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Derogate the non-derogable: the legitimization of migrant pushbacks in Lithuania

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Abstract

Migrant pushbacks have become a common practice in many European countries and have garnered considerable academic and media attention. In contrast, the legitimization of migrant pushbacks represents a relatively new legislative development within the EU, often obscured by governments and lacking sufficient scrutiny. Forceful returns of migrants involve denying entry or expelling individuals without individualized assessment, thereby contravening absolute human rights, such as the prohibition of torture and the principle of non-refoulement. Paradoxically, despite the significance and absolute nature of these provisions, Lithuania chose to derogate from them by amending its border laws on April 25, 2023. Consequently, this paper aims to explain how Lithuania's legislative framework came to legalize pushbacks and how racialized narratives have influenced this process. To answer these questions, the study focuses particularly on the notion of absolute rights, the principle of the primacy of EU law, the concept of racial tropes in conjunction with postcolonial theory, and the Critical Legal Studies (CLS) approach. This socio-legal research will be carried out by employing a single-case study design and utilizing two methods: Bacchi and Goodwin's (2016) 'What's the Problem Represented to Be?' (WPR) policy analysis and discourse analysis combined with thematic coding of the language used by Lithuanian government officials. Findings reveal that Lithuania's restrictive asylum policies are significantly influenced by the broader EU stance on immigration, which has become increasingly hostile. The EU's own derogations from international law, coupled with the culture of impunity and a lack of public resistance, have facilitated Lithuania's actions. Additionally, the use of racial tropes has profoundly contributed to the codification of ongoing European neocolonialism and the dehumanization of arriving newcomers into law. The study concludes that the legal and political environment within the EU is regressing in terms of upholding human rights, challenging the notion of absolute rights and weakening the rule of law.

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List of Abbreviations

CFREU: Charter of Fundamental Rights of the European Union

CJEU: Court of Justice of the European Union

CLS: Critical Legal Studies

CPT: European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment

EU: European Union

ECHR: European Convention on Human Rights

ECRE: European Council on Refugees and Exiles

ECtHR: European Court of Human Rights

MEA: Middle Eastern and African

NGO: Non-Governmental Organization

PRAB: Protecting Rights At Borders initiative

TFEU: Treaty on the Functioning of the European Union

UN: United Nations

UNHCR: United Nations High Commissioner for Refugees

WPR: 'What's the problem represented to be?' policy analysis

Introduction

The practice of migrant pushbacks is akin to the proverbial elephant in the room - everyone acknowledges its existence, yet no one is willing to address it. The general awareness and reluctance to confront forceful returns at the EU borders result in evident violations of fundamental human rights principles, with no accountability or punishment for those responsible. Politicians in Lithuania openly assert that 'it is here that we must forget human rights' when advocating for the legitimization of pushbacks (Mazuronis, 2021, para. 4). Employing this rhetoric, Lithuania enacted amendments to the Law on the State Border and its Protection on the 25th of April 2023, thereby formally authorizing migrant pushbacks under domestic legislation. According to Amnesty International, this practice of forceful returns, which entails denying entry or expelling individuals from the nation's border territory without undergoing individual assessment procedures, gives the 'green-light to torture' (Muižnieks, 2023, para. 3). As articulated by the ECtHR, Article 3 of the ECHR, prohibiting torture, inhuman or degrading treatment or punishment, is an absolute right, implying that no limitations or derogations are permissible and its application shall be a matter of definition only. This right is also guaranteed by Article 4 of the CFREU and must, therefore, take precedence over the national legislation of EU member states. Another absolute human rights provision closely linked with the prohibition of torture, and likewise violated by refusing asylum seekers entry into the country's territory, is the principle of non-refoulement. Protected under Article 33 of the Geneva Refugee Convention and Protocol, this principle prohibits deporting individuals to a country where they face serious threats to their life or freedom. Nevertheless, despite the absolute nature of these rights, the legal practice of certain EU member states, including Lithuania, illustrates that even such fundamental norms of international law can be contested through the adoption of hostile domestic asylum laws.

State-exercised pushbacks are a prime example of how non-derogable rights, such as freedom from torture and the principle of non-refoulement, can be suspended or restricted. Individuals attempting to cross the Lithuania-Belarus border outside of designated locations are now being detained and deported without the right to appeal, both at the border and up to five kilometers within the country's territory. Accordingly, this empirical case demonstrates that the derogation of absolute rights is fundamentally inconsistent with Lithuania's international legal obligations, yet it remains widely practiced. This paradox observed in the case of Lithuania reflects a broader trend within the EU, where the asylum system is becoming increasingly hostile towards newcomers instead of addressing the root causes of

migration. Nonetheless, intense migratory pressure is a new phenomenon for Lithuania, as it had relatively few border crossings until 2021, despite being located at an external border of the EU (Migration Department, 2017). The emergence of this newly established northeastern migration route stemmed from the disagreement between Belarus and the EU concerning the legitimacy of the 2020 Belarusian presidential elections, accompanied by widespread demonstrations in Belarus and sanctions imposed by the EU. As a result, legislative changes regarding the asylum system were also implemented in other EU external border countries, including Poland, Latvia, Estonia, and Finland. These changes frequently referenced the need to manage irregular migration and safeguard national borders. The implications of such practices are profound, not only for the individuals directly affected but also for the integrity of international human rights law.

The central problem addressed in this study concerns the normalization of migrant pushbacks and their arbitrary codification into national laws of the EU member states. The routine practice of forceful returns and efforts to hinder south-to-north migration has become so deeply entrenched within the EU, that several countries have begun legalizing such mechanisms without due consideration. This trend represents a dehumanizing approach to border control that risks overshadowing the severity and complexity of the issue at hand. Consequently, this paper aims to analyze in principle wrongful but practically feasible legal authorization of migrant pushbacks, violating the principle of non-refoulement and amounting to ill-treatment and torture. The primary objective of the research is to explain the emergence of the legitimization of forced removals, its correlation with the absoluteness of rights, and its alignment with the EU's fundamental principle of the rule of law. Additionally, this study seeks to illustrate how powerful and privileged entities utilize language as an instrument of oppression, enabling them to derogate the non-derogable. Regarding these research objectives, the paper will examine:

How does Lithuania reconcile its authorization of migrant pushbacks with absolute human rights, and what role do racial tropes play in shaping this dynamic?

The central research question will be divided into three narrower sub-questions, providing a structured framework for this analysis:

1. Lithuania's response to intensified migration: actions and legislative developments since the 2015 European 'refugee crisis' till now.

2. How does Lithuania reconcile its authorization of migrant pushbacks with absolute human rights?

3. What role do racial tropes play in the legalization of migrant pushbacks?

To answer these questions, the study focuses particularly on the notion of absolute rights, the principle of the primacy of EU law, the concept of racial tropes in conjunction with postcolonial theory, and the Critical Legal Studies (CLS) approach. By combining all these relevant constructs and perspectives, the research develops a novel theoretical lens that enables the examination of the controversial legitimization of migrant pushbacks. This socio-legal research will be carried out by employing a single-case study design and utilizing two methods: Bacchi and Goodwin's (2016) 'What's the Problem Represented to Be?' (WPR) policy analysis and discourse analysis combined with thematic coding of the language used by government officials.

As will be discussed in subsequent chapters, while there is extensive literature primarily focusing on the illegal nature of forceful returns, there is a lack of research addressing countries that have already codified pushback measures into national laws, thereby making this practice 'legal'. Since the legitimization of forced removals is a relatively new trend, particularly characterizing the northeastern states of the EU, this paper's most significant contribution lies in expanding knowledge about the migration situation in a region that is both underexplored and unique in its hostile asylum system. Furthermore, this inquiry is of high social relevance because the studied matter is not just legal or political, but one that deeply affects the lives of vulnerable individuals and communities. By documenting these violations, the research provides solid evidence for advocacy, raises public awareness, and influences policy reform to ensure more humane and rights-respecting migration practices. The investigation also highlights the tension between national legislation and international obligations, illustrating the practical challenges and ethical dilemmas encountered by states under migratory pressure.

The relevance of this study is multi-faceted. Firstly, while much has been written about the general rise of anti-immigrant sentiments and policies, there is a lack of focused analysis on how specific countries, particularly those at the EU's external borders like Lithuania, justify and implement such practices. This research conducts a case study that sheds light on these dynamics, contributing to a more nuanced understanding of the issue. Secondly, the study's exploration of the role of language in legitimizing

pushbacks adds a critical dimension to the field of migration research. By applying postcolonial theory and the CLS approach, the research illustrates how language can be used as a tool of oppression, enabling states to circumvent their international obligations. This aspect of the study not only enriches the theoretical framework but also offers practical insights for advocacy and policy reform, suggesting ways to counteract such rhetoric and promote more humane and lawful migration practices. Finally, this study is relevant to lawmakers and human rights advocates. By recording and analyzing Lithuania's legislative changes and their implications, the research provides valuable insights for those involved in shaping asylum and migration policies at both national and EU levels. It emphasizes the need for a more coherent and rights-respecting approach to migration management, highlighting the potential long-term consequences of current practices on the integrity of international human rights law.

To address the research question, this paper begins by introducing a theoretical framework derived from previous research in the field and develops a novel perspective to investigate the authorization of pushbacks in Lithuania. The review of existing literature and discussion of the key theoretical notions are followed by the methodology section of the study, where I present the research design, justify the choice of methods and sources, and reflect on my positionality. The analysis, comprising three parts, first provides context about the studied case, then examines the pushback-authorizing legislation, and finally unveils the role of racialized language in formulating, applying, and enforcing asylum laws. Finally, the paper concludes that the implementation of a policy contradicting international and EU laws was facilitated by regional dynamics within the EU, which is characterized by an anti-immigration stance, and the culture of impunity in the field of migration. Additionally, the use of racialized narratives by government officials significantly influenced legislative processes, perpetuating ongoing forms of European imperialism and neocolonialism, while also dehumanizing arriving newcomers.

Theoretical Framework

Literature review

The current literature on migrant pushbacks covers a wide range of topics, although the debates on the legality of pushback operations and their adherence to human rights norms, alongside the examination of the methods employed by states to justify such practices, dominate the field. Regarding the empirical studies, considerable attention has been directed toward analyzing migration routes in the Balkan and

the Mediterranean regions, while comparatively less focus has been placed on the emergent phenomenon of migration along the northeastern border of the EU and the countries neighboring Belarus. Forced returns occur both at sea and on land, and may be executed on an individual or collective basis. They restrict migrants' access to international protection and asylum procedures, thereby precluding any individual assessment of their protection requirements (González Morales, 2021). Over the past decade, this practice has witnessed a notable rise in prevalence among states and has evolved into the primary mode of border management at European Union borders (Perocco, 2023). Although pushbacks are not legally recognized and lack an internationally accepted definition, the European Union Agency for Fundamental Rights (FRA) (2020, p. 4) defines the phenomenon as the apprehension of a person following an irregular border crossing and their subsequent return to a neighboring country without an individualized assessment of their circumstances. According to González Morales (2021), migrant pushbacks generally refer to government-implemented actions that violate the principle of non-refoulement. As suggested by international soft law documents, pushbacks contravene both non-refoulement and collective expulsions, while the judgments of the ECtHR, such as *Hirsi Jamaa and Others v Italy* (2012), typically associate them with collective expulsions. Considering the terminology provided by FRA, this paper includes both the denial of entry and the removal from the country's borderline territory without undergoing an individual assessment procedure in the definition of pushbacks. While taking into account that pushbacks violate not only Article 3 and the principle of non-refoulement but also the prohibition of collective expulsions of aliens, protected by Article 4 of Protocol No. 4 to the ECHR (1950), this study will not encompass the latter provision within its scope. Accordingly, emphasis will be placed on the infringement of non-derogable rights, such as the prohibition of torture and non-refoulement.

The strand of literature addressing the legality of pushbacks unanimously concludes that border rejections contravene international human rights law and refers to the consequent developments of the significant case law of the ECtHR and the CJEU (Barnes, 2022; Cortese, 2023; Liguori, 2019; Takou, 2023). When examining forced migrant returns, the following articles from international human rights instruments are of particular relevance. Article 18 of the CFREU (2012) guarantees the right to asylum while ensuring compliance with the principle of non-refoulement. Article 3 of the ECHR (1950) and the corresponding Article 4 of the CFREU (2012) prevent the transfer of a person to a country where one is likely to face the death penalty, torture, or other forms of cruel, inhuman, or degrading treatment or punishment. Further, the Geneva Convention on Refugees (1954) and the Additional Protocol (1967)

ensure the right to seek international protection, and more specifically, Article 33 of the Refugee Convention (1954) protects from refoulement. While considerable attention is devoted to investigating violations of these legal provisions, a significant portion of scholars also engage in a deeper examination of the discourse surrounding impunity (Jubany and Rué 2023, pp. 120-123; Costello and Mann, 2020, p. 313). The prevailing methods of managing migration by the EU member states have been likened to an international regime of impunity concerning migrant fatalities (Costello and Mann, 2020, p. 313). Serious accountability gaps are emphasized not only by scholars but also by human rights experts. The evidence indicates that legal mechanisms designed to guarantee accountability are systematically and globally ineffective in the context of asylum seekers and refugees (CPT, 2023; Guild, 2023). Moreover, the EU has encountered substantial criticism for prioritizing border controls at the detriment of migrants' human rights and for its approach of externalizing border management through collaborations with third countries (Luyten, 2022).

The body of literature examining the methods employed by states to justify unlawful border expulsions typically characterizes the EU's border control approach as constructing a 'fortress Europe' (Algotino, 2023, p. 179; Fridez, 2020, p. 6; Marino, & Dawes, 2016, p. 2). There are various measures to enhance border securitization, but the most prominent among states and extensively analyzed by scholars are the misuse of the concept of emergency and the abuse of the narrative of instrumentalized migration. John Reynolds (2020, pp. 1771-1772) argues that 'international law's framing of a state of emergency as a threat to the life of the nation' is employed to justify exclusive border regimes. This emergency paradigm, currently exploited by both international and national laws, enables states to circumvent their self-implemented legal frameworks. Imposing a state of emergency in light of increased migrant arrivals has become a common practice, often subject to abuse by governments seeking to forge the impression that a surge in migrants constitutes an existential crisis for Europe (Reynolds, 2020). Another strategy that aids in validating the illegal actions of EU members is the utilization of the instrumentalized migration narrative (HumanRights360, 2021). Poland, Lithuania, Latvia, and Estonia are employing the term instrumentalization of refugees to characterize Belarus' endeavors to stimulate and facilitate the movement of third-country nationals toward the EU's external borders, thereby destabilizing the Union (PRAB, 2024, p. 14). Although somewhat later, Finland also aligned with its neighbors by utilizing the risk of instrumentalized migration as a rationale for indefinitely closing its border with Russia (ECRE, 2024). The doctrine of instrumentalization has gained prominence in recent years among the countries neighboring Belarus and Russia, serving as the primary argument to justify

the authorization of pushbacks. When asylum seekers are regarded as ‘weapons’ or ‘tools’ of another state, they are stripped of their human status and fundamental rights (HumanRights360, 2021, p. 5). Such measures confirm the admissibility of refoulement and death of people at the border in the interests of the state. While the literature extensively discusses the inviolability of absolute rights, numerous EU member states have not only violated these fundamental rights but also derogated them with the permission of legislators (Mavronicola, 2012).

While academia criticizes the EU for illegal practices and human rights violations in border control, little literature discusses countries that have already legalized pushback measures in national laws. Spain, through Organic Law 4/2015 regarding Protection of Citizen Security (2015), and Hungary, via the amendments to the Act on Asylum (2008) made in 2016, were the initial EU members to legalize pushbacks in their national legislation, blatantly contravening EU law and disregarding fundamental human rights obligations. However, neither the initial proponents who pioneered the practice of pushback authorization, nor the neighbors of Belarus who adopted similar measures later have received sufficient academic scrutiny. There is a lack of explanatory research investigating how specific members of the Union have managed to bypass the rule of law and derogate from absolute rights, such as the principle of non-refoulement and the freedom from torture and inhuman or degrading treatment, without encountering strong opposition from the principal European institutions. Furthermore, although considerable focus has been directed towards the Balkan and Mediterranean migration routes, the northeastern border of the EU, with its newly established route, has been largely overlooked. Various human rights NGOs, such as Amnesty International (2022), have endeavored to raise awareness about the dire situation and the sudden enactment of pushback measures in the national legislations of Lithuania, Estonia, Latvia, and Poland. Accordingly, this research aims to contribute to the scholarly debate by investigating how EU member states authorizing pushbacks navigate around a fundamental principle of the Union - the rule of law. Additionally, the paper seeks to draw attention to the recently emerged migration path, which, despite its novelty, has already significantly influenced the state of human rights in Europe.

Theoretical underpinnings

The theoretical approach of this study draws on the previous literature in the field and integrates relevant theoretical notions to create a novel perspective, enabling the examination of the legitimization

of migrant pushbacks. The key conceptualizations constituting the theoretical framework of this research are *absolute rights*, *migrant pushbacks*, *the primacy of the EU law*, and *racial tropes*. Additionally, the research will be guided by the critical legal studies (CLS) approach, which suggests that law is fundamentally intertwined with social dynamics and frequently serves the interests of those who establish it. By adopting this perspective, the study seeks to clarify how powerful and privileged entities utilize legal mechanisms as instruments of oppression, enabling them to derogate from non-derogable rights and freedoms (Hunt, 1986). This paper aims to add to the existing theoretical knowledge by delving deeper into the concept of absolute rights, particularly centering on the prohibition of torture and non-refoulement within the framework of migrant pushbacks. The analysis will be enhanced by adopting a critical lens to scrutinize racial tropes in political discourse and their impact on legislative processes within the realm of migration.

Critical Legal Studies

Given the socio-legal nature of this research, the objective is to contextualize law and assess the influence of broader social and political elements, such as Eurocentric biases, on legal phenomena like the authorization of pushbacks. Consequently, employing a critical lens is imperative to guide this inquiry effectively. The approach of Critical Legal Studies is well-suited for this purpose as it provides a framework for challenging existing legal structures, claiming that law often contributes to the perpetuation of human subordination (Kairys, 1998). Proponents of the CLS movement, such as Duncan Kennedy (1979), David Kairys (1998), and Alan Hunt (1986), argue that legal processes are far from being politically neutral; on the contrary, it is just a formalized variant of political discourse. Moreover, given that privileged and powerful actors predominantly control the political arena, legal frameworks begin to mirror their interests, consequently perpetuating social disparities. It is crucial to bear in mind that legal formalism and reasoning frequently obscure the underlying power dynamics, which are vital to consider when investigating legislation that either grants or deprives rights (Kennedy, 1979). Hunt (1986, p. 13) takes it a step further by suggesting that the distinction between law and politics becomes blurred as the legal system is inherently shaped by a dominant or hegemonic political culture. This culture, he argues, directly influences the mindset and consciousness of the society at large. In general, critical scholars regard law not as a solution to societal problems, but as a problem in itself, incapable of effectively addressing the issues it purports to resolve.

The Critical Legal Studies prove invaluable in examining the derogations of absolute rights through the authorization of migrant pushbacks. It encourages researchers to question the role of law in upholding existing power structures and to explore how legal instruments may be used to maintain dominance over marginalized groups (Kairys, 1998). Although the principle of non-refoulement and the right not to be tortured or treated in an inhuman or degrading way should be universally upheld without exceptions, certain governments find ways to bypass these regulations when it comes to unwanted migrants. The situation is exacerbated when the European and international oversight structures, designed to enforce these rights, turn a blind eye to the issue and fail to ensure accountability (Costello and Mann, 2020). When impunity becomes a systemic issue in the execution of migrant pushbacks, it highlights a fundamental flaw in the legal system, revealing its failure to serve its intended function. The perspective offered by CLS enables us to discern how legal doctrines and practices, rather than safeguarding fundamental rights, contribute to their infringement, thereby emphasizing the presence of politics within law-making, law-applying, and law-enforcing. Accordingly, throughout the paper, this critical lens will aid in describing the socio-political dynamics, identifying the primary actors responsible for infringing upon absolute rights, clarifying the interests of these actors, and understanding the impact of such legislation on affected individuals.

Absolute rights

Absoluteness of rights and the breaches thereof are the key interest and the point of departure for this study. Gewirth (1981, p. 2) defines an absolute right as one that 'cannot be overridden in any circumstances, thus never justifiably infringed and must be fulfilled without exception'. More importantly, it cannot be lawfully displaced by conflicting considerations, indicating that even the legal system, which itself acknowledged the right as absolute, can no longer revoke its status (Mavronicola, 2012, p. 729). In terms of the potential conflict between negative and positive obligations of a right, absolutists assert that there could never be a positive duty to act in a manner that contravenes the negative duty inherent in an absolute right. The conflict between negative and positive duties is a matter of specification; therefore, it is crucial to delineate it and determine its scope (Mavronicola, 2012, p. 732). Achieving the optimal equilibrium between generality and specificity poses a challenge to ensure that a right remains unambiguous while effectively guiding conduct. Securing clarity and enforceability within legal frameworks is essential for upholding the integrity of absolute rights. The breach of human rights obligations possessing an absolute character becomes a particularly significant

indicator not only of the erosion of the rule of law but also of societal regression (Gatta, 2019). The prohibition of torture and inhuman or degrading treatment, as safeguarded by Article 3 of the ECHR and Article 4 of the CFREU, epitomizes the essence of an absolute right that must not be violated. Article 15 of the ECHR explicitly affirms the non-derogability of the provision enshrined in Article 3. Currently, this human right stands as a *jus cogens* norm, obligating states to refrain from engaging in or permitting torture and other forms of ill-treatment, regardless of their status as a party to the treaty.

Akin to the freedom from torture, the principle of non-refoulement is absolute and mandatory. As clarified by the ECtHR in *Soering v The United Kingdom* (1989), concerning the extradition of a German citizen to the United States and the risk of being sentenced to the death penalty, Article 3 of the ECHR inherently embodies protection against refoulement. It even extends its reach beyond that of the 1951 Geneva Convention by including individuals who may not need to meet the criteria for refugee status. A system of migrant protection is strengthened through Article 3 since the latter obliges states to abstain from deporting an alien to a country where they would be at risk of experiencing ill-treatment (Gatta, 2019, p. 116). Hence, in cases of such maltreatment, the deporting state, despite not bearing direct responsibility, is deemed to play a role in the potential breach of an absolute right. Similarly, the so-called indirect or *chain refoulement* holds a state liable under Article 3 for transferring individuals to an intermediary country, which might then deport them to a third country where they may face torture and other forms of ill-treatment (Gatta, 2019, p. 116). Paradoxically, despite the significance and absolute nature of this provision, numerous states persist in violating the right to freedom from torture, with some even resorting to legalizing such violations to circumvent legal consequences. As a result, this article will focus on violation of Article 3 through the authorization of migrant pushbacks.

Migrant pushbacks

Similar to the concept of absolute rights, understanding migrant pushbacks is equally crucial for this research, as the paper aims to explore the correlation between these two elements. As previously noted, migrant pushbacks contravene the absolute principle of non-refoulement, thereby potentially resulting in violations of the prohibition against torture. Accordingly, a compelling connection emerges between the developments unfolding at the borders of the EU frontline member states and the theoretical notion of absoluteness. Hostile migration laws have transformed borders into sites of epistemic violence,

where unwanted voices are silenced and the application of human rights appears to be eroded (Davies, Isakjee, & Obradovic-Wochnik, 2023). The Border Violence Monitoring Network's (2021) Annual Torture Report provides evidence indicating that 87% of pushbacks conducted by Croatia and 89% by Greece involved one or more instances of violence and abuse, which the organization contends constitute torture or inhuman treatment. Moreover, the Committee for the Prevention of Torture (2023) dedicated its 32nd General Report to addressing the growing prevalence of pushbacks characterized by minimal accountability. The report stresses the necessity of strengthening procedural safeguards against refoulement to prevent violations of Article 3. It underscores that 'by refusing the applicants' entry into the country or unlawfully pushing them back to Belarus, while denying them the possibility of lodging applications (. . .), the responding country failed to protect them from exposure to a real risk of being subjected to ill-treatment' (CPT, 2023, p. 29). In light of the evidence presented, the legalization of such misconduct, which could potentially result in torture, can only be interpreted as a rule of law backsliding within the EU (Carrera, 2021, p. 3).

The notion proposed by Gata (2019) regarding the interconnection between two concurrent crises confronting the EU – the 'migration crisis' and the backsliding of the rule of law – bears significant relevance to this paper. It underscores the importance of examining the interrelationship between these phenomena, as the two crises intersect through the responses to increased migrant arrivals implemented by certain member states. It is noteworthy to mention that many EU countries are employing the concept of a *safe third country* as a means of justifying their response to a surge of border crossings. The notion is frequently utilized to determine the eligibility of asylum seekers, as governments may deem that if individuals have passed through a country designated as safe, based on its overall legal and political situation, their asylum application should have been filed there (Krisper, 2022). Despite the absence of a common list of safe third countries approved by the EU, individual member states may create national lists. The discretion retained by countries has introduced further complexities, as the lists vary significantly, and the procedures for their formulation often lack credibility and transparency (Krisper, 2022). Furthermore, there is no legal obligation under the Refugee Convention (1954) for asylum seekers to claim asylum and remain in the first safe country they reach. Nonetheless, many governments employ the safe third country logic to justify the illegal practice of pushbacks. However, the same argument loses its relevance when states try to validate the authorization of forced removals, as this law does not distinguish between individuals arriving from safe or unsafe countries. The

authorization represents a significant legal step that violates various human rights obligations derived from international and EU law.

The primacy of the EU law

The discussion regarding absolute rights and migrant pushbacks directs attention to the principle of the primacy of EU law, as legalized forced returns come into conflict with certain EU regulations. The principle delineated in the Declaration concerning primacy appended to the Treaty on the Functioning of the European Union (TFEU) (2007) asserts that in cases of a conflict between a provision of EU law and a provision of national law of an EU member state, EU law shall take precedence. Otherwise, each country could potentially prioritize its national laws over EU legislation, rendering the implementation of EU policies unfeasible. Countries delegate specific powers to the EU and constrain their sovereign rights when acceding to the Union. Consequently, to uphold the effectiveness of EU standards, they must supersede all national legal provisions, including those enshrined in constitutions (POEU, 2022). However, this principle of precedence applies only to sectors, whose supervision the countries have transferred to the EU. Among these sectors are the customs union, monetary policy, environment, and transport, while health, industry, culture, tourism, and education are regulated separately by each member state (POEU, 2022). With regards to human rights, the Treaty of Lisbon (2007) served as a turning point since after amending the Treaty on European Union, the EU Charter of Fundamental Rights became legally binding and rose to the equivalent level of primary EU law (Douglas-Scott, 2011). Protection of fundamental rights has emerged as one of the most pivotal domains within EU law, significantly impacting the Union's interactions with its member states and international law.

Considering the foregoing, the legalization of pushbacks through national laws contradicts the supremacy of EU law. The enactment of forced removals into domestic legislation is a relatively recent development, making it challenging to establish its unlawfulness through case law, as it has yet to emerge. Nonetheless, the TFEU and the EU Charter, both regarded as primary sources of EU law, reveal that these hostile migration policies violate the principle of non-refoulement, protected by Article 78(1) TFEU (2007) and Articles 18 and 19 of the Charter (2012), and the right to asylum and international protection enshrined in Article 78 TFEU (2007) and Article 18 of the Charter (2012). If properly implemented, these pieces of legislation safeguard justice, freedom, and security, while also ensuring respect for fundamental rights and human dignity of those seeking refuge. Accordingly, the

authorization of pushbacks not only breaches the aforementioned provisions but also diminishes the authority and efficacy of EU law, thereby challenging the unity and coherence of the Union's legal framework (Toom & Engerer, 2023). Henceforth, it is important to analyze pushbacks not only in the context of absolute rights but also from the perspective of the primacy of EU law. This dual examination is essential as it underscores their interrelation and highlights that the authorization of forced removals raises legal concerns at both the international and European levels. Nevertheless, to formalize actions contradicting EU law, governments must provide justification to their citizens and the Union's institutions. Although the methods discussed earlier, such as the misuse of the concept of emergency and the exploitation of narratives surrounding instrumentalized migration, are common among EU countries, an underlying factor exists - *racial tropes*.

Racial tropes

To grasp the correlation between migration, EU law, and torture, it is necessary to center the analysis on racism and its function within these associations. Border control regulations do not exist within a political vacuum; rather, they are significantly influenced by societal attitudes toward arriving migrants. According to John Reynolds (2020, p. 1771), EU borders have become 'racial borders', serving as a stark reminder of the global color line. Hence, it is important to discuss the *racial tropes* which are often bound to legal concepts and strategically employed by the lawmakers to achieve certain political aims. By using the term *racial tropes*, this paper refers to racialized representation, stereotypes, and narratives that contribute to the construction of racial identities within contemporary oppressive systems (Fanon, 1967; Hall, 1997; Reynolds, 2020). As an illustration, Hall (1997), a pioneering scholar in the examination of racialized portrayals of black individuals in media and popular culture, identified tropes such as the 'criminal black man' and the 'exotic other.' These tropes served to reinforce prejudice, discrimination, and colonial injustices. The border regimes of certain EU member states perpetuate continuing forms of European imperialism and neocolonialism (Reynolds, 2020). Despite violations of EU law by the national border regimes in question, states remain largely unaccountable, particularly concerning migrants coming from Middle Eastern and African (MEA) countries. Violence plays a crucial role in upholding European whiteness, while racial tropes, which dehumanize newcomers, serve to justify and perpetuate such violence (Fanon, 1967; Hall, 1997). Thus, the construction and preservation of racialized narratives regarding asylum seekers, both at societal and legal levels, are essential for preserving the dominance and impunity of member states.

The postcolonial theory proves invaluable in analyzing the Eurocentric nature of legal processes. The introduction of the postcolonial lens, to which Edward Said (1978) made a significant contribution, enables the examination of the lasting effects of colonialism and imperialism on societies, cultures, and power structures. Moreover, it critiques dominant discourses and unveils the strategies that continue to be employed by those in power to influence contemporary social, political, and legal systems. In the context of migration, postcolonial theory sheds light on the inherent biases and inequalities embedded in migration policies and legal frameworks, privileging the interests and concerns of white Europeans. The Western perspective portrays migration from non-white communities as irregular, unauthorized, and illegal, sometimes necessitating the implementation of pushback measures (Reynolds, 2020). However, South-to-North migration can be viewed as a manifestation of distributive justice, where open borders serve as reparations toward decolonization (Walia, 2014). Considering this, the Global North has no right to exclude newcomers from the Global South; rather, the current border systems and institutions demand a thorough reconsideration. Nonetheless, the perpetuation of racial tropes, which often evade scrutiny, does not contribute to ensuring the fairness and impartiality of laws being passed, nor does it promote equal treatment under these laws. Indeed, racial stereotypes can play a pivotal role in facilitating lawmakers' justification of actions that contravene established human rights principles (Isakjee et al., 2020).

Methodology

Research design

Following a thorough review of the existing literature in the field and the presentation of the most relevant theoretical underpinnings, this research adopts a deductive approach. Utilizing a theoretical framework as a guiding tool, the analysis of an empirical case is conducted (Casula et al., 2021). A deductive strategy of linking data and theory is chosen since it provides a greater level of structure. Commencing with general theoretical principles and proceeding to specific observations, this approach ensures logical coherence in the research process. Additionally, a comprehensive examination of theoretical foundations helps to frame the research question relevant to the current academic debate. This paper employs a qualitative methodology to provide an in-depth understanding of a societal issue by scrutinizing the interpretations of the participants involved in it (Mwita, 2022). The qualitative

research strategy is likewise valuable for exploring the social dimensions of law and examining its genesis (McConville & Chui, 2017). Given that the study aims to explore how the legalization of migrant pushbacks came into being and its correlation with the absoluteness of rights, a qualitative approach is deemed the most suitable. The paper focuses on gaining a rich grasp of a single phenomenon, as is intrinsic to qualitative research, instead of generalizing the findings to other settings and increasing the study's external validity (Casula et al., 2021). According to Gilgun (2015), this inquiry could be termed as Deductive Qualitative Analysis (DQA) that combines the structure offered by deductive reasoning and the flexibility to discover new theoretical notions provided by the qualitative strategy. This theory-guided research does not test a hypothesis but utilizes sensitizing concepts that offer focus and guidance to the paper (Gilgun, 2015). Sensitizing concepts can address a common issue in qualitative methodology - the potential misalignment between theory and data. Informed by prior theoretical understanding, these concepts navigate the scholar's efforts in data collection and reporting. Consequently, this study's methodology and analysis will be guided by the concepts of *absolute rights*, *migrant pushbacks*, the *primacy of the EU law*, and *racial tropes*.

In seeking to explore the phenomenon of state-implemented migrant pushbacks and to gain a deeper understanding of the interplay between the authorization of forced returns and non-derogable rights, this explanatory inquiry adopts a single-case study design. This research design stands as the optimal choice for answering an explanatory research question because it allows for an in-depth exploration of a singular case (Yin, 2018, p. 61). Through this immersive approach, researchers can thoroughly examine the complexities of the phenomenon being studied, thereby aiding them in clarifying the underlying reasons behind certain outcomes (Yin, 2018, p. 37). This paper will investigate the case of the legalization of migrant pushbacks in Lithuania. Despite similar recent legal developments in neighboring countries such as Estonia, Latvia, Poland, and Finland, Lithuania was selected for the following reasons. Firstly, there is a lack of media and academic coverage of the migration-related legislative changes and the situation at the country's borders. Secondly, this decision was motivated by personal research objectives, which include an examination of my home country, allowing me to gain profound insights due to my familiarity with the language and context. Lastly, Lithuania is at the forefront of international human rights litigation. The CJEU recently delivered a significant judgment in *M.A. v Valstybės sienos apsaugos tarnyba* (2022), addressing the alignment of the Lithuanian asylum system with EU law. Additionally, a major case, *C.O.C.G. and Others v. Lithuania* (2022), is currently pending before the Grand Chamber, concerning pushbacks to Belarus and the deprivation of

liberty in a center for asylum seekers. While Estonia, Latvia, Poland, and Finland cannot be included in this study due to time constraints and the research scope, it is notable that all five countries share similar circumstances. Therefore, analyzing Lithuania as a common case permits a modest degree of generalization.

Returning to the single-case study design, it is noteworthy for its potential to identify causality between multiple factors. In this instance, it will aid in examining the influence of broader socio-political elements, such as entrenched racial tropes, on the formulation and execution of stringent migration legislation. Furthermore, ensuring the quality of the inquiry involves considering four criteria relevant to qualitative research: credibility, transferability, dependability, and confirmability (Lincoln & Guba, 1985). Credibility seeks to establish confidence in the reliability of the findings (Lincoln & Guba, 1985, p. 301). Hence, employing techniques such as prolonged engagement, persistent observation, and triangulation of sources will aid in achieving the necessary scope, depth, and consistency of data, respectively. Transferability concerns the extent to which findings can be applied to other contexts, requiring a thick description of the studied phenomenon (Guba & Lincoln 1989, p. 241). This will be accomplished throughout the paper, with particular emphasis on the initial section of the analysis, where a comprehensive portrayal of Lithuania as a receiving country for asylum seekers will be presented. Dependability regards the clarity of the research process and the demonstration that the findings are consistent and replicable (Lincoln & Guba, 1985, p. 330). This can be achieved by having a researcher who is not directly involved in the research process, in this instance - a thesis supervisor, to evaluate the outcomes of the study. Confirmability seeks to guarantee that conclusions are rooted in the data and are shaped by the perspectives of the studied participants, rather than the biases or interests of the researcher (Lincoln & Guba, 1985, p. 219). Reflection on the researcher's positionality and the documentation of analytical memos throughout the analysis process can aid in revealing how the author's preconceptions and perspectives may have influenced the research process.

Methods and sources

As this socio-legal paper aims to contextualize law within broader social and political factors, it will adopt a social science perspective and employ qualitative research methods accordingly. The case study on the authorization of migrant pushbacks in Lithuania seeks to answer the research question by dividing the analysis into three sections. The first one provides a brief historical background of

Lithuania as a migrant-receiving country. The second one studies the legislation, its alignment with the EU law, and the significance of the principle of primacy, thus adopting a specific type of policy analysis as the method of data analysis. The third section delves into the discourse utilized by lawmakers that contributed to the enactment of the law, thereby employing the method of discourse analysis.

The second part of the research examines a primary source, the amendment to the Law on the State Border and its Protection No.VIII-1666, ratified by the Parliament of the Republic of Lithuania on April 25th, 2023. While analyzing a solitary document might seem limiting, this particular legislation holds landmark significance within its context, positioning Lithuania among the few EU countries that have implemented forced returns. This makes it a focal point for the study. To scrutinize the content of the legislation and disclose its relationship with EU law, a specific type of policy analysis, Bacchi and Goodwin's (2016) 'What's the problem represented to be?' (WPR), is utilized. For this paper, the post-structural WPR approach is deemed more suitable than conventional policy analysis techniques, as it views law-making, law-applying, and law-enforcing as closely intertwined with politics (Bacchi & Goodwin, 2016). Accordingly, the WPR policy analysis method effectively aligns with the previously presented perspectives of Critical Legal Studies and postcolonial theory. Together, they seek to question established legal frameworks and examine the role of law in perpetuating human subordination. Since this study is interested in how migrant pushbacks are codified in national laws, given their incompatibility with absolute rights and EU law, it is crucial to perceive policy implementation and enforcement not merely as a mechanism for upholding the rule of law and protecting individuals' rights. Rather, it should be seen as a deeply politicized process that targets and problematizes specific phenomena, occasionally even leading to the endorsement of actions that are *de jure* illegal. To better understand such paradoxes in law-making, Bacchi and Goodwin (2016) introduce six forms of questioning that enable the investigation of policy documents, the circumstances of their enactment, and their ramifications (see Table 1). It is important to mention that using the six questions involves the examination of oneself as an integral aspect of the process (Tawell & McCluskey, 2021). Thus, including self-reflection throughout the analytical process emerges as a fundamental component of the analysis. In WPR's respect, policies are not inherently designed to resolve arisen issues; instead, they often generate new issues, thereby reflecting broader socio-political dynamics. As a result, employing the six questions allows us to understand policy better than the policy-makers because the

WPR approach helps to uncover hidden assumptions and underlying conceptual frameworks inherent in problem formulations.

Bacchi and Goodwin's (2016) WPR approach to policy analysis	
Question 1	What's the problem represented to be in a specific policy or policies?
Question 2	What deep-seated presuppositions or assumptions (conceptual logics) underlie this representation of the 'problem' (problem representation)?
Question 3	How has this representation of the 'problem' come about?
Question 4	What is left unproblematic in this problem representation? Where are the silences? Can the 'problem' be conceptualized differently?
Question 5	What effects (discursive, subjectification, lived) are produced by this representation of the 'problem'?
Question 6	How and where has this representation of the 'problem' been produced, disseminated, and defended? How has it been and/or how can it be disrupted and replaced?
Step 7	Apply this list of questions to your own problem representations.

Table 1. WPR approach to policy analysis

To further explore the underlying catalysts behind the enactment of legislation that threatens absolute rights, the third part of the research investigates the discourse of legislators, while evaluating the influence of racial tropes. Including this perspective is imperative for gaining a comprehensive insight into the prevalent attitudes toward heightened migration. Considering that the power dynamics among social actors as well as dominant cultural norms and values influence the social practices that shape legal meaning, discourse analysis coupled with thematic coding appears to be the most appropriate analytical method (Creutzfeldt, Mason & McConnachie, 2020). Furthermore, discourse analysis aligns well with the theoretical approach of the study due to its emphasis on scrutinizing language as an instrument of power capable of perpetuating and consolidating inequality and domination (Foucault, 1982). The method is also vital for uncovering the role of racial tropes in the legitimization of migrant

pushbacks, as it exposes the portrayal of newcomers from Africa and the Middle East. This section will analyze primary sources, comprising public statements of politicians regarding the issue, recordings of parliamentary debates, and press releases retrieved from the website of the Seimas of the Republic of Lithuania. Since all collected data is in Lithuanian, it will undergo translation using DeepL, a software tailored for translating extensive pieces of text. Regarding video recordings, they will initially be transcribed and later translated using the aforementioned software. Subsequently, I will employ a two-cycle coding to analyze the gathered data, utilizing the qualitative coding software Atlas.ti and generating analytical memos throughout the entire coding procedure (see Appendix A). The coding process adopts an abductive approach, where theoretical underpinnings and concepts presented earlier guide the initial coding cycle, yet it remains receptive to alternative analytical directions, allowing the data to speak for itself (Saldaña, 2021). The second phase of analysis, referred to as focused coding, will follow the initial coding cycle. This secondary coding phase aims to group the codes into categories and synthesize them, thereby revealing dominant patterns and narratives. By systematically analyzing the discourse of lawmakers in this manner, the study will gain insights into how racial tropes influence legal processes and their role in the violation of non-derogable rights.

Reflection on positionality

This research follows a social constructivist epistemological orientation, recognizing the existence of multiple realities and interpretations, leading to observer-dependent findings (Yin, 2018, p. 47). According to this epistemological stance, individuals engage in specific actions rather than others because of certain ‘social constructs’, such as norms, beliefs, and ideas, shaping their perception of the world (Parsons, 2010, p. 80). Social constructivism is particularly suitable for this research, as it will aid in revealing how lawmakers' perceptions of migrants influence their decision-making processes, occasionally resulting in controversial legislation such as the authorization of migrant pushbacks. Furthermore, the approach aligns well with case study design and qualitative methods because it emphasizes comprehending subjective experiences, meanings, and social contexts. Taking into account these considerations, it becomes crucial for the researcher undertaking such investigations to reflect on their positionality. My identity markers, worldview, and social background shape the interpretation of the data and are inherently intertwined with the phenomena under investigation. Drawing on Holmes (2020), I reflect on my positionality regarding three areas: the subject under investigation, the participants in the research, and the research context and process. Concerning the subject of analysis,

my Lithuanian nationality as well as my academic background in political science and human rights were the primary factors shaping my interest in the legalization of migrant pushbacks in Lithuania. Additionally, my left-wing political orientation and prior volunteering experience with refugees in Lithuania contributed to my critical assessment of Lithuania's legal actions posing a threat to the protection of human rights. Regarding the second aspect, there are no direct participants in the research. However, it is important to note that the politicians whose language I will be analyzing hold high-ranking positions as civil servants with significant authority. They may not necessarily share my perspective on migration, implying that divergent viewpoints could influence my assessment of their discourse. In terms of research context and process, I had a keen interest in migration law well before starting the investigation, indicating my familiarity with the context of the studied matter. Nonetheless, I am aware that my knowledge of the issue has primarily been shaped by Western sources, and conducting this study in a European university may introduce certain biases.

Analysis

1. Lithuania's response to intensified migration: actions and legislative developments since the 2015 European 'refugee crisis' till now

Before delving into the first part of the analysis, which examines the legitimization of pushbacks using WPR policy analysis, it is crucial to contextualize the events leading up to this law's implementation and comprehend Lithuania's background as a migrant-receiving country. As mentioned earlier, providing a thick description of the studied phenomenon is essential to fulfill the transferability criterion. Hence, this section will be dedicated to achieving that objective and familiarizing the reader with the case under investigation.

Lithuania's response to increased refugee arrivals in 2015

Throughout recent history, Lithuania has primarily been characterized as a country of emigration, with asylum having a limited significance. The asylum procedure was formally established in Lithuania with the enactment of the Law on Refugee Status (1997) and ratification of the Geneva Convention relating to the Status of Refugees (1951) and its Protocol (1967) in 1997. Between 2000 and 2015, the annual

number of asylum applications varied between 291 and 644 (Migration Department, 2017). However, everything shifted when Europe confronted the so-called Mediterranean 'refugee crisis' in 2015, prompting Lithuania to participate in the European Commission's Emergency Relocation Scheme by accepting 1,105 refugees who had arrived in Greece and Italy (European Website on Integration, 2019). The relocation deadline, set for 31 October 2019, passed with Lithuania accepting less than 50% of the agreed-upon number. Despite the small immigrant population in Lithuania, the segregation between the hosting population and refugees is significant, resulting in the majority of these newcomers leaving the country shortly after their arrival (Blažytė, Frėjutė-Rakauskienė, & Pilinkaitė-Sotirovič, 2020). A study on refugees conducted in 2019 shows that Lithuanians commonly perceive asylum seekers entering the country as economic migrants who may potentially increase crime rates and cause social unrest (IES, 2019). The prevailing social attitudes coupled with Lithuania's unfavorable economic situation posed a challenge for the Emergency Relocation Scheme, as many refugees relocated to Lithuania viewed it primarily as a transit country en route to other Western EU states, such as Germany. In response to this phenomenon of 'secondary movement', relevant incentives were introduced to discourage refugees from relocating to destinations other than those originally designated (Blažytė, & Žibas, 2019, p. 114). Among various legislative developments initiated by the government, measures such as subsidized employment, mobility support, professional training assistance, and skill acquisition support were implemented (Blažytė, & Žibas, 2019, p. 117). However, despite their positive impact, these incentives were temporary and, being primarily economy-focused, are unlikely to alter the societal attitudes of Lithuanian residents.

Furthermore, there is a widespread belief that the nation has already admitted an adequate number of refugees, notwithstanding that in 2019 only 1,822 individuals held refugee status and resided in Lithuania, amounting to only 0.07 percent of the population (IES, 2019; UNHCR, 2023a). Although Lithuania experienced a relatively modest influx of refugees in 2015, it was nonetheless perceived as a crisis. A study on Lithuanian media discourse regarding refugees reveals that newcomers are frequently associated with threats to national security, culture, welfare, and health systems (Blažytė, Frėjutė-Rakauskienė, & Pilinkaitė-Sotirovič, 2020). This linkage fosters perceptions of chaos and instability, inciting calls for immediate control. National opinion polls from 2017 prove that 79% of respondents support the government's decision to rigorously regulate the arrival of refugees, with 54% expressing the view that Lithuania should decline participation in the Emergency Relocation Scheme (IES, 2017). The Minister of Internal Affairs at the time stated that negotiations were ongoing with Italy and Greece

to select refugees based on Lithuania's interests, as the country would not admit just anyone (Skvernelis, 2015). This illustrates that Lithuania not only resisted admitting asylum seekers but also sought to only select those meeting its standards, thereby perpetuating discriminatory rhetoric. In 2015, Lithuania chose to distance itself from the matter, neglecting the Southern member states grappling with heightened migration. Ironically, in 2021, Lithuania found itself confronting a similar scenario when Belarus unveiled a new migration route to the EU.

Lithuania's response to increased border crossings at its border with Belarus in 2021

The heightened attempts to enter the EU through Belarusian borders with Poland, Lithuania, and Latvia started in June 2021. The emergence of this new migration route resulted from the disagreement between Belarus and the EU over the legitimacy of the 2020 Belarusian presidential elections, followed by the 2020-2021 nationwide demonstrations (Forti, 2023). Lithuania, along with the EU, denounced the re-election of Belarusian President Lukashenko as fraudulent due to the lack of freedom and fairness in the electoral process, which failed to meet international standards (EU Council, 2024). Additionally, the EU condemned the use of violence against peaceful protesters by the Belarusian security forces and promptly implemented sanctions against Alexandr Lukashenko and several other officials (EU Council, 2024). The Belarusian government, in response to the sanctions, took actions to artificially boost migration flows. This included organizing flights and issuing tourist visas to individuals from the Middle East and Africa, encouraging them to cross the EU's external border once their short-term visas expired (Forti, 2023). Entry attempts to Lithuania began in June 2021, and within just three months, the country encountered over 4,000 such border crossings, contrasting sharply with the annual average of around 200 migrants in the years prior (VSAT, 2024a). The majority of these migrants were arriving from Iraq, Congo, Syria, Cameroon, and Afghanistan, excluding individuals from neighboring Belarus and Russia (VSAT, 2024a). Even though Lithuanian border guards later began pushing the migrants back to Belarus, the majority of them were detained for illegally crossing the border. Some migrants spent over a year residing in overcrowded detention centers, which were never designed to accommodate thousands of people. Amnesty International (2022, p. 6) reported that arbitrarily detained individuals endure inhumane conditions, torture, denial of fair asylum procedures,

and other serious human rights violations, aiming to coerce them into 'voluntarily' returning to their countries of origin.

Regarding the forced returns at the Lithuania-Belarus border, they began once the detention centers reached capacity and space became limited. Initially, the pushbacks were conducted in violation of the law and covertly, as they were not publicly acknowledged by the state. However, these actions were reported by migrants themselves to Sienos Grupė (Border Group), a non-profit organization offering legal and humanitarian support to individuals on the move (Vyšniauskas, 2022). Subsequently, the country pursued legal measures by declaring a state of emergency, amending the Law on Legal Status of Aliens No. XIV-506 (2021), and initiating the construction of a physical barrier along the entire Belarus-Lithuania border perimeter. The legislative changes entailed several provisions: designated locations for asylum application submissions with refusals at other sites, establishing preconditions for collective expulsions; accelerated examination of cases for all arrivals from Belarus, disregarding the imperative to promptly process applications from vulnerable individuals; automatic detention without recourse for challenging the decision, thereby impinging on asylum seekers' freedom of movement; absence of recourse to appeal decisions before an impartial body like a court; limitations on access to information, interpretation services, social and psychological support, and the right to employment (ECRE, 2021, pp. 2-9). The amendments are a continuation of Resolution No. XIV-505 (2021), which focuses on counteracting 'hybrid aggression' waged by the Belarusian regime aiming to destabilize Lithuania. This legislative response has significantly reduced the volume of lodged asylum applications as guards were effectively barring newcomers from entry, thereby preventing them from even reaching the designated border points to submit an application (VSAT, 2024a). As autumn and winter approached, the individuals stranded between the borders found it increasingly challenging to access humanitarian or medical assistance. Journalists were also prohibited from accessing the border area to report on the unfolding humanitarian crisis (Vyšniauskas, 2022). The aforementioned non-profit organization, Sienos Grupė, served as the sole source reporting on the conditions at the borders, claiming that enduring winter conditions in the forests led to limb amputations for at least three individuals and even one death, with tens of people still being missing (Sienos Grupė, 2024).

Lithuania's response to the influx of refugees from Ukraine in 2022

In 2022, Lithuania experienced heightened arrivals of migrants once again, this time sparked by Russia's invasion of Ukraine, commencing on February 24th (UNHCR, 2024a). After refusing entry to asylum seekers from Iraq, Congo, Syria, Cameroon, Afghanistan, and other MEA countries, Lithuania demonstrated solidarity by welcoming Ukrainian refugees fleeing a comparable predicament.

According to statistical data, Lithuania has repelled approximately 22,000 individuals attempting to cross the Lithuania-Belarus border (VSAT, 2024b). Concurrently, the country has provided asylum to more than 85,000 Ukrainian refugees (UNHCR, 2024a). The treatment and entitlements afforded to these two groups of individuals seeking refuge differed significantly. To begin with, migrants from Ukraine were promptly granted temporary protection, providing access to residency, housing, labor market, and education without the necessity of applying for asylum (Brazinskaite & Goldsmith, 2022). Conversely, the majority of detained newcomers from the Middle East and Africa held asylum seeker statuses for nearly one year, only to ultimately be refused refugee status. Consequently, this also impacted the mobility and security of immigrants (Forti, 2023). Concerning mobility, stark differences were evident in their ability to freely cross the Lithuanian border and travel inside the country. Border guards vigilantly monitored the country's frontier, halting and detaining individuals from MEA countries, as the aforementioned legislative changes justified such border control practices (Amnesty International, 2022, p. 5). In contrast, Ukrainians' mobility remained unrestricted since officers permitted individuals with Ukrainian nationality or residency to pass without rigorous screenings or interrogation (Carrera et al., 2022). Following registration at specially designated centers, they were free to settle in their preferred locations, without being compelled to reside in a specific area (Carrera et al., 2022). There was also a notable disparity in the access to safety between these two groups of asylum seekers. By withholding the opportunity to lodge asylum applications and by urging them to return to their home countries, Lithuania disregards the unsafe conditions of newcomers from MEA countries, thereby exposing them to heightened risks (Amnesty International, 2022, p. 12). Conversely, Ukrainians faced no risk of deportation to their turbulent homeland and were even provided with substantial humanitarian aid and material support from Lithuanian institutions (Amnesty International, 2022, p. 4).

Another crucial difference in the treatment and entitlements of these two groups of immigrants revolved around accommodation. Reacting to the intensified migration from Ukraine, Lithuania passed two policies, Resolution No. 587 (2022) and Order No. 1V-143 (2022), instructing to establish state border crossing points and registration centers. These centers were tasked with providing humanitarian

assistance, including essential equipment such as beds, mattresses, and sleeping bags. Additionally, following the completion of the registration process, Ukrainians were offered accommodation, catering services, and hygiene goods, all of which were subsidized by state, municipal institutions, or other affiliated organizations. On the other hand, amendments to the Law on Legal Status of Aliens No. XIV-506 (2021) pertaining to Middle Eastern and African asylum seekers ordered to temporarily accommodate them in border control points or transit zones, without being granted the right to freely move within the territory of Lithuania. This accommodation effectively constitutes detention, as it deprives asylum applicants of their freedom of movement and segregates them from the general population (ECRE, 2021). Moreover, asylum seekers are automatically subjected to confinement for an extended period of 12 months, without undergoing individual assessments for detention (ECRE, 2021). The detention of migrants without an individual court assessment is a gross violation of human rights, and the detention of children in the context of migration and asylum is generally considered a violation of the UN Convention on the Rights of the Child (1989). It is important to note that these appalling and unhealthy living conditions resulted in 3 deaths (a 10-year-old boy, a 5-year-old girl, and a young woman), as well as one stillbirth, experienced by a woman detained while eight months pregnant (Murauskaitė, 2021; Rinkevičius, 2021). Overall, the examination of arrival conditions and state-provided assistance granted to Ukrainians, juxtaposed with the treatment experienced by nationals of MEA countries, demonstrates that refugees from Ukraine were met with considerable public and political support.

2. How does Lithuania reconcile its authorization of migrant pushbacks with absolute human rights?

After providing a brief historical overview of Lithuania as a receiving country for refugees, the paper will conduct a policy analysis of migrant pushbacks authorizing legislation by applying Bacchi and Goodwin's (2016) 'What's the problem represented to be?' approach. This section aims to explain the enactment of migrant pushbacks, a measure conflicting with absolute rights and the principle of the primacy of EU law, into Lithuania's national legislation. The WRP, functioning as a problem-questioning paradigm, will scrutinize both the content of the legislation and its problem representations. This will be accomplished through an examination of the profound conceptual foundations upon which policies are constructed. The analysis will be guided by the six questions outlined by Bacchi and Goodwin (2016) (see Table 1). However, for the purpose of this paper,

questions 4 and 5 will be interchanged, as it seems more appropriate to first examine the effects of the legislation before proposing alternative perspectives on how the problem could be reconceptualized.

Before addressing question 1, which asks ‘What's the problem represented to be in a specific policy?’ (Bacchi & Goodwin, 2016, p. 20), it is essential to first present the content of the legislation. The Law on the State Border and its Protection No.VIII-1666 was modified by amending articles 1, 2, 4, 10, 11, 14, 15, 16, 18, 23, 26, and incorporating new Article 23(1) and a new Chapter 9. Generally, the policy anticipates that in the event of a state-level emergency declared as a result of a mass influx of foreigners, authorities are empowered to push back individuals who are either in the process of crossing or have already crossed the state border. The most relevant and consequential amendments to the articles will be subject to a more in-depth analysis. Article 2 has been enlarged by adding a new role to the border control team, namely the Supporter of the State Border Guard Service. This role pertains to an individual who voluntarily aids the State Border Guard Service in executing the functions outlined in this law. This entails that not only official border guards but also ordinary citizens will be able to engage in pushback practices. Amendment of Article 4 seems to be pivotal, as it is expanded to stipulate that during a state-level emergency, individuals violating the procedure for crossing the state border are prohibited from entering the territory of Lithuania. It indicates that the provision applies individually to each mentioned foreigner and exempts individuals fleeing armed conflicts as specified in the government's decision, those experiencing persecution, or those seeking humanitarian assistance. Moreover, the decision on the non-admission of foreigners and assessment of the need for assistance is made by the commander of the State Border Guard Service. Nevertheless, the testimonies of the migrants themselves indicate a dissonance between the practices delineated in the article and the realities they experience since there is no individual assessment or acknowledgment of their need for humanitarian assistance (Amnesty International, 2022; Sienos Grupė, 2024). Article 11 was supplemented by adding that during a state-level emergency resulting from a mass influx of foreigners, only those with a permit issued by the State Border Guard Service are allowed to access the border area. This restriction curtails independent oversight of the situation, impedes journalists from reporting on the matter, and prevents humanitarian groups from reaching those in need. The modified Article 18 stipulates that in the event of a state-level emergency, the State Border Guard Service shall receive assistance from the Minister of the Interior, the Lithuanian Armed Forces, the Lithuanian Riflemen's Union, and the Department of Environmental Protection. Article 23, as revised, delineates that the Minister of the Interior would be responsible for determining the specific tasks of the State Border

Guard officers. Article 26 was altered by indicating that border guards shall not escort detained and arrested persons in any manner other than that prescribed by the procedure established by the Minister of the Interior. Lastly, the legislation was expanded by including a new section, Chapter 9, which sets out the function of the Supporters of the State Border Guard Service established in Article 2. It specifies that to qualify as a Supporter, an individual must be either a Lithuanian citizen or EU country national permanently residing in Lithuania, aged 18 or above, fluent in Lithuanian, and with at least a secondary school education. The activities of the Supporters are funded through allocations from the State Budget of the Republic of Lithuania. These Supporters actively assist the border guards in the execution of their duties and are empowered to employ coercion or special measures, including the use of restraints such as handcuffs, when deemed necessary. Furthermore, they possess the authority to identify and assist in the apprehension of individuals suspected of committing offenses. Nonetheless, the supporters are required to uphold human dignity, protect fundamental rights, and provide immediate assistance to victims and foreigners denied entry to Lithuania.

Question 1: What's the problem represented to be in a specific policy?

The analysis begins by identifying the proposed changes or solutions delineated within a given policy. Subsequently, these changes or solutions are utilized as a starting point to trace the construction of the underlying problem. The legislation in question aimed to prohibit the entry of asylum seekers from Middle Eastern and African countries into Lithuania. Accordingly, the legislators proposed several policy interventions devised to achieve the established objective. These included: the closure of the country's borders to aliens who are either in the process of crossing or have already crossed the state border at non-designated points or designated points but have violated the state border crossing procedure; the enhancement of border supervision through the introduction of the voluntary role of Supporter of the State Border Guard Service; the imposition of limitations on entry into the border area (5 km inland from the state border) for anyone without permission; and the reinforcement of border control by soliciting assistance from the Minister of the Interior, the Lithuanian Armed Forces, the Lithuanian Riflemen's Union, and the Department of Environmental Protection. Within the first proposal regarding the closure of the country's borders, arriving aliens are represented to be the problem. The state's reluctance to allow the entry of asylum seekers, including women and minors, into its territory and the implementation of pushbacks as a defensive measure signify that the presence of these individuals poses a challenge for the state. Further, the second solution delineated in the

legislation, concerning the introduction of the role of Supporters, problematizes the increased migration volume. If relying on border guard officers is no longer sufficient for monitoring the Belarus-Lithuania border perimeter, the issue lies in the heightened attempts to cross the frontier by the aliens as mentioned earlier. In the third modification proposed by lawmakers, dealing with restricted entry to the state border zone for residents of Lithuania, excessive and inadequately regulated presence in the border area is depicted as problematic. By requiring special permits for accessing the zone within 5 km of the borderline, officials enhance their oversight of the area while ensuring discretion. Hence, law enforcement authorities seek to prevent any bystanders, such as journalists, residents, or NGOs, from observing and reporting on the situation. Lastly, the proposal to extend forces for controlling the frontier beyond the purview of the Border Guard Service underscores the primary concern of a deficiently fortified current border control system. The involvement of additional institutions highlights the severity of the matter regarding a poorly secured border, an issue that authorities are diligently striving to mitigate.

An examination of the four principal solutions proposed in the legislation suggests that the central problem revolves around the incoming asylum seekers, their influx, and the imperative to safeguard the state from their presence. It is crucial to consider the geopolitical context previously outlined, as Lithuania, in conjunction with the European Union, attributed the surge in border crossings to the Belarusian regime since the beginning of the incident. As of the present moment, the stance remains largely unchanged, with the EU persisting in imposing sanctions in response to the instrumentalization of refugees (EU Council, 2024). Nevertheless, this legislation does not penalize the Belarusian regime for instrumentalizing the movement of nationals from MEA countries; it does not address this aspect at all. In contrast, proposals from Lithuanian legislators shift the responsibility for instrumentalization onto the migrants themselves and cast their arrival in the country as problematic. The legislation, as a response to the migration induced by Belarus, paradoxically does not attribute responsibility to the hostile state. Rather, it concentrates on restricting the rights of newcomers and repatriating them to the territory from which they initially arrived.

Question 2: What deep-seated presuppositions or assumptions underlie this representation of the problem?

Addressing question 2 will aid in uncovering the meanings and implicit assumptions contributing to the emergence of such proposals (Bacchi & Goodwin, 2016, p. 17). Firstly, it appears that the legislation may reflect biases or prejudices against certain cultural or ethnic groups, as similar measures were not enacted when a significantly larger number of Ukrainian refugees arrived. Although the policy does not explicitly specify the ethnic background or nationality of the individuals it targets, given the geopolitical context, it is evident that the amendments were introduced in response to intense migratory pressure at the Belarusian border, where the majority of individuals were of Middle Eastern or African origin. Secondly, there is an underlying assumption that all newcomers in question are law offenders, given that they frequently enter the territory of Lithuania outside of designated locations. Their *de jure* criminal status is thus employed as a rationale to justify the need to safeguard the country and deprive them of the ability to seek asylum. The legislation validates pushbacks for those who contravene the state border crossing procedure, operating under the premise that an individual engaged in criminal behavior is undeserving of entry into Lithuania, let alone the entitlement to refugee status. This perception of migrants as law offenders aims to obscure that under international law, individuals possess the right to seek asylum in any country that is signatory to the 1951 Refugee Convention. This convention acknowledges that individuals fleeing persecution may resort to irregular methods to flee and seek asylum in another country, thereby absolving violations of national border crossing procedures. Thirdly, there exists a deep-seated presupposition of migrants as a threat, evidenced by the state's efforts to protect itself through amendments to relevant laws and the declaration of a state-level emergency. In Europe, there is a prevalent belief that asylum seekers from MEA countries threaten national security, cultural identity, or socio-economic stability. This belief provides states with the strategic justification to further fortify their border regimes and protect the European way of life (Reynolds, 2020, p. 1785). Finally, the situation at the Belarusian-Lithuanian border is perceived as a crisis necessitating a state-level emergency and urgent response. Despite the significantly larger and more resource-intensive influx of Ukrainians, Lithuania treated the increased border crossings of Middle Easterns and Africans as a major emergency requiring immediate action. Characterizing the situation as an emergency facilitates the implementation of measures that might otherwise be unfeasible (Reynolds, 2020). Additionally, this portrayal often justifies short-term solutions, which, while not sustainable or highly effective in addressing the problem in the long term, are effective in quickly preventing further deterioration. Viewing migration as a crisis obscures that these urgent and impulsive responses will not effectively resolve the issue or deter migrants from arriving. Ensuring the stability

and security of society over the long term requires reliance on principles such as human rights, the rule of law, democratic accountability, and global cooperation.

Question 3: How has this representation of the ‘problem’ come about?

The representation of incoming asylum seekers as a problem is not a novel occurrence and extends beyond the scope of the analyzed policy. At the EU level, the heightened arrival of non-Europeans is similarly regarded as problematic (PRAB, 2024). Therefore, this broader political context likely influenced Lithuanian lawmakers to address the issue comparably. Moreover, the enactment of analogous legislation in other countries permitting migrant pushbacks, coupled with the heightened anti-migration sentiment articulated by Lithuania's neighbors, contributed to the depiction of asylum seekers from MEA countries as a matter requiring resolution. Poland was the first in the region to implement such border regulations, as it faced the highest number of border crossings (Gall, 2024). Despite being deemed unlawful by numerous domestic court rulings, the directive adopted on October 14, 2021, remains in effect (Gall, 2024). Estonia subsequently enacted a comparable law, rejecting asylum applications and pushing aliens back, on August 1, 2022 (Wright, 2022). At that time, Latvia was also considering the legalization of refoulement and put it into effect two months after Lithuania, on June 22, 2023 (UNHCR, 2024b). Finally, Finland, faced with increased arrivals at its border with Russia, similarly accused its neighbor of instrumentalizing migration and subsequently closed its border indefinitely (ECRE, 2024). Considering the prevailing attitudes and responses to intensified border crossings in the region, Lithuania's representation of asylum seekers as the problem appears to have been significantly influenced by regional dynamics.

Furthermore, the failure of the European Union to prevent Poland and Estonia from enacting legislation that violates human rights principles, or to hold these countries accountable after such enactment, has also encouraged Lithuania to follow this negative regional trend. Despite extensive criticism from Amnesty International and the European Commissioner for Human Rights, the European Commission defended Latvia and Lithuania against the Members of the European Parliament in the civil liberties committee, asserting that both countries are diligently working to safeguard the external EU border (The Baltic Times, 2023). Additionally, shortly after the migration influx began, the European Commission introduced two controversial proposals aimed at assisting the countries coping with the phenomenon of instrumentalized migration. The first Commission Proposal concerning provisional

emergency measures for the benefit of Latvia, Lithuania, and Poland (2021) aimed to extend the time limit for registering asylum applications to 4 weeks, thereby overriding the previous 10-day deadline established in Article 6(1) of the Asylum Procedures Directive (2013). It also sought to permit border authorities to evaluate asylum claims directly at the border, preventing applicants from entering the national territory, and to allow Member States to provide different reception conditions than those foreseen in the Reception Conditions Directive (2013). The second Commission Proposal addressing situations of instrumentalization (2021) offered EU states various derogations from the EU legal framework governing migration and asylum. According to the draft, states would have the authority to limit border crossings to specified transit zones and extend the registration deadline for asylum applications to a maximum of four weeks, with decisions on their approval potentially taking up to sixteen weeks.

While these two proposals responded specifically to the situation at the EU-Belarus border, the European Commission was concurrently preparing the New Pact on Migration and Asylum, a comprehensive framework representing a renewed approach to migration (Forti, 2023, p. 236). On 14 May 2024, the 27 EU governments approved the Migration and Asylum Pact, which permits derogations from specific asylum and return obligations during emergencies and instances of instrumentalization. The reform will strengthen the responsibilities of border countries and increase detention at the borders, while potentially weakening human rights protection and solidarity among the member states. Considering these legal developments at the EU level is crucial for understanding how the representation of asylum seekers as a problem has emerged in the pushback-authorizing legislation. Lithuania succeeded in implementing a regulation that conflicts with the principle of EU law primacy because it aligned with the Union's interests and objectives at the time. It is evident that in the realm of migration and asylum, the EU tends to overlook potential incompatibilities with the rule of law, permitting national laws to override the precedence of existing EU regulations. The principle of primacy loses its significance as the European Parliament itself plans to adopt a set of measures allowing states to derogate from fundamental laws entrenched in the EU's legal framework. As ratified by Lithuania, the amendments to the Law on the State Border and its Protection (2023) infringe upon non-refoulement, the right to asylum and international protection, and the prohibition of torture, inhuman, or degrading treatment or punishment. As previously highlighted in the theoretical framework section on *the primacy of the EU law*, all three provisions are safeguarded by either the TFEU (2007) or the EU Charter (2012), both serving as primary sources of EU legislation. Thus, by

breaching them Lithuania is violating the principle of the precedence of EU law. Generally, neglecting the supremacy of these treaty provisions undermines the principles and values upon which the EU is founded, potentially bearing significant implications. However, the reluctance of EU institutions to hold states accountable, coupled with the European Commission's decision to defend violators, suggests that the EU itself may be attempting to circumvent certain human rights provisions perceived as obstacles to safeguarding its interests. Overall, the top-down legislative initiatives, like that of the Migration and Asylum Pact, encouraged Lithuania to close its borders, notwithstanding the resultant conflict with overarching EU laws and the breach of the fundamental rights of asylum seekers.

Question 4: What effects (discursive, subjectification, lived) are produced by this representation of the 'problem'?

According to Bacchi and Goodwin (2016), the objective of this question is to address the political implications arising from the specific representations of problems by identifying the three categories of effect. Discursive effects refer to how the representation of the problem influences the language, narratives, and discussions surrounding it. The problematization of incoming migrants has rendered discussions on threats and securitization more relevant than ever (Grumodas, 2023). Heightened migration came to be portrayed as an emerging threat to national security and identity, often overshadowing the humanitarian nature of the issue (Vyšniauskas, 2022). Subjectification effects pertain to how people are positioned or defined by the representation of the problem. In this case, nationals of MEA countries arriving in Lithuania via Belarus are categorized as illegal aliens whom the state must safeguard against, while Lithuanian lawmakers position themselves in a precarious position of vulnerability. Lastly, lived effects capture the real-life impacts on people's embodied existence that result from the particular way a problem is represented. The inability of newcomers to enjoy the rights to which they are entitled may be understood as the lived consequence of the hostile asylum policy targeting non-Europeans. They are the ones enduring harm and bearing the responsibility for this multifaceted situation involving a multitude of actors.

While identifying the discursive, subjectification, and lived effects of the problem's representation, another significant implication emerged - the legal effect. Although not explicitly listed by Bacchi and Goodwin (2016), this effect constitutes a crucial consequence warranting analysis. The

problematization of incoming migrants and their forceful return to Belarus significantly affected the comprehension of the absoluteness of rights since this development produced a conflict of legal norms. As previously noted, the practice of migrant pushbacks circumvents the rule of law and derogates from absolute rights, such as the principle of non-refoulement and the freedom from torture and inhuman or degrading treatment. Consequently, by enacting legislation that authorizes border rejections, Lithuania violates these fundamental human rights provisions. Lithuania attempted to align this legislation with human rights norms by including specific clauses in the renewed Article 4 of the Border Law (2023) intended to ensure that the decision to enforce pushbacks is applied individually to each foreign national and that individuals fleeing armed conflicts, those experiencing persecution, or those seeking humanitarian assistance cannot be forcibly returned to Belarus. Nevertheless, the attempt to adhere to existing regulations was unsuccessful due to the absence of established mechanisms or independent evaluators at the border to ensure the fair enforcement of these clauses. Given that the decision to push back or not is made directly at the border, border guards and the newly established Supporters of the State Border Guard Service are granted significant discretion in making this determination. Moreover, Lithuania could not utilize the concept of a safe third country to justify its actions, a strategy frequently employed by many EU states practicing pushbacks, because the ECtHR officially confirmed Belarus as unsafe in *M.A. and Others v Lithuania* (2018). This determination stems from Belarus not being a party to the European Convention on Human Rights.

The case of *M.A. and Others v Lithuania* (2018) is pivotal for this analysis, as it determined that Lithuania violated the prohibition of torture and inhuman or degrading treatment, along with the right to an effective remedy. This judgment was based on Lithuania's refusal to examine asylum applications and its decision to return a family from Chechnya to Belarus. The central issue in analyzing this case was not whether the applicants faced a real risk of ill-treatment in Chechnya, but whether the Lithuanian authorities conducted a thorough assessment of the applicants' claim that they would face such a risk before returning them to Belarus. The Lithuanian authorities failed to carry out such an examination, thereby violating Article 3 of the ECHR. In relation to the ongoing pushbacks of MEA nationals, evidence from migrant testimonies, Sienos Grupė, and Amnesty International supports the assertion that Lithuania continues to neglect the assessment of applicants' claims regarding the potential risk of ill-treatment upon the return to their countries of origin (Amnesty International, 2022; Sienos Grupė, 2024). Furthermore, in the case of *M.A. v Valstybės sienos apsaugos tarnyba* (2022), the CJEU ruled that amended Lithuanian migration laws, which bar irregular migrants from seeking asylum and

authorize mass detention during the so-called migrant influx, are in direct violation of EU law. The CJEU criticized Lithuania's attempt to justify pushback practices on the grounds of security and declared them illegal.

Although it is beyond the scope and capacity of this paper to evaluate whether the codification of forcible removals into Lithuania's national laws constitutes a violation of Article 3 and the principle of non-refoulement, the aforementioned case law strongly suggests this likelihood. This is due to the legislation preventing newcomers from entering the country and applying for asylum, coupled with Lithuania's failure to conduct individual assessments evaluating the risk of ill-treatment in their countries of origin. The decisions delivered by the two courts affirm the strong nexus between migrant pushbacks, an absolute prohibition of torture, and the principle of non-refoulement. By failing to ensure that the individuals in question will not be subjected to treatment contrary to Article 3 of the ECHR and forcefully turning them away, Lithuania is responsible for chain refoulement. The nationals of the Middle Eastern and African countries expelled to Belarus lack legal authorization to reside therein, consequently facing deportations back to the countries afflicted by the instabilities from which they fled. As a result, this examination unveils that the legalization of pushbacks carries profound legal implications, as it demonstrates the feasibility of derogating absolute rights enshrined at the EU level. In light of more frequent authorization of forceful returns within the EU, the notion of absoluteness of rights diminishes in significance, thereby exposing the dysfunctional aspects of the existing legal framework.

Question 5: What is left unproblematic in this problem representation? Where are the silences? Can the 'problem' be conceptualized differently?

This part builds on question 1 by identifying the aspects that remain unaddressed within the representation of the problem. It invites the analyst to be creative by envisaging potential reconceptualizations and re-problematizations or even considering whether certain aspects should not be construed as problems altogether. As established in question 1, the legislation problematizes arriving asylum seekers, assigning them responsibility for the alleged threats to Lithuania's public order and national security. However, there is no comprehensive explanation detailing how these individuals threaten the state or why such a stringent response is required, particularly in light of the significantly

higher volume of arrivals from Ukraine that did not provoke comparable measures. The CJEU, in the case of *M.A. v Valstybės sienos apsaugos tarnyba* (2022), similarly criticized Lithuania for its failure to prove how M.A., a third-country national, constituted a threat to either national security or public order. The discussed amendments seem to fit into a broader policy discourse that addresses migration from a predominantly security, rather than humanitarian, perspective. Furthermore, the legislation remains silent about the Belarusian regime, which is blamed by the Lithuanian authorities and EU institutions for facilitating this migration route. Accordingly, instead of modifying the actual Border Law, which negatively affects all arriving individuals without distinction, Lithuania could have concentrated more on addressing the root cause of the issue - the Belarusian regime's exploitation of asylum seekers for political purposes. Nevertheless, the artificial instigation of migration by another hostile state does not absolve the responsibility to respect the rights of those in transit. Greater attention could have been given to granting humanitarian organizations access to the border area and providing emergency aid to alleviate the suffering of those stranded between borders. In general, the problem could be thought of differently - the arrival of asylum seekers from countries plagued by instability should not be criminalized and subject to punishment. On the contrary, to deter irregular crossings, Lithuania should improve the accessibility and flexibility of pathways for regular migration through existing mechanisms, such as complementary pathways and relocation programs that could alleviate migratory pressure. Moreover, Belarus's exploitation of migrants should be met with stronger sanctions imposed by all neighboring states and the entire Union. However, this novel approach to the situation is not devoid of my biases and worldview that are worth reflecting on because, as mentioned earlier, self-reflection throughout the analytical process is an important component of the analysis. I believe it is essential to address this issue from a humanitarian rather than a security perspective since my background in human rights compels me to prioritize the fundamental rights of migrants. Additionally, having lived abroad as an immigrant for multiple years, I am particularly attuned to the challenges faced by newcomers. This personal experience enhances my understanding and consideration of their struggles and urges me to problematize the Belarusian regime, which places MEA nationals in such an unenviable situation, as well as Lithuania's current border system that exacerbates their plight.

Question 6: How and where has this representation of the ‘problem’ been produced, disseminated, and defended? How has it been and/or how can it be disrupted and replaced?

This segment builds on question 3, focusing on the practices and processes that enable certain problem representations to dominate and achieve legitimacy. To begin with, this representation of the problem has been produced by linking heightened migration with the notion of emergency. As previously noted, this implementation strategy facilitates the enactment of measures that might otherwise be unfeasible (Reynolds, 2020). Most of the amendments are dependent on the declaration of a state of war, state of emergency, or extraordinary situation, suggesting that these derogations are intended to be temporary. Nevertheless, the Lithuanian government introduced the extraordinary situation via Resolution No. 517 on 2 July 2021; it has no termination date and remains in effect at the time of writing. This signifies that nearly three years after the initiation of the extraordinary situation, all derogations established in the modified Border Law (2023) remain feasible indefinitely. In the case of *M.A. v Valstybės sienos apsaugos tarnyba* (2022), the CJEU determined that the declaration of a state of emergency does not exempt Lithuania from its responsibility to guarantee access to the asylum procedure, and should not be employed as a means to fortify a hostile border system. Further, the portrayal of arriving MEA nationals as a pressing issue was defended by Lithuanian legislators through references to neighboring countries, including Poland, Estonia, and Latvia, and by underscored support from the European Commission (Polskie Radio, 2021; The Baltic Times, 2023).

Nonetheless, this problem representation encountered resistance from within Lithuania and from international actors. Domestic opposition included non-governmental organizations such as the Human Rights Monitoring Institute, Sienos Grupė, and the Lithuanian Centre for Human Rights; politicians such as Tomas Tomilinas and Tomas Vytautas Raskevičius; and lawyers such as Erika Leonaitė, Dainius Žalimas, and Laurynas Biekša (Andriukaitytė, 2023; Bakaitė, 2023; Stankevičius, & Lybertytė, 2023). Monika Guliakaitė-Danisevičienė (2023, para. 7), head of advocacy at the Lithuanian Centre for Human Rights, claimed: ‘Enacting an illegal provision that contravenes international law does not make it lawful. This is an attempt to avoid responsibility.’ Regarding international actors, UNHCR, Amnesty International, and the Council of Europe Commissioner for Human Rights, strongly criticized Lithuania’s decision to pass the law in question (The Baltic Times, 2023; UNHCR, 2023b). Disrupting and reframing the problematization of incoming Middle Eastern and African nationals requires substantial effort from both top-down and bottom-up actors. This challenge emerges due to the concurrent failure of the corresponding institutions to safeguard the rights of migrants and society's complicity in perpetuating this inaction by neglecting to hold these institutions accountable. Guild (2023) provides insights into the potential replacement of the prevailing hostile border systems

established in most of the EU member states. According to the scholar, effective monitoring of border services, establishment of independent review boards to investigate complaints, reinforcement of legal frameworks, and collaboration with civil society are indispensable elements for holding responsible actors accountable (Guild, 2023). Overall, a representation of the problem already enshrined within the legislation is not easily replaceable due to the existing power dynamics and deeply rooted inequalities. Consequently, the next section of the paper will further explore how this problem representation has been produced by analyzing lawmakers' discourse and evaluating the influence of racial tropes upon it.

3. What role do racial tropes play in the legalization of migrant pushbacks?

After an extensive examination of the pushback-authorizing legislation, which frames Middle Eastern and African asylum seekers as a problem to be addressed, the third section of the analysis will assess the influence of political discourse and entrenched racial tropes on the formulation and execution of stringent border control measures. Building upon the assertion that the legal process is just a formalized variant of political discourse, it becomes imperative to scrutinize not only the final legislative outcomes but also the narratives employed by lawmakers and law enforcement officials before enacting the legislation (Kennedy, 1979). More specifically, this research supports the premise that comprehending the decisions crafted by policymakers necessitates a consideration of the perspectives they maintain regarding their surrounding environment (Creutzfeldt, Mason & McConnachie, 2020). Accordingly, this segment of the paper draws on the findings derived from the thematic coding of language utilized by legislators, as extracted from parliamentary debates and public statements on this subject matter. The speeches of 21 government officials, spanning from members of different Municipal Councils to the Minister of the Interior, and statements issued by two government agencies, specifically the Alytus County Chief Police Department and the Ministry of the Interior of the Republic of Lithuania, were subjected to analysis using the coding software Atlas.ti. Following the initial coding cycle, a total of 48 codes emerged across all the texts. Subsequently, these codes were grouped into six distinct categories, namely: Emergency, Security issue, Criminality, Lithuania's response, Characteristics of newcomers, and Othering (see Appendix B). Following this, focused coding was performed, wherein the six categories served as codes to reanalyze the data, this time with greater precision, to refine the most prominent themes (Saldaña, 2021).

These categories give rise to concepts, patterns, and narratives, which constitute the primary focus of this paper. As previously stated, the coding process embraced an abductive approach, wherein the initial coding cycle was guided by the previously discussed Critical Legal Studies approach and postcolonial theory. Nevertheless, the second cycle of coding remained open to alternative analytical directions, facilitating the emergence of new concepts and theories, which will be presented later (Saldaña, 2021). Discourse serves as a powerful instrument in law-making processes, and Lithuania is no exception. It aids the authorities in circumventing the fundamental principles of the EU, such as the rule of law and the inviolability of absolute rights. However, because Eurocentric biases and racial tropes often embedded in language are intangible - despite their manifestation in tangible laws - they remain within the realm of discourse and thus frequently escape scrutiny. Consequently, conducting discourse analysis helps to demonstrate that language is a tool of power, capable of perpetuating and consolidating inequality and domination.

Emergency

Beginning with the category of Emergency, it is evident that politicians reinforce prejudice by characterizing the arrival of MEA nationals as a pressing crisis and by enacting laws that disadvantage this group of migrants. The examination of the discourse used by Lithuanian government officials substantiates Reynolds' (2020, pp. 1771-1772) claim that framing heightened migration as a threat to the life of the nation is utilized to justify the establishment of exclusive border regimes. The codes such as *extreme situation*, *invasion*, *irregular situation*, *state of emergency*, *migration crisis*, and *high volume of migration* clearly illustrate that the increased border crossings are construed as an emergency, equating it with an existential threat. The viewpoints expressed by A. Kislovas (2021a, para. 32), the Head of the Aliens Registration Centre, who believes that 'the growing illegal invasion will surely create a crisis,' and S. Skvernelis (2021, 24:06), a Member of Parliament, who asserts that 'this is not a standard migration crisis. Therefore, these individuals who have entered Lithuania in violation of the law will be addressed accordingly,' emphasize the severity and the pressing nature of this migration situation. A. Anušauskas (2023, para. 28), the Minister for National Defence, further advocated for the swift adoption of 'the necessary legislation' and the pursuit of 'the strategy of non-admission,' suggesting that the current situation is deemed an emergency, thereby justifying derogation from certain international norms. Additionally, the analysis of the discourse of government officials supports the claims made by civil society organizations, such as HumanRights360 (2021) and PRAB

(2024), that the doctrine of instrumentalized migration serves as another strategy to validate the illegal actions of EU member states. Politicians frequently justified their questionable actions toward the incoming migrants by portraying the migration across the Belarusian border as instrumentalized, thereby implying that this situation is unconventional and necessitates an emergency response. A. Bilotaitė (2023, para. 3), the Minister of the Interior, asserted that ‘we must have national measures to defend ourselves against hybrid attacks and the instrumentalization of migration - and they must be enshrined in law’. L. Kasčiūnas (2023, 13:00), a Member of Parliament, echoed the Minister's sentiment, stating that ‘we managed to stop the process of instrumentalization of illegal migration, which was started by Lukashenko, first of all, by introducing the policy of pushbacks’. Diminishing migration solely to a phenomenon of instrumentalized hybrid attack completely disregards the humanitarian aspect of the matter. Nevertheless, the narrative of emergency proved highly beneficial for lawmakers as it facilitated expedited legal processes, which are often characterized by significant delays, and enabled the prompt implementation of pushback measures. Lastly, the language of emergency was also incorporated into the law since many amended articles include the clause of emergency, indicating that authorities are able to exercise certain practices exclusively during exceptional circumstances. This demonstrates that the verbal depiction of the arrival of MEA nationals at the EU's external border as an extraordinary circumstance was later materialized in legislation.

Security issue

The second category identified during the process of coding is closely linked to the concept of emergency since depicting an issue as a national security threat legitimizes the government's decision to implement extraordinary measures. Presenting a phenomenon as a security concern transitions it from a politicized issue to a securitized one, which is precisely what Lithuanian government officials did when border crossings increased. Codes in this category were among the most frequently recurring, suggesting that politicians intend to frame the migration of MEA nationals as a security issue. Accordingly, since the coding followed an abductive approach - relying on initial theories while remaining open to emerging concepts - the theory of securitization emerged as highly relevant to this study. I will employ the Copenhagen School's framework to analyze securitization, as it was the first to define this concept and remains one of the most influential schools of thought in the field of security studies. The School has posited that issues become securitized through speech acts, asserting that merely invoking the term 'security' is sufficient to reframe migration from a political matter into a

security concern (Buzan, Wæver & De Wilde, 1998, p. 46). This indicates that the concept of security is self-referential, as anything can be redefined as a threat once it is portrayed as such, irrespective of the presence of the actual existential dangers. Hence, securitization hinges on the belief that language has a performative dimension and thus political elites play a pivotal role in identifying and framing the threats. The analyzed statements made by government officials frequently fell under the categories of *unsafe* and *unknown*. This indicates that the arrival of individuals seeking refuge is associated with insecurity and uncertainty regarding their stay in Lithuania. S. Skvernelis (2023, 25:30) expresses concern by stating that ‘we do not really know what kind of people are being sent to Lithuania,’ advocating for the implementation of ‘sorting and screening’ practices to ascertain whether they are the ‘potential people who could be a danger to Lithuania’. R. Baškienė (2023, 26:00), a Member of Parliament, further compared migrants with menace, emphasizing that ‘we cannot underestimate the threats and the danger that we have felt recently’. Furthermore, *threat to society* and *threat to national security* were also a common way to describe the heightened migration. These narratives compel individuals to take positions either in favor of Lithuania's safety and its people or in support of ‘those who want to weaken Lithuania’s security’ (Kasčiūnas, 2023, 14:10). The discourse used by authorities contributes negatively to perpetuating *fear* and *suspicion*, significantly facilitating the implementation of controversial laws such as the legalization of pushbacks. Remarks such as ‘the patrolling has been strengthened from the very first days’ (Požėla, 2021, para. 4) and public speculations about ‘what will happen if these people suddenly break out of the camps’ (Skvernelis, 2023, 26:00) demonstrate that migrants are depicted as an existential threat without having any precise knowledge of their identities. Consequently, the securitization of newcomers perpetuates prejudice against an already marginalized group, further hindering their integration into host societies. Additionally, framing migrants from MEA countries as a threat to national security shifts migration policies from humanitarian and rights-based approaches to security-centric frameworks, enabling breaches of the primacy of EU law and derogations from absolute rights.

Criminality

The third category pertains to government officials' efforts to link the movement of MEA nationals with criminal activity, a strategy effectively used to justify hostile border regimes.

As previously mentioned, irregular arrival to seek asylum in any country that is a signatory to the 1951 Refugee Convention is not considered criminal activity under international law. However, lawmakers

frequently employ this narrative as a primary argument to validate the introduction of pushbacks. The term *illegal migrants* is so prevalent in the political discourse that it is often sufficient to simply say ‘illegals’ when referring to individuals fleeing dire conditions back in their home countries in the Middle East and Africa (Alytus County Chief Police Department, 2021; Kislovas, 2021a, para. 24). Moreover, they are often accused of *collaborating with Belarus* and *abusing asylum* - the two categories effectively illustrating how newcomers are labeled in Lithuania. G. Lansbergis (2023, para. 15), the Minister for Foreign Affairs, claimed that these are not the ‘people fleeing war or natural disasters, this is economic migration, (. . .) these are not even people who are looking for a better life on their own, they are just being advised to arrive here’. The politician, without presenting any evidence, implies that the arriving migrants would not meet the criteria for refugee status. He also questions their ability to make independent decisions, suggesting they are only present because they are obediently following orders from the Belarusian regime. L. Kasčiūnas (2021, para. 6) similarly accuses incoming foreigners, stating that ‘illegal migrants consciously cooperate with the Belarusian regime and blatantly, cynically, and with impunity violate Lithuanian law’. By framing MEA nationals as lawbreakers, these officials effectively criminalize them, thereby depriving them of the opportunity to apply for refuge. Furthermore, the discourse analysis revealed a clear link between the text of the legislation and the language employed by lawmakers prior to the law's implementation. It is evident that government officials successfully embedded the term ‘lawbreakers’ in the amended Law on the State Border and its Protection No. VIII-1666. The political discourse was replete with discussions about migrants damaging ‘the wall we have built with taxpayers' money’ and engaging in criminal activity while attempting to cross the border (Semeška, 2023, 23:05). This perception has been effectively codified into law, now having tangible consequences for the fates of arriving foreigners. Racial stereotypes have significantly aided legislators in justifying actions that violate established human rights principles, with the tropes of ‘criminal’ and ‘illegal’ often used to obscure the fact that these individuals are primarily asylum seekers. These tropes are not unprecedented and are not unique to Lithuania, as they are commonly found in European public discourse regarding individuals arriving from MEA countries (Galantino, 2022). Similarly, the trope of ‘terrorist’ featured in the communication of politicians, some of whom publicly questioned: ‘What exactly the color of the skin has to do with (. . .) the protection of our Lithuanian citizens from terrorists?’ (Semeška, 2023, 21:35). A paradox emerges here: initially, authorities claim to lack information about the newcomers, leading to widespread uncertainty and suspicion; however, they later openly label them as terrorists, criminals, and illegals.

Lithuania's response

The fourth category represents Lithuania's reaction to the heightened border crossings and the rationales officials employed to justify the country's exclusive asylum system. This context invokes Critical Legal Studies, which argue that influential and privileged actors wield legal mechanisms as instruments of oppression, enabling them to undermine even absolute rights (Hunt, 1986). Speech acts can similarly be regarded as instruments of oppression, as they influence and shape the tangible response to migration through the dissemination of particular ideas. Hunt (1986) posits that the legal system is inherently shaped by a dominant or hegemonic political culture. Therefore, it is essential to examine whether the final legislation reflected the prevailing objectives and intentions of the lawmakers at that time. Firstly, despite the legislation not mentioning the Belarusian regime even once, *blaming Belarus* emerged as one of the most frequently recurring codes among all the analyzed statements. Nevertheless, instead of focusing on Lukashenko's involvement and the exploitation of MEA nationals, the authorities chose to equate the incoming migrants with the Belarusian regime, likewise accusing them of threatening Lithuania's security. The arrival of these individuals was often described as a 'hybrid attack by the Lukashenko's regime' (Čmilytė-Nielsen, 2023, para. 9). By framing the issue in this manner, Lithuanian officials aim to obscure the fact that behind the term 'hybrid attack' are real people in need of humanitarian assistance. Secondly, according to the legislators, *Lithuania is attacked* and thus has *a right to defend itself* - the two codes vividly depict the adoption of a militarized approach to the issue, treating it akin to an actual military threat. N. Puteikis (2021, 13:05), adviser to Member of Parliament P. Gražulis, implicitly compared the arrival of asylum seekers with the deployment of troops at the Lithuanian borders: 'If 50,000 Kurds from Iraq lined up at the Belarusian border and crossed into Lithuania at the same time, wouldn't we have the right to reject them and defend ourselves from them?' Consequently, in response to the so-called hybrid attack, authorities viewed *detering entry* and *deportation* as necessary strategies to safeguard national security, notwithstanding their potential legal ambiguities. These mechanisms were successfully codified into law, showcasing that national interests outweighed adherence to internationally accepted human rights norms. The fear of failing to protect the nation, driven by racial biases, seems so potent that Lithuania, despite being a small and relatively weak state, disregards the primacy of EU law and risks facing significant consequences. The earlier comparison between Lithuania's response to the arrival of Ukrainians and MEA nationals, which highlights the absence of a similar anti-immigrant

sentiment when approximately 85,000 Ukrainians settled in the country, emphasizes the significant influence of racist political discourse on the process of pushback authorization. Subsequently, government officials sought to justify these border practices by claiming a *lack of resources* to host them and by *undermining newcomers' suffering*. A. Kislovas (2021a, para. 24) publicly mocks the applicants by stating that ‘the main argument in their applications is that they are in danger of being eaten by cannibal political opponents at home’. The legislators utilize the trope of ‘deceiver’ to downplay the hardships of the migrants, resulting in unequal protection under the law, as issues affecting marginalized racial groups are ignored. Nonetheless, downgrading newcomers’ experiences before even processing their applications cannot be justified in any manner.

Characteristics of newcomers

This category embodies the primary focus of the current analysis section, examining how incoming MEA nationals are represented in political discourse and identifying the most pertinent stereotypes. Drawing on postcolonial theory, I investigated the inherent biases and generalizations embedded in the language surrounding asylum policies and individuals seeking refuge in Lithuania. To begin with, as stressed by the civil society organization HumanRights360 (2021), migrants are frequently framed as tools or weapons, and Lithuanian authorities actively perpetuate this narrative. V. Semeška (2023, 22:40) referred to them as ‘bullets’ and indignantly questioned whether ‘Lithuania should take those bullets, supposedly here, and take care of them?’ A trope of a ‘puppet’ can be identified here, particularly in the context of migration at the borders with Belarus, where the newcomers are objectified and portrayed as subordinates of Lukashenko’s regime. Furthermore, the codes *angry*, *aggressive*, and *loud* suggest that both individuals attempting to cross the border and those confined in detention centers are characterized as ‘dangerous’. This trope shifts the narrative from viewing them as victims in need of assistance to depicting them as perpetrators against whom we must defend ourselves. Nonetheless, the representation of arriving MEA nationals is fraught with contradictions, as they are simultaneously described as *rebellious* and referred to as *cowards*. G. Jasiulionis (2016, para. 6), the Mayor of Rukla, addressed the residents of the refugee center, stating: ‘You were a coward, you fled your war-torn country, you did not defend it, so sit tight now, with your ears folded’. Simultaneously, the official criticized the newcomers for being ‘insolent’ and reported that local residents complained the migrants ‘behave aggressively and provoke people’ (Jasiulionis, 2016, para. 8). V. Pranckevičius (2021, 12:55), the Deputy Director of Alytus District Administration, echoed his colleague’s remarks,

asserting that the detained migrants ‘see the journalists’ cameras and they make spectacles’. The authorities raise concerns about numerous other issues related to the presence of individuals from MEA countries, often characterizing them as *problematic*. The Head of the Aliens Registration Centre makes prejudiced generalizations about arriving Iraqis and warns of potential disruptions since ‘there are various problems associated with their accommodation’ in centers in Scandinavia (Kislovas, 2021b, para. 20). Lastly, the codes *dissatisfied* and *lazy* imply that asylum seekers are ungrateful for their opportunity to stay in the EU, unwilling to work, and likely to struggle with integration into society. This perpetuates the racial trope of the ‘undeserving’ immigrant, fostering negative attitudes and delegitimizing the experiences and needs of asylum seekers, thereby facilitating the implementation of hostile asylum laws. Overall, these racial stereotypes not only demonize incoming MEA nationals but also impact their legal status, as the tropes are intertwined with judicial concepts and are strategically utilized by legislators. The analysis of their language revealed that their words consistently materialize, reinforcing the enduring effects of colonialism and imperialism on both the Lithuanian legal system and society.

Othering

The category of Othering, along with the Characteristics of newcomers, emerged as one of the most prominent themes in the political discourse. Although politicians and civil servants highlight the ethnic background of incoming migrants, they do so less frequently than one might expect. However, they establish a racial barrier without explicitly mentioning race through the strategy of othering. This concept, though not initially included in the theoretical framework, proved highly relevant to the paper, akin to the previously explored theory of securitization. Othering involves categorizing people into ‘we’ and ‘they’, thereby essentializing the other (Said, 1978, p. 207). In the context of migration, othering occurs by identifying similarities and differences between those seeking refuge and the host population (Welfens & Pisarevskaya, 2020, p. 6). The notion of the ‘other’ considers existing inequalities and is therefore crucial to this paper, as the inclusion of some is contingent upon the exclusion of others, necessitating states to establish ‘orders of worth’ (Welfens, 2022, p. 521). Lithuanian authorities avoid explicit racism but emphasize the differences between the host population and arriving individuals. They refer to the newcomers as *guests*, advocate for stringent *selection* criteria, and encourage them to *respect Lithuanian culture*. G. Jasiulionis (2016, para. 6) addresses the residents of the refugee center by stating: ‘You are a visitor (. . .), we are the masters here’. N. Puteikis

claims: ‘Only this determined policy of exclusion, of non-acceptance, such as the policy of Hungary, can really save Lithuania against such a backdrop’ (2021, 22:50). The statement of A. Mazuronis (2021, para. 4), a Member of Parliament, encapsulates the sentiment: ‘The rights of our people are much more important than the rights of those who allow themselves to be used as a tool for political pressure’. These statements reflect the prevailing ‘hierarchies of humanity’, privileging the interests and concerns of white Europeans over those fleeing from Middle Eastern and African countries (Welfens, 2022, p. 520). Lithuanian government officials perform othering by *homogenizing* the foreigners, often emphasizing their similarities and unity as a threat to the state. Furthermore, the frequently recurring code *breach of human rights* and remarks such as ‘we have to forget human rights’ (Mazuronis, 2021, para. 4) illustrate how legislators downgrade MEA nationals to the extent that even violations of the prohibition of torture are deemed justifiable. Attempts to maximize the differentiation between incoming migrants and Lithuanians contribute to their dehumanization and the perpetuation of the racial trope of the ‘other’. This trope arguably offers the most accurate depiction of newcomers’ representation in Lithuanian political discourse, intertwining with all previously identified racial tropes. The stereotypical image of the other normalizes disorder and torture since violence, terror, and mass displacement are commonly linked with their countries of origin, where the rule of law is often dysfunctional and chaos is seen as culturally permissible and expected (Augustová, 2023, p. 144). As previously emphasized, violence plays a crucial role in maintaining European whiteness, making the notion of the other even more significant (Fanon, 1967; Hall, 1997). This concept legitimizes material practices of control and subordination, such as pushbacks, within the ‘modern’ and ‘civilized’ world (Augustová, 2023, p. 144). The process of othering thus facilitates the circumvention of international human rights norms and the implementation of violent policies aimed at immobilizing ‘other’ people.

The role of racial tropes

Given this section’s aim to further explore the underlying catalysts behind the enactment of legislation that threatens absolute rights, I investigated the discourse of Lithuanian legislators, while evaluating the impact of racial tropes. The coding process revealed six dominant themes, with Security issue, Characteristics of newcomers, and Othering being particularly relevant for this paper. Upon further analysis of these themes, eight racial tropes perpetuated by Lithuanian authorities were identified: ‘criminal’, ‘illegal’, ‘deceiver’, ‘terrorist’, ‘puppet’, ‘dangerous’, ‘undeserving’, and ‘other’. The construction and preservation of racial tropes that stereotype asylum seekers play a crucial role in facilitating the

implementation of laws such as the authorization of migrant pushbacks. It is imperative to recognize that beyond economic factors, political climate, and national security concerns, racialized narratives likewise influence the formulation, application, and enforcement of hostile asylum laws. This discourse embeds prejudices not only within legal frameworks but also within Lithuanian society and culture, shaping legal processes accordingly. The profound impact of racial tropes on the violation of non-derogable rights, such as non-refoulement and freedom from torture and inhuman or degrading treatment, stems from their dehumanizing nature. By stripping newcomers of their human status, concerns affecting this marginalized racial group are often deprioritized or disregarded altogether, resulting in unequal protection under the law. Additionally, there is a stark problem of impunity, as EU states continue to commit acts of torture against MEA nationals without facing accountability, viewing them as undeserving of justice. Furthermore, the analysis demonstrates that not only the use of racial tropes, but also the securitization of migration and the othering of arriving migrants were the primary mechanisms enabling Lithuania to bypass the primacy of EU law and derogate from non-refoulement and the prohibition of torture, without encountering strong opposition from the principal European institutions. Nevertheless, it is crucial to acknowledge that discourses are plural, complex, and frequently inconsistent (Saldaña, 2021). Likewise, in Lithuania, various politicians, lawyers, and activists have promoted a different narrative, advocating for the rights of incoming foreigners and attempting to highlight the violations committed by the Lithuanian state. However, analyzing opposing narratives falls outside the scope of this paper, as the research focused on the most prevalent and influential discourse, which supported the legitimization of migrant pushbacks. Even the Chairman of the Human Rights Committee, T. V. Raskevičius (2023, para. 2), who initially strongly opposed the legislation, later announced that the Committee approved the law ‘through gritted teeth’. This once again highlights that the opposition to forced removals was very weak and lacked sufficient influence to alter the dominant narrative. Overall, despite being often overlooked, racial tropes entrenched in political discourse wield significant power as they materialize into legislation that undermines the absoluteness of rights, justifying and perpetuating colonial domination.

Conclusion

Under the pretext of a hybrid attack from Belarus, Lithuania has enacted emergency measures that suspend the right to asylum and effectively legalize pushbacks, despite their classification as illegal under both international and EU law. This empirical case demonstrated a significant discrepancy

between theoretical expectations and practical realities. Therefore, this socio-legal paper, inspired by real-life events at the Lithuanian border, sought to understand the impact of broader socio-political factors on legal processes shaping the asylum system. The research was guided by two primary objectives: first, to investigate how the legalization of migrant pushbacks came into being, notwithstanding their incompatibility with absolute rights and EU law; second, to assess the influence of racialized narratives on the formulation, application, and enforcement of laws that violate non-derogable rights. Accordingly, the research aimed to answer: *How does Lithuania reconcile its authorization of migrant pushbacks with absolute human rights, and what role do racial tropes play in shaping this dynamic?* Upon thorough examination of both the discourse of government officials and the legislative framework that authorizes pushbacks, a comprehensive response to the posed question can be provided.

Firstly, the study identified multiple factors that assist Lithuania in its efforts to reconcile the authorization of migrant pushbacks with absolute human rights and the rule of law. One of the most significant determinants behind Lithuania's decision to codify the non-admission of foreigners into domestic legislation is the similarly hostile approach of the EU toward immigration from the Middle East and Africa. This indicates that legalizing actions otherwise considered illegal becomes feasible with sufficient support from other international actors and institutions. Given the prevailing attitudes and responses to increased border crossings in the region, Lithuania's restrictive asylum strategy has been profoundly shaped by regional dynamics. The European Union itself provided member states with various derogations from the EU legal framework governing migration and asylum by introducing the new Migration and Asylum Pact. Additionally, there was little to no resistance from the general public regarding the manner in which the EU and its member states were treating newcomers. This lack of opposition further facilitated the adoption of stringent measures, reinforcing the narrative that rigorous border control and pushback policies are necessary for national and regional security. The alignment between domestic legislation and societal attitudes emphasizes the complex interplay between political discourse, legal frameworks, and public opinion in shaping immigration laws. The policy analysis of a single legislation enacted in Lithuania revealed that the issue extends far beyond national boundaries and must be addressed at the EU level. This leads to another crucial factor that enabled Lithuania to implement pushback measures: impunity. Lack of accountability starkly exposes a critical deficiency in the legal system, revealing its failure to serve the intended function. The reluctance of EU institutions to hold states responsible, alongside the European Commission's justification of offenders like Poland

and Latvia, suggests that the Union itself may be attempting to bypass certain human rights provisions seen as obstacles to safeguarding its own interests. As pushbacks become legalized, it fundamentally challenges absolute EU rights, showcasing the potential for derogation. With the increased authorization of forceful returns, the once absolute rights lose their significance, revealing critical flaws in the current legal framework. Consequently, the actions of several European states compel a reassessment of the conceptual understanding of the prohibition of torture and the principle of non-refoulement as absolute rights. The current asylum system suggests that these rights may not be deemed non-derogable, given that violations persist continuously and perpetrators evade accountability. The theoretical notion of absoluteness of rights, although appealing on paper, is difficult to achieve in reality. Furthermore, the legalization of such misconduct, which potentially leads to torture, clearly indicates a rule of law backsliding within the EU. The authorization of pushbacks not only violates the aforementioned provisions but also weakens the authority and effectiveness of the EU as a supra-national organization, thereby diminishing the unity and coherence of the organization's legal framework. The infringement of non-derogable human rights serves as a critical indicator of both the erosion of the rule of law and societal regression, which likewise significantly influences the well-being of migrants.

Secondly, the paper analyzed the role of racialized language and the use of racial tropes in legal processes. It is evident that racist rhetoric, alongside the EU's anti-migration stance and the culture of impunity, crucially contributed to the legitimization of forceful returns in Lithuania. Racialized narratives impact legislative processes by embedding stereotypes and prejudices into the development and implementation of migration laws. These stereotypes further shape the perceptions and decisions of lawmakers, law enforcement, and judicial authorities, resulting in biased decision-making. After performing a discourse analysis of public statements made by Lithuanian government officials, eight racial tropes emerged: 'criminal', 'illegal', 'deceiver', 'terrorist', 'puppet', 'dangerous', 'undeserving', and 'other'. The role of these tropes in violating absolute rights, such as non-refoulement and freedom from torture, is substantial. Firstly, issues affecting marginalized racial groups might be deprioritized or ignored due to the negative portrayal of newcomers, leading to unequal protection under the law. Secondly, the perpetuation of racial stereotypes can lead to the creation of biased legislation that disproportionately targets or disadvantages certain groups of migrants. Thirdly, depicting marginalized racial groups as dangerous criminals with malicious intentions enables the justification of government abuses, leading to systemic impunity. Accordingly, despite being intangible, language exerts significant

influence in shaping asylum legislation, alongside economic factors, political climate, and national security concerns. This research demonstrated how the verbal depiction of arriving MEA nationals as undeserving of refuge later materialized in legislative measures. Additionally, characterizing the situation at the border as an emergency facilitated the implementation of measures that are incompatible with Lithuania's international legal obligations. Invoking the doctrine of emergency reveals how certain legal practices, instead of safeguarding fundamental rights, contribute to their infringement. The studied empirical case confirmed the theoretical notions discussed initially and expanded the theoretical framework by highlighting the relevance of the concept of othering and the theory of securitization. The paper reaffirmed that political elites play a pivotal role in identifying and framing the threats. MEA nationals were framed as perpetrators necessitating defensive measures, thus dehumanizing them and stripping them of any rights or even refugee status. Similar to the securitization of migrants, the process of othering constitutes another crucial strategy effectively employed by Lithuanian authorities to facilitate the implementation of hostile policies aimed at immobilizing 'other' people. When such a separation of people into those deserving and undeserving of protection becomes codified into law, it reinforces the enduring effects of colonialism and imperialism, not only within the Lithuanian legal system but also at the EU level. This poses a threat to the fairness and equality of the European justice system, as the legalization of pushbacks in one member state could have a spillover effect on others, as already observed in the northeastern region. Therefore, state-exercised forceful returns should receive increased scrutiny to prevent this malpractice from spreading.

Since this research followed a single-case study design aimed at gaining a deep understanding of the studied phenomenon, generalizing the findings was not the intended objective. Nevertheless, it became evident during the investigation that the conclusions drawn from the case of Lithuania could be applied to countries such as Poland, Latvia, and Estonia due to their similar contexts and legislative developments. This implies that the research achieved a high level of transferability, as the theoretical framework and methodological strategy could also be applied to other EU countries if they decide to legitimize migrant pushbacks in the future. Furthermore, to enhance the confirmability of the research, I reflected on my positionality throughout the paper and maintained analytical memos while coding the interviews to document the reasoning that led me to certain conclusions. Credibility was ensured by using only primary sources to examine the content of the legislation and the impact of government officials' statements on the authorization of pushbacks. Finally, the study upheld a high standard of dependability by providing a detailed description of all the steps taken, justifying the selection of

methods and theories, and including the codebook and analytical memos - all under the oversight of the supervising professor.

Although this research contributed to the scholarly debate by drawing attention to the recently emerged migration route and investigating the relatively novel legal phenomenon of pushback legitimization, it is not without limitations. Firstly, the established timeframe and scope restricted the research to examining only one country - Lithuania - and limited the discourse analysis to speeches of 21 government officials. Likewise, the paper was centered on a single legislative document, the amendment to the Law on the State Border and its Protection No.VIII-1666. While this legislation is significant, focusing on a single document might limit the breadth of the analysis and the understanding of broader legislative trends or related laws. Expanding the number of studied legislations and including more statements by various government authorities would result in a more exhaustive and inclusive study. Secondly, the investigation discussed how migrant pushbacks are codified into domestic law and the impact of racial tropes on legislative processes within the realm of migration, but it was beyond the scope of this research to study the detailed effects of this policy of non-admission on arriving MEA nationals. Examining the ramifications of the legislation is crucial because it would provide a bottom-up perspective on the studied matter, offering insights into the real-world implications of such policies on individuals. Thirdly, the primary data, including public statements by government officials and parliamentary debates, were in Lithuanian. The process of translating these texts might have introduced inaccuracies or misinterpretations, potentially affecting the analysis and outcomes. Lastly, the paper focused on investigating racial tropes and the discourse used by lawmakers. While this focus provided valuable insights into the influence of language and power dynamics, it might have overlooked other important factors influencing the legislation, such as economic or geopolitical considerations.

Considering the limitations of this study, future research should explore pushback legitimization in different contexts and compare whether other EU member states were influenced by similar factors, as well as assessing the role of racial tropes in that process. Further, researchers could build upon the findings presented in this thesis by conducting a longitudinal study to examine the long-term effects of pushback measures on migrants and host populations. This could include examining the psychological and physical impact on foreigners who experienced pushbacks, as well as the broader socio-political implications for countries that implement such policies. Additionally, further research should explore

the role of NGOs and international organizations in both documenting and challenging pushback practices. This could involve case studies of successful interventions by NGOs or evaluations of the strategies applied by international bodies to ensure adherence with human rights norms. The Lithuanian case demonstrated that NGOs, such as Sienos Grupė, are crucial in these dire situations, it was the only one to provide information on events at the border. These organizations remind us that we are all refugees, sharing the common experience of seeking safety, security, and a sense of belonging. Thus, solely legitimizing pushbacks does not make them lawful or justifiable in any manner.

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Appendix A

Analytical Memos

Memo 1 - Hosting migrants in Lithuania (07/06/2024)

At the onset of the coding process, a significant code swiftly emerged, related to the hosting of the newcomers in Lithuania. Initially, I labeled the code as ‘can’t host newcomers,’ reflecting the frequent assertions by politicians regarding the complexities of providing accommodation and care for immigrants, as well as the discontent expressed by local inhabitants. However, as I coded more public statements, it became increasingly evident that the issue was not an inability to host immigrants but rather an unwillingness to do so. Consequently, I revised the label to ‘unwilling to host newcomers.’

Memo 2 - Concept: Othering (08/06/2024)

When coding discourse aimed at excluding newcomers from the host population and emphasizing the differences between the two groups, I recalled the concept of *othering*. According to Welfens and Pisarevskaya (2020), othering involves the construction of ‘us’ and ‘them’ by highlighting differences and similarities between those seeking refuge and the host population. This phenomenon creates boundaries for an already socially excluded group. I concluded that this concept aptly captures the language used by lawmakers and law enforcers since remarks, such as ‘there are a lot of fears when you see people who are foreigners, who have a different religion, who look different’, indeed reinforce boundaries between asylum seekers and the local population.

Memo 3 - Migration: a threat to national security (08/06/2024)

Midway through the coding process, it became evident that politicians frequently frame the issue of heightened migration as a significant security threat. Consequently, they justify their actions by employing the narrative of *a right to defend the country*. Moreover, to reinforce the perception of the arrival of MEA nationals as a security threat, lawmakers deliberately avoid characterizing the situation as a humanitarian crisis requiring urgent assistance. References to the severe conditions faced by migrants stranded at the borders were notably scarce. By consistently framing migration as a security issue, policy-makers sidestep discussions on addressing the root causes of displacement and fail to engage in meaningful dialogue regarding comprehensive and humane immigration policies.

Memo 4 - Grouping codes into categories (10/06/2024)

The process of categorization started smoothly and the 48 codes were distributed into six categories. I decided to label one category after the code *Othering*, recognizing that this concept serves effectively as an umbrella term for various forms of exclusion faced by Middle Eastern and African asylum seekers. Initially, I was concerned about my ability to identify racialized tropes used by politicians to describe incoming migrants. However, a category titled *Characteristics of newcomers* emerged, containing a substantial number of racialized descriptions of the arriving individuals. I plan to dedicate a separate section to each of the tropes employed by Lithuanian lawmakers and law enforcement officials to examine how such discourse contributed to the authorization of pushback.

Memo 5 - Links to the theory of securitization (10/06/2024)

Given the abductive approach employed in the coding process (which combines initial theories with openness to emerging concepts), the analysis of the *Security issue* category revealed the significant relevance of the theory of securitization to this study. Although I did not initially incorporate this theory into the paper's theoretical framework, I came to realize that securitization is indeed one of the strategies employed by lawmakers to dehumanize migrants and justify derogations from certain human rights to which they are entitled. Therefore, I plan to examine various definitions and approaches to securitization and select the most appropriate one for my paper.

Memo 6 - 'Illegals' (11/06/2024)

While coding the texts, I observed how deeply entrenched and normalized the usage of the term 'illegals' is in Lithuanian political discourse. This underscores the long-term success of perpetuating a consistent narrative, as politicians now omit 'migrants' altogether, assuming that 'illegals' alone convey their meaning clearly. Portraying them as illegals and criminals obscures the fact that these individuals are primarily asylum seekers. This also reminded me of the conclusions I drew when writing my Bachelor's thesis, where I investigated the differential treatment received by Ukrainians and asylum seekers from MEA countries. I noted that Ukrainians were never referred to as 'illegals', thereby underscoring the racial biases perpetuated by government officials.

Memo 7 - Dehumanizing (11/06/2024)

I realized that one of the most important effects of the use of racial tropes in political discourse is the dehumanization of arriving MEA nationals. By stripping newcomers of their human status and equating them with 'bullets' or labeling them as aggressive and dangerous, Lithuanian authorities diminish their

suffering, obscure the humanitarian aspects of migration, and even justify the use of violence and torture at the borders. This illustrates the critical deficiencies in Europe's asylum system and the urgent need for fundamental reform. However, such changes unfold at a glacial pace, highlighting the profound influence of discourse as the catalyst for broader transformation.

Memo 8 - Alternative narrative (11/06/2024)

Although the research primarily centered on the racial rhetoric and stereotypes that justified migrant pushbacks, it is crucial to acknowledge the alternative narrative that opposed this hostile asylum system and sought to emphasize the humanitarian nature of migration at the Lithuania-Belarus border. Several politicians highlighted Lithuania's human rights violations and endeavored to draw parallels between the host population and arriving migrants, emphasizing that they too are fleeing wars, poverty, and persecution, akin to Lithuanians during occupations in the 20th century.

Appendix B

Codebook: analyzing discourse regarding migration employed by Lithuanian government officials

Categories	Description of the categories	List of codes
Emergency	This category highlights that the arrival of MEA nationals is framed as a crisis demanding urgent action. It represents a deliberate strategy by legislators, as presenting migration as an emergency enables expedited legal measures and derogation from international norms.	High volume of migration
		Instrumentalized migration
		Invasion
		Irregular situation
		Migration crisis
		Extreme situation
		State of emergency
Security issue	This category is closely linked to the category of Emergency since depicting an issue as a national security threat legitimizes the government's decision to implement extraordinary measures. Securitization approach shifts the narrative from humanitarian considerations to security priorities, impacting policies governing migration in Lithuania.	Unsafe
		Unknown
		Threat to society
		Threat to national security
		Suspicion
		Fear
Criminality	This category revolves around portraying newcomers as perpetrators of criminal acts, despite their legal status as asylum seekers. This criminalization not only misrepresents their motives and legal rights under international law but also shapes public perception and legislative responses, undermining their ability to seek refuge and protection.	Abusing asylum
		Collaborating with Belarus
		Criminal activity
		Damaging the wall
		Illegal migrants
		Terrorists

Lithuania's response	This category encompasses the government's reaction to increased border crossings. This discourse justifies stringent measures such as deportation and deterring entry, framing the situation as a hybrid attack and necessitating a militarized response. The legislative responses prioritize national security over human rights obligations, influenced by racial biases and rhetoric that undermine the legitimacy of asylum seekers' claims.	Blaming Belarus
		Blaming migrants
		Deportation
		Deterring entry
		Lithuania is attacked
		Lack of resources
		Right to defend itself
		Undermining newcomers' suffering
		Unwilling to host newcomers
Characteristics of newcomers	This category explores how MEA nationals seeking asylum are portrayed in Lithuanian political discourse through various stereotypes. These individuals are often depicted as tools or threats, characterized by traits such as anger, aggression, and laziness. This portrayal not only demonizes them but also influences policy decisions, reinforcing discriminatory attitudes and hindering their integration into Lithuanian society.	Aggressive
		Angry
		Attention seekers
		Cowards
		Dissatisfied
		Lazy
		Loud
		Migrants as tools
		Problematic
Rebellious		
Othering	This category focuses on how these individuals are portrayed as fundamentally different from the host population. Through rhetoric that emphasizes cultural differences, labels them as guests rather than members of society, and justifies exclusionary	Dehumanizing
		Guests
		Have no say
		Homogenizing

<p>policies, Lithuanian authorities create a hierarchical distinction between 'us' and 'them'. This process of othering perpetuates racial stereotypes, dehumanizes migrants, and legitimizes policies that violate human rights norms under the guise of national interest and cultural preservation.</p>	Breach of human rights
	Othering
	Respect our culture
	Selection
	Skin color
	United Arabs