



IOM International Organization for Migration

## **European Migration Network**

### **National Contact Point for the Republic of Lithuania**

# **PRACTICAL RESPONSE TO THE IRREGULAR MIGRATION IN LITHUANIA**

**VILNIUS, 2011**

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EMN is a network composed of migration and asylum experts from EU Member States, Norway and the European Commission. Its main objective is to meet the information needs of Community institutions and of Member States' authorities by providing up-to-date, objective, reliable and comparable information on migration and asylum, with a view to supporting policymaking in the European Union in these areas.

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## Summary

The scale of irregular migration in Lithuania is low. Every year, about 1500 cases are determined in which foreigners violate the requirements for entry, stay or residence in Lithuania and have to leave the country for this reason. Over one year, about 2,000 foreigners who do not meet the entry conditions (for example by not having the required documents) are denied access to the territory of Lithuania.

Over the years, the trends of irregular migration have remained the same: the largest irregular migration flows through the Republic of Lithuania and the European Union's external border come from the Republic of Belarus. The border is mostly crossed with attempts of illegitimate entry to the Schengen area by residents from Georgia, the Russian Federation, Vietnam, Afghanistan, and in isolated cases of Azerbaijan, Iran, and Moldova. In individual cases, the foreigners, whose goal was to travel to Western Europe or the Nordic countries, are detained at the border of the Russian Federation, Kaliningrad area, and Lithuania.

The main methods of irregular immigration remain the same: illegal migration across the “green” state border, illegal state border crossing by using forged documents. But Frontex joint operations and modernization of surveillance equipment has meant that irregular migration flows by these means remain low.

The consultation mechanism for issuing visas and the use of information provided by liaison officers in countries of origin are particularly successful in the fight against illegal migration.

In recent years, other forms of irregular migration can be noted: obtaining a visa by deception, the setting up of fictitious companies or marriages of convenience to obtain a legal status. It is likely that these measures will be employed by an increasing number of foreigners to take advantage of, and to legitimize, their presence in the European Union in the future.

Taking note of these techniques, an amendment to the law has been initiated and the procedure for company start-ups has been tightened in cases where companies are established by more than one foreigner (increased share capital is now required). This has led to a reduction of immigrating co-owners (foreigners). However, it is not clear whether this change was not deterring honest investors. In addition, checks began to establish whether established companies actually carry out the work they are registered to do so, but a lack of clear criteria means that it is difficult to define the economic activity of companies.

Vilnius County Police Migration Board is particularly active in the checking and identifying of fraudulent marriage cases. So far, few cases have been determined (up to ten per year), as evidence of a fictitious marriage is a time-consuming and complicated process. In the future, it is recommended to perform similar check all across the country, and to take the necessary measures to solve problems that arise in identifying marriages of convenience. This is especially important in protecting the citizens of the Republic of Lithuania – having entered into such a marriage, they may not be able to divorce and enter into other marriages, and without signing a prenuptial agreement they may suffer financially.

The cases of illegal employment that have been determined are few, although they rose in good economic times. Upon suspicion of illegal employment, workplace inspections are carried out in collaboration with several institutions. The most common irregularities detected include working without a work permit.

Political, legal and practical measures have ensured the effective management of migration flows. Although the number of irregular immigrants has not declined significantly, it has not increased, and this is the result of the state policy against irregular immigration: specific determination of functions of institutions engaged in preventing irregular migration and control, increasing cooperation between institutions of foreign control, both nationally and internationally (expanding the network of communication officers, presence in the Baltic Council of Ministers, Baltic Sea States Council and the activities of Frontex). The provisions of the fight against irregular immigration are contained in the Long-Term Development Strategy and the National Security Strategy, adopted by the Seimas of the Republic of Lithuania, the Lithuanian immigration policy guidelines approved by the Lithuanian Government, and the Lithuanian Government Programme for 2008-2012.

In order to curb illegal migration, administrative and penal sanctions were provided for persons who have entered the national territory illegally and those who employ illegal immigrants. Proportionate and dissuasive penalties for persons involved in the assistance of illegal immigration were provided for.

Meanwhile, the return of illegal migrants is not a very important problem in Lithuania. The vast majority of illegal immigrants leave voluntarily, using the assistance of the International Organization for Migration, or are returned. A residence permit is granted only in cases where the alien cannot be returned, but such cases are extremely rare. Lithuania carried out small-scale regularisation programmes between 1996 and 2004. Currently, the draft Law on the Legal Status of Aliens submitted to the Seimas also provides for conditions for aliens to legalize their stay in Lithuania or to avoid administrative liability for unlawful presence.

Both the EU Immigration Policy Guidelines and EU legislation have had a significant impact in shaping the national policy against irregular migration. However, it is important that Lithuania's specific problems are addressed promptly and at the national level, taking the necessary legal and practical measures to curb irregular migration.

The opinion presented in the study cannot be considered as an official opinion of the state and its institutions.

## **1. INTRODUCTION: OBJECTIVES AND METHODOLOGY**

Lithuania is often chosen as the alleged travel destination, but is not the final destination for irregular migrants. Often, it is chosen as a possible entry point to the Schengen area, by resorting to means of unlawful entry such as obtaining a visa by deception (often using persons who issue false invitation documents), the use of forged documents, or the setting up of fictitious companies in order to legitimize and legalize falsely recruited third-country nationals etc.

By implementing EU and national policy, Lithuania applies legal and practical means to ensure the effective management of migration flows and to combat irregular migration and its threats.

This study aims to provide an overview of the situation and key trends in Lithuania in recent years in the area of migration policy and migration process management, highlighting the key events dealing with irregular immigration issues / problems.

This study is intended for policy makers, academia, international and non-governmental organizations operating in the field of irregular migration.

EMN glossary terms are used in the study.

The study was prepared by using various sources and different methods of data collection and analysis. It examines and analyzes the laws and other legal acts of the Republic of Lithuania, official publications of laws and other legal acts, information from various authorities, institutions and bodies, non-governmental organizations and other public sources of information, and surveys by experts.

In the collection of information, priority was given to official information. When collecting the data for this study, interviews with the experts of the following institutions were conducted: the State Border Guard Service under the Ministry of the Interior of the Republic of Lithuania (hereinafter the SBGS); the Migration Department under the Ministry of the Interior of the Republic of Lithuania (hereinafter the MD) and police migration services.

Statistics on irregular immigrants in Lithuania were collected from publicly available sources as well as from the above mentioned authorities which control the presence and stay of aliens in the Republic of Lithuania. The data is based on factual figures.

Where possible, the study presents data beginning from the year 2005. Statistics before 2008 were not available in the following areas: applications for asylum rejected by the decision of the first instance, the nationality and gender of applicants, applications for asylum rejected by a final court decision. This data was not collected prior to 2008. Also, data on third-country nationals by age group illegally staying in the country was not collected until 2008 (the data was only collected on illegally staying minors under the age of 18 and persons above 18 years old), as was the combined data from all the responsible authorities on illegally staying third-country nationals by gender.

There have been no large-scale studies on irregular migration in Lithuania; however, this study

complements the annual reports of 2009 and 2010 on migration policy and asylum in Lithuania prepared by the National Information Centre of the European Migration Network of the Republic of Lithuania.

## **2. POLICY AND LEGAL FRAMEWORK FOR DEALING WITH ISSUES OF IRREGULAR MIGRATION IN LITHUANIA**

### **2.1. National policies and legislation on irregular migration**

#### **Lithuanian policy and approach to irregular migration.**

##### *Policy documents relevant to all stages (pre-arrival, arrival, stay, expulsion)*

The Government of the Republic of Lithuania in its programme for the year 2008–2012 provided to strengthen the prevention and control of irregular migration and instructed the development of legislative framework focusing on detailing the functions of institutions engaged in the prevention and control of irregular migration, and the means by which to implement this programme.

The Government of the Republic of Lithuania in its resolution No 1317 of 3 December 2008 adopted the Lithuanian immigration policy guidelines, with one of the key goals of the immigration policy being to ensure the effective management of migration flows in order to maintain the balance of international commitments of the Republic of Lithuania on human rights and freedoms, national security and public order, and to prevent irregular migration. The resolution highlighted the following areas for the development of immigration policy: expanded cooperation in the field of the control of foreigners, in particular in cooperation with law enforcement authorities, the regular analysis of illegal employment threats of third-country nationals and risk assessment, the effective return of third-country nationals to their countries of origin or to foreign countries to which they have the right to travel, their expulsion from the Republic of Lithuania, the need to develop the system of preventing irregular immigration and foreigner control management, covering the activities of competent authorities in the Republic of Lithuania and third countries, to widely disseminate information on the procedures on foreigners' entry in the Republic of Lithuania, their stay, transit and departure from its territory, and to provide information to the Lithuanian public about immigration policy.

The National Security Strategy approved by resolution No IX-907 of the Government of the Republic of Lithuania of 22 May 2002 (*Official Gazette*, 2002, No 56-2233; 2005, No 15-473), identifies the fight against irregular migration and its threats as one of the measures for the implementation of the national security strategy. To prevent the spread of irregular migration and crime across the state border, the state is developing its border protection system, implementing the requirements of the European Union for state border control, ensuring constant readiness to neutralize potential risks at the border which pose a threat to Lithuanian national security.

These documents led to qualitative changes and laid down the foundations of amendments to national legislation. Measures for strengthening the prevention and control of irregular migration addressed issues such as the sharing of powers and responsibilities between institutions performing

these duties. While implementing the amendments to the Law on the Legal Status of Aliens of the Republic of Lithuania, adopted by the Seimas of the Republic of Lithuania on 22 July 2009 regarding the institutions engaged in performing the functions of the prevention and control of irregular migration, it was established that the presence and residence of foreigners in the Republic of Lithuania is controlled by the police, the MD and the SBGS. These legislative amendments provide that the SBGS will control the presence and residence of foreigners in the Republic of Lithuania in cooperation with the Lithuanian state and municipal institutions and agencies. The SBGS previously controlled migration processes and exercised state border protection and the control of its crossing, but not inside the country. These amendments made the effective control of the presence of foreigners in the country possible.

Also, given the main objectives of the immigration policy and expanding the inter-institutional cooperation in the field of foreigner control, a variety of cooperation agreements and contracts were concluded (p. 2.2 of the study), international cooperation was expanded by signing readmission agreements, agency agreements on the issue of visas in the presence of Frontex operational activities.

These actions and measures have led to more effective control and the prevention of irregular migration.

### ***Before arrival***

In 2010, Lithuania signed representation agreements on the issue of visas with Latvia, Norway, Denmark, Greece, and Germany. There are plans to sign an agreement for representation in the issuance of visas with Slovakia.

In its order No 1V-233/V-66 of 24 March 2011, the Minister of the interior of the Republic of Lithuania and the Minister of Foreign Affairs of the Republic of Lithuania approved the description of the approval of procedures of visa application submissions, the issue and revocation of visas, consultation, the accreditation of tour operators and travel agencies and invitations for temporary stay in the Republic of Lithuania, in order to harmonise them with the provisions of the Visa Code.

In implementing one of the integrated border management measures (elements), namely, the activities in third countries, it is worth highlighting the mechanism of consultation on the issue of visas in Lithuania. Prior to making an objective decision on the issue of a visa, Lithuanian diplomatic representations and consular offices (hereinafter the visa services) take advice on the issue of visa approval from the responsible authorities of the Republic of Lithuania on the possible grounds for visa denial, and/or whether the entry conditions are met. In consultations on the issue of a Schengen visa according to Articles 22 and 31 of the Visa Code, consular institutions send inquiries to the Migration Department under the Ministry of the Interior of the Republic of Lithuania (hereinafter the MD), which, in turn, consults the State Border Guard Service Under the Ministry of the Interior of the Republic of Lithuania (hereinafter the SBGS) and the State Security Department of the Republic of Lithuania (hereinafter the VSD). The SBGS and the VSD, in turn, check whether the alien will have a place to reside, if he is coming for tourist purposes, and whether or not a travel agency is organizing the trip etc. The SBGS provides about 10 thousand consultations a year.

## ***Arrival***

The State Long-term Development Strategy approved by resolution No IX-1187 of the Seimas of the Republic of Lithuania of 12 November 2002 (*Official Gazette*, 2002, No 113-5029) provides to ensure the protection of Lithuanian borders, as the EU's external borders, implementing the requirements of the EU's Schengen Treaty, cooperation in the fight against irregular migration, to further enhance tight multilateral and bilateral cooperation in the areas of public security, and to promote inter-agency cooperation between police, border guards and special services.

Currently, the draft programme of State Border Guard Development in 2011–2018 is being developed. It will establish the measures and trends for the improvement of the main European Union external and internal border control. The programme will be implemented as one of the programmes for building long-term national security, enabling the external border controls between the Republic of Lithuania and the European Union to be ensured, combating the spread of criminal activities across the state border and inside the country, and strengthening public safety.

## ***Stay and expulsion***

In order to enhance the powers of the SBGS in the fight against irregular migration, the Seimas of the Republic of Lithuania submitted a draft Law on the Amendment of the Law on State Border and its Protection. The draft proposes extending the SBGS powers by including the functions of the SBGS in carrying out the control of the presence of foreigners within the country. It is also proposes allowing the SBGS to make decisions on the expulsion of aliens (currently, decisions on expulsion are made exclusively by the MD).

There is also the draft Law on the Amendment of the Law on the Legal Status of Aliens, which aims to transpose into national legislation, and to implement, the provisions of European Union legislation (including the Return Directive), as well as tightening the control of foreigners.

### **2.1.1. The Lithuanian legislation system on irregular migration**

The Law on the Legal Status of Aliens (*Official Gazette*, 2004, No 73-2539) is the main law establishing the procedure of entry and exit, temporary or permanent residence, the granting of asylum, the procedure of integration and naturalisation as well as the procedure for lodging appeals against the decisions on the legal status of aliens and regulates other issues relating to the legal status of aliens in the Republic of Lithuania.

The Government of the Republic of Lithuania in its resolution of 25 August 2010 submitted the draft Law on the Amendment of the Law on the Legal Status of Aliens to the Seimas of the Republic of Lithuania. The draft law was developed by the interdepartmental working group set up by ordinance No 134 of the Prime Minister of the Republic of Lithuania of 10 April 2009. The main goal is to transpose and implement European Union legislation.

The Law on the on State Border and its Protection (*Official Gazette*, 2000, No 42-1192) lays down

the legal regimes of the Lithuanian state border and cross-border border control, and regulates the organisation of border control points and state border protection.

The Government of the Republic of Lithuania in its resolution of 17 November 2010 submitted to the Seimas of the Republic of Lithuania the draft Law on the Amendment of the Law on State Border and its Protection of the Republic of Lithuania, which aims to clarify the functions of the SBGS and to expand the powers of this service and its subordinate divisions in the fight against organized crime, smuggling and irregular migration.

The Law on the State Border Guard Service (*Official Gazette*, 2000, No 92-2848) establishes the status, functions and structure of the State Border Guard Service, the principles of funding the organisation and the rights and obligations of its officers.

The Law on Police Activities (*Official Gazette*, 2000, No 90-2777) establishes the purpose, principles and legal bases of the activities of the police of Lithuania (hereinafter referred to as the Police), the goals of the police, its organisational structure, and the powers, rights, duties, responsibility etc. of police bodies. For instance, the powers of police while monitoring compliance with the pass system at the State border, the requirements of legal acts regulating immigration, the entering of residential premises from 6 a.m. to 10 p.m. and the requesting of personal documents.

The Consular Statute of the Republic of Lithuania (*Official Gazette*, 1995, No 43-1047) lays down the powers and responsibilities of consular officers, the basis for the activities of consular posts, the conditions and procedures for the provision of consular assistance and performance of other consular functions, as well as the principles of the provision of consular assistance to citizens of the European Union.

### **2.1.2. Main secondary legislation on irregular migration:**

Order of the Minister of the Interior of the Republic of Lithuania and the Minister of Foreign Affairs of the Republic of Lithuania “On order No 1V-280/V-109 the Minister of the Interior of the Republic of Lithuania and the Minister of Foreign Affairs of the Republic of Lithuania of 2 September 2004 “The amendment of Description of the approval of procedures of visa application submissions, issue and revocation of visa, consultation, accreditation of tour operators and travel agencies and invitations for temporary stay in the Republic of Lithuania”” (new version *Official Gazette*, 2011, No 38-1832), lays down the approval of procedures for the submission of visa applications, visa issue, revocation, consultations, cooperation with external service providers, commercial accreditation and invitations (hereinafter the description) governing the submission of visa applications, examinations and decisions on the issue of visas or the refusal to issue visas, consultations on the issue of visas, the approval of invitations, the revocation of visas and other visa-related issues, the procedure for cooperation with external service providers and the accreditation of commercial mediators to the extent to which these issues are not covered by the provisions of the Regulation (EC) No 810/2009 of the European Parliament and of the Council of 13 July 2009 establishing a Community Code on Visas (Visa Code) (OL 2009 L 243, p. 1) (hereinafter the Visa Code), or other legislation of the European Union;

Order of the Minister of the Interior of the Republic of Lithuania and the Minister of Foreign Affairs of the Republic of Lithuania “On the Description of procedure on the recognition of travel documents entitling an alien to enter the Republic of Lithuania, and approval of the list” (*Official Gazette*, 2007, No 125-5123; 2010, No 51-2527; 2011, No 73-3515), governs the drafting of the list of travel documents entitling an alien to enter the Republic of Lithuania, changes and modifications to this list, and the procedure for decision making on the recognition of travel documents entitling an alien to enter the Republic of Lithuania in diplomatic missions and consular offices and border control posts;

Order of the Minister of Social Security and Labour of Republic of Lithuania “On the approval of the Description of conditions for the issue of work permits for aliens and the procedure” (*Official Gazette*, 2004, No 149-5435; 2006, No 135-5126; 2007, No 86-3454; 2009, No 143-6300; 2010, No 122-6223), regulates the terms and conditions of the issue of work permits in the Republic of Lithuania to aliens, their extension, refusals to issue or to extend their validity term, the conditions for their withdrawal, and the terms under which an alien is not required to obtain a work permit;

Resolution of the Government of the Republic of Lithuania “On the establishment of the Lithuanian National Visa Information System, approval of its regulations and determination of the beginning of its operation” (*Official Gazette*, 2009, No 136-5933; 2010, No 145-7442);

Order of the Minister of the Interior of the Republic of Lithuania “On the amendment of order No 1V-329 of the Minister of the Interior of the Republic of Lithuania of 12 October 2005 “On the Approval of the rules on the issue of temporary residence permits for aliens in the Republic of Lithuania and the rules for the identification of marriages of conveniences, registered partnerships, and fictitious adoptions”” (new version *Official Gazette*, 2009, No 62-2501), governs the submission of documents for temporary residence permit in the Republic of Lithuania; the issue of temporary residence permits to aliens; their replacement and withdrawals, submissions of applications for temporary residence permits by aliens, applications for the replacement of temporary residence permits and accompanying documents, acceptance and consideration of applications, the procedure for the assessment as to whether a marriage or a registered partnership agreement was concluded or a child was adopted for the purpose of obtaining a temporary residence permit for an alien, the procedure for making decisions on the issue or replacement of temporary residence permits, submission and acceptance of documents for temporary residence permits, the completion and registration of applications for the formalisation of temporary residence permits in the system for issuing identity documents, the formation of orders on the issue of temporary residence permits and their delivery to the Centre for the issue of identity documents under the Ministry of the Interior, the obtaining of the issued temporary residence permits from the Centre for the issue of identity documents, the collection of temporary residence permits, the storage of applications for permits, decision-making on the withdrawal of temporary residence permits, the invalidity of temporary residence permits, and the cancellation of invalid temporary residence permits;

Order of the head of State Border Guard Service Under the Ministry of the Interior of the Republic of Lithuania “On the approval of Regulations of Foreigners’ Registration Centre of the State Border Guard Service under the Ministry of the Interior of the Republic of Lithuania” (*Official Gazette*, 2008, No 5-180);

Order of the Minister of the Interior of the Republic of Lithuania “On the approval of the Description of the conditions and procedure for temporary accommodation of aliens in the Foreigners Registration Centre” (*Official Gazette*, 2007, No 105-4326) regulates the temporary residence of aliens who have illegally arrived in the Republic of Lithuania or are staying illegally in the Republic of Lithuania, as well as the temporary accommodation of aliens who have filed applications for asylum in the Republic of Lithuania in the Foreigners’ Registration Centre of the State Border Guard Service under the Ministry of the Interior, the rights and duties of the accommodated persons, the imposition of disciplinary measures, personal health care, household and financial supplies, issues of employment and the departure of persons from the Centre;

Order of the Minister of Social Security and Labour of Republic of Lithuania “On the determination of means of subsistence that may be considered adequate for an alien applying for a residence permit in the Republic of Lithuania” (*Official Gazette*, 2007, No 15-570);

Resolution of the Government of the Republic of Lithuania “On the Approval of the Rules on the formation and management of the list of foreigners who were denied entry into the Republic of Lithuania” (*Official Gazette*, 2005, No 52-1747; 2008, No 107-4085), determines the formation and management of the national list of aliens prohibited from entering the Republic of Lithuania and the procedure for forwarding the data from this list to the Central Schengen Information System (hereinafter the C. SIS);

Order of the Minister of the Interior of the Republic of Lithuania “On the approval of the procedure for decisions regarding the obligation of aliens to depart, their expulsion, return and transit through the territory of the Republic of Lithuania and the rules for its implementation” (*Official Gazette*, 2005, No 4-70; 2005, No 117-4246; 2006, No 32-1148; 2007, No 40-1519; 2008, No 91-3646), governs decision-making on the obligation of aliens to depart from the Republic of Lithuania, their expulsion from the Republic of Lithuania, their return to a foreign country and transit through the territory of the Republic of Lithuania and the procedure for their enforcement, and determines the institutions responsible for decision-making and implementation;

Resolution of the Government of the Republic of Lithuania “On the establishment of the register of foreigners and approval of its regulations” (*Official Gazette*, 2000, No 76-2301; 2001, No 11-326; 2003, No 73-3400; 2005, No 147-5353; 2008, No 127-4850; 2009, No 136-5934; 2011, No 6-231). Regulations of the Register of Foreigners governs the purpose of the Register of Foreigners, its objects, management bodies, their rights and duties, data processing, interoperability with other registries, registry data protection, publication and provision, and the reorganization and liquidation of the register.

The purpose of the register is to register the objects subject to registration, to collect, store, process, organize, keep and provide the register data to Lithuanian state and municipal institutions and agencies, other entities and individuals, as well as to the European Union and foreign institutions and bodies within the procedure established by the legislation of the Republic of Lithuania, the European Union, international treaties, other laws and Regulations, and to carry out other management actions with the registered data.

Objects of the Register of Foreigners are the foreigners whose legal status in the Republic of Lithuania is determined in accordance with the Law on the Legal Status of Aliens of the Republic of Lithuania (*Official Gazette*, 2004, No 73-2539) and other laws of the Republic of Lithuania, European Union law and international agreements (hereinafter the foreigners).

A number of other laws have also been passed.

### **2.1.3. The Lithuanian case law on irregular migration**

Most often foreigners appeal against the decisions denying them residence permits (for example, if it is found that the permit was obtained through the conclusion of a marriage of convenience), or decisions on their expulsion from the Republic of Lithuania. Meanwhile, the number of appeals against obligations of departure is almost zero.

Below we provide some examples of these cases.

*Ruling of the Lithuanian Administrative Court in the administrative case No A756-569/2010. The ruling is not subject to appeal<sup>1</sup>.*

An Armenian citizen appealed to the Vilnius Regional Administrative Court asking it to revoke the decision of the Irregular Migration and control division of the Varėna squad of the SBGS on the annulment of her visa and the decision on her obligation to leave the Republic of Lithuania. The SBGS decisions were passed, determining that the conditions and objectives of arrival of the Armenian citizen are different from those specified in the visa application.

Vilnius Regional Administrative Court in its decision dismissed the appeal of the applicant as being devoid of merit. The court, pursuant to the provisions of the Law on the Legal Status of Aliens of the Republic of Lithuania, ruled that the defendant (SBGS), having determined that the applicant had submitted false facts with the aim of obtaining the visa, had reasonably made a decision to obliging her to leave the Republic of Lithuania. Upon the annulment of the visa issued to the applicant, the applicant was reasonably obliged to depart the Republic of Lithuania.

The Supreme Administrative Court of Lithuania also dismissed the applicant's appeal and left the decision of the Vilnius Regional Administrative Court unchanged.

*Ruling of the Lithuanian Supreme Administrative Court of 19 March 2010 in the administrative case No A-756-1933/2008. The ruling is not subject to appeal<sup>2</sup>.*

The applicant, a Chinese citizen, appealed to the Vilnius Regional Administrative Court with an appeal asking for the annulment of the decision of the Migration Division of the Public Police of Vilnius City Chief Police Commissariat, in which the citizen of China was obliged to depart the Republic of Lithuania.

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<sup>1</sup> Lithuanian court information system, Ruling of the Lithuanian Supreme Administrative Court in the case No A-756-569-10, 2010 <http://liteko.teismai.lt/viesasprendimupaieska/tekstas.aspx?id=587d0f58-b674-4be0-957e-85695edb2ab1>

<sup>2</sup> Lithuanian court information system, Ruling of the Lithuanian Supreme Administrative Court in the case No -756-1933-08, 2008. <http://liteko.teismai.lt/viesasprendimupaieska/tekstas.aspx?id=b36b0538-f322-4235-a6e1-36d0a0f28c9c>

Vilnius Regional Administrative Court in its decision dismissed the appeal of the applicant and concluded that the decision in which the applicant was obliged to depart from the Republic of Lithuania was legitimate and justified, since the Migration Department in its decision had withdrawn the temporary residence permit in the Republic of Lithuania for the applicant, having discovered that the citizen of China had registered a marriage of convenience.

The Supreme Administrative Court of Lithuania also dismissed the applicant's appeal and left the decision of the Vilnius Regional Administrative Court unchanged.

#### **2.1.4. Administrative and criminal sanctions provided for by the national law:**

##### a) for persons illegally entering the national territory

The Code of Administrative Offences of the Republic of Lithuania (hereinafter the LR ATPK) provides for liability for illegal border crossing for negligence (Article 205<sup>(2)</sup>). This act incurs a fine of two thousand to ten thousand litas.

Article 206 of the LR ATPK details the liability for violations of the procedure of entry, residence, transit and departure of foreigners from the Republic of Lithuania. This act incurs a warning or a penalty of two hundred and fifty to one thousand litas.

Article 291, part 1 of the Criminal Code of the Republic of Lithuania (hereinafter the LR BK) provides for criminal liability for the illegal crossing of the state border. A person who illegally crosses the state border of the Republic of Lithuania shall be punished by a fine, arrest or by imprisonment for a term of up to two years. According to Article 291 paragraph 1, an alien who unlawfully enters the Republic of Lithuania seeking to exercise the right of asylum shall be released from criminal liability. An alien who commits the act provided for in paragraph 1 of this Article with the intent of illegally crossing into a third state from the Republic of Lithuania shall be released from criminal liability according to paragraph 1 of this Article where he is, in accordance with the established procedure, subject to deportation back to the state from the territory whereof he illegally crossed the state border of the Republic of Lithuania or to the state whose citizen he is.

Article 300 of the LR BK provides for criminal liability for the **forgery of a document or possession or producing of a forged document**. A person who produces a false document, forges a genuine document or stores, transports, forwards, uses or handles a document known to be false or a genuine document known to be forged shall be punished by a fine, arrest or by imprisonment for a term of up to three years. A person who commits these acts, where this incurs major damage, shall be punished by imprisonment for a term of up to five years. A legal entity shall also be held liable for the acts provided for in this Article.

##### b) persons involved in the assistance to illegal immigration

According to the above Article 300 of the LR BK persons assisting in obtaining forged documents may also be held liable.

Article 206<sup>(2)</sup> of the LR ATPK provides for liability for offering accommodation to foreigners who do not have a passport or an equivalent document, a travel document, a visa of the Republic of Lithuania, a temporary residence permit or permanent residence permit in the Republic of Lithuania. These acts incur a fine of one thousand to two thousand litas. The same acts committed by a person previously convicted of an administrative penalty for the offences listed in part one of this article incur a fine of two thousand to three thousand litas.

Article 292 of the LR BK provides for criminal liability for the **unlawful transportation of persons across the state border**. A person who unlawfully transports an alien not having a permanent place of residence in the Republic of Lithuania across the state border or who transports or conceals in the territory of the Republic of Lithuania such an alien who has illegally crossed the state border of the Republic of Lithuania **shall be punished by a fine, arrest or by imprisonment for a term of up to six years**.

A person who commits the acts provided for in paragraph 1 of this Article for mercenary reasons or where this poses a threat to human life, shall be punished by imprisonment for a term of up to eight years.

A person who organises the acts provided for in paragraph 1 of this Article shall be punished by imprisonment for a term of from four up to ten years.

A legal entity shall also be held liable for the acts provided for in this Article.

c) persons who employ irregular migrants

Article 206<sup>(3)</sup> of the LR ATPK provides for liability for employing or providing conditions for engagement in other activities in terms of deriving benefits of subsistence to foreigners without a work permit, a temporary residence permit or a permanent residence in the Republic of Lithuania. Such act incurs a fine of two thousand to three thousand litas. Aliens are not subject to penalties for illegal employment but their residence permit is withdrawn if it was issued for the purposes of work.

### **2.1.5. Developments in the Lithuanian policy and legislation over the past year**

Since 21 December 2007, the cancellation of the land internal border controls, and, since 30 March 2008, also air border controls at airports for domestic flights, led to a whole range of structural and operational changes within the SBGS units, in particular at the internal borders. The SBGS regrouped its human resources at the internal borders: a part of the positions were moved in order to enhance the external border controls, to ensure the implementation of the function of control and prevention of irregular migration, and to strengthen the operational and pre-trial investigative activities. Less than 30 per cent of the former staff remained at the internal border to ensure the assigned functions (except for the regrouped positions of the operational activities and the irregular migration functions).

Given the operational changes of the SBGS structural units located at the internal borders, after the accession to the Schengen area and in order to implement the concept of the cancellation of control and the internal borders of the Republic of Lithuania and the European Union and the enhancement of the activities of competent authorities in border regions, approved by order No 1V-272 of the Minister of the Interior of the Republic of Lithuania of 17 July 2006, the head of the SBGS in its order No 4-783 of 5 September 2008 approved the Regulations of the organisation of the Service at the internal borders of the European Union of the Republic of Lithuania which govern the operational activities of those units.

In order to implement the provisions of the Convention implementing the Schengen Agreement and the Schengen Borders Code on the cancellation of control at the internal borders, ensuring the free movement of persons, resumption of temporary control at the internal borders, strengthening migration controls within the country and ensuring the implementation of the function of prevention and control of irregular migration (combat against irregular migration) inside the country, the relevant departments responsible for the prevention and control of irregular migration were set up in the central office of the SBGS and other internal units. Using a risk assessment and analysis of the situation in collaboration with regional police commissariats, other law enforcement agencies and territorial labour authorities, these structural units contribute to the strengthening of the fight against irregular migration and the support of public security and public order.

These developments were a prerequisite of Lithuania's accession to the Schengen area and the EU and national immigration policy aims, to ensure the effective management of migration flows, the enhancement of controls of irregular migration within the country and the control of irregular migration through the external and internal borders.

While implementing or transposing the provisions of the EU legislation, as well adjusting the relevant provisions in order to ensure the transposition of directives and finding solutions of other issues related to the legal status of aliens and the legal framework for the legal status of foreigners in the Republic of Lithuania, in recent years, the Law on the Legal Status of Aliens of the Republic of Lithuania (*Official Gazette*, 2004, No 73-2539; 2006, No 137-5199; 2008, No 22-803; 2009, No 93-3984) has been repeatedly amended along with related secondary legislation.

For instance, there is currently a draft law prepared aimed at transposing the provisions of the Return Directive and addressing other legal aspects related to the legal status of aliens.

Changes in national policies and legislation on irregular immigration are described in section 2.

Aid of the External Borders Fund and the projects funded by the European Return Fund: Modern border monitoring systems have been, and are being installed, along the most vulnerable stretches of the external borders on land and waters along the border; the system of technical surveillance measures meeting the requirements for the surveillance of the external border has been installed for the monitoring of the territorial sea, the Curonian Lagoon and border inland waters of the Republic of Lithuania; information systems/ registers are being upgraded and various equipment and technical means, significantly contributing to the control of external borders are being acquired, and the efficient return of irregular migrants is ensured etc. (Additionally in section 5).

The performance, development and expansion of international cooperation with third countries and member states, cooperation with EU agencies and other institutions, and with international organizations (information in section 4).

Enhancement of the cooperation of institutions responsible for the migration process control (information in section 2).

On 10 December 2010, the National Visa Information System Development Project was completed. It was aimed at connection to the Central Visa Information System. From October 2011, all countries will be able to access the information on visas issued to individuals, countries of issue, and so on.

The successful completion of the upgrade of the national Schengen Information System (N. SISII), second generation, and the national registers and systems according to the latest C.SISII requirements (ICD version 2.5.3) should ensure the smoother operation of the system.

The draft Law on the Legal Status of Aliens that was submitted to the Seimas of the Republic of Lithuania, the resolution of the Government of the Republic of Lithuania of 25 August 2010 proposed to establish a legal framework for the collection of biometric data of persons who submit applications to the national or Schengen visa.

Other changes are described in other sections of the study.

***Legislation which is not directly related to irregular immigration, but may nevertheless affect it indirectly***

The provisions of the Law on Companies of the Republic of Lithuania (*Official Gazette*, 2000, No 64-1914; 2007, No 68 (revision), as subsequently amended) essentially promote business in the Republic of Lithuania as well as facilitate favourable conditions for honest businesses. However, it is noted that the same provisions of the law (e.g. the registered capital of a private limited liability company must be no less than 10 thousand litas) were taken advantage of by third-country nationals in order to legitimize themselves in the Republic of Lithuania as well as helping to legitimize other third-country nationals.

Therefore, changes were made to the Law on the Legal Status of Aliens by tightening the conditions of establishing an enterprise – the value of the registered capital was increased to 50,000 litas. Currently, the law provides that a temporary residence permit may be issued to an alien who intends to engage in lawful activities in the Republic of Lithuania, provided that the alien registers an enterprise, agency or organisation in the Republic of Lithuania as the owner or co-owner, in which the nominal value of his proportion of the authorised capital held in the enterprise must comprise not less than 50 000 litas, and that his stay in the Republic of Lithuania is necessary in order to attain the aims of the enterprise, agency, or organisation and carrying out its activities; if he is the head or an authorised representative of an enterprise, agency or organisation registered in the Republic of Lithuania, if the principal goal of his entry is work at the enterprise, agency or organisation. Moreover, a temporary residence permit may be issued to an alien who intends to work in the Republic of Lithuania, provided that the alien has a work permit.

However, it is necessary to continue taking steps to ensure that foreigners do not abuse this provision of the law. Therefore, in order to prevent third-country nationals from legitimising themselves in the Republic of Lithuania by setting up fictitious companies, it is necessary to introduce additional legislative requirements (safeguards) to foreigners who intend to register a company, an institution or organization in the Republic of Lithuania.

Recently, the trends of fraudulent business start-ups and the fictitious employment of other nationals of third parties upon establishing the companies in order to obtain a visa or to legitimise themselves in the Republic of Lithuania have been emerging.

The MD and the police and immigration authorities, in cooperation with the State Tax Inspectorate, have identified cases of fictitious companies where no economic or commercial activity was performed. Upon identifying these fictitious enterprises, residence permits in Lithuania were withdrawn, and the nationals of third countries were obliged to leave.

## **2.2. Lithuanian institutional framework**

### *Government authority determining the policy:*

The Ministry of the Interior of the Republic of Lithuania is the main body **determining** public policy on public security (including migration (with the exception of economic migration), and for organising, coordinating and controlling its implementation. The ministry also performs the functions of the responsible authority in the implementation of the Schengen Facility and the Special Kaliningrad Transit Programme, carrying out the functions of the competent authority in implementing the External Borders Fund 2007–2013 and the European Return Fund 2008–2013 according to the Solidarity and Migration Flows general programme, annual and multi-annual programmes, ensuring the implementation of the state visa policy; overseeing the implementation of the state policy on the issuing of identity documents.

### *Institutions implementing the policy:*

Within its competence, the MD is involved in the implementation of state policy in areas such as visa and immigration, asylum, identity and citizenship documents, travel documents, residence permits in the Republic of Lithuania and other documents and their accounting, and the free movement of persons.

The SBGS is a state institution whose purpose is the protection of state border and its crossing control, and involvement in the implementation of the state control of migration processes. A structural unit of the SBGS is the Foreigners' Registration Centre used for the accommodation of foreigners detained upon staying illegally or illegally entering the Republic of Lithuania, and for asylum seekers during the processing of their asylum applications.

The role and tasks of the police in the implementation of the migration process control include the management of the migration processes, matters of the legal status of aliens, the prevention of irregular migration, and other issues concerning migration policy.

## Role of institutions at various stages:

### a) *Before arrival*

The Ministry of Foreign Affairs is involved in formulating and implementing the Lithuanian Republic's visa policy, issuing visas, concluding international treaties, and organising consular functions in the Lithuanian diplomatic missions and consular offices that issue visas and perform other consular functions.

The MD examines documents for the issue or revocation of Schengen and national visas, makes decisions on these matters and issues/revokes Schengen or national visas.

The SBGS carries out consultations before issuing visas, exchanges information about the risks of irregular migration with liaison officers in third countries, and within its competence decides on the alien's transit through Lithuanian territory.

Police Migration Offices accept and analyse requests for invitations of natural persons for an alien's temporarily visit to the Republic of Lithuania, and invitations of legal persons or temporarily visits of aliens to the Republic of, and make decisions on these matters.

### b) *Upon arrival*

The SBGS is a state institution, whose purpose is the protection of the state border and its crossing control. It issues visas for foreigners and makes decisions on the revocation of visas according to the procedures specified by law.

### c) *During the stay*

The MD:

- Organises the issue of these documents in the migration divisions of the chief police commissariats of the counties, migration subdivisions of police commissariats and in groups (hereinafter the Migration Services):
  - temporary residence permits in the Republic of Lithuania (hereinafter temporary residence permit).
  - permanent residence permits of the Republic of Lithuania to live in the European Union (hereinafter permanent residence permit),
  - permits of the citizen of an EU Member State and his family member to reside in the Republic of Lithuania (hereinafter the EU residence permit),
  - travel documents of stateless persons,
  - refugee travel documents,
  - foreigner passports for foreigners, certificates confirming the right of a citizen of an EU member state and his family member to reside in the Republic of Lithuania;
- Examines foreigners' applications for temporary residence permits, residence permits, residence permits in the European Union, renewals of temporary residency permits, renewals of residence permits in the European Union, applications from the citizens of member states of the European Union to confirm the right of residence or permanent residence in the Republic of Lithuania, and issues a certificate confirming this right to and make decisions on these matters;
- Examines the documents for the withdrawal of temporary residence permits, residence permits, European Union residence permits, and makes decisions on these matters;

- Consults other Schengen countries on the issue of temporary or permanent residence permits to an alien, in respect of whom a notice has been issued for the refusal of entry by the Republic of Lithuania;
- In cases discussed in legislation, evaluates and determines whether there is a basis to consider that a marriage between the alien and his spouse residing in the Republic of Lithuania, who is a national of the Republic of Lithuania, or a foreigner is fictitious;
- Within its competence, decides on the granting of asylum in the Republic of Lithuania, decides on asylum issues, and organises the execution of these decisions, issues and replaces alien registration cards;
- Examines the documents of the extension of the time of stay in the Republic of Lithuania with a Schengen visa, makes decisions on these matters and extends the stay of foreigners in the Republic of Lithuania with a Schengen visa, consults with other Schengen countries;
- Examines the documents for the issue of travel documents to foreigners, makes decisions on these matters and issues temporary travel documents;
- Examines the documents concerning the refusal of an alien to enter the Republic of Lithuania and makes decisions to ban (not to ban) an alien from entering the Republic of Lithuania;
- Sets up and processes the national list of foreigners refused entry into the Republic of Lithuania, considers the alien's request and proposals of public authorities or institutions to remove the data of a foreigner from the national list of foreigners refused entry into the Republic of Lithuania, makes decisions on these matters;
- Provides the details of the national list of foreigners denied entry into the Republic of Lithuania, to the Central Schengen Information System, prepares and publishes Lithuanian alerts according to the Schengen Convention, in the Schengen Information System;
- Examines applications of foreign nationals for the issue (replacement) of the alien's passport or the extension of its validity and makes decisions on these matters;
- Maintains the registry of aliens;
- Examines the causes of irregular migration and in conjunction with the SBGS and the Police -Department under the Ministry of the Interior of the Republic of Lithuania (hereinafter the PD) engages in the prevention of irregular migration, and so on.

#### The SBGS:

- Controls the lawful stay and residence of aliens in the Republic of Lithuania;
- Identifies and detains for the period determined in the legislation within the entire territory of the state foreigners who have illegally crossed the state border, aliens staying illegally, and determines their identity;
- Applies administrative sanctions to foreigners who violate the procedures for transit and departure, arrival, stay and travel within the Republic of Lithuania;
- Ensures the protection of detained irregular aliens in the Foreigners' Registration Centre before the adoption of a decision in respect of them by authorised institutions;
- Carries out illegal migration prevention measures;

Decides on the obligation of foreigners to leave the Republic of Lithuania and controls the enforcement of decisions;

#### Police migration services:

- Accept and consider requests for extensions of the time of stay in the Republic of Lithuania of persons with visas, make decisions on these issues and extends the length of stay of the alien

in the Republic of Lithuania with a visa (public police migration units of chief police departments of Vilnius, Kaunas and Klaipeda counties);

- Accept applications from foreigners to issue (replace or extend) their temporary residence permit in the Republic of Lithuania (hereinafter the permanent residence permit), as well as applications for the issuing of a long-term evidence permit of Republic of Lithuania to live in the European Union (hereinafter the permanent residence permit), or the residence permit of a family member of a European Union member state to live in the Republic of Lithuania (hereinafter the EU residence permit), creates the files of foreigners and sends them according to the established procedure to the Migration Department for decision;
  - Accept applications of foreigners to replace permanent residence permits, examines them and make decisions on these matters;
  - Accept foreigners' applications for temporary residence permits, permanent residence permits, residence permits to live in the EU;
  - Control the validity period of temporary residence permits, residence permits and residence permits for the EU, as well as decisions to grant (replace) a temporary residence permit or a permanent residence permit and decisions to issue (renew) the validity period of the EU residence permits after the expiration of temporary residence permits, and also the period of decision on these permits; send the foreigner's files to the MD;
  - Control the period of a foreigner's lawful stay in the Republic of Lithuania;
- Apply administrative sanctions to foreigners who violate the procedures for transit and departure, arrival, stay and travel within the Republic of Lithuania;
- Identify cases of the unlawful employment and accommodation of foreigners in the Republic of Lithuania; carry out illegal migration prevention measures;
  - Decide on the obligation of foreigners to leave the Republic of Lithuania and control the enforcement of decisions;

*d) During the expulsion stage*

The MD:

- Examines the documents provided by territorial police bodies and structural subdivisions of the SBGS for the expulsion of foreigners from the Republic of Lithuania and return to a foreign country, makes decisions on these matters;
- Examines the documents and decides on the feasibility of implementation of the other state's decision on the expulsion of a foreigner;

The SBGS:

- decides on the return of an alien according to the laws and within its competence;
- organises the receipt of the return documents;
- Carries out the MD's decisions to expel an alien or his return.

The police carry out the MD's decisions regarding the expulsion of an alien or his return.

The State Labour Inspectorate is an institution acting under the Ministry of Social Security and Labour which is engaged in the control of illegal labour and coordination of the operations of institutions engaged in the control of illegal labour.

The Lithuanian Labour Exchange is an institution under the Ministry of Social Security and Labour which carries out the monitoring of the labour market, and according to their competence ensures social security for migrant workers and the application of the EU legislation relating to labour migration and social protection, taking into account the needs of the internal market, and issues and withdraws work permits for aliens in the Republic of Lithuania.

### ***Other stakeholders (non-institutional entities), acting in the area of irregular migration***

The International Organisation for Migration (IOM) office in Vilnius is engaged in voluntary assistance programmes for return and reintegration, as well as the provision of information to migrants about their rights and responsibilities, and prepares various studies and reports (including on irregular migration).

The Lithuanian Red Cross Society carries out the monitoring of the procedure of foreigners' return and expulsion in accordance with the European Parliament and Council Directive 2008/115/EC of 16 December 2008 on common standards and procedures in member states for the returning of illegally staying third-country nationals.

### ***Cooperation between public authorities and other stakeholders***

#### ***Between public authorities:***

Notable are the agreements and contracts on cooperation of institutions responsible for the migration process control. The agreements define the institutional roles in the area of foreigner control and the forms of cooperation. Based on those contracts and agreements, there is an ongoing exchange of relevant information, and the holding of common measures for the prevention and control of irregular migration.

1. Cooperation agreement No 5-IN-118/(15-01)7K-348/8-15 of 16 November 2006 of the Police Department under the Ministry of the Interior of the Republic of Lithuania, Migration Department under the Ministry of the Interior of the Republic of Lithuania and State Border Guard Service Under the Ministry of the Interior of the Republic of Lithuania;
2. Agreement No 27P-4/5-IN-6/(15/7-7)6K-31/8-13 of 21 January 2008 of the Labour Inspectorate of the Republic of Lithuania, Police Department under the Ministry of the Interior of the Republic of Lithuania, Migration Department under the Ministry of the Interior of the Republic of Lithuania and State Border Guard Service Under the Ministry of the Interior of the Republic of Lithuania "On collaboration in the areas of the irregular stay and employment of aliens," according to which the institutions cooperate at all levels in carrying out the control of the irregular stay, residence and employment of aliens in the Republic of Lithuania and its prevention, exchange information and carry out joint measures;

3. Agreement No US08-252 / (21)-16-217 of 4 December 2008 of the National Labour Exchange under the Ministry of Social Security and Labour of the Republic of Lithuania and State Border Guard Service Under the Ministry of the Interior of the Republic of Lithuania “On the provision of personal data” according to which they provide data about persons seeking employment and registered in the Labour exchange and foreigners with issued work permits in the Republic of Lithuania;
4. Cooperation agreement No 5-IN-3/8-2 of 15 January 2010 of the Police Department under the Ministry of the Interior of the Republic of Lithuania and State Border Guard Service Under the Ministry of the Interior of the Republic of Lithuania “On the activities in the area of foreigners control”;
5. Agreement No 19-11-KOD/8-7 of 3 February 2011 of the Ministry of Foreign Affairs of the Republic of Lithuania and State Border Guard Service Under the Ministry of the Interior of the Republic of Lithuania which provides for cooperation in the exchange of information relating to the issuance of visas to foreigners, information about the risks of irregular migration (and relevant information of foreigners, their groups or categories).

The Crime Information Analysis Centre is a permanent operating working group of four institutions (State Border Guard Service, Police and Customs Department and the Financial Crime Investigation Service associated to the centre in 2010), coordinated by the Lithuanian Criminal Police Bureau and established to monitor the complex changes in the crime situation in Lithuania, including illegal migration, to provide recommendations based on data analysis to the country’s law enforcement authorities on the priorities in operational and investigative activities.

*Between public authorities and other stakeholders:*

In accordance with resolution No 126 of the Government of the Republic of Lithuania of 25 February 2009 "On Council decision 2008/381/EC of 14 May 2008 on establishment of the European Migration Network," in which the International Organisation for Migration office in Vilnius (hereinafter the IOM Vilnius Office) was appointed as the institution performing the functions of the national information centre, the SBGS, the MD and police are actively involved in the activities of the European Migration Network (hereinafter the EMT) and, in cooperation with the IOM, regularly provide information to the Vilnius office of the national information centre which is required in order to carry out the tasks of the European Migration Network, the main goal of which is to meet the need of Community institutions, member states' authorities and the general public regarding information on migration and asylum, by providing the latest, comparable information.

In particular, we should highlight the efficient cooperation between the SBGS and the IOM Vilnius Office in addressing the issues of the voluntary return of aliens illegally staying in the Republic of Lithuania.

### **3. PRACTICAL MEASURES TO REDUCE THE SCOPE OF IRREGULAR MIGRATION**

### **3.1. Before arrival: practical measures to reduce the scope of irregular migration before the arrival of migrants to Lithuania**

The network of liaison officers in third countries is a quite effective tool in the prevention of illegal migration. Lithuania does not have its own liaison officers. Currently liaison offices are operating in the Russian Federation, the Republic of Belarus and the Republic of Georgia, while liaison officers in the Republic of Latvia represent all three Baltic States. In view of the irregular migration flows, the nationals of the above mentioned third countries in particular constitute the majority of irregular immigrants. Continuous exchange of information with liaison officers in third countries on the risks of irregular migration, their trends, techniques, and the use of false documents constitutes an important contribution to preventing irregular migration. We should highlight the assistance/mediation of liaison officers in obtaining the return documents in third-country diplomatic missions or consular institutions for the expulsion of third-country nationals who have arrived or are staying illegally. Lithuanian officials are also cooperating with the liaison officers of other EU member states.

The most effective practical tool applied before the arrival of foreigners in the Republic of Lithuania is a consultation mechanism for issuing visas. Diplomatic missions and consular offices of the Republic of Lithuania (hereinafter the visa offices), before taking an objective decision on the issue of a visa, consult on the issue of the visa with the competent authorities of the Republic of Lithuania (with the Migration Department, which in turn forwards the requests to the State Border Guard Service and the State Security Department) as to whether there are any grounds for the refusal of a visa, and / or whether the entry conditions are met. This consultation mechanism allows for misleading information provided by third country nationals submitted in requests for the issue of a visa to be determined, i.e. the grounds for the refusal of a visa are established and a visa is denied. VSAT provides about 100 consultations per day. Having received a negative response from the consulting authorities, the consular offices must take this response into account.

Operational work is also important in the prevention of illegal migration. Efforts are being made in cooperation with other state officials to identify groups involved in illegal activity.

In the course of the implementation of Council Directive 2001/51/EC of 28 June 2001 on supplementing the provisions of Article 26 of the Convention implementing the Schengen Agreement of 14 June 1985, the Law on the amendment and supplement of the Law on the Fundamentals of Transport activities of the Republic of Lithuania was passed, providing the duties of carriers in transporting foreigners, and their liability for the transportation of foreigners, where the carrier may be subject to a penalty of from 11000 to 18000 litas for each alien transported without the required documents (information on sanctions against carriers is presented in p. 6.2). Following the imposition of sanctions on carriers since 2008, the situation has changed dramatically, and the number of persons without the necessary documents has decreased significantly, along with a reduction in the number of sanctions against carriers.

Regular training of various levels of officials: examination of documents, border control, risk analysis and other issues.

All the above mentioned and other practical measures are effective and contribute to the fight against irregular migration.

### **3.2. Arrival: practical tools to identify and detect irregular migrants before they**

## **cross the border**

Modern border monitoring systems have been, and are being installed along the most vulnerable sections of the external land and water borders along the border. These measures are particularly efficient. It has been observed that violations have reduced dramatically along the external border sections with the border monitoring systems installed.

For border checks, the SBGS is using the information system (SBGSIS), which contains data on foreign nationals who are denied entry to Lithuania, have invalid documents and other relevant data.

In its order No 1V-143 of 21 April 2005, the Minister of the Interior of the Republic of Lithuania approved the border inspection procedures, which define a person's check according to the level of control. The document checking instruction approved by the head of the SBGS in its order No 4-705 of 6 October 2006 has established the actions for the thorough checking of documents such as the verification of documents by using document checking and testing equipment (infrared ray equipment, microscopes, UV light source, etc.), the use of available records, interviews of people in the event of suspicion of the authenticity of documents and their belonging to the holder; action upon identifying a person who has filed counterfeit travel documents. All border checkpoints are equipped with modern testing and analysis instruments.

The use of information systems/records, document verification and testing equipment at the border control points, checks became much more effective allowing officials to quickly obtain the information about the third-country national (e.g. persons non-grata, other information) and identify document frauds significantly easier. In cooperation with Frontex, the SBGS exchanges information with the Frontex Risk Analysis Division.

The SBGS commander in his order verifies the list of risk factors, identifying risk factors for both the external and internal borders which are used in border checks at the external borders, in carrying out the prevention of irregular migration, and random checks at the internal borders and within the country. The list of the risk factors is revised at a determined frequency, or on demand upon the emergence of new risks.

Random spot checks are carried out in order to identify and determine irregular immigrants passing through the internal borders in view of the risk factors and information from Lithuania and neighbouring national authorities. However, due to restructuring, from February 2012, VSAT squads will no longer have illegal migration prevention units and it is therefore unclear whether the custom checks at EU internal borders will continue.

### **3.3. Presence: practical measures to control irregular migration in the territory of Lithuania**

One of the most recently uncovered methods of illegal immigration is entering into marriages of convenience with citizens of the Republic of Lithuania, with the aim of obtaining a residence permit in EU countries. In accordance with order of the Minister of the Interior of the Republic of Lithuania "On the amendment of order No 1V-329 of the Minister of the Interior of the Republic of Lithuania of 12 October 2005 "On the Approval of the rules on the issue of temporary residence permits for aliens in the Republic of Lithuania and the rules for the identification of fictitious marriages, registered partnerships, and fictitious adoptions"" (new version *Official Gazette*, 2009, No 62-2501), a civil servant of the Department of Immigration and Migration Police Office must

evaluate whether the marriage or the registered partnership is not fictitious: in such cases where after the conclusion of a marriage or a registered partnership the spouses or persons who have registered the partnership agreement are not living together, have no common household, the persons have never previously met before the marriage or the registered partnership contract; spouses, or persons who have registered in the partnership agreement do not speak a common language both of them can understand, and so on.

In determining whether a marriage or registered partnership agreement was concluded in order to obtain a temporary residence permit and whether the marriage or registered partnership is not fictitious, an authorized civil servant of the Department of Immigration and Migration Police Office carries out an inspection: a written survey of spouses or persons having entered into a registered partnership, by interviewing neighbours, parents, friends and acquaintances, and carries out periodic checks in the declared place of residence.

These checks are carried out when the alien applies for a visa or a temporary residence permit. If officials have any suspicions, checks may also be carried out after the issue of a residence permit. The Migration Board of Vilnius County Police Headquarters is in particularly active in carrying out such checks. In Vilnius county, which has the highest number of foreigners, 10 cases of marriages of convenience were identified in 2010 and as a result residence permits for these foreigners were withdrawn. Police officers also apply to the prosecutor's office asking for the annulment of a marriage and declaring it null and void from the date of conclusion so as to prevent foreigners from fraudulently obtaining permits to live in other EU member states.

National legislation provides for the measures for the identification of marriages of convenience and safeguards against the issue of residence permits in such cases, and relevant changes have been made in line with this purpose. However, no responsibility (either administrative or criminal) is applied in respect of aliens or citizens of the Republic of Lithuania for an attempt to obtain a residence permit by fraud. Upon determining cases of marriages of convenience and withdrawing residence permits, it is recommended to include such nationals of third countries onto the lists of persona non-grata. It is also advisable to apply the provisions of the Sanctions directive on the facilitation of entry and residence for Lithuanian nationals entering into marriages of convenience. It is also necessary to strengthen cooperation with other EU countries and to exchange information on such cases of illegal migration.

Lithuania has also identified another method of illegal immigration. By taking advantage of the legal provision for the encouragement of investment for persons who have established a company, which makes it easier to obtain a residence permit, foreigners were setting up companies in Lithuania to legalize their presence. Previously, foreigners had the opportunity to establish a company by making a contribution of LTL 10,000, which could be paid by an unlimited number of co-owners. However, when it was found that some foreigners set up a company but, in fact, failed to carry out any activities, this provision was changed. It is envisaged that when a company is set up by more than one alien, the nominal value of the share capital must be at least 50 thousand litas. When these amendments were made at the end of 2009, the number of decisions to issue / replace residence permits to persons wishing to engage in legal activities and establish a company decreased two-fold (from 826 decisions in 2009 to 383 decisions in 2010). Although the number of persons establishing companies fell, it is not known whether this was a result of the amendments made, economic conditions, or other factors.

In determining that a company, **institution or organization whose co-owner is a foreigner, is not carrying out the declared activities** and (or) whether the alien's presence in Lithuania is not

necessary for the achievement of the goals of the company, institution, organization and in carrying out its operations, the MD, and the Police Immigration Service cooperate with the State Tax Inspectorate, which offers advice on company activities. If it is found that the activity is not being carried out, residence permits to live in Lithuania are cancelled. However, currently authorities do not agree on how to assess whether a company established is operating. It is therefore necessary to establish clear, sensible criteria to be used in determining whether an established company is engaged in business activities. Specialists of state institutes in Lithuania offer to exempt foreigners who started their business on the requirement that a certain number of jobs were created as doing so could discourage investors and encourage them to choose other countries for their activities.

**Meanwhile, illegal aliens working in Lithuania** is not a concern. During the crisis, the number of foreigners coming to work significantly decreased (about four-fold), and therefore there are several cases of illegal employment. In the area of irregular migration, state institutions carry out inspections in public places and engage in interinstitutional cooperation (agreements), organising joint efforts against irregular migration and illegal employment. For instance, the SBGS units responsible for the prevention and control the irregular migration carried out over 100 of various measures/inspections together with other agencies in 2010 (police, the State Labour Inspectorate and others.). Checks reveal a small number of illegal or unauthorized citizens of third countries in employment (there were two such cases in 2010; the numbers for the illegal employment of Lithuanians are significantly higher). The most common violations: an alien is not authorized to work in the company which employs him (the permit has been issued to another position and / or to work in another company), or is working without a work permit (but has a residence permit). According to the information from the State Labour Inspectorate, Lithuania has had only a few cases of illegal employment of aliens, e.g. when the company that brought in foreigners has "re-hired" them to other businesses). Upon identifying cases of irregular stay, administrative sanctions have been imposed on third country nationals and the obligations to depart, and in cases of irregular employment administrative penalties have been imposed for employers.

Dissuasive and proportionate sanctions are provided for employers in Article 41<sup>3</sup> of the Code of Administrative Offences of the Republic of Lithuania "Illegal Work" and Article 147<sup>1</sup> of the Criminal Code of the Republic of Lithuania "Use for forced labour."

### **3.4. Ways to reduce the number of irregular migrants**

Given the small number of forced returnees/expulsed migrants (the statistics can be found in the attached table), Lithuania has no migrant return plans, and voluntary return programmes are carried out by the IOM office.

#### **3.4.1. Acquisition of legal status in Lithuania**

The Law on the Legal Status of Aliens provides the legalisation in the Republic of Lithuania. Art. 40 of the said law provides that a temporary residence permit may be issued or replaced to an alien if: the alien **may not be expelled from the Republic of Lithuania** in accordance with the procedure established by this Law or his expulsion from the Republic of Lithuania has been postponed in accordance with the procedure laid down in this Law; the alien is unable to depart due to a dangerous health condition and requires urgent basic medical aid (the list of such health conditions shall be established by the Minister of Health).

Art. 53 of the said law provides that an alien may be issued a permanent residence permit if: the alien is a child under the age of 18, born in the Republic of Lithuania and his parents or one of the parents are citizens of the Republic of Lithuania whose place of residence has been declared in the Republic of Lithuania or who holds a permanent residence permit;

Lithuania carried out small-scale legalization programmes in 1996, 1999 and 2004. In 1996, the opportunity to obtain a permanent residence permit was taken up by 51 aliens. In 1999, based on this law, public police migration units of local police offices registered 385 illegal residents of the Republic of Lithuania. In 2004, 103 individuals illegally residing in Lithuania were registered, of which 83 were allowed to live in Lithuania. Opportunities for individuals to legalize their status are planned in the amendment to the Law on the Legal Status of Aliens currently submitted to the Seimas.

Irregular migrants can be granted emergency medical aid. The services of a social worker and psychologist are provided to irregular immigrants in the Foreigner Registration Centre. Non-governmental organisations are not active in providing assistance to irregular aliens.

### **3.4.2. Consequences for persons whose status may not be validated.**

#### *Expulsion plans, duration of waiting until expulsion, practice of expulsion and detention prior the expulsion*

*Persons* who cannot be legalised are obliged to leave or are expelled from the Republic of Lithuania, but in the Law on the Legal Status of Aliens an exception is provided for: an alien may be legalised (he may be issued a temporary residence permit) if the alien **may not be expelled from the Republic of Lithuania** in accordance with the procedure established by this Law or his expulsion from the Republic of Lithuania has been postponed in accordance with the procedure laid down in this Law in the following cases: the decision regarding the expulsion of the alien from the Republic of Lithuania is appealed against in court, except in cases where the alien must be expelled due to a threat he constitutes to national security or public policy; the foreign country to which the alien may be expelled refuses to accept him; the alien is in need of basic medical aid, the necessity of which is confirmed by a consulting panel of a health care institution; the alien cannot be expelled due to objective reasons (the alien is not in possession of a valid travel document, there is no possibility to obtain travel tickets, etc.). When the above reasons cease to exist, the decision to expel an alien from the Republic of Lithuania must be fulfilled immediately.

If an alien's expulsion from the Republic of Lithuania has been suspended due to the circumstances provided for by this Law and these circumstances have not disappeared within one year from the suspension of the implementation of the decision to expel the alien from the Republic of Lithuania, he shall be issued a temporary residence permit. In Lithuania these are isolated cases, the most common ones are when it is not possible to expel the foreigner due to objective circumstances (the alien does not have a valid travel document) and the diplomatic mission or the consular office of the alien's country of origin does not, or will not, cooperate in order to obtain a travel or a return document.

The Law on the Legal Status of Aliens provides that an alien may be detained for longer than 48 hours only according to a court decision. In practice, aliens are usually detained for 3 months at the

Foreigners' Registration Centre. If it is not possible to expel the alien during this period, it is necessary to reapply to the court asking to extend the period of detention. The average waiting time for this in the Foreigners' Registration Centre is 2 months.

***Complex situations associated with expulsion (e.g. the expulsion of minors, unaccompanied minors, disabled and sick persons, elderly, immigrants). Dealing with such issues in Lithuania:***

In Lithuania decisions on the return of aliens including unaccompanied minors are made by the Foreigners Affairs Division of the Migration Department. In the decision, they specify as to which border protection unit or whether the police will enforce the decision.

The law provides that an unaccompanied minor alien may be returned only provided that he is duly taken care of in the foreign country to which the unaccompanied minor alien is returned, taking into consideration his needs, age and level of independence. Having determined the identity of the unaccompanied minor, the Migration Department attempts to contact the parents of the unaccompanied minor. If failing to do so, the Migration Department contacts the competent institution of the state of the unaccompanied minor with a request to confirm that the unaccompanied minor staying in Lithuania is a citizen of that country, and requests them to accept him. Upon receipt of response of the relevant institution, the Migration Department instructs the organisation of the return of the unaccompanied minor and his delivery to the responsible institution of another state.

In all cases, if unaccompanied minors and other vulnerable persons are expelled, a social worker and, where necessary, personnel of the children rights protection service take part in the procedure and accompanies them. Medical professionals always take part in accompanying disabled or sick individuals.

If it is not possible to return an unaccompanied minor alien to his country of origin or another country, he is granted the right to live in the Republic of Lithuania.

These cases of return are the most difficult because the procedure of return must be coordinated with the responsible institutions of the state of origin, the representatives of institutions of other countries who are involved in the return, and the carriers.

For instance, during the procedure of return of a disabled (mentally ill) person to the Russian Federation, all procedures provided for in the readmission agreement were carried out, all details on meeting the disabled person (employees of responsible institutions, medical professionals, social workers were waiting for the disabled person in a Russian airport), and from the Lithuanian side he was accompanied by SBGS officials, medical professionals and a social worker. However the airline (not the Russian carrier) refused to fly the disabled person because the carrier's representatives (doctors) gave a negative answer (according to medical records and the medical certificate from the Lithuanian doctors). This issue was resolved on the same day when the Russian carrier assumed to fly the disabled person.

## **4. CROSS-BORDER COOPERATION IN REDUCING THE SCOPE OF IRREGULAR MIGRATION**

### **4.1. Cooperation agreements**

While strengthening cooperation between the border protection services of neighbouring Schengen area countries and seeking to prevent illegal migration processes across the internal borders, thus contributing to the overall safety of all Schengen area countries, there is an ongoing harmonization of draft agreements on joint patrols with Latvia and Poland.

The Agreement between the Republic of Lithuania and the Republic of Belarus on the Lithuanian-Belarusian state border regulatory regime became effective on 7 July 2010 (signed on 16 August 2009 in Vilnius).

A draft agreement of the Government of the Republic of Lithuania and the Government of the Russian Federation “On state border agent operations” was prepared.

## **READMISSION AGREEMENTS**

Currently, Lithuania has signed readmission agreements with 24 countries.

1. Agreement of 30-06-1995 of the Government of the Republic of Lithuania, the Government of the Republic of Estonia and the Government of the Republic of Latvia on the return of irregular residents valid since 30-06-1995; (*Official Gazette*, 1995, No 62-1551).
2. Agreement of 06-05-1996 of the Government of the Republic of Lithuania and the Government of the Republic of Slovenia on the return of persons whose arrival and stay in the country is illegal valid since 15-06-1997; (*Official Gazette*, 1997, No 55-1265).
3. Agreement of 23-09-1996 of the Government of the Republic of Lithuania and the government of Ukraine on the transfer and acceptance of persons valid since 29-03-1997; (*Official Gazette*, 1997, No 27-624).
4. Agreement of 26-09-1996 of the Government of the Republic of Lithuania and Swiss Federal Council on the removal of illegally residing persons (Readmission Agreement) valid since 01-11-1996; (*Official Gazette*, 1996, No 105-2400).
5. Protocol on the implementation of the said agreement of 36-09-1996 valid since 01-11-1996; (*Official Gazette*, 1996, No 105-2400) (amendment to Protocol).
6. Agreement of 10-02-1997 of the Government of the Republic of Lithuania and the Government of the Kingdom of Sweden on the return of persons valid since 24-05-1997; (*Official Gazette*, 1997, No 37-897).
7. Agreement of 18-03-1997 of the Government of the Republic of Lithuania and the Government of the Republic of Finland on the return of persons who arrived or residing in the state without permit valid since 23-07-1997; (*Official Gazette*, 1997, No 37-898).
8. Agreement of 04-04-1997 of the Government of the Republic of Lithuania and the Government of Iceland on the return of persons who arrived or residing in the state without permit valid since 24-04-1997; (*Official Gazette*, 1997, No 37-896).
9. Agreement of 20-05-1997 of the Government of the Republic of Lithuania and the Government of the Republic of Italy on the return of persons valid since 24-02-1999; (*Official Gazette*, 1999, No 7-142).
10. Agreement of 28-05-1998 of the Government of the Republic of Lithuania and the Government of the Republic of Croatia on the return of illegally arriving or residing persons valid since 01-01-2000; (*Official Gazette*, 1999, No 103-2959).
11. Agreement of 18-11-1998 of the Government of the Republic of Lithuania and the Kingdom of Spain on the return of illegally residing persons valid since 01-03-2000; (*Official Gazette*, 1999, No 103-2958).
12. Agreement of 09-12-1998 of the Government of the Republic of Lithuania and the

Austrian Federal Government on the acceptance of persons who have eagerly entered the territory of another contracting party (Readmission Agreement); (*Official Gazette*, 1999, No 103-2960) valid since 01-01-2000.

13. Agreement of 13-07-1998 of the Government of the Republic of Lithuania and of the Government of the Republic of Poland on the transfer and acceptance of persons valid since 08-01-2000; (*Official Gazette*, 1999, No 103-2957).

14. Agreement of 04-12-1998 of the Government of the Republic of Lithuania and of the Government of the Republic of France on the return of illegally residing persons valid since 07-01-2000; (*Official Gazette*, 1999, No 103-2954).

15. Agreement of 16-12-1998 of the Government of the Republic of Lithuania and the Government of the German Federal Republic on the return/transfer of persons (Readmission Agreement) valid since 01-01-2000; (*Official Gazette*, 1999, No 103-2962).

16. Agreement of 11-02-1999 of the Government of the Republic of Lithuania and the Portuguese Government on the return of persons who arrived or residing in the state without permit valid since 07-06-2001; (*Official Gazette*, 1999, No 103-2955).

17. Agreement of 12-05-2003 of the Government of the Republic of Lithuania and the Government of the Russian Federation on the acceptance and return of persons illegally staying in the territory of the Republic of Lithuania or the Russian Federation (Readmission Agreement), valid since 21-08-2003; (*Official Gazette*, 2003, No 53-2360).

18. Agreement of 06-12-2001 of the Government of the Republic of Lithuania and of the Government of the Republic of Moldova on the return of persons illegally arriving or residing in the territory of the Republic of Lithuania or the Republic of Moldova valid since 14-02-2004; (*Official Gazette*, 2004, No 26-803).

19. Agreement of 09-06-1999 of the Government of the Republic of Lithuania and the Governments of the Benelux countries (Belgium Kingdom, Grand Duchy of Luxembourg, the Netherlands) on the return of illegally residing persons (Readmission Agreement) (*Official Gazette*, 1999, No 103-2961) With effect after the implementation of conditions. Effective from 01-02-2005

20. Agreement of 01-07-1999 of the Government of the Republic of Lithuania and the Government of the Republic of Greece on the return of irregular residents (*Official Gazette*, 1999, No 03-2956). Effective from 01-05-2004.

21. Agreement of 15-09-2003 of the Government of the Republic of Lithuania and of the Government of the Republic of Armenia on the readmission of persons whose stay is illegal valid since 22-05-2004; (*Official Gazette*, 2004, No 77-2668).

22. Agreement of 19-02-2004 of the Government of the Republic of Lithuania and the Government of Romania on the readmission of its citizens and foreigners Effective from 13-11-2004; (*Official Gazette*, 2004, No 151-5478).

The Government of the Republic of Lithuania and the Government of the Republic of Moldova on 29 September 2010 signed the protocol on the implementation of the agreement of the European Community and the Republic of Moldova on the readmission of irregular residents.

The following agreements on readmission are currently being negotiated:

- Draft protocol of the Government of the Republic of Lithuania and Council of Ministers of Bosnia and Herzegovina implementing the agreement between the European Union and Bosnia and Herzegovina on the readmission of residents living without permits;
- Draft protocol of the Government of the Republic of Lithuania and of the Government of the Republic of Macedonia on the implementation of the agreement between the European Community and the Former Yugoslav Republic of Macedonia on the readmission of irregular residents;
- Draft protocol of the Government of the Republic of Lithuania and the Government of the Russian Federation on the implementation of the agreement between the European

- Community and the Russian Federation on readmission;
- Drafts of the protocol agreement of the Government of the Republic of Lithuania and the Government of the Republic of Kosovo on the readmission of irregular residents and the protocol implementing the agreement;
  - Draft agreement of the Government of the Republic of Lithuania and the Government of the Republic of Kazakhstan on the readmission of persons.

The return of irregular residents in accordance with readmission agreements is not particularly common. In accordance with readmission agreements, citizens of the Russian Federation and Georgia are usually returned. Both the international agreements of the Republic of Lithuania on readmission, and agreements on readmission of the European Union and other third countries are sufficient for the return of irregular persons.

## **4.2. Other (non legal) forms of cooperation with other countries**

### *Multilateral cooperation:*

The expansion of the network of liaison officers in third countries (such initiatives for liaison officers in third countries was also recommended by Schengen Evaluation Committee experts).

In 2008, the border guard services of Lithuania, Latvia and Estonia signed the Memorandum of Understanding on the operations of the offices of liaison officers in Belarus, Russia and Georgia.

On 18-12-2009, the border guard services of Lithuania, Latvia and Estonia signed the Memorandum of Understanding on the operations of the offices of liaison officers in Russia that was opened in 2010.

These agreements provided the basis for the continuous exchange of information with liaison officers in third countries on the risks of irregular migration, their trends, techniques, use of false documents, and constitute an important contribution to combating and preventing irregular migration.

In carrying out the provisions of Council Decision 2005/267/EC of 16 March 2005, establishing a secure web-based information and coordination network for member states' migration management services they passed resolution No 415 of the Government of the Republic of Lithuania of 4 May 2006 "On the appointment of the national liaison support centre of the Republic of Lithuania for the exchange of information about irregular immigration, the centre for the coordination of return and expulsion of aliens of the Republic of Lithuania and the centre for the coordination of immigration liaison officer support of the Republic of Lithuania."

In this resolution, the SBGS has been appointed as the coordination centre of the national liaison support centres of the Republic of Lithuania for the exchange of relevant information between the migration control services of member states of the European Union engaged in the fight against irregular migration, as well as the centre for the coordination of the return and expulsion of aliens of the Republic of Lithuania and for immigration liaison support officers of the Republic of Lithuania.

In the course of the implementation of Council Directive 2003/110/EC of 25 November 2003 "On assistance for transit for the purposes of expulsion by air" and in accordance with order No 1V-112 of the Minister of the Interior of the Republic of Lithuania of 20 March 2006 "On the amendment of

order No 1V-429 of the Minister of the Interior of the Republic of Lithuania of 24 December 2004 “On the approval of the procedure for decisions regarding the obligation of aliens to depart, their expulsion, return and transit through the territory of the Republic of Lithuania and the rules for its implementation” (*Official Gazette*, No 32-1148), the Vilnius Airport border control post of the SBGS has an information point that may be contacted for transit assistance related with expulsion via air transport.

Upon the transposition of the provisions of the directive into national law, several requests have been received from member states for assistance in transit related with expulsion via air transport which, according to the requirements, were met.

There is active participation in Frontex activities on the issues of return.

Taking into consideration Council Decision 2004/191/EC of 23 February 2004, setting out the criteria and practical arrangements for the compensation of financial imbalances resulting from the application of Council Directive 2001/40/EC on the mutual recognition of decisions on the expulsion of third-country nationals (OL 2004, *Special Edition*, Chapter 1, Volume 5, p. 25) and implementing resolution No 864 of the Government of the Republic of Lithuania of 22 August 2007 “On the appointment of the Lithuanian National information Centre” (*Official Gazette*, 2007, No 93-3730) the Lithuanian National information Centre of the Republic of Lithuania was established by the SBGS for the exchange of information on criteria and practical measures for the compensation of financial differences in the expulsion of third-country nationals.

The provisions of Council Decision 2004/573/EC of 29 April 2004 on the organisation of joint flights when sending third-country nationals who are subject to individual orders of expulsion from the territories of two or more member states (OL 2004, *Special Edition*, Chapter 19, Volume 7, p. 78) were transposed to national law, and institutions were appointed (Police Department under the Ministry of the Interior of the Republic of Lithuania and State Border Guard Service Under the Ministry of the Interior of the Republic of Lithuania) responsible for the organisation and/or participation in joint flights and provision of related information to other member states according to the Council's decision.

Upon the transposition of the provisions of the Council decision into national law, the responsible authorities of the Republic of Lithuania did not organise joint flights from the territory of two or more member states sending third country nationals, and did not take part in the organisation of joint flights by other member states (so far there has been no need).

We should highlight the importance of contact point activities in developing the integrated border protection model according to the provisions of the Schengen acquis and strengthening cooperation not only between the local law enforcement authorities, but also between the state border protection services of neighbouring countries in the prevention and investigation of the processes of illegal migration and other criminal acts at the EU's internal and external borders.

It should be noted that the activities of contact points operating at the internal borders of the European Union are governed by international bilateral agreements, and is very efficient and useful.

It is worth mentioning the multilateral cooperation, contributing to the achievement of the objectives of the SBGS and implementation of their tasks: in the context of the Baltic Sea States Council (cooperation of border protection services of the Baltic Sea Region, participation in the special group combating against organised crime (Task For) and in the context of the Baltic Council

of Ministers (BCM) (participation in the activities of the Border Security Sub-Committee of Senior Officials of Internal Affairs (formerly the Border Protection Committee of Senior Officials), participation in Siofok International Border Police Conference and the Soderkoping process).

Activities of the National Maritime Border Security Coordination Centre (NJSAKC) are highly beneficial for the efficient exchange of operational information. The most important activities of the centre are the exchange of information with state institutions of the Baltic Sea region countries and the Republic of Lithuania, and also the provision of summarised information for divisions.

The Migration Department under the Ministry of the Interior operates at the level of the Subcommittee on Immigration of the Baltic Council of Ministers with the migration services of Latvia and Estonia, and also with foreign countries in the implementation of the commitments of the Republic of Lithuania under the readmission agreements.

#### *Bilateral cooperation:*

Bilateral cooperation is being developed on state border security issues with the State Border Troops Committee of the Republic of Belarus (operating in third countries), the National Border Guard Department of the Republic of Estonia, the State Border Protection of the Republic of Latvia, the Security Service of the Federal Security Service of the Russian Federation, the Kaliningrad area Border Service of the Federal Security Service of the Russian Federation, the Poland Border Protection organisation, the Finnish Border Guard Service, the Swedish Coast Guard, the German Federal Police (the former Federal Border Guard), the Georgian Border Police, the Border Guards Service of Moldova, and the State Border Service of the Republic of Azerbaijan.

In 2010, an agreement was signed between the Lithuanian Police Department and the Polish Police Chief Commandant “On implementing the provisions of the agreement between the Government of the Republic of Lithuania and the Government of the Republic of Poland 14 March 2006 “On cooperation in combating against organised crime and other crimes and joint actions in the border area,”” developing cooperation and exchanging information and experience on operational and preventive measures.

### **4.3. Cooperation with the EU and international organisations**

SBGS officers increasingly participate in EU activities related with the strengthening of external borders and operations in third countries (international facilities according to the plans of the European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union (FRONTEX), committees and working groups of the EU Council of Justice and Home Affairs; EU special missions and others).

SBGS representatives regularly participate in various FRONTEX working groups and organised meetings and workshops: documentation experts, dog trainers, refund transactions, risk analysis, training and other issues.

By participating in the activities of the FRONTEX Risk Analysis Department, information is regularly provided to the ICONet'e Frontex Risk Analysis Section, and the FRONTEX Risk Analysis Network.

In the light of one of the main activities of FRONTEX (joint operations and training), from 2007, the SBGS is actively involved in FRONTEX joint operations.

SBGS Border Guard School, as one of the FRONTEX partnership academies in accordance with a memorandum of cooperation is also actively involved in FRONTEX coordinated training activities.

There is also presence in the activities of the Strategic Committee on Immigration, Frontiers and Asylum (SCIFA) of the European Council and the organisation and development of the Centre for Information, Discussion and Exchange on the Crossing of Frontiers and Immigration (CIREFI).

The MD is involved in the activities of the following committees and working groups of the European Council and European Commission: the High Level Working Group on Migration and Asylum (HLWG); the Strategic Committee on Immigration, Frontiers and Asylum (SCIFA); the Migration and Expulsion Working Group, the Visa Working group; the Unified Visa Form Introduction Committee; the Committee on Immigration and Asylum; the European Migration Network and others.

State bodies operating in the field of migration cooperate and exchange information with migration agencies from different countries and international organisations, such as the International Organisation for Migration, the Council of the United Nations High Commissioner for Refugees, the International Red Cross and others, and also in the Soderkoping process.

## **5. EU POLICIES AND LEGISLATION IMPACT**

### **5.1. Impact of EU policies and legislation on the Lithuanian policy to combat irregular migration**

EU policy and legislation established common immigration policies, which have helped to shape the national policy on irregular migration and to solve practical problems due to different legal systems in the Member States; established joint rules on return, expulsion, use of coercive measures, detention and denial of entry; established mechanisms and tools of information exchange on irregular migration between the member states.

#### ***Changes in Lithuania in transposing the [Directive of Sanctions](#) and the [Directive of Return](#)***

The provisions of the Directive of Sanctions were transposed into national law: the Code of Administrative Offences of the Republic of Lithuania and the Criminal Code of the Republic of Lithuania. After the transposition of the Directive of Sanctions into national law, sanctions were provided for in the Criminal Code for the facilitation of irregular migration, and sanctions in the Code of Administrative Law Offences for the facilitation of residence, which are efficiently applied.

However, given the recent growth in the forms of irregular immigration, the penalties for persons facilitating illegal entry were insufficient, and therefore the draft amendment of the Code of Administrative Offences of the Republic of Lithuania was developed proposing to establish administrating liability for persons for the submission of false data for the invitation of foreigners for temporary stay into the Republic of Lithuania, or other illegal facilitation to aliens in obtaining a document confirming the alien's right to stay or reside in the Republic of Lithuania.

Transposition into national law of the provisions of the European Parliament and Council directive 2008/115/EC of 16 December 2008 on common standards and procedures in Member States for returning illegally staying third-country nationals (OL 2008 L 348, p. 98) is not yet completed.

### ***Impact of EU agreements on the implementation of Lithuanian practical measures in combating irregular migration***

Agreements between the EU and third parties on readmission provided the legal background and facilitated the procedures of return of illegally residing persons.

### ***Assistance for the implementation of the Lithuanian practical measures in combating irregular migration in the project carried out in Lithuania and financed by the External Borders Fund and the European Refugee Fund***

Aid of the projects is financed by the External Borders Fund (EBF): modern border monitoring systems have been, and are being installed along the most vulnerable sections of the external land and water borders along the border; the system of technical surveillance measures meeting the requirements for the surveillance of external border has been installed for the monitoring of the territorial sea, the Curonian Lagoon and inland border waters of the Republic of Lithuania; the Forged and Authentic document Information System (FADO) was acquired; vehicles acquired for external border controls and information systems were upgraded; modern document analysis and checking equipment was acquired; border crossing points were upgraded; border pikes were reconstructed; official training is being conducted; the National Schengen Information and National Visa Information Systems have been developed, as have a number of other projects funded by the EBF.

Costs funded by the projects financed by the European Return Fund (ERF): for the maintenance of foreigners and their forced return/expulsion; costs of the trips for expulsion and the return of foreigners and organisational activities; payment for translation and legal services; the leasing of equipment necessary for the identification of foreigners; special vehicle rental; modernisation of the foreigners register etc. Also, the EGF allowed for the updating of the voluntary return assistance to foreigners who are in a difficult situation; Lithuania started to implement the reintegration program for foreigners in their countries of origin there's preventing re-migration. The voluntary return and reintegration programmes are implemented by the IOM office.

## **6. PRELIMINARY AND ACTUAL STATISTICS ON IRREGULAR MIGRANTS**

In Lithuania, the scope of irregular migration is low. Given the statistics on irregular migration, in recent years, the changes have been minor. The decline in the number of inadmissible persons from 2008 was a result of the accession of Lithuania to the Schengen area and the full application of the Schengen acquis (abolition of the control at internal borders). The statistics prior to 2008 concern all **inadmissible aliens** (not limited to third-country nationals).

In recent years, the majority of irregular migrants **detained** in Lithuania are the citizens of Russia, Belarus, Ukraine and other post-Soviet republics. However, a significant number of irregular migrants are nationals of third countries of Asia and Africa.

Strengthening of the migration control in Republic of Lithuania, by defining the responsibilities and functions of institutions engaged in the prevention and control of irregular migration, as well as cooperation and practical activities of competent institutions (measures applied) led to the greater numbers of identified irregular third-country nationals in Lithuania in 2009 and 2010.

### 6.1. National statistics related with irregular migration (Eurostat)

The majority of unadmitted citizens are the citizens of the Russian Federation, Belarus and Ukraine. In 2010, the number of citizens who were denied entry from Georgia increased and was as high as 145.

The main reasons for **non-admission** of third country nationals are: the absence of a valid visa or a residence permit; failure to justify the purpose and conditions of stay; a threat to public order or public security, and the absence of valid travel documents.

*Number of unadmitted persons by nationality, 2005-2010*

<b>Nationality/Citizenship</b>	<b>2005</b>	<b>2006</b>	<b>2007</b>	<b>2008</b>	<b>2009</b>	<b>2010</b>
Russian Federation	1493	1465	1346	1048	835	800
Belarus	756	856	707	732	533	703
Ukraine	334	312	352	120	104	100

In recent years, the majority of irregular migrants **detained** were also the citizens of Russia, Belarus, and Ukraine. More than 40% of detained irregular migrants are persons from 18 to 34 years old and more than 50% are persons over 50 years old. A large proportion, more than 70% of detained irregular migrants, are men.

*Number of detained irregular migrants persons by nationality, 2005-2010*

<b>Nationality/Citizenship</b>	<b>2005</b>	<b>2006</b>	<b>2007</b>	<b>2008</b>	<b>2009</b>	<b>2010</b>
Russian Federation	494	402	241	180	515	430
Belarus	220	163	174	175	330	360
Ukraine	127	174	153	140	130	125

The majority of third country nationals **obliged to leave** are citizens of Russia, Belarus, and Ukraine.

*Number of third country nationals obliged to leave, by nationality, 2005-2010*

<b>Nationality/Citizenship</b>	<b>2005</b>	<b>2006</b>	<b>2007</b>	<b>2008</b>	<b>2009</b>	<b>2010</b>
Russian Federation	465	372	202	143	343	399
Belarus	184	125	141	140	285	358
Ukraine	110	169	142	130	99	121

In 2010, the number of asylum seekers doubled (in 2010 it was the first time that asylum applications were filed by 362 persons; in 2009 this number was 185). In particular, the number of asylum seekers from Georgia grew. In 2010 they submitted 231 applications (over 60% of all applications).

*Number of rejected asylum applications, 2005-2010*

	<b>2005</b>	<b>2006</b>	<b>2007</b>	<b>2008</b>	<b>2009</b>	<b>2010</b>
First instance decision	30	29	51	37	101	176
Final decision	-	-	-	35	49	61

Data by nationality and gender of applicants for the year 2008-2010 is presented in the statistical supplement. This data was not collected before 2008.

In recent years, the humanitarian status for third-country nationals (refugee status, subsidiary protection or temporary protection) has not been withdrawn (up to 2008 such data was not collected).

## **6.2. Other national statistics about irregular migration**

Statistics on irregular immigrants in Lithuania was collected from publicly available sources as well as the statistical data of the authorities that control the presence and stay of aliens in the Republic of Lithuania. These data are based on actual figures.

Used data sources – <http://www.migracija.lt>; <http://www.pasienis.lt> <http://www.policija.lt> and the survey of the specialists of these institutions.

Given the statistics on irregular migration, in recent years the changes are minor. In 2010 a total of 1345 irregular immigrants were detained (for comparison: in 2009 – 1495, in 2008 – 910, in 2007 – 1045). Examination of recent statistics (data is presented in the statistical Annex) demonstrates that the majority of irregular immigrants are the nationals of Russia (430), Belarus (360), and Ukraine (125) (data of 2010). In recent years there has been an increase in irregular migrant flow from Georgia (in 2010 - 55 irregular immigrants who were citizens of Georgia were detained, in 2009 – 80, for comparison in 2007 this number was 9, and in 2006 and 2005 less than 5).

In the implementation of provisions of Council Directive 2001/51/EC, transposing them into national law and providing for liability/penalties to carriers, since 2006 there have been about 100 cases when carriers have been prosecuted for transportation of aliens without necessary documents. Since 2006, at Vilnius airport alone, carriers were imposed sanctions 64 times (in 2006 – 7, in 2007 – 39; in 2008 – 5, in 2009 – 7, in 2010 – 6).

The number of marriages of convenience of Lithuanian citizens with foreigners who seek to legitimize themselves in Lithuania in order to obtain a residence permit and to gain access to the right of free movement is growing. In 2010, upon suspicion of marriages of convenience, officers of The Migration Service of Vilnius Territorial Police alone checked more than one hundred of mixed families of the citizen of the Republic of Lithuania and foreign nationals. Ten of them were recognised as fictitious (in 2009 seven such marriages were registered in Vilnius Migration Office alone). Vilnius Migration Service has collected sufficient data supporting the fictionality of the

marriage, and decisions were made in respect of ten foreign nationals to withdraw or deny the permits for residence in Lithuania, five cases were referred to the Prosecutor's Office, which appealed to the court for the recognition of marriages of convenience as null and void from the moment of their conclusion<sup>3</sup>.

### ***Costs of measures for fighting with irregular migration***

The following funds were provided according to the list of projects financed by the annual programme of the External Borders Fund in 2009 for staff training (for instance, in the area of legal measures of the Community on external borders and visas, in particular in the application of the Schengen Borders Code and the Code on Visas): to the Ministry of Foreign Affairs LTL 175,315.92, to the SBGS LTL 612,468.02, to the Police LTL 371,451.20.

Details of the lists of projects of annual programmes of the External Borders Fund is published on the website of the Ministry of the Interior of the Republic of Lithuania<sup>4</sup>.

In 2010, the European Return Fund was used to finance the implementation of the project in 2009 – surveillance of foreigners and organisation of their forcible return/expulsion: 2.2. “Costs of the trips for expulsion and the return of foreigners and organisational activities.” In 2009, this project was funded to the amount of LTL 172396.43. The uptake period of funds is from 1 July 2010 until 30 June 2011.

For the period from 1 July 2010 until 30 September 2010 – LTL 43099.43, a total of 74.84 of funds allocated for the 3<sup>rd</sup> quarter of 2010 were used during the mentioned period, i.e. LTL 32257.63.

For the period from 1 October 2010 to 31 December 2010 LTL 43,099.00, a total of 132.28 of funds allocated for the 4<sup>th</sup> quarter of 2010 were used during the mentioned period, i.e. LTL 57,010.74.

Detailed information about the lists of annual programmes of the European Return Fund is presented on the website of the Ministry of the Interior of the Republic of Lithuania <http://www.vrm.lt/index.php?id=1098>

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<sup>3</sup> Police department. <http://www.policija.lt/index.php?id=11893>

<sup>4</sup> Ministry of the Interior <http://www.vrm.lt/index.php?id=1083>

## 7. CONCLUSIONS

As demonstrated in this study, irregular migration is not a big challenge in Lithuania. The scale of irregular migration is small and has changed little in recent years. The main countries of origin also remain unchanged (Russia, Ukraine, Belarus), and accession to the Schengen Area has strengthened Lithuania's response to irregular immigration. The determining factors for Lithuania's successful response to new threats of irregular migration have been affected the transposition of EU legislation, the support of the European Return and External Borders Funds, participation in Frontex operations, as well as national measures taken in response to new forms of irregular migration.

However, the overview of the different stages of irregular migration shows that the effectiveness of the measures applied is not the same. The study showed that international and inter-institutional cooperation is important in preventing irregular migration routes before the arrival of migrants to Lithuania, the modernisation of equipment helps to identify irregular immigrants at the entry stage, and that programmes of expulsion and return are running quite smoothly. But the greatest challenge for Lithuania is the presence of irregular immigrants within the country and, in particular, the fight against new methods of irregular migration – marriages of convenience and the establishment of companies in order to obtain a residence permit. A detailed analysis of these new methods and appropriate preventative measures at the national level will be the key factors that will determine the efficiency of the Lithuanian fight against irregular immigration.

The prevention of irregular immigration **before the arrival of foreigners in** Lithuania is *rather successful*. In this regard, the consultation mechanism for the issue of visas is important and effective: consular services, through the mediation of the MD, consult with the SBGS and State Security Department on the issue of visas to citizens of the countries classified as irregular migration risk countries. According to SBGS representatives, such inter-institutional cooperation is an effective mechanism in reducing the number of visas issued by fraud. In analysing the means and methods of irregular migration, the network of liaison officers in the main countries of origin of irregular migration is also important.

EU assistance has resulted in the *successful* fight against irregular migration **at the entry stage**. The land border is likely to be the greatest probable entry point for illegal migration; therefore, the number of persons refused entry here is the largest: in 2010 a total of 95 per cent of people who were refused entry attempted to do so via the land frontier. The modernisation of equipment and staff training has significantly contributed to the successful protection of the border. The EU's support allowed for the modernisation of border monitoring equipment and the updating of document verification and analysis equipment. Participation in Frontex activities facilitates the constant upgrading of personnel qualifications, the sharing of experience and information on patrolling the border.

Cooperation with neighbouring countries (Latvia, Poland) with which Lithuania has an internal EU border is of particular importance at this stage to prevent irregular migrants who transit through Lithuania to Western Europe. Therefore, there is an ongoing exchange of information, participation in work groups, and joint inspections. Measures applied at the entry stage resulted in the fall in the number of persons not admitted by almost 40 per cent – from 3165 persons in 2005 to 1967 persons

in 2010.

However, Lithuania is faced with its *largest challenge* – the control of irregular migration among foreigners **staying in Lithuania**. Upon the identification of existing problems, significant changes to law and order were made in the country; inspections of companies established by foreigners and of employers employing foreigners began. However, there is a lack of research on the effectiveness of the measures implemented to help create future policies and measures to combat irregular migration.

In order to strengthen the control of irregular migration, amendments to laws were initiated, which have clearly defined the functions of the institutions responsible for the control of foreigners. They clearly defined and expanded the powers of the SBGS in inspecting foreigners within the country, which has led to the more efficient allocation of the functions between the institutions involved in the control of foreigners. Other changes are planned for the future.

Also, the statutory provision which had been abused by foreigners to get residence permit in Lithuania was identified and amended in 2009. Foreigners, like Lithuanian citizens, had to deposit 10 thousand LTL of share capital in order to set up a business. Having established the company, aliens easily obtained residence permits and not everyone would engage in business upon arrival. Therefore amendments have been made for the establishment of enterprises. They provide that when a company is established by a foreigner, the nominal value of the share capital must be at least 50 thousand LTL. Since the amendments became effective at the end of 2009, the decisions on the issue/replacement of residence permits decreased more than 2-fold for persons who wish to engage in lawful activities and set up a company (from 826 decisions in 2009 to 383 decisions in 2010). Although the number of persons establishing companies has declined, it is not known whether this was entirely due to the amendment. It is also unknown whether the amendments to the law have not deterred honest businessmen. It is therefore *advisable to perform a deeper analysis* to evaluate the effectiveness of these measures.

To find out whether a company is actually established to engage in business, the MD, the State Tax Inspectorate and the police have launched joint inspections of the economic activities of companies established by foreigners. But there is still a lack of consensus on how to assess whether the entity is engaged in business activities, and therefore there is an urgent need to establish reasonable and clearly defined criteria.

Another new irregular method of obtaining legal status was also observed in Lithuania – marriages of convenience. In 2009 the rules were established on the procedure of inspection of such marriages (and adoptions). Currently, Vilnius district police Migration Board actively carries out inspections to determine whether marriages are fictitious, and this has proved to be an efficient tool. It has been determined that about 10 per cent of all checked marriages are fictitious. *It is recommended that such inspections are conducted more actively throughout the country.*

It is difficult, so far, to assess the scale of the potential illegal employment of third-country nationals. During inspections involving more than one institution, only a few cases of illegal employment during the year have been found. The more common forms of illegal work are working without a permit, or working in a company other than the one specified in the work permit.

The **departure of irregular migrants** from Lithuania *does not cause* any significant *problems*. If it is determined that an alien is staying in the country illegally or has crossed the border illegally, he leaves voluntarily or is returned. There have been only several cases in which foreigners could not be returned. Readmission agreements are not frequently used, but this far they have been effective in carrying out return operations. Upon the transposition of the provisions of the Return Directive, Lithuania will have a clearly stated principle of the priority of voluntary return over forced return, as well as may extend the period within which an alien is entitled to leave voluntarily (from 15 to 30 days). Assistance from the RF is particularly important to Lithuania in helping immigrants to leave or in carrying out return operations. It facilitated the voluntary return operations and the provision of the reintegration assistance, which, as indicated by the short-term practice, is successful as a measure for the prevention of repeated unsuccessful (irregular) migration.

Lithuania has been carrying out only small-scale legalization programmes. Currently, the draft law submitted to the Seimas provides for the possibility, in isolated cases, to legalise the stay of foreigners staying in the country illegally, or to avoid administrative liability for an illegal stay in the Republic of Lithuania.

The amendments to the laws and the introduction of new practical measures to fight irregular migration were the reasons why the numbers for irregular migration did not grow after Lithuania's accession to the Schengen area. Lithuania successfully combats irregular migration at all stages. More attention should be given to the control of foreigners' stays in the country and, in particular, to the determination of the effectiveness of the measures applied.

## **8. REFERENCES**

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Lithuanian Police <http://www.policija.lt>

Migration Department <http://www.migracija.lt>

State Border Guard Service <http://www.pasienis.lt>

Lithuanian court information system <http://liteko.teismai.lt/>

## **SUPPLEMENT**

**Standard set of tables for the collection of national statistics on irregular migration from Eurostat**