



**ENSURING THE PRINCIPLE OF THE BEST INTERESTS OF THE CHILD:
THE CASE OF TRANSPOSITION AND IMPLEMENTATION OF THE
DIRECTIVES 2013/32/EU AND 2013/33/EU IN LITHUANIA**

IED Research Project: “Migration, borders control and solidarity: Schengen at stake?”

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Abstract: This article analyses and evaluates the transposition of the latest Common European Asylum System Directives 2013/32/EU on common procedures for granting and withdrawing international protection and 2013/33/EU laying down standards for the reception of applicants for international protection in Lithuania, concentrating on the ensuring one of the most prominent contemporary human rights principle, also enshrined in these two directives - the best interests of the child. For this purpose, Lithuanian legislation is analyzed and evaluated, indicating good and bad transposition and implementation practices; also practical recommendations how to improve transposition and implementation and thus strengthen CEAS and make it more effective are formulated.

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Introduction

Migration has always posed serious challenges to Europe. However, recent massive flow of migrants from Middle East is not only challenging to freshly upgraded Common European Asylum System (hereafter - CEAS), but also threatening European Union Member States' solidarity and thus the whole European integration foundations. Reacting to this crisis, European Commission on 13 May 2015 presented its European Agenda on Migration,¹ setting out a comprehensive approach to improve the management of migration in all its aspects. The Agenda included not only the adoption of new initiatives in the area of asylum and migration, but also a commitment to prioritize transposition and implementation of the latest CEAS asylum and migration legislation when considering infringement procedures. Besides that, in its resolution of 10 September 2015 on migration and refugees in Europe European Parliament has also urged the Commission to ensure full transposition and effective implementation of the CEAS legislation by all participating Member States to guarantee common effective, consistent and humane standards across European Union. Particularly standards for the most vulnerable persons – women and children.

¹ Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, A European Agenda on Migration, Brussels, 13.5.2015 COM(2015) 240 final.

In September 2015, European Commission adopted 40 infringement decisions against several Member States for failing to fully implement legislation making up the CEAS.² 8 more infringement decisions were taken in December.³ Lithuania was among those Member States. She received letters of formal notice for the non-communication of national transposition measures in accordance with the procedure stipulated in the Article 258 of the Treaty on the Functioning of the European Union⁴ for the two latest CEAS directives - Directive 2013/32/EU of the European Parliament and of the Council of 26 June 2013 on common procedures for granting and withdrawing international protection⁵ (hereafter – Directive 2013/32/EU) and Directive 2013/33/EU of the European Parliament and of the Council of 26 June 2013 laying down standards for the reception of applicants for international protection⁶ (hereafter – Directive 2013/33/EU). The adoption of these directives in June 2013 together with Regulation (EU) No. 604/2013⁷ and Regulation (EU) No. 603/2013⁸ constituted the final step in the second phase of harmonization of asylum and migration law in Member States. Both directives had to be transposed by Member States into national legislation by 20 July 2015.

The purpose of the present article is to evaluate the situation of transposition of the Directives 2013/32/EU and 2013/33/EU in Lithuania, concentrating on the ensuring one of the most prominent contemporary human rights principle, also enshrined in these two

² More Responsibility in managing the refugee crisis: European Commission adopts 40 infringement decisions to make European Asylum System work, Press Release of European Commission of 23 September 2015, http://europa.eu/rapid/press-release_IP-15-5699_en.htm

³ Implementing the Common European Asylum System: Commission escalates 8 infringement proceedings, Press Release of European Commission of 10 December 2015, http://europa.eu/rapid/press-release_IP-15-6276_en.htm

⁴ Consolidated version of the Treaty on the Functioning of the European Union, OJ C 326, 26.10.2012, p. 47–390

⁵ OJ L 180, 29.6.2013, p. 60–95

⁶ OJ L 180, 29.6.2013, p. 96–116

⁷ Regulation (EU) No 604/2013 of the European Parliament and of the Council of 26 June 2013 establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person, OJ L 180, 29.6.2013, p. 31–59

⁸ Regulation (EU) No 603/2013 of the European Parliament and of the Council of 26 June 2013 on the establishment of 'Eurodac' for the comparison of fingerprints for the effective application of Regulation (EU) No 604/2013 establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person and on requests for the comparison with Eurodac data by Member States' law enforcement authorities and Europol for law enforcement purposes, and amending Regulation (EU) No 1077/2011 establishing a European Agency for the operational management of large-scale IT systems in the area of freedom, security and justice, OJ L 180, 29.6.2013, p. 1–30.

directives - the best interests of the child. For this purpose, national legislation of Lithuania will be analyzed and evaluated, indicating good and bad transposition and implementation practices; also practical recommendations how to improve transposition and implementation and thus strengthen CEAS and make it more effective will be formulated.

Let us start with the essence of the best interests of the child principle, related obligations for Member States.

I. The best interests of the child principle

The best interests of the child principle, enshrined in the Article 3(1) of the Convention on the Rights of the Child, provides that the child has a right to have his or her best interests assessed and taken into account as a primary consideration in all actions or decisions that concern him or her, both in the public and private sphere. As the Committee on the Rights of the Child (hereafter - the Committee) indicated,⁹ this principle expresses one of the fundamental values of the Convention and is one of the four general principles of the Convention for interpreting and implementing all the rights of the child. It is a dynamic concept that requires an assessment appropriate to the specific context.

The Committee explains the child's best interests as a threefold concept: a substantive right, a fundamental, interpretative legal principle and a rule of procedure.¹⁰ The best interests of the child as a substantive right means the child's right to have his or her best interests assessed and taken as a primary consideration when different interests are being considered in order to reach a decision on the issue at stake, and the guarantee that this right will be implemented whenever a decision is to be made concerning a child, a group of identified or unidentified children or children in general. As a fundamental, interpretative legal principle it means that the interpretation of legal provision which most effectively serves the child's best interests should be always chosen. The best interests of the child as a rule of procedure means that whenever a decision is to be made affecting a specific child, an identified group of children or children in general, the decision-making process must include an evaluation of the possible impact (positive or negative) of the decision on the child or children concerned. Assessing and determining the best interests of the child require

⁹ General comment No. 14 (2013) on the right of the child to have his or her best interests taken as a primary consideration (art. 3, para. 1), Committee on the Rights of the Children, 2013, p. 3

¹⁰ *Ibid.*, p. 4

procedural guarantees. Furthermore, the justification of a decision must show that the right has been explicitly taken into account.

Three different types of obligations for States parties arise out of the best interests of the child principle.¹¹ First, the obligation to ensure that the child's best interests are appropriately integrated and consistently applied in every action taken by a public institution, especially in all implementation measures, administrative and judicial proceedings which directly or indirectly impact on children. Second, the obligation to ensure that all judicial and administrative decisions as well as policies and legislation concerning children demonstrate that the child's best interests have been a primary consideration. This includes describing how the best interests have been examined and assessed, and what weight has been ascribed to them in the decision. And third, the obligation to ensure that the interests of the child have been assessed and taken as a primary consideration in decisions and actions taken by the private sector, including those providing services, or any other private entity or institution making decisions that concern or impact on a child.

The Committee also stresses that the concept of the child's best interests is complex and its content must be determined on a case-by-case basis. It is through the interpretation and implementation of Article 3(1), in line with the other provisions of the Convention, that the legislator, judge, administrative, social or educational authority will be able to clarify the concept and make concrete use thereof. Accordingly, the concept of the child's best interests is flexible and adaptable. It should be adjusted and defined on an individual basis, according to the specific situation of the child or children concerned, taking into consideration their personal context, situation and needs. For individual decisions, the child's best interests must be assessed and determined in light of the specific circumstances of the particular child. For collective decisions – such as by the legislator –, the best interests of children in general must be assessed and determined in light of the circumstances of the particular group and/or children in general. In both cases, assessment and determination should be carried out with full respect for the rights contained in the Convention and its Optional Protocols.

¹¹ *Ibid.*, p. 5

II. EU law and the best interests of the child principle

Protection of fundamental rights, including the best interests of the child principle, enters EU law through the doctrine of general principles of EU law that was consistently developed in the jurisprudence of the Court of Justice of the European Union. Now, after some years, the Article 3.5 of the Treaty on European Union¹² stipulates the Union will contribute to the protection of human rights and, in particular, the rights of the child. The principle is also enshrined in the Article 24 of the European Union Charter of Fundamental Rights.¹³ These provisions are binding on the European Union and Member States in transposing and implementing EU law.

In addition, Stockholm Programme,¹⁴ adopted on 2 December 2009, in order to set the course of EU migration and asylum policy objectives for Member States in the period 2010-2014, also expressly stated mentioned the rights of the child and the principle of the best interests of the child. In response to the Stockholm Programme, the European Commission developed an Action Plan on Unaccompanied Minors (2010-2014),¹⁵ which put the standards established by the United Nations Convention on the Rights of the Child at the heart of any action concerning unaccompanied minors.¹⁶

All Member States have also signed and ratified the Convention for the Protection of Human Rights and Fundamental Freedoms. It's Article 8, dealing with the right to respect for private and family life provides any child within the EU geographic area a qualified right to continue to enjoy their family and private life there.¹⁷ The jurisprudence of the European Court of Human rights dealing with this Article must also be taken into account.

¹² Consolidated version of the Treaty on European Union, OJ C 326, 26.10.2012, p. 13–390

¹³ Charter of Fundamental Rights of the European Union, OJ C 326, 26.10.2012, p. 391–407

¹⁴ The Stockholm Programme — An open and secure Europe serving and protecting citizens, OJ C 115, 4.5.2010, p. 1–38

¹⁵ Communication from the Commission to the European Parliament and the Council - Action Plan on Unaccompanied Minors 2010 - 2014 (6/5/2010 - COM (2010) 213 final)

¹⁶ Judicial implementation of Article 3 of the Convention on the Rights of the Child in Europe: the case of migrant children including unaccompanied children, Office of the United Nations High Commissioner for Human Rights Regional Office for Europe, 2012. P. 17

¹⁷ Ibid., P. 19.

III. Directives 2013/32/EU and 2013/33/EU and the best interests of the child principle

Directive 2013/32/EU establishing common procedures for granting and withdrawing international protection pursuant to Directive 2011/95/EU.¹⁸ This is a significant step forward from Directive 2005/85/EC¹⁹ with its the minimum standards of international protection. As European Council on Refugees and Exiles (hereafter – ECRE) indicates, Directive 2013/32/EU significantly changes and improves certain procedural safeguards and guarantees. However, it also still leaves considerable room for maneuver to Member States as to the way these standards may be transposed and implemented into national legislation, while some of its provisions continue to set rather low protection standards. Moreover, the, at times, extreme complexity of its provisions risks undermining the effectiveness of the procedural safeguards and consequently complicates its proper implementation.²⁰

Directive 2013/33/EU repeals Directive 2003/9/EC²¹ that laid down minimum standards for the reception of asylum seekers for the Member States. Based on the same principles, it aims to harmonize the reception conditions for applicants for international to ensure a dignified standard of living and comparable living conditions in all Member States. As ECRE indicates, Directive 2013/33/EU increases the level of and access to reception conditions for applicants for international protection during the examination of their application in many respects, but at the same time still leaves considerable flexibility for Member States in the implementation and transposition of the standards laid down in the Directive.²²

The best interests of the child principle, as a primary consideration of the Member States during the application of the Directives 2013/32/EU and 2013/33/EU, is stipulated

¹⁸ Directive 2011/95/EU of the European Parliament and of the Council of 13 December 2011 on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection, and for the content of the protection granted, OJ L 337, 20.12.2011

¹⁹ Council Directive 2005/85/EC of 1 December 2005 on minimum standards on procedures in Member States for granting and withdrawing refugee status, OJ L 326, 13.12.2005, p. 13–34

²⁰ Information Note on Directive 2013/32/EU of the European Parliament and of the Council of 26 June 2013 on common procedures for granting and withdrawing international protection (recast), 2015, European Council on Refugees and Exiles (ECRE), p.4

²¹ Council Directive 2003/9/EC of 27 January 2003 laying down minimum standards for the reception of asylum seekers, OJ L 31, 6.2.2003, p. 18–25

²² Information note on Directive 2013/33/EU of the European Parliament and of the Council of June 26 June 2013 laying down standards for the reception of applicants for international protection., 2015, European Council on Refugees and Exiles (ECRE), p.4

their preambles. Besides that, it is directly mentions in a number of articles and is related with a five child rights issues covered by the Directives 2013/32/EU and 2013/33/EU. These are the child's right to make an application for asylum, age assessment of the child asylum applicant, separated children and their reunification with families, detention of the child and procedural safeguards (right to representation, interviews of children and right to information). The analysis of these directives' provisions and their transposition and implementation into Lithuanian legislation is presented below.

a. Child's right to make an application for asylum

An application for asylum means an application made by a foreigner or a stateless person which can be understood as a request for protection under the Geneva Convention of 1951 or national refugee law.²³

Applications for asylum made on behalf of the minors are dealt in the Article 7 of the Directive 2013/32/EU. Paragraph 3 obligates Member States to ensure that a minor has the right to make an application for international protection either on his or her own behalf, if he or she has the legal capacity to act in procedures according to the law of the Member State concerned, or through his or her parents or other adult family members, or an adult responsible for him or her, whether by law or by the practice of the Member State concerned, or through a representative. Paragraph 4 further obligates Member States to ensure that the appropriate bodies referred to in Article 10 of Directive 2008/115/EC²⁴ have the right to lodge an application for international protection on behalf of an unaccompanied minor if, on the basis of an individual assessment of his or her personal situation, those bodies are of the opinion that the minor may have protection needs pursuant to Directive 2011/95/EU. Paragraph 5 leaves Member States a discretion to determine when a minor can make an application on his or her own behalf, when the application of an unaccompanied minor has to be lodged by a representative as provided for in Article 25(1)(a) and when the lodging of an application for international protection is deemed to constitute also the lodging of an application for international protection for any

²³ Asylum and Migration Glossary 3.0, European Migration Network, 2014, P. 28.

²⁴ Directive 2008/115/EC of the European Parliament and of the Council of 16 December 2008 on common standards and procedures in Member States for returning illegally staying third-country nationals, OJ L 348, 24.12.2008, p. 98–107

unmarried minor. These provisions of the Article 7 of the Directive 2013/32/EU are transposed and implemented by the Law on the Legal Status of Aliens.²⁵ Article 65 gives alien a right to apply for and be granted asylum in the Republic of Lithuania in accordance with the procedure laid down in this Law. In case of indications that an alien might apply for the asylum in a place of detention, border crossing point or transit zone, he must be informed understandably about this right and related procedures. According to the Article 67(2), an alien personally lodges his application for asylum. Minors' application may be lodged by one of his adult family members. Unaccompanied minors' application may be lodged by his or her representative.

b. Age assessment of the child asylum applicant

Age assessment in asylum procedures is a process by which authorities seek to establish the chronological age, or range of age, of a person in order to determine whether an individual is a child or not.²⁶ Age assessment procedures are problematic for a number of reasons and often put the enjoyment of rights in jeopardy. Medical examinations can interfere with the child's right to privacy and be detrimental to the child's health, in particular when they involve radiological testing.²⁷

Age assessment of the applicant is regulated in the Article 25(5) of the Directive 2013/32/EU. Member States have discretion to use medical examinations to determine the age of unaccompanied minors within the framework of the examination of an application for international protection where, following general statements or other relevant indications, they have doubts about the applicant's age. If, thereafter, there are still doubts left, the applicant must be assumed as a minor. Any medical examination must be performed with full respect for the individual's dignity, be the least invasive examination and be carried out by qualified medical professionals allowing, to the extent possible, for a reliable result. Where medical examinations are used, unaccompanied minors must be appropriately informed in a language they understand prior to the examination of their application that

²⁵ Law No. IX-2206 on the Legal Status of Aliens of the Republic of Lithuania (with latest amendments made by the Law No. XII-2080), Valstybės žinios, 2004-04-30, No. 73-2539

²⁶ Asylum and Migration Glossary 3.0, European Migration Network, 2014, p. 22

²⁷ Judicial implementation of Article 3 of the Convention on the Rights of the Child in Europe: the case of migrant children including unaccompanied children, Office of the United Nations High Commissioner for Human Rights Regional Office for Europe, 2012., p. 23

their age may be determined by medical examination. This includes information on the method of examination and the possible consequences of the result of the medical examination for the examination of the application, as well as the consequences of refusal to undergo the medical examination. Unaccompanied minors and/or their representatives must consent to a medical examination to determine the age of the minors and the decision to reject unaccompanied minor's application cannot be solely based on that refusal to undergo a medical examination. The fact that an unaccompanied minor has refused to undergo a medical examination does not prevent the determining authority from taking a decision on the application for international protection.

Mentioned provisions are transposed and implemented by the Law on Legal Status of Aliens and by the Regulation on Procedure for Granting and Withdrawal of Asylum in Republic of Lithuania.²⁸ Article 83(2) of the Law on Legal Status of Aliens stipulates that where, in the course of examining an application for asylum, it is established that, despite a genuine effort of the asylum applicant, the data relevant to the determination of his status cannot be supported by written proof, such data shall be assessed in favor of the asylum applicant and the application for asylum shall be considered as well-founded, if the application for asylum has been lodged at the earliest possible date, unless the asylum applicant can demonstrate good reason for not having done so, all relevant information at the asylum applicant's disposal has been submitted and a satisfactory explanation has been given regarding any lack of other relevant information, the asylum applicant's explanations are coherent and plausible and do not run counter to available specific and general information relevant to the asylum applicant's case. Article 83(5) further stipulates that the Article 83(2) is not applicable and the data that cannot be confirmed by written proof is rejected if, during the examination of application, the asylum applicant misleads the investigation, delays it by his acts or omissions, tries to cheat or if contradictions are established between the facts provided by the asylum applicant that have a decisive effect on the granting of asylum. According to the Article 123, age assessment test is performed in a case of reasonable grounds to doubt an alien's declared age. Age assessment test of unaccompanied minors is performed following the procedure, established by the Minister of

²⁸ The Order of the Minister of Interior of the Republic of Lithuania No. 1V-131 of 24 February 2016 „Approving the Regulation on Procedure for Granting and Withdrawal of Asylum in Republic of Lithuania“ (TAR, 2016-02-25, No. 3630)

Social Security and Labor, the Minister of Interior and the Minister of Health, of asylum applicants – established by the Minister of Interior. Age assessment test must be performed with the consent of an alien whose age is to be assessed. Where the age of a minor alien is assessed, the test shall be performed only with the consent of the alien's legal representatives or representatives. Age assessment test is performed submitting alien, whose age is being determined, with information about assessment procedure and possible consequences of results, in understandable language, respecting the person's dignity, choosing the least invasive methods. The costs related to the performance of an age assessment test are covered by the Republic of Lithuania, except cases when an alien performs age assessment test on his own initiative.

The age assessment procedure is further detailed in the Regulation on Procedure for Granting and Withdrawal of Asylum in Republic of Lithuania. As Paragraphs 104-108 and 114 of the Regulation stipulate, in case of the reasonable doubts about the asylum applicant's age or his family relationship, asylum applicant may be obligated to perform age assessment test and (or) DNA test. If, after performing age assessment test, doubts about the age of asylum applicant remain, such asylum seeker is considered as a minor. The refusal of the asylum applicant to undergo an age assessment test does not preclude the Migration department²⁹ from taking the decision on granting (not granting) him an asylum. Migration department, decided to assign asylum applicant age assessment test, empowers Foreigners' Registration Center³⁰ if asylum applicant is housed there or detained, to approach nearest health care institution having a necessary equipment to perform rengenologic tests to perform asylum applicant's rengenologic test. In health care institution asylum applicant's front handbreadths and wrists, shoulder, collarbone and breastbone roentgenograms are made, which are transported or sent by post by the Foreigners' Registration Center to the Migration department. Asylum applicant's, who is not housed or detained in Foreigner's

²⁹ The Migration Department under the Ministry of Interior of the Republic of Lithuania is the main institution implementing state policy in the area of migration and asylum in close cooperation with migration services which fall under the responsibility of the Police Department under the Ministry of Interior of the Republic of Lithuania.

³⁰ As defined in Article 31² of the Law on Legal Status of Aliens, Foreigners' Registration Center is an establishment to hold temporarily aliens on the grounds stipulated in this law by the ruling of the court or Migration department's decision to accommodate aliens temporarily, to ensure other material admission conditions, to conduct investigation on the identity of the alien and on arrival in the Republic of Lithuania circumstances, to manage aliens accounting and to perform their return and expulsion from the Republic of Lithuania.

Registration Center, rengenologic test performance is organized by the Migration department itself. The rengenologic test is paid by the institution, which approaches health care institution to perform this test. Migration department, received the asylum applicant's roentgenograms, approaches State Forensic Medicine Service's Forensic Medical Criminalistics laboratory and submits asylum applicant's roentgenograms to perform age assessment test and get a conclusion on the age of the applicant (is he a minor or not). After getting conclusions on the age (minor or not), family connections and (or) injuries, its causes, nature and appearance time, empowered civil servant of the Migration department adds it to the asylum applicant's file and fills in vulnerability form, on which basis the head of the empowered Migration department unit or other empowered civil servant may again evaluate the need of special procedural guarantees for asylum applicant and fill in special procedural guarantees form.

c. Separated children and their reunification with families

Separated child is a child under 18 years of age who is outside his country of origin and separated from both parents or their previous legal/customary primary caregiver.³¹ Family reunification means the establishment of a family relationship which is either: the entry into and residence in a Member State, in accordance with the Directive 2003/86/EC,³² by family members of a third-country national residing lawfully in that Member State ('sponsor') in order to preserve the family unit, whether the family relationship arose before or after the entry of the sponsor, or between an EU national and third-country national established outside the EU who then subsequently enters the EU.³³

Provisions dealing with minors are stipulated in the Article 23 of the Directive 2013/33/EU. According to this article, the best interests of the child must always be a primary consideration for Member States when implementing the provisions of this Directive that involve minors. They must ensure a standard of living adequate for the minor's physical, mental, spiritual, moral and social development. In assessing the best interests of the child, Member States must in particular take due account of family

³¹ Asylum and Migration Glossary 3.0, European Migration Network, 2014, p. 264

³² Council Directive 2003/86/EC of 22 September 2003 on the right to family reunification, OJ L 251, 3.10.2003, p. 12–18

³³ Asylum and Migration Glossary 3.0, European Migration Network, 2014, p. 127

reunification possibilities, the minor's well-being and social development, taking into particular consideration the minor's background, safety and security considerations, in particular where there is a risk of the minor being a victim of human trafficking, the views of the minor in accordance with his or her age and maturity.

Member States must also ensure that minors have access to leisure activities, including play and recreational activities appropriate to their age within the premises and accommodation centers referred to in Article 18(1)(a) and (b) and to open-air activities and access to rehabilitation services for minors who have been victims of any form of abuse, neglect, exploitation, torture or cruel, inhuman and degrading treatment, or who have suffered from armed conflicts, and ensure that appropriate mental health care is developed and qualified counselling is provided when needed. They must also ensure that minor children of applicants or applicants who are minors are lodged with their parents, their unmarried minor siblings or with the adult responsible for them whether by law or by the practice of the Member State concerned, provided it is in the best interests of the minors concerned.

The essence of the Article 24 is transposed and implemented by the Article 4 of the Law on Fundamentals of Child Rights Protection. According to this Article, parents, other lawful representatives of the child, state, local government and society institutions, other natural and corporate persons must always obey that everywhere and always the best interest of a child is firstly take into account and that child has a right to use all child rights and liberties, stipulated in Constitution of the Republic of Lithuania, this and other laws and legal acts. Other provisions are transposed and implemented by the Law on the Legal Status of Aliens and its implementing acts. According to the Article 71(2) on the Legal status of Aliens, minor asylum applicants have the right to study according to a general education or vocational training programme/programmes in accordance with the procedure laid down by the Minister of Education and Science. The possibility to use this right is ensured no later than 3 months from the lodging application to grant asylum. Asylum applicant, started studying as a minor, has a right to finish a general education or vocational training programme/programmes, if during the studies the reached the age of 18. As the Article 79(3) stipulates, unaccompanied minor asylum applicant, under the procedure established by the Minister of Interior and the Minister of Social Security and Labor, is

accommodated with adult relatives, legal representative or at Refugees Reception Center, if his legal representative does not object. Taking the decision on the accommodation his opinion according to age and maturity is taken into account. Refugees' Reception Center is established, reorganized and liquidated by the Minister of Social Security and Labor. Article 2(17¹) defines Refugees Reception Center as a social services providing budget institution for foreigners, who were granted asylum in the Republic of Lithuania, and for unaccompanied minor foreigners to accommodate, also for the implementation of social integration foreigners, who were granted asylum. According to the Paragraphs 6, 13 and 16 of Foreigners Accommodation in the Refugees Reception Center Conditions and Procedure, the members of a one family are housed altogether. Children have a right study in a general education schools and attend preschool training institutions. Center creates conditions for its habitants to attend Lithuanian language courses and courses on Lithuanian society, professional orientation courses, receive free consultations of psychologist, use the services of library and public information services, to do sports, participate in cultural events, to do public service. Paragraph 4 of the Foreigner's accommodation in the Foreigners' Registration Center conditions and procedure further defines accommodation conditions in the Foreigners' Registration Center. Detained aliens are accommodated separately from the detained asylum applicants. Asylum applicants are accommodated separately from detained aliens and detained asylum applicants. Men are accommodated separately from women. Members of the one family are accommodated altogether in one living accommodation or next to each other situated, not isolated from each other living accommodation, ensuring adequate privacy. Persons might be accommodated distributing into groups (by the State of origin, by religion professed, by danger to their own and others health and by other grounds). Paragraph 46 stipulates that in order to organize occupation of the persons accommodated in the Center, its workers creates them conditions to use Center's library, participate in sports competitions and various cultural events, organized in the Center, practice various needlework, gain knowledge about health care. Paragraph 19 stipulates that persons accommodated in the center, who were tortured or raped, are, minors, single women, elderly and other persons in a need of, are provided with psychologic assistance.

Special provisions relating to unaccompanied children who have not yet acquired refugee status are contained Article 24 of the Directive 2013/33/EU. Article 24(1) obligates

Member States as soon as possible to ensure that a representative represents and assists the unaccompanied minor to enable him or her to benefit from the rights and comply with the obligations provided for in this Directive. Also the unaccompanied minor must be informed immediately of the appointment of the representative. The representative must perform his or her duties in accordance with the principle of the best interests of the child, as prescribed in Article 23(2), and must have the necessary expertise to that end. In order to ensure the minor's well-being and social development referred to in Article 23(2)(b), the person acting as representative must be changed only when necessary. Organizations or individuals whose interests conflict or could potentially conflict with those of the unaccompanied minor cannot be eligible to become representatives. Regular assessments must be made by the appropriate authorities, including as regards the availability of the necessary means for representing the unaccompanied minor. This paragraph is transposed and implemented by the Law on the Legal Status of Aliens and the Rules on Accommodation of unaccompanied minor asylum applicants in the Refugees Reception Center.³⁴ Article 2(18²) of the Law on Legal Status of Aliens recognizes minors as vulnerable persons. According to the Article 32(1), unaccompanied minor aliens, regardless of the legitimacy of their stay in the territory of the Republic of Lithuania, must be immediately taken into temporary guardianship/curatorship in accordance with the procedure laid down by legal acts of the Republic of Lithuania for the period of a child's stay in the Republic of Lithuania. When a corporate person is appointed as a guardian/curator, it appoints a responsible person who serves as a representative of the unaccompanied minor alien. As Article 67(2) stipulates, in a case of unaccompanied minors or incapacitated persons an application may be lodged by his representative. Article 71(1) stipulates that the asylum applicant has a right, after being determined as a vulnerable person, to have his specific needs corresponding admittance conditions. The procedure regulating submission and examination of alien's applications to grant asylum, determination, whether asylum applicant is a vulnerable person, making of the decisions and their implementation, is set by the Minister of Interior. Paragraph 8 of the Rules on Accommodation of Unaccompanied Minor Asylum Applicants in Refugees Reception Center further stipulates that unaccompanied minor asylum applicant, housed in

³⁴ The Order No. 1V-31/A1-28 of the Minister of Interior of the Republic of Lithuania and of the Minister of Social Affairs and Labor of 2 February 2005, „Approving the Rules On Accomodation of unaccompanied minor asylum aplicants in the Refugees Reception Center“ (Valstybės žinios, 2005-02-11, No. 20-641)

the Center, is taken into temporary guardianship/curatorship, appointing Center as a temporary guardian/curator. Center must represent the best interests of the unaccompanied minor asylum applicant during the process of examination of application to grant asylum. Center makes access for every unaccompanied minor asylum applicant to social worker³⁵ and, if necessary – psychologist’s services. Center creates possibilities for non-governmental organizations, providing assistant to refugees, to contact unaccompanied minor asylum applicants, accommodated in the Centre, and implement social education and assistance projects.

Article 24(2) of the Directive 2013/33/EU provides that unaccompanied minors who make an application for international protection, from the moment they are admitted to the territory until the moment when they are obliged to leave the Member State in which the application for international protection was made or is being examined, must be placed with adult relatives, with a foster family, in accommodation centers with special provisions for minors, or in other accommodation suitable for minors. Member States also have discretion to place unaccompanied minors aged 16 or over in accommodation centers for adult applicants, if it is in their best interests, as prescribed in Article 23(2). As far as possible, siblings must be kept together, taking into account the best interests of the minor concerned and, in particular, his or her age and degree of maturity. Changes of residence of unaccompanied minors must be limited to a minimum.

These provisions is transposed and implemented by the Law on the Legal Status of Aliens, by the Order on the Foreigners Accommodation in the Refugees Reception Center conditions and procedure³⁵ and by the Regulation on Procedure for Granting and Withdrawal of Asylum in Republic of Lithuania. As was mentioned, according to the Article 79(3) of the Law of Legal Status of Aliens, unaccompanied minor asylum applicant is accommodated with adult relatives, legal representative or at the Refugees Reception Center, if his legal representative does not object. Taking the decision on the

³⁵ Order No. A1-501 of the Minister of Social Security and Labour of the Republic of Lithuania of 14 August 2009 „ Changing the Order No. 20 of the the Minister of Social Security and Labour of the Republic of Lithuania of 13 February 2002 „On Foreigners Accomodation in the Refugees Reception Center conditions and procedure, Regulation on procedure of organization of Foreigners occupation and procedure of application of disciplinary measures for them, Regulation on procedure of Foreigners right to recieve monthly allowance for small expenses and Regulation on implementation procedure of Foreigners right to recieve compensation for the use of public transport services“

accommodation his opinion according to age and maturity is taken into account. Article 79(5) stipulates that by the decision of the Migration Department vulnerable persons and their family members may be accommodated in other accommodation places, suitable for their special needs, administered by the nongovernmental organizations working with asylum applicants. For vulnerable persons, if it is possible, by the decision of Migration department, accommodation with an adult relative or legal representative, lawfully present in the territory of the Republic of Lithuania might be permitted. Paragraph 6 of the Order on the Foreigners accommodation in the Refugees Reception Center conditions and procedure provides that the members of the same family are accommodated altogether. According to the Paragraph 51 of the Regulation on Procedure for Granting and Withdrawal of Asylum in Republic of Lithuania, unaccompanied minor asylum applicants are accommodated taking into account the best interests of the child. The accommodation place of the unaccompanied asylum applicants must be changed as rarely as possible. If possible, brothers and sisters must not be separated.

Article 24(3) of the Directive 2013/33/EU obligates Member States to start tracing the members of the unaccompanied minor's family, where necessary with the assistance of international or other relevant organizations, as soon as possible after an application for international protection is made, whilst protecting his or her best interests. In cases where there may be a threat to the life or integrity of the minor or his or her close relatives, particularly if they have remained in the country of origin, care must be taken to ensure that the collection, processing and circulation of information concerning those persons is undertaken on a confidential basis, so as to avoid jeopardizing their safety. These provisions are transposed and implemented by the Law on the Legal Status of Aliens. According to the Article 32, Migration department, after receiving information about the unaccompanied minor foreigner, together with the nongovernmental or international organizations and the representative of unaccompanied foreigner must immediately organize the search of his family members and not later than two work days after the receiving of the information about the unaccompanied minor foreigner issue him an foreigner registration ID. As Article 68(2) further provides, the information related to the lodging of applications for asylum and examination of the applications is not disclosed to the state of origin. During the examination of the applications it is forbidden approach the state of origin, if such approach

would indicate that alien has lodged an application of asylum and this would be a threat to his or his family life, health, security or freedom.

Article 24(4) of the Directive 2013/33/EU provides that those working with unaccompanied minors must have and have to continue to receive appropriate training concerning their needs, and are bound by the confidentiality rules provided for in national law, in relation to any information they obtain in the course of their work. This provision is transposed and implemented by the Law on Legal Status of Aliens and by the Regulation on Procedure for Granting and Withdrawal of Asylum in Republic of Lithuania. As Article 68(2) of the Law on the Status of Aliens indicates, information relating to the lodging of applications for asylum and examination of the applications shall not be disclosed to the state of origin. During the examination of the applications it is forbidden to approach the state of origin, if such approach would indicate that alien has lodged an application of asylum and because of that there would be a threat to his or his family life, health, security or freedom. Paragraph 15 of the Regulation on Procedure for Granting and Withdrawal of Asylum in Republic of Lithuania stipulates that Migration department civil servants, performing their functions, must be acquainted with the requirements of international, EU and Lithuanian legal acts regulating examination of applications to grant asylum and decision making, European Asylum Support Office and United Nations High Commissioner for refugees board's published methodical and practical recommendations for the civil servants, examining applications to grant asylum; they also have to have adequate training, which takes into account questions, stipulated in Article 6(4)(a-e) of the Regulation (EU) No. 439/2010,³⁶ and have to be trained on this further. Migration department civil servants, conducting interviews of asylum applicants, must have specialized training in which they are acquainted with interview conducting techniques and good practice, choose the most appropriate method to communicate with asylum applicant, taking into account, inter alia, his age, maturity, cultural origin, sex, sexual orientation, sexual identity and vulnerability, also adequate features to recognize problems, which can negatively affect asylum applicant's possibility to be interviewed. According to the Paragraph 16, civil servants related to examination of applications to grant asylum and

³⁶ Regulation (EU) No 439/2010 of the European Parliament and of the Council of 19 May 2010 establishing a European Asylum Support Office, OJ L 132, 29.5.2010, p. 11–28

making decisions on the special procedural guarantees for the vulnerable asylum applicants must have adequate training and have to be trained on special needs of such asylum applicants further.

d. Detention of children

Detention, in the global migration context, is a non-punitive administrative measure ordered by an administrative or judicial authority(ies) in order to restrict the liberty of a person through confinement so that another procedure may be implemented. In the EU asylum context detention is understood as a confinement (i.e. deprivation of liberty) of an applicant for international protection by a Member State within a particular place, where the applicant is deprived of their personal liberty.³⁷ Detention of children during the asylum procedures might be harmful and is thus particularly problematic.

Detention of children is covered by Article 11 of Directive 2013/33/EU. According to the Paragraph 1, health, including mental health, of applicants in detention who are vulnerable persons must be of primary concern to national authorities. Where vulnerable persons are detained, Member States have to ensure regular monitoring and adequate support taking into account their particular situation, including their health. This paragraph, as far as it concerns the unaccompanied minor foreigners, is transposed and implemented by the Law on the Legal status of Aliens and by the Law on Health Insurance.³⁸ Article 32(2)(2) of the Law on Legal Status of Aliens provides unaccompanied minor foreigners regardless of the legitimacy of their stay in the territory of the Republic of Lithuania with a right to free mandatory medical help in accordance with the procedure, established by the Minister of Health. The Article 6 of the Law on Health insurance stipulates that unaccompanied minor foreigners are insured by the mandatory health insurance.

Article 11(2) indicates that minors can be detained only as a measure of last resort and after having been established that other less coercive alternative measures cannot be applied effectively. Such detention must be for the shortest period of time and all efforts must be made to release the detained minors and place them in accommodation suitable for minors.

³⁷ Asylum and Migration Glossary 3.0, European Migration Network, 2014, p. 81

³⁸ Law No. I-1343 on Health insurance (with the last amendments made by the Law No. XII-2003) (Valstybės žinios, 1996-06-12, No. 55-1287)

The minor's best interests, as prescribed in Article 23(2), must be a primary consideration. When detained, they must have the possibility to engage in leisure activities, including play and recreational activities appropriate to their age. These provisions are transposed and implemented by the Law on the Legal status of Aliens and the Law on Fundamentals of Child Rights Protection. According to Article 54(5) of the Law on Fundamentals of Child Rights Protection, after restriction or deprivation of child's liberty, his other rights (right to schooling, physical, mental, spiritual, moral and social development) that are not directly related to detention and deprivation, cannot be restricted. According to the Article 114(2) and (3) of the Law on Legal Status of Aliens, alien can be detained at the Foreigners Registration Centre for a period exceeding 48 hours by a decision of the court. Vulnerable persons and families with vulnerable minor aliens may be detained only in exceptional cases having regard to the best interest of a child and vulnerable persons. Article 115, provides that, in view of the fact that an alien's identity has been established, he represents no threat to national security and public policy, assists the court in determining his legal status in the Republic of Lithuania as well as other circumstances, the court may take a decision not to detain the alien and to provide an alternative to detention. These alternatives are: a regular registration at the relevant territorial police agency at the fixed time, an information by communication means of relevant territorial police agency about his whereabouts at the fixed time, a trust of the guardianship of an alien, to a citizen of the Republic of Lithuania or an alien lawfully residing in the Republic of Lithuania who is related to the alien, provided that the person undertakes to take care of and to support the alien and an accommodation of the alien at the Foreigners' Registration Centre without restricting his freedom of movement.

According to the Article 11(3), (4) and (5) of the Directive 2013/33/EU, unaccompanied minors can be detained only in exceptional circumstances. All efforts have to be made to release the detained unaccompanied minor as soon as possible. Unaccompanied minors must never be detained in prison accommodation. As far as possible, unaccompanied minors must be provided with accommodation in institutions provided with personnel and facilities which take into account the needs of persons of their age. They must be accommodated separately from adults. Detained families must be provided with separate accommodation guaranteeing adequate privacy. Detained female

applicants must be accommodated separately from male applicants, unless the latter are family members and all individuals concerned consent thereto. Exceptions may apply to the use of common spaces designed for recreational or social activities, including the provision of meals. These provisions are transposed and implemented by the Law on the Legal Status of Aliens and Foreigner's accommodation in the Foreigners Registration Center conditions and procedure. As was indicated, according to the Article 114(2) and (3) of the Law on the Legal Status of Aliens, of aliens, an alien can be detained at the Foreigners' Registration Centre for a period exceeding 48 hours by a decision of the court. Vulnerable persons and families with vulnerable minor aliens can be detained only in exceptional cases having regard to the best interest of a child and vulnerable persons. Article 31² defines Foreigners' Registration Center as an establishment to hold temporarily aliens on the grounds stipulated in this law by the ruling of the court or Migration department's decision to house aliens temporarily, to ensure other material admission conditions, to conduct investigation on the identity of the alien and on arrival in the Republic of Lithuania circumstances, to manage aliens accounting and to perform their return and expulsion from the Republic of Lithuania. Paragraph 4 of the Foreigner's accommodation in the Foreigners' Registration Center conditions and procedure further defines accommodation conditions in the Foreigners' Registration Center. Detained aliens are accommodated separately from the detained asylum applicants. Asylum applicants are accommodated separately from detained aliens and detained asylum applicants. Men are accommodated separately from women. Members of the one family are accommodated altogether in one living accommodation or next to each other situated, not isolated from each other living accommodation, ensuring adequate privacy. Persons might be accommodated distributing into groups (by the State of origin, by religion professed, by danger to their own and others health and by other grounds).

Article 11(6) of the Directive 2013/33/EU gives Member States a possibility in duly justified cases and for a reasonable period that shall be as short as possible to derogate from the mentioned detention conditions when the applicant is detained at a border post or in a transit zone, with the exception of the cases referred to in the Article 43 of the Directive 2013/32/EU. But the Republic of Lithuania does not choose to transpose and implement such an option.

e. Procedural safeguards (Right to representation, interviews of the children and right to information)

The particular vulnerability of migrant children, especially unaccompanied and separated children, requires that they be provided with adequate procedural safeguards in all administrative and judicial proceedings in which they take part.³⁹

As was mentioned, according to the Article 7(3)-(5) of the Directive 2013/32/EU, Member States must ensure that a minor has the right to make an application for international protection either on his or her own behalf, if he or she has the legal capacity to act in procedures according to the law of the Member State concerned, or through his or her parents or other adult family members, or an adult responsible for him or her, whether by law or by the practice of the Member State concerned, or through a representative. Member States must ensure that the appropriate bodies referred to in Article 10 of the Directive 2008/115/EC have the right to lodge an application for international protection on behalf of an unaccompanied minor if, on the basis of an individual assessment of his or her personal situation, those bodies are of the opinion that the minor may have protection needs pursuant to Directive 2011/95/EU. Member States may determine in national legislation the cases in which a minor can make an application on his or her own behalf, the cases in which the application of an unaccompanied minor has to be lodged by a representative as provided for in the Article 25(1)(a) and the cases in which the lodging of an application for international protection is deemed to constitute also the lodging of an application for international protection for any unmarried minor. Mentioned provisions are transposed and implemented by the Law on Legal Status of Aliens. According to the Article 67(2), in a case of minors an application may be lodged by one of his adult family members. In a case of unaccompanied minors or incapacitated persons an application may be lodged by his representative. Representative in the Article 2(21) is defined as a natural person or corporate entity in accordance with the procedure established in the legal acts of the Republic of Lithuania duly appointed to take care (guard) of incapable alien or unaccompanied minor alien.

³⁹ Judicial implementation of Article 3 of the Convention on the Rights of the Child in Europe: the case of migrant children including unaccompanied children, Office of the United Nations High Commissioner for Human Rights Regional Office for Europe, 2012. p. 86

Crucially important unaccompanied minors' representation is dealt in the Article 25 of the Directive 013/32/EU. In all procedures mentioned in this Directive, representative represents and assists the unaccompanied minor to enable him or her to benefit from the rights and comply with the obligations related with asylum procedures. The unaccompanied minor must be informed immediately of the appointment of a representative. The representative has to perform his or her duties in accordance with the principle of the best interests of the child and must have the necessary expertise to that end. The person acting as representative should be changed only when necessary. Organizations or individuals whose interests conflict or could potentially conflict with those of the unaccompanied minor cannot be eligible to become representatives. The representative may also be the representative referred to in Directive 2013/33/EU. The representative must also be given the opportunity to inform the unaccompanied minor about the meaning and possible consequences of the personal interview and, where appropriate, how to prepare himself or herself for the personal interview. The representative and/or a legal adviser or other counsellor admitted or permitted as such under national law must be present at that interview and have an opportunity to ask questions or make comments, within the framework set by the person who conducts the interview. Member States may require the presence of the unaccompanied minor at the personal interview, even if the representative is present. These provisions are transposed and implemented by the Law on Legal Status of Aliens. According to the mentioned Articles 67(2) and (4) in a case of unaccompanied minors or incapacitated persons an application may be lodged by his representative. Having lodged an application for asylum, an unaccompanied minor alien shall be taken into temporary guardianship/curatorship. According to the Article 82(1), during the examination of asylum application or investigation of the circumstances when the application is not examined, the interview of asylum applicant is conducted in the absence of his family members, with exceptions, when the presence of family members is necessary to conduct this interview. During the interview the asylum applicant's right to state guaranteed legal assistance, if he wishes so, and right to interpreter must be guaranteed. The interview procedure of the unaccompanied minors is further detailed in the Paragraphs 22.8, 26, 64 and 99.1 and 114 of the Regulation on Procedure for Granting and Withdrawal of Asylum in Republic of Lithuania. Acting civil servant of the institution, admitting the application for asylum,

provides the unaccompanied minor asylum applicant with the information mentioned in Article 4(1) of the Regulation (EU) No. 604/2013 and prepared according to the part A of the Annex XI of the Commission Regulation (EC) No. 1560/2003 with latest amendments. The information mentioned in this paragraph is submitted in accordance with the Article 4(2) of the Regulation (EU) No. 604/2013. Unaccompanied minor asylum applicant is provided with the mentioned information in a presence of acting legal representative and the representative of child rights protection institution. The representative of child rights protection institution is called by the institution admitted asylum application. Acting representative, providing legal assistance for asylum applicant, further is always called to the interviews of unaccompanied minor asylum applicants. The interview of unaccompanied minor asylum applicant is conducted in a presence of representative, providing legal assistance, and of representative, mentioned in Article 2(21) of the Law on Legal status of Aliens. The participation of interpreter and (or) representative, providing legal assistance is ensured by the Migration department. On the basis of interview's audio or video recording stenograph of the interview is prepared, which is signed by the interview conducting empowered civil servant of Migration department and which is added to the asylum applicant's personal file. Acting civil servant of the Migration department, examining application to grant asylum, must always call representative, providing legal assistance for the unaccompanied minor asylum applicant. His interview is conducted in a presence of representative, providing legal assistance, and of representative, mentioned in Article 2(21) of the Law on Legal status of Aliens, who both has a possibility before the interview to inform unaccompanied minor asylum applicant about the meaning of the interview and possible consequences and, if necessary, assist him to prepare for the interview, and during the interview, in accordance with the conditions set by the civil servant of the Migration department, conducting interview, pose questions for the unaccompanied minor asylum applicant and (or) make remarks about his answers. After getting conclusions on the age (minor or not), family connections and (or) injuries, its causes, nature and appearance time, empowered civil servant of the Migration department adds it to the asylum applicant's file and fills in vulnerability form, on which basis the head of the empowered Migration department unit or other empowered civil servant may again evaluate the need of special procedural guarantees for asylum applicant and fill in special procedural guarantees form.

Article 25(2) of the Directive 2013/32/ EU allows Member States to refrain from appointing a representative where the unaccompanied minor will in all likelihood reach the age of 18 before a decision at first instance is taken. But Lithuania does not choose this option.

Article 25(3) obliges Member States to ensure that if an unaccompanied minor has a personal interview on his or her application for international protection as referred to in Articles 14 to 17 and 34, that interview is conducted by a person who has the necessary knowledge of the special needs of minors and that an official with the necessary knowledge of the special needs of minors prepares the decision by the determining authority on the application of an unaccompanied minor. This provision is transposed and implemented by the Law on Legal Status of Aliens and Regulation on Procedure for Granting and Withdrawal of Asylum in Republic of Lithuania. Article 68(5) of the Law on Legal status of Aliens provides that the civil servants and workers of competent institutions and establishments dealing with the examination of asylum applications and (or) ensuring admission conditions, must have an adequate training. This provision is further detailed by the Paragraphs 16, 22.8 Regulation on Procedure for Granting and Withdrawal of Asylum in Republic of Lithuania. Paragraph 16 stipulates that civil servants, performing their functions, described in Regulation, related to examination of applications to grant asylum and decision taking of and setting of the special procedural guarantees for the vulnerable asylum applicants must have adequate training and have to be trained on special needs of such asylum applicants further.

According to the Article 25(4) of the Directive 2013/32/EU unaccompanied minors and their representatives must be provided, free of charge, with legal and procedural information concerning the applicants' application particular circumstances. This provision is transposed and implemented by the Article 71 of the Law on Legal Status of Aliens and further detailed by the Regulation on Procedure for Granting and Withdrawal of Asylum in Republic of Lithuania. Article 71(1)(2) stipulates that asylum applicant has a right to receive information about his rights and duties and effects of noncompliance during the examination of the application to grant asylum, also the information related to the examination of application to grant asylum free of charge. As the Paragraph 22.8 of the Regulation on Procedure for Granting and Withdrawal of Asylum in Republic of Lithuania stipulates, the

acting civil servant of the institution, admitting the application for asylum, provides unaccompanied minor asylum applicant information mentioned in Article 4(1) of the Regulation (EU) No. 604/2013 and prepared according to the part A of the Annex XI of the Commission Regulation (EC) No. 1560/2003 with latest amendments. The information mentioned in this paragraph is submitted by the order, established in the Article 4(2) of the Regulation (EU) No 604/2013. Unaccompanied minor asylum applicants are always provided with such information in a presence of acting representative, providing legal assistance.

According to the Article 25(6) of the Directive 2013/32/EU, the best interests of the child shall be a primary consideration for Member States when implementing this Directive. It's Paragraph 6(a) stipulates that where Member States, in the course of the asylum procedure, identify a person as an unaccompanied minor, they may apply or continue to apply Article 31(8), dealing with the accelerated and/or conducted at the border or in transit zones, only if (i) the applicant comes from a country which satisfies the criteria to be considered a safe country of origin within the meaning of Directive 2013/32/EU, or (ii) the applicant has introduced a subsequent application for international protection that is not inadmissible in accordance with the Article 40(5); or (iii) the applicant may for serious reasons be considered a danger to the national security or public order of the Member State, or the applicant has been forcibly expelled for serious reasons of public security or public order under national law. Paragraph 6(b) allows to apply or continue to apply the Article 43, dealing with the taking of asylum decisions at the border or transit zones, in accordance with the Articles 8 to 11 of the Directive 2013/33/EU, only if: (i) the applicant comes from a country which satisfies the criteria to be considered a safe country of origin within the meaning of Directive 2013/32/EU; or (ii) the applicant has introduced a subsequent application; or (iii) the applicant may for serious reasons be considered a danger to the national security or public order of the Member State, or the applicant has been forcibly expelled for serious reasons of public security or public order under national law; (iv) there are reasonable grounds to consider that a country which is not a Member State is a safe third country for the applicant, pursuant to Article 38; or (v) the applicant has misled the authorities by presenting false documents; or (vi) in bad faith, the applicant has destroyed or disposed of an identity or travel document that would have helped establish his or her

identity or nationality. Member States may apply points (v) and (vi) only in individual cases where there are serious grounds for considering that the applicant is attempting to conceal relevant elements which would likely lead to a negative decision and provided that the applicant has been given full opportunity, taking into account the special procedural needs of unaccompanied minors, to show good cause for the actions referred to in points (v) and (vi), including by consulting with his or her representative. Paragraph 6(c) of the Article 25 stipulates that where Member States, in the course of the asylum procedure, identify a person as an unaccompanied minor, they may consider the application to be inadmissible in accordance with the Article 33(2)(c) if a country which is not a Member State is considered as a safe third country for the applicant pursuant to the Article 38, provided that to do so is in the minor's best interests. Paragraph 6(d) stipulates that where Member States, in the course of the asylum procedure, identify a person as an unaccompanied minor, they may apply the procedure referred to in the Article 20(3) where the minor's representative has legal qualifications in accordance with national law. Without prejudice to the Article 41, in applying the Article 46(6), dealing with a right to review by the court or tribunal a negative decision to remain in the member state, to unaccompanied minors, Member States must provide at least the guarantees provided for in the Article 46(7) in all cases.

The mentioned provisions are transposed and implemented by the Law on Fundamentals of Child Rights Protection, Law on Legal Status of Aliens and by Regulation on Procedure for Granting and Withdrawal of Asylum in Republic of Lithuania“. Article 4 of the Law on Fundamentals of Child Rights Protection indicates that parents, other lawful representatives of the child, state, local government and society institutions, other natural and corporate persons must always obey that everywhere and always firstly take into account the best interests of a child, child has a right to use all child rights and liberties, stipulated in Constitution of the Republic of Lithuania, this and other laws and legal acts and that parents and other lawful child's representatives have a primary responsibility to ensure child's rights. Article 76(4) of the Law on Legal Status of Aliens indicates the cases when the application for asylum might be examined in an accelerated manner. But according to the Article 76(4) this is not applicable to unaccompanied minor asylum applicants. Article 77(1) indicates the cases when the application to grant asylum is not examined in a substance. And again, according to the Article 77(3), this is not applicable to vulnerable

persons. Similar provisions are also contained in the Regulation on Procedure for Granting and Withdrawal of Asylum in Republic of Lithuania that implements the provisions of the Law on Legal Status of Aliens

IV. Evaluation of and transposition and implementation in Lithuania: good and bad practice, recommendations

As the analysis of the transposition and implementation had shown, the essence of all the best interests of the child principle related issues had been transposed and implemented into Lithuanian legislation. As most of it are directly related with the rights and liberties of the person, its limitations, in accordance with the doctrine of the Constitutional Court of the Republic of Lithuania,⁴⁰ many of these provisions are transposed and implemented by the laws – the Law on the Legal Status of Aliens, the Law on the Fundamentals of the Child rights protection and the Law on the Health Insurance. The rest of the provisions, mostly dealing with the details of the previously mentioned issues, are transposed by the implementing national legal acts. This clearly indicates Lithuania's intention to give full effect to the best interests of the child principle and child rights while transposing and implementing these directives.

As concerns the applications for asylum of minors, child's best interests is always ensured – application may be lodged on his behalf by his adult family members, in a case of unaccompanied minors, application may be lodged by his representative, who is defined widely enough to cover various institutions, except the ones enforcing return, taking care of the child interests. How this mechanism will be implemented in practice and whether it serves the best interests of the child, will be seen in the future.

The provisions concerning age assessment are transposed and implemented properly – two main aspects directly related with the best interests of the child are obeyed – applicant's age assessment is carried out only when there are well founded doubts about the applicant's age and if after an age assessment there are still in doubts about the applicant's age left, the

⁴⁰ As the Constitutional Court of the Republic of Lithuania has stated in the paragraph 2.2 of the Order of 31 May 2006 and its later jurisprudence, according to the Constitution, restrictions on person's rights and liberties are possible only if: it is done by the law, restrictions are necessary in democratic society to protect other persons rights and liberties and values, enshrined in the Constitution, also constitutionally important purposes; restrictions do not deny the nature and essence of the rights and liberties; the principle of constitutional proportionality is obeyed.

applicant is further considered as a minor. However, some doubts can be raised about the use of radiological testing as a method to determine asylum applicant age. The use of less harmful methods instead of or the use of as a measure of last resort would be highly recommended.

Required standard of adequate living for the minor's physical, mental, spiritual, moral and social development is yet fully guaranteed by Lithuanian legislation. Access to basic social services and the enjoyment of economic, social and cultural rights are of crucial importance for migrants, particularly children. The obstacles faced by migrants in access to such services and rights constitute a key human rights challenge and are both a cause and a consequence of social exclusion.⁴¹ Not all related provisions of the Directive 2013/33/EU are fully transposed – some adjustments in Lithuanian implementing acts still have to be done. It is important to indicate that at the moment transposition and implementation of the Directives 3013/32/EU and 2013/33/EU is not over yet. Hopefully, when it will be over, the adequate standard of living and help, particularly psychological, will be fully guaranteed for the migrant children. But, as examples of good transposition and implementation practice immediate start of the search for his family, not limiting the search to his country of origin might be indicated.

Regrettably, Lithuania still allows detention of minors, although in exceptional cases. It must be agreed with European Council on Refugees and Exiles (ECRE) position that detention of minors, particularly unaccompanied, always contradicts with their best interests, even if all adequate guarantees for minor's physical, mental, spiritual, moral and social development are provided.

The procedural safeguards related with the child's best interests are property transposed and implemented into Lithuanian legislation. Lithuania' immediate appointment of the representative for the unaccompanied child, he must be present during the child interviews, must be informed about child related actions taken. A prohibition to examine unaccompanied minor's asylum application in an accelerated manner can be identified as a good example of transposition and implementation practice.

⁴¹ Judicial implementation of Article 3 of the Convention on the Rights of the Child in Europe: the case of migrant children including unaccompanied children, Office of the United Nations High Commissioner for Human Rights Regional Office for Europe, 2012. p. 68

It is particularly important that while transposing and implementing mentioned Directives 2013/32/ES and 2013/33/EU provisions, Lithuania did not chose many of the derogations. Lithuania also did not choose to derogate from the Article 25 of the Directive 2013/32/EU dealing with the guarantees for unaccompanied minors. Unaccompanied minors are always appointed with a representative even if there is a likelihood that they will reach the age of 18 before the decision at first instance is take. And their applications for asylum cannot be examined as to a substance in an accelerated way. It is worth mentioning, that these derogations were identified by the European Council on Refugees and Exiles (ECRE) as particularly problematic form child rights perspective and recommended not to use by the Member States.⁴² Lithuania also did not choose to derogate from the Article 11 of Directive 2013/33/EU dealing with the detention of vulnerable persons – although detention of children is still permitted in exceptional cases, minors and unaccompanied minors must be always provided with all adequate guarantees - appropriate leisure and recreational activities, separate accommodation for families, gender separation, if detained persons are not family members – even if detained at the border post or in a transit zone. This can be identified as good examples of transposition and implementation practice.

Concluding remarks

Since the European Commission's launch of infringement procedures in September 2015, Lithuania has made a great effort in transposing and implementing Directives 2013/32/EU and 2013/33/EU and complying with its undertaken obligations. At the moment this process is not over, but will be soon – the essence of the directives and most of its provisions are already incorporated into Lithuanian legislation. As the Directives 2013/32/ES and 2013/33/ES are at the core of CEAS, this is a significant forward to comply with its standards and thus to strengthen it and make more efective.

The biggest challenge for Lithuania ensuring the best interests of the child principle is to ensure the required standard of adequate living for minors. Hopefully, Lithuania will do

⁴² Information Note on Directive 2013/32/EU of the European Parliament and of the Council of 26 June 2013 on common procedures for granting and withdrawing international protection (recast), p. 30-33, European Council on Refugees and Exiles (ECRE)

necessary adjustments as soon as possible in order to ensure the best interests of the particularly vulnerable migrant children.

At the end it should be noted that full implementation of the best interests of the child principle enshrined in the Directives 2013/32/EU and 2013/33/EU will ensure interpreting Lithuanian legislation in individual migrant child related cases in a light of this principle. Hopefully at least some of mentioned gaps will be filled in the future in this way.

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