submit a law to the Seimas in autumn to establish a policy to turn away irregular migrants.

This practice is currently applied by decision of the Minister of the Interior in her capacity as Head of Operations.

Lithuania started the reversal a year ago, in response to an influx of migrants at the border with Belarus and accusing the Minsk regime of organising it.

In total, more than 11 000 illegal migrants have been refused entry from Belarus to Lithuania since 3 August last year, when the Minister of the Interior authorised border guards to turn back illegal migrants by order.

Critics say that these actions can be seen as expulsions that violate international law. Officials claim that they are not pushing migrants out, but not letting them into Lithuanian territory.

The European Border and Coast Guard Agency (Frontex), although it has provided both human resources and technical assistance, and more specifically the agency's Fundamental Rights Office, has already criticised Lithuania for the collective rejection of migrants by border guards.

According to the Office, this practice is contrary to international law and the European Convention on Human Rights, and the possibility to apply for asylum at an official border checkpoint does not work in practice.

The question of how to further develop the legal framework in order to strike a balance between state security and human rights remains open. But are these EU measures taken effective? Are these measures adopted in a timely manner?

Conclusions

In Lithuania has witnessed an increase in migration flows in the last decade, especially in 2021. Largely driven by factors such as economic disparities, conflicts, and political instability in neighbouring regions. The inflow of migrants, including asylum seekers and irregular migrants, has placed pressure one the country's resources, infrastructure and social cohesion.

Lithuania has implemented various measures. There includes strengthening border control, enhancing interagency cooperation, improving the asylum process and providing support for integration initiatives.

International cooperation plays a vital role in addressing migration-related security challenges. Lithuania actively engages with regional and international organizations, sharing best practices, exchanging information and collaboration on border management and security initiatives.

The increased migration flows have generated concerns among some segments of the Lithuanian population regarding public security. These concerns encompass various aspects, including challenges in managing integration, and potential risks associated with criminal activities. It is crucial to examine these perceived security concerns critically and evaluate the extent to which they are based on empirical evidence.

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VISUOMENĖS SAUGUMAS IR VIEŠOJI TVARKA (32)

Mokslinis žurnalas

PUBLIC SECURITY AND PUBLIC ORDER (32)

Research Journal

Kaunas 2023

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Redaktorių kolegijos 2023 m. birželio 19 d. posėdžio nutarimu leidinys rekomenduotas spausdinti.
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