

3.1.2.1. Access during a state of emergency

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In 2023, several EU+ countries maintained their previously declared states of emergency to manage high numbers of arrivals. In the face of a remarkable increase in irregular arrivals, in April 2023 Italy also declared a state of emergency, initially for 6 months and renewed in October 2023 for another 6 months.[280](#) In addition, the Italian government reached a bilateral agreement with Albania to disembark and host up to 3,000 applicants on Albanian territory, pending the assessment of their asylum application.[281](#)

In a press briefing, the European Commission stated that it appeared that Italy intended to apply national legislation in a manner that ensures full respect of its obligations in terms of international law and the actions carried out outside of the territory of the Member State go beyond the scope of the EU asylum *acquis*.[282](#)

The European Commission further clarified that it is understood that the agreement will apply to migrants rescued in international waters by Italian vessels. UNHCR reiterated that the transfer agreement of asylum seekers and refugees must respect international refugee law.[283](#) The Council of Europe's Commissioner for Human Rights reacted with concern, stating that the agreement "adds to [the] worrying European trend towards externalising asylum procedures".[284](#) Similar concerns were expressed by civil society organisations, particularly in relation to procedural guarantees, the risk of detention and reception conditions.[285](#) The Italian Parliament approved the law ratifying the Protocol on 15 February 2024.[286](#) The Constitutional Court of Albania ruled that the agreement between Italy and Albania does not harm the territorial integrity of Albania and the agreement may proceed for parliamentary approval.[287](#)

The CJEU delivered its judgment on Hungary's 'embassy procedure' (*see Asylum Report 2023 for the description*). The court [ruled](#) that Hungary failed to fulfil its obligations under Article 6 of the recast APD, limiting effective access to the asylum procedure when it introduced the requirement for persons seeking international protection to submit a declaration of intent in person in a Hungarian embassy. The procedure continued to be implemented in Hungary, despite the CJEU's ruling.

Related to transit zones which were in place from 2015 to 2020, in *S.S. and others v Hungary*, the ECtHR held that a country cannot deny entry to an asylum seeker or remove them – even if it is assumed that the person could enter the country through other means – without a proper evaluation of the risks. The court found a violation of Article 3 of the ECHR because the national authority failed to examine whether the applicants would have access to an adequate asylum procedure when returned, in line with the principle of *non-refoulement*. In another case, the ECtHR [ruled](#) that Hungary had subjected an unaccompanied minor to a collective expulsion to Serbia in violation of the ECHR and had not provided effective remedies.

The Lithuanian Ministry of Internal Affairs submitted draft legislative amendments to the State Border Act to clarify that illegally crossing the border during a state of emergency does not constitute access to the territory.[288](#) At the same time, the ministry submitted draft amendments to the Law on the Legal Status of Foreigners, allowing applications for asylum irrespective of whether a third-country national entered the territory legally or illegally.[289](#)

Despite calls by the Council of Europe's Commissioner for Human Rights to reject draft amendments to the Law on the State Border and Protection,²⁹⁰ the Lithuanian parliament adopted the amendments which allow border guards to return migrants who cross into Lithuanian territory irregularly during a state of emergency.²⁹¹ Civil society organisations continued to criticise the authorities and initiated proceedings before the ECtHR to challenge denials of access to the procedure and instances of *refoulement*.²⁹² The Seimas Controller also found concerns about the way foreigners were held by the State Border Guard Service (SBGS) at border checkpoints without being immediately provided with the minimum standards required by law.²⁹³ In the context of a third-party intervention²⁹⁴ in the communicated case of *COCG and others v Lithuania*,²⁹⁵ the civil society organisation Human Rights Monitoring Institute, citing monitoring data collected by the Lithuanian Red Cross Society,²⁹⁶ stated to the ECtHR that effective access to the asylum procedure was hindered in Lithuania and that persons seeking asylum at international border checkpoints faced serious obstacles.²⁹⁷

In Latvia, the parliament approved legislative bills that amended the State Border Law and the State Border Guard Law, building on Order No 518 of the Cabinet of Ministers on the Declaration of an Emergency Situation, which was adopted in 2021. The law provides the Cabinet of Ministers with the authority to declare a situation of emergency when it considers that there is a disproportionately high number of cases of illegal or attempted crossings of the state border. Prior to the adoption of the laws, UNHCR recommended that the proposed amendments “be revised to prevent collective expulsions and guarantee effective access to protection against *refoulement* by admission to the territory and individual assessments of personal circumstances and possible risks in accordance with international and EU legislation”.²⁹⁸ Following the parliament's adoption of the amendments to the State Border Law and the State Border Guard Law, UNHCR issued a statement to express concern that the changes effectively authorise pushbacks and may lead to individuals not being granted effective access to the territory and the right to seek asylum. The changes do not specify how an assessment should be conducted and the assessment would be undocumented.²⁹⁹ The Ministry of the Interior and the State Border Guard have repeatedly emphasised that third-country nationals can apply for asylum at official border-crossing points. Nonetheless, a civil society organisation in Latvia criticised some practices (such as the use of sound canons) to deter persons from crossing the Belarusian-Latvian border, stating that this practically prohibits people from applying for asylum.³⁰⁰

The Polish Border Guard underlined that a foreigner who crosses an external border in violation of the law will receive a decision and an order to leave the territory. The authority noted the primacy of the international protection procedure and highlighted that if the foreigner expresses the wish to apply for international protection, the Border Guard officer must acknowledge this intent and abandon all activities related to returning the person to the state border line, so that the application for international protection can be processed according to the law. The Border Guard underlined that domestic law does not allow a Border Guard officer not to acknowledge the intent to apply for international protection.

²⁸⁰ Ministry of Labor and Social Policies | Ministero del Lavoro e delle Politiche Sociali. (2023, April 12). *Sbarchi, dichiarato lo stato di emergenza nazionale [Landings, national state of emergency declared]*. <https://integrazioneimmigranti.gov.it/it-it/Ricerca-news/Dettaglio-news/id/3166/Sbarchi-dichiarato-lo-stato-di-emergenza-nazionale->

Department of the Civil Protection | Dipartimento della Protezione Civile. (2023, October 5). *Delibera del Consiglio dei Ministri del 5 ottobre 2023 - Proroga dello stato di emergenza in conseguenza dell'eccezionale incremento dei flussi di persone migranti in ingresso sul territorio nazionale attraverso le rotte migratorie del Mediterraneo [Resolution of the Council of Ministers of 5 October 2023 - Extension of the state of emergency as a result of the exceptional increase in the flows of migrant people entering the national territory via the Mediterranean migratory routes]*.

²⁸¹ Department of the Civil Protection | Dipartimento della Protezione Civile. (2023, October 5). *Delibera del Consiglio dei Ministri del 5 ottobre 2023 - Proroga dello stato di emergenza in conseguenza*

dell'eccezionale incremento dei flussi di persone migranti in ingresso sul territorio nazionale attraverso le rotte migratorie del Mediterraneo [Resolution of the Council of Ministers of 5 October 2023 - Extension of the state of emergency as a result of the exceptional increase in the flows of migrant people entering the national territory via the Mediterranean migratory routes]
. <https://www.protezionecivile.gov.it/it/normativa/delibera-del-cdm-del-5-ottobre-2023-proroga-dello-stato-di-emergenza-incremento-flussi-migranti/>

Italian government | Governo d'Italia. (2023, November 6). *Dichiarazioni alla stampa con il Primo Ministro d'Albania, l'intervento del Presidente Meloni [Statements to the press with the Prime Minister of Albania, speech by President Meloni]*.

[282](#) European Commission. (2023, November 16). Midday press briefing from 16/11/2023. From 0:55:07 to 1:12:20.

[283](#) United Nations High Commissioner for Refugees. (2023, November 7). *UNHCR: Transfer arrangements of asylum seekers and refugees must respect international refugee law* [Press release].

[284](#) Council of Europe, Commissioner for Human Rights. (2023, November 13) Italy–Albania agreement on the disembarkation and processing of asylum applications adds to worrying European trend towards externalising asylum procedures [Tweet]
Twitter. <https://twitter.com/CommissionerHR/status/1724033764324434033?s=20>

Council of Europe (CoE), Commissioner for Human Rights. (2023, November 13). *Italy-Albania agreement adds to worrying European trend towards externalising asylum procedures*.

[285](#) Jesuit Refugee Service Europe. (2023, November 7). *We are very concerned about the announced Italy-Albania agreement: another attempt to externalize responsibility to protect refugees*. [Tweet].
Twitter. <https://twitter.com/JRSEurope/status/1721920971903230133?s=20>

European Council on Refugees and Exiles. (2023, November 17). *Mediterranean: Italy-Albania MoU Leaves Trail of Questions, Legal Implications and Critique – Germany to Target NGO Rescuers as The Civil Fleet Continues to Save Lives Amid Italian Crack-down – Ongoing Returns to Torture and Abuse in Libya*.

[286](#) Disegno di legge S. 995, Ratifica ed esecuzione del Protocollo tra il Governo della Repubblica italiana e il Consiglio dei ministri della Repubblica di Albania per il rafforzamento della collaborazione in materia migratoria, fatto a Roma il 6 novembre 2023, nonché norme di coordinamento con l'ordinamento interno [Bills, Senate Act No 995, Ratification and execution of the Protocol between the Government of the Italian Republic and the Council of Ministers of the Republic of Albania for the strengthening of collaboration in migration matters, done in Rome on 6 November 2023, as well as coordination rules with the internal legal system], February 15, 2024.

[287](#) Ministry of Labor and Social Policies | Ministero del Lavoro e delle Politiche Sociali. (2024, January 31). *Albania, la Corte Costituzionale convalida l'accordo con l'Italia sui migranti [Albania, the Constitutional Court validates the agreement with Italy on migrants]*.

[288](#) State Gazette | Seimas. (2023, January 13). *Valstybės sienos ir jos apsaugos įstatymo [Draft amendment on the State Border Act]*. <https://e-seimas.lrs.lt/portal/legalAct/lt/TAK/67e42910930c11edb55e9d42c1579bdf?positionInSearchResults=58&searchMode=51f8-41e7-99bd-402f9c15d8be>

[289](#) State Gazette | Seimas. (2023, January 13). *Įstatymo Dėl užsieniečių teisinės padėties [Draft amendment on the Law on the Legal Status of Foreigners]*. [https://e-](https://e-seimas.lrs.lt/portal/legalAct/lt/TAK/67e42910930c11edb55e9d42c1579bdf?positionInSearchResults=58&searchMode=51f8-41e7-99bd-402f9c15d8be)

[290](#) Council of Bars and Law Societies of Europe (2023, April 24). *Lithuania: Human rights should be at the centre of the parliamentary debate on migration and asylum*. Council of Europe.
<https://www.coe.int/en/web/commissioner/-/lithuania-human-rights-should-be-at-the-centre-of-the-parliamentary-debate-on-migration-and-asylum>

[291](#) European Council on Refugees and Exiles. (2023, April 21). *Lithuania: Parliament Vote to Legalise Pushbacks, Leading NGOs and Academics Denounce 'Hungarian Border Hunter Model'*.

[292](#) Human Rights Monitoring Institute | Žmogaus teisių stebėjimo institutas. (2023, January 24). *Pateikta peticija EŽTT dėl prieglobsčio procedūrų neprieinamumo ir negrąžinimo principo pažeidimo* [A petition was submitted to the ECtHR regarding the unavailability of asylum procedures and violation of the principle of non-refoulement]. <https://hrmi.lt/pateikta-peticija-eztt-del-prieglobscio-proceduru-neprieinamumo-ir-negrazinimo-principo-pazeidimo/>

[293](#) Lithuanian Ombudsperson | Lietuvos Seimo Kontrolierai. (2023, August 31). *Seimo kontrolierius reiškia susirūpinimą dėl pažeidžiamų užsieniečių situacijos pasienyje* [The Ombudsperson expresses concern about the situation of vulnerable foreigners at the border]. <https://www.lrski.lt/naujienos/seimo-kontroliere-reiskia-susirupinima-del-pazeidziamu-uzsienieciu-situacijos-pasienyje/>

[294](#) Human Rights Monitoring Institute | Žmogaus teisių stebėjimo institutas. (2023, April 21). *Case of C.O.C.G. and Others v Lithuania, Application No 17764/22, Written Submissions Third-Party Intervention*.

[295](#) European Court of Human Rights. (2022, December 19). *Application No 17764/22, C.O.C.G. and Others against Lithuania*, lodged on 8 April 2022, communicated on 2 December 2022. <https://hudoc.echr.coe.int/eng?i=001-221976>

[296](#) Lithuanian Red Cross Society | Lietuvos Raudonojo Kryžiaus. (2023). *Prieglobsčio ir Migracijos Programa Stebėjimo* [Asylum and Migration program, Monitoring]. <https://redcross.lt/veiklos/prieglobscio-ir-migracijos-programa/stebesena-2/>

[297](#) Human Rights Monitoring Institute | Žmogaus teisių stebėjimo institutas. (2023, April 26). *Žmogaus teisių stebėjimo institutas (ŽTSI) pateikė intervenciją Kubos piliečių atstovų ir sulaikymo byloje Europos Žmogaus Teisių Teisme* [Human Rights Monitoring Institute (ŽTIS) filed an intervention in the case of the rejection and detention of Cuban citizens at the European Court of Human Rights].

[298](#) United Nations High Commissioner for Refugees. (2023, June 20). *UNHCR observations on the draft Amendments to the Law of Republic of Latvia on the State Border Guard Law (No 278/Lp14) and the draft amendments to the Law of Republic of Latvia on the State Border of the Republic of Latvia (No 277/Lp14)*.

[299](#) United Nations High Commissioner for Refugees, & Nordic and Baltic Countries. (2023, June 27). *UNHCR concerned with new legislation in Latvia. Statement from UNHCR, the UN Refugee Agency, on law amendments adopted in Latvia*.

[300](#) I want to help refugees | Gribu palėti bėgėjimui. (2023, September 6). *Atklėtą vėstulę par psichologų įskas iedarbas skaityti internete izmantošanų civilinių atstovų šoninėse ribose šoninės* [Open letter on the use of psychological sound devices to deter people from crossing the border].