

MAIN CONSTRAINS IN IMPLEMENTING THE EU ASYLUM *ACQUIS*
IN LITHUANIA

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Pateikta 2006 m. vasario 28 d., parengta spausdinti 2006 m. kovo 15 d.

Summary. This article aims to review the main Lithuanian asylum legislation in light of the EU asylum *acquis* and identify existing or possible constrains to the effective implementation of the *acquis*. The author analyses the main legal documents regulating the protection of refugees, adopted under Article 63 of the Amsterdam Treaty of the European Union (EU), which represents a first stage of asylum law harmonisation process in the EU. At the time of Lithuania's accession to the EU it was under an obligation to align its law and practice with then legally non-binding EU provisions on asylum. Even more so after accession, this time with legally binding legislation, now in place in the EU. But even after the adoption of the last asylum instrument under the Amsterdam Treaty by the end of 2005, asylum law developments within the EU can not be considered completed yet. Discussions on the second stage of harmonisation and preparations for it are taking place within the EU. This process will further influence the development of legal regulation of asylum matters in the EU Member States, including Lithuania. The author stresses that not less important than the legal alignment is the development of national jurisprudence in line with the legal provisions and spirit of the EU law in this field.

Keywords: EU asylum *acquis*, asylum seekers, refugees, asylum, refugee status, complementary protection, temporary protection, Dublin regulation, reception conditions, asylum procedures, refugee definition, harmonisation of asylum legislation, foreigners, legal status of aliens, aliens' law, family reunification.

1. INTRODUCTION

EU accession process undoubtedly had an influence on the development of the asylum system and legal regulation in Lithuania. Noteworthy, that the process of aligning the national legislation with the EU asylum *acquis* started already in 2000, when the Government of Lithuania approved a National Action Plan in the Field of Asylum.¹ The Action Plan envisaged concrete administrative and legal measures for the implementation of the EU *acquis* in the Republic of Lithuania. Alignment of national legislation with the EU requirements was namely the reason behind the revisions of the Law on the Status of Refugee and the Law on Legal Status of Aliens of that time, made in the year 2000 and 2004, as

well as the adoption of a new Law on Legal Status of Aliens on 29 April 2004 (further-Aliens' Law)². The process of alignment in the field of asylum differed to a certain extent from other areas due to the nature of the *acquis* as a constantly evolving concept.

Documents in asylum field adopted before the 1997 Amsterdam Treaty on the European Union (further-the Amsterdam Treaty) were mostly of a legally non-binding nature. However, Lithuania as an accession state was under an obligation to align its law and practice with these provisions. Furthermore, following the entry into force of the Amsterdam Treaty in 1999, the regulation of asylum matters has changed, i.e. legally binding legal acts: regulations and directives (as well as decisions) were adopted. But even after the adoption of

¹ Resolution of the Government of the Republic of Lithuania on "Approval of a National Action Plan in the Field of Asylum"//28 July, 2000. No. 906. "State News". 2000. No. 65-1960.

² Law on Legal Status of Aliens in the Republic of Lithuania// 29 April, 2004. No. IX-2206. "State News". 2004. No. 73-2539.

the last asylum instrument under the Amsterdam Treaty by the end of 2005, asylum law developments in the EU can not be considered completed yet. Discussions on the second stage of harmonisation and preparations for it are taking place within the EU. This process will further influence the development of legal regulation of asylum matters in the EU Member States. Not less important than the legal alignment is the development of national jurisprudence in line with the legal provisions and spirit of the EU law in this field.

The purpose of this Article is to review the main Lithuanian legislation in light of the EU asylum *acquis* and identify existing or possible constraints to the effective implementation of the *acquis*.

2. TRANSPOSITION AND IMPLEMENTATION OF THE EU ASYLUM ACQUIS IN LITHUANIA

How is the EU *acquis* reflected in the Lithuania's national law?¹ Given that pre-Amsterdam Treaty documents have by now lost their relevance, only measures adopted under Article 63 of the Amsterdam Treaty will be analysed.² A few of these documents are meant for regulation and implementation of certain procedural or

¹ Implementation of the EU asylum *acquis* in the jurisprudence of Lithuania's courts is excluded from the scrutiny of this analysis due to already extensive scope of the article. Administrative practice is referred to whenever possible.

² This includes:

1. Council Decision 2004/904/EC of 2 December 2004 establishing the European Refugee Fund for the period 2005 to 2010//Official Journal L 381, 28/12/2004. P. 0052–0062 (further-Decision on Refugee Fund).

2. Council Regulation 2725/2000/EC of 11 December 2000 concerning the establishment of 'Eurodac' for the comparison of fingerprints for the effective application of the Dublin Convention//Official Journal L 316, 15/12/2000. P. 0001–0010 (further – EURODAC Regulation).

3. Council Directive 2001/55/EC of 20 July 2001 on minimum standards for giving temporary protection in the event of a mass influx of displaced persons and on measures promoting a balance of efforts between Member States in receiving such persons and bearing the consequences thereof//Official Journal L 212, 07/08/2001. P. 0012–0023 (further – Temporary Protection Directive).

4. Council Directive 2003/9/EC of 27 January 2003 laying down minimum standards for the reception of asylum seekers//Official Journal L 031, 06/02/2003. P. 0018–0025 (further – Reception Conditions' Directive).

5. Council Regulation 343/2003/EC of 18 February 2003 establishing the criteria and mechanisms for determining the Member State responsible for examining an asylum application lodged in one of the Member States by a third-country national//Official Journal L 050, 06/02/2003. P. 0001–0010 (further – Dublin Regulation).

6. Council Directive 2003/86/EC of 22 September 2003 on the right to family reunification (this document is not an asylum document as such, but contains provisions relevant for refugees)//Official Journal L 251/12, 3/10/2003 further-Family Reunification Directive).

7. Council Directive 2004/83/EC of 29 April 2004 on minimum standards for the qualification and status of third country nationals or stateless persons as refugees or as persons who otherwise need international protection and the content of the protection granted//Official Journal L 304, 30/09/2004. P. 0012–0023 (further-Directive on Refugee Status and Complimentary Protection).

8. Council Directive 2005/85/EC of 1 December 2005 on minimum standards on procedures in Member States for granting and withdrawing refugee status// Official Journal L 326/13, 13/12/2005 (further-Asylum Procedures' Directive).

financial issues (e.g. the Decision on Refugee Fund or the EURODAC Regulation), thus are left outside the scope of this analysis. In addition, as the EU regulations are directly implemented in the national law and do not require any specific national legislative measures to be adopted to implement these acts, the later also falls outside the scope of this article. However, the Dublin Regulation merits a brief mentioning due to its impact on the situation of refugees and national asylum procedures.

2.1. Dublin Regulation

A brief description of the procedure for determining responsibility for examination of the asylum claim is contained in Part Two of Section IV of the Aliens' Law. In other words, before entering into examination of the asylum claim the Migration Department to the Ministry of Interior (further-the Migration Department) shall determine whether Lithuania bears responsibility for examination of this particular claim and whether this asylum seeker shall be transferred to another EU Member State. The criteria for determination of responsibility for examination of claims are not enlisted by the Law, but are applied in accordance with the Dublin Regulation. So-called Dublin procedure started operating in Lithuania from the date of entry into the EU, thus earlier legislation in Lithuania did not contain any provisions as regards this procedure. Very important in the implementation of the Dublin Regulation is the role of national courts. Contrary to its predecessor - the Dublin Convention of 1990³, the Dublin Regulation envisages a possibility of judicial appeal against the transfer of an asylum seeker to another member state.⁴ Though the general rule is that such an appeal does not suspend the execution of the decision, the courts may in individual cases suspend the execution, if this is allowed by the national laws. In this connection, worthwhile mentioning that Article 128(2) of the Aliens' Law provides for such a possibility. Thus whenever necessary the Lithuania's courts shall exercise the right granted to it by the Regulation. Partially due to its geographical position it is unlikely that Lithuania will benefit a lot from the application of this Regulation. The numbers of returned asylum seekers from other Member States to Lithuania are much higher if compared with numbers of asylum seekers transferred from Lithuania to other Member States. For instance, in 2005, the number of outgoing requests from Lithuania to other Member States was only 6 (4 persons transferred), while the number of incoming requests to Lithuania was almost six times higher – 35 (16 persons transferred).⁵ Similar tendency was also ob-

³ Convention Determining the State Responsible for Examining Applications for Asylum Lodged in one of the Member States of the Community. Official Journal C 254, 19/8/1997.

⁴ Article 19 (2) of the Dublin Regulation.

⁵ Information of the Migration Department to the Ministry of Interior of the Republic of Lithuania. January, 2006.

served during 2004: 1 outgoing request and 21 incoming request.¹

2.2. Reception Conditions' Directive

The Reception Conditions' Directive outlines the conditions of treatment of asylum seekers pending the determination of their status. The provisions of this Directive are to a large extent transposed in the Lithuanian national legislation. However, the Aliens' Law limits itself by simply enumerating the rights and obligations of asylum seekers during the asylum procedure² and by briefly regulating the accommodation issue.³ Regulation of other aspects of reception is left to the by-laws.⁴ It should be noted that Lithuanian legislation is rather progressive as concerns the treatment of unaccompanied minor asylum seekers, to whom the Directive also pays a special attention. Special legislation was even adopted for the benefit of this vulnerable group on 2 February 2005 – the Order of the Minister of Social Security and Labour on Accommodation of Unaccompanied Minors Asylum Seekers.⁵ Article 79(3) of the Aliens' Law provides for a more favourable treatment of this vulnerable group stating that „unaccompanied minor asylum seekers [...] shall be accommodated in the Refugee Reception Centre [...]“. This Centre is a social establishment, differently from the Foreigners' Registration Centre (further-FRC) where all other asylum seekers are being accommodated and where the living conditions are rather different.

One of the problems that may arise in implementing the Directive in Lithuania is restrictions applied to asylum seekers' right to work. This right is not granted to asylum seekers in Lithuania, though the Directive allows only limiting the granting of this right for a particular period, but as such it is recognised by the Directive⁶. Furthermore, ensuring the implementation of obli-

gations under the Directive may be problematic due to certain rearrangements in the administrative structure of the asylum procedure that happened in 2004. Previous legislation provided for accommodation of asylum seekers in the FRC only during the first stage of the asylum procedure, while the rest time of the asylum procedure they were accommodated in the Refugee Reception Centre (further-RRC). However, with the adoption of the Aliens' Law, all asylum seekers (except unaccompanied minors) are now accommodated in the FRC for the whole period of the asylum procedure. Noteworthy that this Centre, despite a significant improvement in living conditions for the recent years, is not and is unlikely to become a social establishment, suitable to organise a longer stay of asylum seekers. Thus certain difficulties may arise for Lithuania in this regard while ensuring proper social reception conditions for the asylum seekers as requested by the Directive.⁷

2.3. Directive on Refugee Status and Complimentary Protection

While writing this Article, still some time remained before the deadline of 10 October 2006 for the transposition of this Directive into the national legislation. The Directive on Refugee Status and Complimentary Protection is perhaps the most important one concerning the examination of asylum claim in substance both at first and also at appeals' instance. The Directive regulates two forms of protection: refugee status under the 1951 United Nations Convention Relating to the Status of Refugees (further-1951 Convention) and complimentary protection deriving from the general human rights instruments. All three forms of refugee protection currently available in the EU: refugee status, complementary protection and temporary protection, were incorporated into the Aliens' Law while transposing the provisions of the EU *acquis* to national legislation. The recognition of all possible protection forms (referred in the Aliens' Law as to asylum forms) is very important not only because it reflects the need to implement international obligations and the EU legal acts on asylum, but even more importantly because therewith protection needs of various groups of refugees are being taken into consideration. Part Three of Section IV of the Aliens' Law titled "Order on granting asylum in the Republic of Lithuania" regulates two forms of refugee protection mentioned in the Directive. Articles 86 and 87 define respectively the criteria for these forms of protection. It should be noted here that the criteria for granting complementary protection in accordance with the Directive differ from the criteria embodied in the Law, as the Directive recognises as grounds for complementary protection the situations of death penalty or execution, torture or inhuman or degrading treatment or punishment, as well as serious and individual threat to a civilian's life or person by reason of indiscriminate violence in

¹ Ibid.

² Article 71 of the Aliens' Law.

³ Article 79 of the Aliens' Law.

⁴ Resolution of the Government of Lithuania on "Approval of Order and Conditions of Temporary Accommodation of Foreigners in the Foreigners' Registration Centre"// 29 January, 2001. No. 103. „State News“. No. 11-322. 2001 with amendments (9 April, 2003. No. 417. „State News“. No. 35-1472. 2003); Order of the Minister of Social Security and Labour on „Approval of the Order and Conditions of Accommodation of Foreigners in the Refugee Reception Centre, Organisation of Foreigners' Occupation and Application of Disciplinary Measures, Implementation of the Right of Foreigner to Receive Monthly Allowance for Minor Expenses and the Right to Receive Compensation for the Use of Public Transport“// 13 February, 2002. No. 20. „State News“. 2002. No. 17-702. Order of the Minister of Social Security and Labour of the Republic of Lithuania on „Approval of Statute of the Refugee Reception Centre“// 18 August, 2005. No. A1-234. „State News“. 2005. No. 102-3795. Order of the State Border Protection Service to the Ministry of Interior on „Approval of the Statute of the Foreigners' Registration Centre of the State Border Protection Service to the Ministry of Interior of the Republic of Lithuania“//29 December, 2005. No. 4-719. „State News“. 2006. No. 3-88.

⁵ Order of the Minister of Social Security and Labour on „Approval of Rules for Accommodation of Unaccompanied Minor Asylum Seekers in the Refugee Reception Centre“// 2 February, 2005. No. IV-31/A1-28. „State News“. 2005. No. 20-641.

⁶ Article 11(1-2) of Reception Conditions' Directive.

⁷ Article 7(1) and 17(1) of Reception Conditions' Directive.

situations of international or internal armed conflict.¹ Article 87 of the Law enlists the situations of torture, widespread violence in the context of armed conflict and a risk to human rights and fundamental freedoms. Though the later ground differs from the Directive, this difference most probably appeared unintentionally at the time when draft Aliens' Law was coordinated with the draft Directive of that time. It provided namely the ground of human rights violations and not a risk of execution. However, the final text of the Directive no longer contained this provision. The Directive has been criticized on this point on several occasions and thus the approach in the Aliens' Law seems to be more progressive in this respect.

Turning to the Directive itself, it can be noted that in comparison with the previous documents regulating harmonised application of the refugee definition², it is a rather progressive legal document. Differently from previous legally non-binding acts, it recognises persecution by non-state agents as a ground for refugee status under the 1951 Convention³, includes a *sur place* refugee category⁴; the notion of the internal flight alternative is recognised as part of the refugee status determination and not as a ground for rejecting an asylum application⁵; efforts are made to define the acts of persecution at the same time recognizing gender-based persecution and specific forms of persecution of minors as persecution under the 1951 Convention.⁶

How these progressive provisions reflect in the legislation of Lithuania? The Aliens' Law only mentions the grounds for granting refugee status or complementary protection, but does not deal with the definition of persecution/acts of persecution, agents of persecution, *sur place* refugees, etc. These provisions are left out to the by-laws: e.g. the Order on Examination of the Asylum Claims, approved by the Order of Minister of Interior in 2004.⁷ Given the importance of these provisions, it would be reasonable though to define possible acts of persecution in the Law. This would allow harmonising the interpretation of refugee definition in administrative institutions and courts. Also, given that certain doubts exist as concerns proper application of gender-based

persecution⁸ or recognition of specific forms of persecution of minors as a ground for refugee status, it would be recommendable to introduce these provisions in the national law or interpret and apply the refugee definition in practice in the context of the Directive's provisions. The definition of the internal flight alternative notion needs further alignment with the Directive. The definition in Lithuania is contained in the Order on Examination of the Asylum Claims. It is described as "[...] a real possibility for an asylum seeker to relocate to another place within the country of origin where state protection from persecution could be obtained".⁹ Meanwhile, the Directive sets much higher requirements for application of this notion, i.e. it requires to establish that there is no well-founded fear of being persecuted or no real risk of suffering serious harm and that the applicant can reasonably be expected to stay in that part of the country; as well as it should be taken into account that in applying this notion not only general circumstances prevailing in that part of the country of origin shall be considered, but also personal circumstances of the applicant.¹⁰

Also, concerns could be raised as regards the effect of complementary protection cessation clauses for the persons in need of protection. These clauses are stated in paragraph 4 of Article 90(2) ("if foreigners' presence in the Republic of Lithuania poses a risk to national security and public order"), as well as in paragraph 14 of Article 50(1) of the Law (providing withdrawal of the temporary residence permit on considerations of state security, public order or health of the population). These cessation grounds are undisputable and undoubtedly important, however the question arises – what would be the legal status in Lithuania of persons to whom these grounds are applied? These provisions seem to be in variance with the very nature of complementary protection, which emerged namely on the basis of the absolute prohibition of expulsion to a country, where the applicant would risk torture. The jurisprudence of the European Court of Human Rights for the past decade clearly confirms that it is forbidden to expel a person to the territory where he would face a risk of torture.¹¹ This prohibition is valid even if the person is dangerous or undesirable in the country. The same rule is confirmed by Article 130(2) of the Aliens' Law, which restates an absolute principle of non-refoulement in case of a risk of torture. Thus the Law lacks consistency, because, if these persons are deprived of complementary protection status or/and the residence permit, they could not still be deported. The question therefore remains – if they

¹ Article 15 of the Directive on Refugee Status and Complementary Protection.

² Joint position 96/196/JHA of 4 March 1996 defined by the Council on the basis of Article K.3 of the Treaty on European Union on the harmonized application of the definition of the term "refugee" in Article 1 of the Geneva Convention of 28 July 1951 relating to the status of refugees.

³ Article 6 of the Directive on Refugee Status and Complementary Protection.

⁴ Article 5 of the Directive on Refugee Status and Complementary Protection.

⁵ Article 8 of the Directive on Refugee Status and Complementary Protection.

⁶ Article 9(2f) of the Directive on Refugee Status and Complementary Protection.

⁷ Order of the Minister of Interior of the Republic of Lithuania on "Approval of the Order on Examination of Foreigners' Applications to Grant Asylum, Adoption of Decisions and its Implementation" (further – Order on Examination of the Asylum Claims)// 15 November, 2004. No. 1V-361. „State News“. No. 168-6196. 2004. P. 66.1 and 66.4.

⁸ Noteworthy that all six cases when women were granted refugee status on the basis of gender-based persecution in Lithuania were during the period of 1998-2000. Following the year 2000, no one has been recognised as a refugee under the 1951 Convention on this ground either by administrative institutions or courts, despite the fact that female asylum seekers are very frequent asylum applicants in Lithuania.

⁹ Paragraph 2 of the Order on Examination of the Asylum Claims.

¹⁰ Article 8 (1-2) of the Directive on Refugee Status and Complementary Protection.

¹¹ Refer e. g. to a court judgements in *Chahal v. the United Kingdom*, *Ahmed v. Austria*.

should indeed be protected from expulsion, what legal status they would have in the country without having a residence permit allowing them to reside there. The administrative institutions and the courts of Lithuania may face difficulties in applying these cessation provisions in the context of Lithuania's obligations under the European Convention for the Protection of Fundamental Rights and Freedoms (further-ECHR).

Rather extensive work still needs to be carried out in Lithuania to align its legislation with the provisions of the Directive concerning the content of international protection. While the Directive provides to persons granted complementary protection the same social security as for the citizens of an asylum country,¹ many Lithuania's legal acts, regulating the provision of various social services, condition the enjoyment of these rights with a permanent residence in Lithuania. This means that persons granted complementary protection are not guaranteed social security on the same basis as citizens after their state-sponsored integration period ends, contrary to the requirements of the Directive. Noteworthy, that recently, access to health care for persons granted complementary protection was ensured through amendments to the Law on Health Insurance (Article 6) and the Law on Health Care System (Article 47), adopted on 28 April 2005.

Besides the above-mentioned, problems in implementing the provisions of the Directive may arise concerning the establishment of a permanent guardianship for unaccompanied minors granted asylum in Lithuania. For the time being Lithuania guarantees only temporary guardianship throughout the asylum procedure and later, but not a permanent one, which is required by the Directive with regard to minors granted refugee status and complementary protection.²

2.4. Asylum Procedures' Directive

As the adoption of the Asylum Procedures' Directive was still pending when the Lithuanian Aliens' Law was adopted, it was namely the provisions of the Commission Proposal for Asylum Procedures Directive³ that was taken into account at that time in revising the national legislation. Certain concerns could be raised in connection with Article 77(2) of the Aliens' Law and analogous provision in paragraph 1 of the Order for Examination of the Asylum Claims, which allow refusing entry to the territory of the country on the basis of a safe country of origin notion or a notion of manifestly unfounded claim. The Law and the Order on Examination of the Asylum Claims also envisages that in these cases the asylum claim shall be examined in substance, i.e.

determining if an asylum seeker should be granted refugee status or complementary protection and if any reasons to refuse granting protection exist (Article 2(19)). But this procedure shall be carried out within 48 hours only with a possibility of extension for another 7 days, as provided in Article 81(3) of the Law. Certain doubts can be raised as concerns the appropriateness of this deadline. In comparison, the Directive mentions a reasonable period that has to be allocated for taking a decision at the border procedure.⁴ It can be implied from the Directive that such a reasonable period can be up to 4 weeks, after which the claim should be examined in the territory. This is the shortest procedural deadline allowed by the Directive and concern special border procedures. Procedural deadlines of 48 hours or even one week (7 days) embodied in the Aliens' Law seem to be too short thus fall outside the reasonable period, which would require to examine the claim in an objective, fair and effective manner – the criteria of the asylum procedure recognised by the international and EU law.

Alignment with the provisions of the Asylum Procedures' Directive still needs to be made as regards the provisions of the Order on Examination of the Asylum Claims, which envisages that reports on the situation in third countries and countries of origin shall be made secret.⁵ The Directive does not deal specifically with the type of information on countries of origin, but generally provides in Article 16(1) that states may make an exception for lawyers representing asylum seekers to access some information if revealing of this information or its sources would entail a risk to national security, as well as in some other very limited circumstances. The Commission proposal for the Asylum Procedures Directive was more explicit in this respect, as it provided that reports on situation in the countries of origin must be public.⁶ Also essential is that while applying the notion of a safe third country, Lithuania is guided not only by the criteria for determining such country, but in addition by other conditions for applying this notion, which are enlisted in the Directive. For instance, that the notion shall be applied only when the applicant has close links with that country and there is an evidence of his admission to that country and the country is safe in the context of his individual circumstances.⁷ Recommendable to include these important provisions in the Order on Examining Asylum Claims, as well as apply it in practice.

Another observation concerning the Lithuanian asylum legislation vis-à-vis the provisions of the Directive relates to the recognition of competence and role of the United Nations High Commissioner for Refugees (further-UNHCR). Perhaps for the first time in the EU

¹ Article 28 (1) of the Directive on Refugee Status and Complementary Protection.

² Article 30 (1) of the Directive on Refugee Status and Complementary Protection.

³ Amended proposal for a Council Directive on minimum standards on procedures in Member States for granting and withdrawing refugee status. COM (2002) 326 final. Official Journal C 291 E of 26/11/2002.

⁴ Article 35 (4) of the Asylum Procedures' Directive.

⁵ Paragraph 34 of the Order on Examination of Asylum Claims.

⁶ Section II of the Annex I and Section II of the Annex II of the Amended proposal for a Council Directive on minimum standards on procedures in Member States for granting and withdrawing refugee status.

⁷ Articles 27 (2a), 27 (4) and 36 (6) of the Asylum Procedures' Directive.

asylum legislation the Directive provides for a very important role to the institution of UNHCR. First of all, UNHCR information about situation in the countries of origin and the third states is recognised as one of the most important information sources, relied upon by asylum authorities in the process of examining asylum claims.¹ Secondly, UNHCR is granted a right to submit to the competent institutions its opinion during any stage of the asylum procedure concerning an individual asylum claim.² Noteworthy, that the later provision is also reflected in Article 91(4) of the Aliens' Law.

2.5. Family Reunification Directive

One of the most important distinctions of the Family Reunification Directive with regard to refugees is that it separates legal regulation applied to refugees from all other foreigners, thereby distinguishing the refugees as a special group of foreigners and recognising the specificity of their situation. However, contrary to the Directive, the Lithuanian Aliens' Law does not provide for any exceptions from the general regime applied to all foreigners as concerns the requirements for family reunification of refugees (e.g. concerning the residence requirement in the asylum country, possibility to limit this right on account of public health interest, waiting period, etc.). Application of the same requirements as for all foreigners may create unbearable difficulties for refugees in exercising their right to family reunification in Lithuania. Therefore it is very important that in implementing the Law the specific nature of refugee situation is taken into account, while certain requirements for family reunification in the Law shall be interpreted and applied in a flexible manner.

Further on, the Aliens' Law overall lacks consistency as concerns the issue of family reunification: Article 30(2) does not provide for a right to family reunification to persons granted temporary protection, but Article 94(4) of the same Law provides for such a right, albeit rather with a limited scope. Thus it can be concluded that Article 30 does not comply with the provisions of the Temporary Protection Directive, which provides for an obligation of states to ensure family reunification (Article 15). Not very positive is the situation that despite the very similar nature of the needs of persons enjoying complementary protection with persons granted refugee status, the Law does not provide for a right to family reunification for the former. The question remains to be answered: how the application of Article 8 of the ECHR (respect for family life) is to be guaranteed in respect of these persons in cases when family reunification is not feasible in any other state.

2.6. Temporary Protection Directive

The last EU asylum legal act to be examined in this Article is the Temporary Protection Directive, which,

though adopted back in 2001, has never been applied in the European Union in practice so far. The Directive envisages a certain regime, applied to massive arrival of asylum seekers in situations when it is not possible to examine the claims individually. In these situations, according to the Directive, all asylum seekers arriving from a crisis country or region are granted with temporary protection for a certain period of time. The provisions of the Directive are transposed in Part Four of Section IV of the Aliens' Law. Even though there are just a few articles in the Law relating to the regime of temporary protection, there are nevertheless a few incompletenesses that could be noted. E.g. the duration of temporary protection in accordance with the Directive is one year with a possibility of extension automatically for two six months periods and if the conditions for temporary protection persist – by a Council decision to one more year, which makes three years maximum. The Aliens' Law however provides for a maximum period of two years only.³ Moreover, the Order on Examination of the Asylum Claims (paragraph 118) is not very clear about the scope of temporary protection, as it states: “with the adoption of Council decision about mass influx of foreigners to the European Union, the Migration Department prepares a draft submission by the Minister of Interior to the Government of the Republic of Lithuania concerning the draft of Government resolution for granting temporary protection to foreigners. The drafts shall mention the number of persons to be granted temporary protection in the Republic of Lithuania” (underlined by the author). This provision reminds to a certain extent of the establishment of a quota system, which would be incompatible with the EU and international obligations. In other words, Lithuania will have to protect under temporary protection regime as many of such persons as arrive, and not to limit it to a particular number of persons.

3. CONCLUSIONS

In conclusion, it could be noted that a large part of the EU Asylum *Acquis* requirements have been already transposed in the national law. Attention should however be paid to the fact that this process is not yet completed. Some important provisions still remain to be aligned or corrected, thus the alignment process should continue. The transposition level is sometimes seen as even more advanced as in the old Member States, because of the binding requirements of the EU enlargement that Lithuania together with all other new Member States was obliged to meet. Good transposition could be noted in particular as concerns the recognition of all possible forms of protection and special treatment of minors. Unless unexpected happens it is clear at the moment that Lithuania will not be able to benefit a lot from some of the EU legal acts (e.g. Dublin Regulation) due to its geographical position, still rather not attractive

¹ Articles 8 (2b) and 30 (5) of the Asylum Procedures' Directive.

² Article 21 (1c) of the Asylum Procedures' Directive.

³ Article 92 (3) of the Aliens' Law.

reception of refugees and limited integration possibilities.

The main legislative act – the Aliens' Law of 2004 emerged as a totally new piece of legislation largely as a result of alignment process with the EU legal acts. It reflects quite well and sometimes even a bit more progressively the provisions of the EU asylum *acquis*. At the same time it lacks consistency and logics while regulating important issues of concern to refugees (e.g. uneven recognition of the right to family reunification for persons granted temporary protection, cessation clauses for complementary protection, etc.). Also, it is essential that some of the most important provisions find their way into the main legislative acts and not remain contained in the low level ministerial instruments (e.g. provisions concerning agents of persecution, gender-based persecution, etc.). Some gaps or inadequacies in the Aliens' Law seem to be non-intentional (e.g. duration of temporary protection, right to family reunification for persons with temporary protection), thus hopefully could be easily cleared.

Among the problems that may arise in implementing the EU asylum *acquis* there is a lacking right to employment for asylum seekers and the nature of the accommodation facilities Pabrade, which is still not able to ensure full social services as required by the Reception Conditions' Directive. The reasons behind the limitation of access to employment do not seem to emerge from economic considerations given the very small number of asylum seekers per year. Allowing such access would add to improving the psychological well-being of these persons as well as reduce the financial burden of reception on the state. Furthermore, the regulation and application of some issues remains problematic. For instance, as concerns the cessation clauses for complimentary protection, the very short deadlines for carrying out accelerated procedures, social security of persons granted complimentary protection beyond the state-sponsored integration period, as well as other provisions that require increased attention before the transposition deadlines come to an end.

Finally, noteworthy that even if some of the provisions are not yet transposed in the national law, administrative institutions and courts while interpreting and applying the provisions of Lithuanian asylum legislation shall do it in the context and in the spirit of the provisions constituting the EU *Acquis* in the field of asylum.

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PAGRINDINĖS EUROPOS SĄJUNGOS PRIEGLOBSČIO TEISYNO ĮGYVENDINIMO PROBLEMAS LIETUVOJE

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S a n t r a u k a

Šiandien jau niekam nekyla abejonių, kad Europos Sąjungos (ES) prieglobsčio teisė turi didelę įtaką Lietuvos teisei

ir praktikos šioje srityje raidai. Šis procesas nesustoja. Šiuo metu Europos Sąjunga, baigusi pirmąjį prieglobsčio teisės derinimo etapą, jau ruošiasi antrajam – sukurti Bendrąją prieglobsčio sistemą ir procedūrą. Sukurti minimalūs prieglobsčio prašytojų ir pabėgėlių apsaugos standartai, be abejonės, užtikrins labiau suderintą prieglobsčio teisės taikymą ES valstybėse narėse, tačiau labai svarbu, kad šie minimalūs reikalavimai neliktų minimalūs. Svarbu, kad ir toliau būtų siekiama visapusiškos pabėgėlių apsaugos Europos Sąjungoje, kuri atitiktų pagrindinį tarptautinį pabėgėlių apsaugos dokumentą – 1951 m. konvenciją dėl pabėgėlių statuso.

Šio straipsnio tikslas – išnagrinėti pagrindines Lietuvos prieglobsčio teisės normas Europos Sąjungos prieglobsčio teisyne požiūriu ir nustatyti problemas, kurios gali kilti įgyvendinant ES teisyne nuostatas. Autorė pateikia pagrindinių Europos Sąjungos prieglobsčio teisės aktų, priimtų remiantis 1997 m. Amsterdamo sutarties 63 straipsniu, analizę. Šie teisės aktai atspindi pirmąjį Europos Sąjungos prieglobsčio teisės derinimo etapą. Dar stodama į Europos Sąjungą Lietuva privalėjo suderinti savo teisę ir praktiką su tada teisiniu požiūriu neįpareigojančių ES prieglobsčio dokumentų nuostatomis. Dar daugiau, toks derinimas privalomas tapus ES nare, nes šiuo metu jau veikia teisiniu požiūriu įpareigojantys ES prieglobsčio teisės aktai. Reikia pasakyti, kad prieglobsčio teisės derinimo procesas Europos Sąjungoje dar nėra baigtas, nes diskutuojama ir rengiamasi antrajam teisės derinimo etapui. Šis procesas ir toliau darys įtaką prieglobsčio teisės raidai ES valstybėse narėse, įskaitant ir Lietuvą. Straipsnio autorė taip

pat pabrėžia, kad nemažiau svarbi yra nacionalinės jurisprudencijos šioje srityje raida, kuri atitiktų ES teisės prieglobsčio srityje nuostatas ir dvasią.

Straipsnyje aptariami visi svarbiausi prieglobsčio teisės dokumentai, priimti pagal 1997 m. Amsterdamo sutarties 63 straipsnį: 2001 m. direktyva dėl laikinosios apsaugos, 2003 m. Dublino reglamentas, 2003 m. priėmimo standartų direktyva, 2003 m. šeimos susijungimo direktyva, 2004 m. pabėgėlio sąvokos ir papildomos apsaugos direktyva bei 2005 m. prieglobsčio procedūrų direktyva. Iš probleminių šių dokumentų įgyvendinimo aspektų autorė išskiria teisės dirbti nesuteikimą prieglobsčio prašytojams prieglobsčio prašymo nagrinėjimo laikotarpiu, prieglobsčio prašytojų apgyvendinimo institucinę sistemą Užsieniečių registracijos centre, trumpus akivaizdžiai nepagrįstų prieglobsčio prašymų procedūros vykdymo terminus, kurie kelia abejonų dėl prieglobsčio procedūros objektyvumo ir teisingumo, tinkamų socialinių garantijų neužtikrinimą prieglobstį gavusiems asmenims pasibaigus socialinės integracijos laikotarpiui, nenuoseklų šeimos susijungimo teisės reglamentavimą Lietuvos teisės aktuose bei kitas problemas.

Pagrindinės sąvokos: ES prieglobsčio teisyne, pabėgėliai, prieglobsčio prašytojai, prieglobstis, pabėgėlio statusas, papildoma apsauga, laikina apsauga, Dublino reglamentas, priėmimo sąlygos, prieglobsčio procedūros, pabėgėlio sąvoka, prieglobsčio teisės derinimas, užsieniečiai, užsieniečių teisinė padėtis, užsieniečių įstatymas, šeimos susijungimas.