EUROPEAN COURT OF HUMAN RIGHTS
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Lithuanian border guards' failure to allow applicants to lodge asylum applications violated Convention

In today's **Chamber** judgment[1] in the case of **M.A. and Others v. Lithuania** (application no. 59793/17) the European Court of Human Rights held, by a majority, that there had been:

a violation of Article 3 (prohibition of torture), and

a violation of Article 13 (right to an effective remedy) of the European Convention on Human Rights.

The case concerned a Russian family of seven who, after leaving Chechnya, tried on three separate occasions to seek asylum in Lithuania, but were each time refused the right to make an application at the border.

The Court found in particular that, contrary to the Government's arguments, the applicants had indeed sought asylum on each of the three occasions they had tried to cross the border from Belarus to Lithuania. It also held that the Lithuanian border authorities had refused to accept the applicants' asylum requests and forward them to competent authorities for examination of whether the applicants faced a risk of torture, or inhuman or degrading treatment or punishment, if they were returned to Belarus and subsequently to Chechnya.

The Court further found that, although the applicants had not appealed against the decisions refusing them entry to Lithuania, the fact that lodging such an appeal would not have automatically suspended their return to Belarus meant that it could not be considered an effective remedy.

Principal facts

The first two applicants, Mr M.A. and Ms M.A., are Russian nationals who were born in 1988 and 1994, respectively. The remaining applicants, also Russian nationals, are their five children, all of whom were born between 2010 and 2016. At the time of the adoption of the present judgment, all seven applicants lived in Poland.

In April 2017 the applicants left their home in the Chechen Republic and travelled to Belarus with the intention of seeking asylum in Poland. They claimed that, when living in Chechnya, Mr M.A. had had problems with the Russian security services and that he had been tortured after refusing several requests to become an informer. The applicants' efforts to seek asylum in Poland are the subject of *M.A. and Others v. Poland* (application no. 42902/17).

The family subsequently made three separate efforts to gain entry into Lithuania from Belarus.

On 16 April 2017, the applicants arrived at a checkpoint on the Lithuania-Belarus border. They were refused entry to Lithuania as they did not have valid visas or residence permits. The applicants claimed that they had submitted asylum applications orally, but asylum proceedings were not initiated. They were informed, in English and Lithuanian, that they had been refused entry, and that they could appeal this decision within fourteen days. When asked to sign these decisions, Mr M.A.

1. Under Articles 43 and 44 of the Convention, this Chamber judgment is not final. During the three-month period following its delivery, any party may request that the case be referred to the Grand Chamber of the Court. If such a request is made, a panel of five judges considers whether the case deserves further examination. In that event, the Grand Chamber will hear the case and deliver a final judgment. If the referral request is refused, the Chamber judgment will become final on that day.:
Once a judgment becomes final, it is transmitted to the Committee of Ministers of the Council of Europe for supervision of its execution. Further information about the execution process can be found here: www.coe.int/t/dghl/monitoring/execution.

and Ms M.A. filled the relevant part of each of the seven decisions with the word “azul”, written in the Cyrillic alphabet. All seven applicants were returned to Belarus the same day, and did not appeal against the Lithuanian authorities’ decision.

On 11 May 2017, the applicants made a second attempt to cross into Lithuania, this time at a different checkpoint. They again claimed that they submitted asylum applications orally. However, they were refused entry once again, for the same reasons as before. Mr M.A. and Ms M.A. signed the seven decisions refusing them entry, which they confirmed had been translated into Russian. They did not appeal against this decision after their subsequent return to Belarus.

Eleven days later, the family again tried to gain entry to Lithuania, this time at the railway border checkpoint in Vilnius. They had with them a written asylum application, prepared in Russian by a Belarussian human rights organisation. Asylum proceedings, however, were not initiated. Instead, they were detained overnight and returned to Belarus the following day. They did not appeal.

The family’s legal stay in Belarus expired on 10 July 2017. Not long after their subsequent return to Russia, Mr M.A. was detained. In January 2018, Ms M.A. and the children managed to submit asylum applications in Poland, where they were admitted to a refugee reception centre while awaiting the outcome of those applications. Mr M.A. joined his wife and children in the centre after submitting his own asylum application in March 2018.

Complaints, procedure and composition of the Court

Relying on Article 3 of the Convention, the applicants complained that the Lithuanian border authorities had violated their right not to suffer torture or inhuman or degrading treatment. Specifically, they contended that, in denying them access to the asylum procedure, the border authorities had returned them to a country from which it was likely that they would be repatriated to Chechnya, where they would in turn be likely to suffer treatment prohibited under Article 3.

Relying on Article 13 of the Convention, the applicants also complained that they had not had access to an effective remedy against the decisions to deny them access to the asylum procedure.

The application was lodged with the European Court of Human Rights on 25 July 2017.

Judgment was given by a Chamber of seven judges, composed as follows:

Ganna **Yudkivska** (Ukraine), *President*,
Paulo **Pinto de Albuquerque** (Portugal),
Faris **Vehabović** (Bosnia and Herzegovina),
Egidijus **Kūris** (Lithuania),
Georges **Ravarani** (Luxembourg),
Marko **Bošnjak** (Slovenia),
Péter **Paczolay** (Hungary),

and also Andrea **Tamietti**, *Deputy Section Registrar.*

Decision of the Court

Article 3

The Lithuanian Government disputed the applicants’ version of the facts and argued that they had at no point expressed a wish to seek asylum. However, the Court rejected that argument. It firstly noted that on each of the three occasions that the applicants had tried to gain entry to Lithuania, they had made no effort to disguise the fact that they had no valid documentation granting them

access to that country. In the Court's view, the applicants' behaviour was consistent with their claim that the purpose of their presence at the Lithuanian border had been to seek asylum.

Furthermore, when they had first sought to enter the country, Mr M.A. and Ms M.A. had written the word "azul" on all seven decision forms which they had been given to sign. This, the Court accepted, was a word often used by Chechen asylum-seekers to mean "asylum". The Court noted that neither Lithuanian nor international law required asylum applications to be lodged in a specific form. It also emphasised the importance of ensuring adequate interpretation for asylum-seekers at the border.

Moreover, on their third attempt to enter the country, the applicants had submitted a Russian-language application for asylum. The Court concluded that it had no reason to doubt the authenticity of this claim, which was substantiated by photo evidence showing the application next to the applicants' train tickets to Vilnius.

Having accepted as credible the applicants' account of two of their attempts to ask for asylum at the Lithuanian border, the Court also accepted their claim that they had requested asylum orally on their other attempt to cross the border, despite a lack of direct evidence supporting it.

The Court, reiterating the principle of subsidiarity, reaffirmed that it was not its role to consider the merits of applications for asylum or international protection.

Instead, the question of whether the Lithuanian border authorities had violated the applicants' Article 3 rights had to be answered with reference to whether they had employed appropriate procedures to allow for an examination of the risk of torture, or inhuman or degrading treatment or punishment, if the applicants were returned to Belarus and subsequently to Chechnya.

The Court found that such procedures had not been followed. Despite the fact that Lithuanian law obliged border guards to accept all asylum applications submitted at the border and forward them to the competent authority for examination on the merits, the border guards had failed to act accordingly. Nor was there any evidence that they had they tried to clarify the reason for the applicants' presence at the border without any valid travel documents. Lastly, it did not appear that the border guards had conducted any assessment of the risk the family might face in being returned to Belarus, a country which was not party to the Convention and which was known to be unsafe as a third country for Chechen asylum-seekers.

By a majority of four to three, the Court held that there had been a violation of the applicants' rights under Article 3.

Article 13

The Court also found, by a majority of four to three, that the applicants had not had access to an effective remedy and that their rights under this provision had been violated.

The Court came to this conclusion despite the fact that the applicants had not appealed against the decisions refusing them entry to Lithuania. It stated that, whether successful or not, an appeal would not have had automatic suspensive effect, meaning that it would not have prevented their return to Belarus pending the result of their appeal. Accordingly, in line with the Court's case-law, such an appeal could not be considered an effective remedy.

Just satisfaction (Article 41)

The Court held, by a majority of four to three, that Lithuania was to pay the applicants, collectively, 22,000 euros (EUR) in respect of non-pecuniary damage.

Separate opinions

Judge Pinto de Albuquerque expressed a concurring opinion. Judges Ravarani, Bošnjak and Paczolay expressed a joint dissenting opinion. These opinions are annexed to the judgment.

The judgment is available only in English.

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