
PROCEDURES AND CONDITIONS FOR THE ENTRY OF FOREIGNERS TO THE REPUBLIC OF LITHUANIA: A CRITICAL APPROACH

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Abstract. *Following the declaration of the restoration of independence of the Republic of Lithuania on 11 March 1990, there was a need to regulate not only the social relations within the country related to Lithuanian citizenship, but also to determine the legal status of foreigners in the Republic of Lithuania. The legal status of aliens includes the following: the conditions of entry, residence or departure are determined by the State itself, a right which derives from the sovereignty of the States, but the definition of the legal status of aliens must also be subject to the norms of international law, which lay down the necessary conditions for the legal protection of aliens. The article presents, on the basis of statistical data, the procedure and conditions of entry of aliens into the Republic of Lithuania and assesses the application of the provisions of the Law on the Legal Status of Aliens.*

Keywords: *Alien, entry procedure, border crossing.*

Introduction

The globalization processes taking place around the world often force countries to review their regulatory instruments. High migration flows have influenced changes in the regulation of the Legal Status of Aliens and related legislation. The Law on the Legal Status of Aliens states that an alien means any person other than a citizen of the Republic of Lithuania irrespective of whether he is a national of a foreign state or a stateless person. (Legal Status of Aliens, 2023). Some literature refers to an alien as a citizen of a foreign state who is temporarily or permanently present on the territory of the relevant state. As a general rule, national law defines foreigners as any person who is not a national of that country, i.e. not only nationals of other countries, but also stateless persons (Šaltė, 2023).

The legal status of a foreigner is regulated by the internal laws of the States in which he or she is present, as well as by international treaties. Legal status is the set of rights and obligations of a person arising from his or her legal status and the existing legal framework. The legal status of foreigners depends on a number of factors, including their entry and exit procedures, their right to reside and work, the forms of asylum granted, the legal regime established in the State, etc.

In 2023, the number of foreigners living in Lithuania surpassed 200,000 for the first time in the country's history. In the middle of this year, in July, there were a little more than 195 thousand foreigners in Lithuania (see Figure 1), and already on 1 September there were 203 157 persons from various foreign countries living in Lithuania, according to the statistics available to the Migration Department (Migration Department, 2023).



Figure 1. Foreigners in Lithuania
Source: European Migration Network (EMN)

At the beginning of the year, immigration of foreign workers to Lithuania slowed down slightly. This may have been due to the talk of an impending recession. However, the pace of applications for residence permits picked up again in the spring, resulting in a 7 000-strong increase in the number of foreigners in Lithuania in July and August (Migration Department, 2023).

As mentioned above, with the increasing number of foreigners in Lithuania (including the increasing number of migrants), the executive authorities are increasingly faced with certain challenges: the large flow of migrants makes it difficult to apply and implement legal procedures consistently, which often creates tensions among persons wishing to cross the border of the Republic of Lithuania, and increasingly poses challenges to public security and the maintenance of public order. The long-standing international agreement whereby a person who illegally crossed the state border by applying for asylum could avoid sanctions for illegal border crossing has also caused some controversy and has come to be seen as a kind of legislative loophole.

As a result, the latest version of the Law of Legal Status of Aliens provides for the possible detention of foreigners for up to six months, but does not provide for an appeal procedure for this measure; the disproportionate length of time it takes to hear court decisions, which has led to the possibility of an increasing number of breaches of the non-refoulement principle.

The increasing number of migrants requires a review of the legal framework on the legal status of foreigners and an assessment of the specificities of the application of the legal rules. The article will assess the aspects of the legal regulation by reviewing the procedure and conditions for the entry of foreigners to the Republic of Lithuania and assessing the problematic aspects.

Entry and legal status of foreigners in the Republic of Lithuania

The legal status of foreigners is primarily a matter for the State to determine at its discretion, but this does not mean that international law does not regulate it in the same way. In contemporary international law, the protection of aliens is an integral part of the international legal protection of human rights, since the regulation of the legal status of aliens must nevertheless be in line with the international obligations of States (Daukšienė & Šaltė, 2022).

As provided by ECHR Article 1, the engagement undertaken by a Contracting State is confined to “securing” the listed rights and freedoms to persons within its own “jurisdiction”. “Jurisdiction” within the meaning of Article 1 is threshold criterion. The exercise of jurisdiction

is a necessary condition for a Contracting State to be able to be held responsible for acts or omissions imputable to it which give rise to an allegation of the infringement of rights and freedoms set forth in the Convention. According to Vilen Vadapal (2006), the wording "every person within their jurisdiction" implies that it applies not only to citizens but also to foreigners and stateless persons.

It should also be noted that Article 18(1) of the Treaty establishing the European Community establishes the right of a citizen of the European Union to move and reside freely within the territories of the Member States (Vranceanu, 2017). Since the regulation of the legal status of aliens is at the discretion of the States, States normally grant aliens the same rights as those enjoyed by hon trade) or through a non-discrimination clause.

Lithuania is no exception. The aforementioned Law of Legal Status of Aliens states that foreigners in the Republic of Lithuania have the rights and freedoms provided for by the Constitution of the Republic of Lithuania, international treaties, laws of the Republic of Lithuania, and legal acts of the EU. Aliens in the Republic of Lithuania are equal under the law, regardless of their sex, race, nationality, language, origin, social status, religion, beliefs or opinions.

However, it is also stated that foreigners staying in the Republic of Lithuania are obliged to comply with the Constitution of the Republic of Lithuania, the laws of the Republic of Lithuania and other legal acts.

At the request of law enforcement officials or civil servants of the Migration Department under the Ministry of the Interior of the Republic of Lithuania (hereafter referred to as the "Migration Department"), a foreigner shall be obliged to present a document confirming his/her personal identity (a travel document, a residence permit, or any other document), as well as other documents, which state the purpose of his/her stay in the Republic of Lithuania and the conditions for such a stay, and which prove that the foreigner has been staying in the Republic of Lithuania legally.

When determining the specific legal regime for foreigners, countries often consider whether they are temporarily or permanently resident. They do not usually enjoy political rights such as the right to vote, to hold public office, etc. They do not have to perform military service during their stay. The right to acquire real estate is often restricted. And this is not treated as discrimination, it is usually part of an international agreement.

Foreigners can enter the territory of a country on the basis of a visa issued by the relevant state bodies, usually consular or diplomatic missions. visas come in different forms: multiple-entry (entry, exit), transit.

The entry of foreigners into the Republic of Lithuania is regulated by the Law of Legal Status of Aliens, as well as the provisions of the Schengen Borders Code (European Parliament, 2016). Foreigners may enter and leave the Republic of Lithuania only through the functioning BCPs.

In response to Russia's war against Ukraine and the resulting threats, Lithuania, together with the other Baltic States, Latvia, Estonia, Poland and Finland, has decided to tighten controls on the entry of Russian nationals. As of 19 September 2022, Russian citizens entering the territory of the Republic of Lithuania through all border checkpoints during the state of emergency will be subject to individually reinforced checks.

The Government Decision confirms that only Russian citizens and their family members for special humanitarian reasons, members of crews and crews of international transport, Russian diplomats in transit through Lithuania, persons holding a residence permit issued by an EU country, as well as Russian citizens holding a long-stay Schengen national visa or a simplified transit document, will be admitted to Lithuania via the Schengen external border.

The State Border Guard Service under the Ministry of the Interior of the Republic of Lithuania controls the entry of foreigners to the Republic of Lithuania through the external border of the European Union, as well as through the internal border of the European Union when its control is temporarily restored, therefore the Embassy does not provide advice on whether a foreigner holding certain documents, etc., will be allowed to enter the Republic of Lithuania.

When admitting a foreigner to the Republic of Lithuania, the officials of the State Border Guard Service have to determine whether the foreigner fulfils the conditions laid down in the Schengen Borders Code and whether there are no reasons laid down in the Schengen Borders Code for not allowing the foreigner to enter the Republic of Lithuania.

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 shall be the following:

- a) they are in possession of a valid travel document entitling the holder to cross the border satisfying the following criteria:
 - (i) its validity shall extend at least three months after the intended date of departure from the territory of the Member States. In a justified case of emergency, this obligation may be waived;
 - (ii) it shall have been issued within the previous 10 years;
- (b) they are in possession of a valid visa, if required pursuant to Council Regulation (EC) No 539/2001 (25), except where they hold a valid residence permit or a valid long-stay visa;
- (c) they justify the purpose and conditions of the intended stay, and they have sufficient means of subsistence, both for the duration of the intended stay and for the return to their country of origin or transit to a third country into which they are certain to be admitted, or are in a position to acquire such means lawfully;
- (d) they are not persons for whom an alert has been issued in the SIS for the purposes of refusing entry;
- (e) they are 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 (European Parliament, 2016).

Accordingly, illegal entry of aliens (see Figure 2) is considered to be an entry in violation of the provisions of the Schengen Borders Code and an entry included in the national list of aliens who are prohibited from entering the Republic of Lithuania.

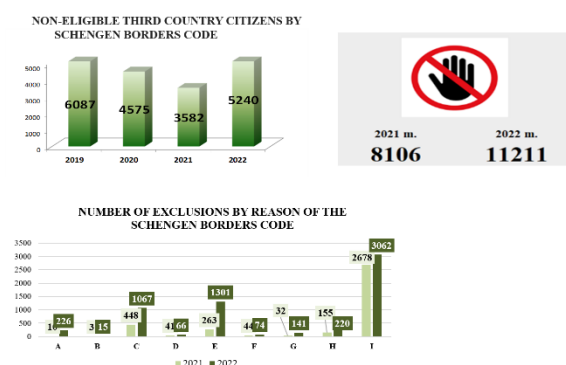


Figure 2. Non-eligible third country citizens by Schengen borders code
Source: State Border Guard Service (SBGS)

In addition to the concept of aliens, the Law of Legal Status of Aliens also includes the concept of a citizen of the European Union. Citizens of the Member States of the European Union have more rights and are subject to fewer requirements in exercising their right to free movement within the territory of the Member States of the European Union than citizens of third countries. One example is that citizens of the Union are exempted from the requirement to hold a visa for entry and stay in the Republic of Lithuania, while citizens of third countries are subject to Regulation (EU) 2018/1806 of the European Parliament and of the Council listing the third countries whose nationals must be in possession of a visa when crossing the external borders of the Union and those whose nationals are exempt from that requirement.

As regards the entry and stay in the Republic of Lithuania of an alien subject to a visa-free regime, an alien holding a Schengen visa valid in the Republic of Lithuania, a residence permit or a national visa issued by another EU Member State, etc., the possible duration of the trip cannot exceed 90 days within a 180-day period. The issuance of a visa is regulated by Article 21(1) of the Law of Legal Status of Aliens, which stipulates that the documents for obtaining a visa shall be submitted to the diplomatic mission or consular office of the Republic of Lithuania, and in the absence of such a diplomatic mission or consular office - to the diplomatic mission or consular office of a Schengen State representing the Republic of Lithuania. An exception is that documents may also be submitted to the SCP, the Migration Department or the Ministry of Foreign Affairs of the Republic of Lithuania, but only in cases determined by the Minister of the Interior in agreement with the Minister of Foreign Affairs.

When the alien's stay becomes unlawful, a return procedure must be initiated against the alien. On the other hand, a national of a Member State of the European Union who arrives in Lithuania for a stay of more than 3 months in a half-year period and who meets at least one of the grounds laid down in Article 101(1) of the Law (worker; has sufficient resources for subsistence and a health insurance document; is in education, training, studying or improving his/her qualification; a member of the family of the European Union citizen with whom or with whom he/she is arriving) is granted a temporary residence permit.

Unaccompanied minors (Seniutienė, 2021) and asylum seekers who have arrived in the territory of the Republic of Lithuania have the right to remain in the Republic of Lithuania. However, these persons have the right to remain until a decision on their legal status is taken. The Migration Department, after examining the documents and evidence submitted to it, shall, within 48 hours of the submission of the application for asylum, adopt a decision on the determination of the State responsible for examining the application for asylum. In order to ensure that the principle of family unity and the best interests of the child are fully respected, according to Article 8(1) of the Dublin Regulation, "If the applicant is an unaccompanied minor, the Member State responsible shall be the one in which the unaccompanied minor's family member, or the unaccompanied minor's sibling, or the unaccompanied minor's brother or sister, if this is in the best interest of the minor, is legally present". Thus, in all cases involving minors, in this case unaccompanied minors, the best interests of the child are always considered, and this is also ensured by the qualified and competent representative involved in the procedures.

The right to reside in the Republic of Lithuania is granted by temporary or permanent residence permits. These permits may be issued or changed in accordance with Article 26 of the Law of Legal Status of Aliens. As a general rule, the first time a residence permit is issued, a temporary residence permit is issued. Such a document confers the status of temporary resident on the alien. This is regulated not only by Section 3 of the Law of Legal Status of Aliens, but also by the Order of the Minister of the Interior of the Republic of Lithuania of 12 October 2005 "On temporary residence permits for aliens in the Republic of Lithuania". A

temporary residence permit may be issued to a foreigner on the following grounds: exercising the right to restore the citizenship of the Republic of Lithuania; of Lithuanian origin; family reunification; for employment purposes; intra-corporate transfer; carrying out a lawful activity; setting up a start-up; for training purposes; for fostering purposes; he/she may not be returned to a foreign country; he/she has been granted subsidiary protection or temporary protection; he/she is in need of medical assistance; he/she is the victim of trafficking in human beings or illegal work; he/she holds a residence permit from another Member State of the EU.

A temporary residence permit is normally issued to a foreigner for one, two or three years, depending on one of the grounds referred to in Article 40(1) of the Law of Legal Status of Aliens, and for a foreigner entitled to restore the citizenship of the Republic of Lithuania or a foreigner of Lithuanian descent - for 5 years. On the other hand, for a citizen of a Member State of the European Union, the certificate of the right of temporary residence in Lithuania and the European Union temporary residence permit card shall be issued and changed for 5 years.

Having a document granting the right to enter and reside in Lithuania and confirming the status of a permanent resident, i.e. a permanent residence permit, does not change the alien's status, i.e. he/she does not lose the right to reside in Lithuania after the expiry of the validity of his/her permit. The permanent residence of foreigners in the Republic of Lithuania is regulated by Section 4 of the Law of Legal Status of Aliens. The aforementioned permit is issued for 5 years to a foreigner who has the right to regain Lithuanian citizenship, is of Lithuanian origin, has lost his/her citizenship but resides in Lithuania, has refugee status, is a long-term resident of Lithuania, as well as in cases of family reunification (has come to reside as a member of the family of a citizen of the Republic of Lithuania, or is a minor foreigner with at least one of the parents being a citizen of the Republic of Lithuania or a permanent resident of the Republic of Lithuania).

Moreover, the list of grounds for revoking this document is much narrower than that for temporary residence. The document granting the right of permanent residence in Lithuania shall be revoked if it was obtained fraudulently, if the foreigner's residence poses a threat to the security of the state, if the foreigner has been convicted of a very serious crime and poses a threat to society, if he/she has been residing in a non-EU Member State for more than 12 or 24 months consecutively, if the foreigner has been residing in a territory of the Member State for more than 6 years and has acquired the status of a long-term resident, or if his/her status of refugee has been cancelled. On the other hand, a citizen of the European Union who has resided legally in Lithuania for 5 years is granted a certificate of the right to reside permanently in the Republic of Lithuania for 10 years, and this right is revoked if the presence of the citizen or his/her family members poses a threat to the state, if the right is acquired by fraud or if he/she departs from Lithuania for a period of more than 2 years in a row.

Depending on the type of residence permit and the basis on which it was issued, foreigners may be required to obtain a work permit in order to exercise their right to work, depending on the needs of the labour market in the Republic of Lithuania, such as the need for workers with certain qualifications or experience, or a shortage of workers in certain professions. This permit is valid for up to 1 year, or up to 6 months in a 12-month period if the work is seasonal. A work permit is not required if the foreigner is a permanent resident of Lithuania, i.e. has a permanent residence permit in the Republic of Lithuania. Similarly, foreigners who are citizens of EU Member States can freely travel and work in Lithuania without visas or work permits.

The status of foreigners granted international protection differs from that of other foreigners for a specific reason. The State of origin of aliens granted international protection is no longer able to provide them with protection and to protect and safeguard their rights, as these aliens need protection from their own State of origin. Thus, only the State which has granted

international protection can ensure the protection and enforcement of the rights of these persons. Article 65 of the UPR states that every alien "shall have the right to apply for and receive asylum in the Republic of Lithuania in accordance with the procedure laid down in this Law". Even if a person enters Lithuania illegally from a country where he/she is at risk, he/she is not liable if he/she immediately presents himself/herself to the competent authorities and explains the reasons.

Conclusions

Entry of a foreigner into the Republic of Lithuania through external borders and internal borders when checks are temporarily suspended is only possible through functioning Border Crossing Points; the person entering must meet the conditions set out in the Schengen Borders Code. The provisions of the Schengen Borders Code are directly and fully applicable in the Republic of Lithuania.

The assessment of the provisions of the legal regulation on entry into the Republic of Lithuania leads to the conclusion that the legislation establishes clear provisions justifying the conditions and procedures for lawful entry into the country, and applies effective screening procedures and, if necessary, allows individuals to apply for protection (e.g. to apply for asylum) at the time of the border screening before they enter the territory of the Republic of Lithuania.

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