QUESTIONS AND ANSWERS
ON CASES CONCERNING INSTRUMENTALISATION OF MIGRATION AT THE BELARUS BORDER

Responding to realities of instrumentalisation of migration at Belarus border, European Court safeguards essential rights and reiterates limits of Convention protections

- A.R. and Others v. Poland
- H.M.M. and Others v. Latvia
- C.O.C.G. and Others v. Lithuania

Press release (link)

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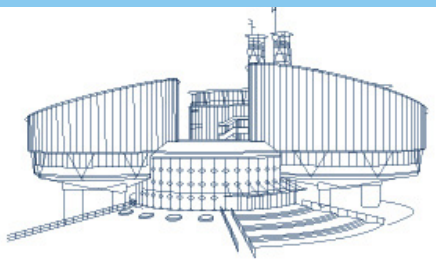

This document is a tool for the press, issued in the context of the rulings in the above cases. It does not bind the Court.

The Grand Chamber delivered its judgments in the cases of *A.R. and Others v. Poland* (application no. 42120/21), *H.M.M. and Others v. Latvia* (application no. 42165/21) and *C.O.C.G. and Others v. Lithuania* (application no. 17764/22) on 24 November 2026.

What are the cases about?

The three cases essentially concerned the applicants' unlawful entry into Poland, Latvia and Lithuania (Council of Europe Member States) from Belarus, in a context of hostile actions carried out by the Belarusian authorities, and the applicants' removal back to Belarus.

What were these hostile actions?

Belarus facilitated the arrival of nationals of various third countries by organising travel arrangements and granting visas to enter Belarus. They then arranged for them, and also coerced them, to cross the border into Poland, Latvia or Lithuania. Those actions are referred to by the Court as "instrumentalisation of migration".

The Court's definition of the term also includes the consequences of this policy which was liable to put essential State functions, such as the maintenance of law and order, at risk.

Are these judgments a change in the Court's caselaw?

The Court has interpreted the Convention in the light of new facts to decide how it protects people caught up in situations of instrumentalised migration. It has ruled that the essential protection against ill-treatment and torture must be respected, and the most vulnerable protected. At the same time, it has reiterated that States control their borders, and they can remove people who have arrived illegally, including in this new context.

What were the complaints before the Court?

The applicants' main complaint was that their removal to Belarus breached their rights under Article 3 of the Convention by exposing them to the risk of inhuman and degrading treatment there, and also to the risk of being returned from there to the countries they had fled – Afghanistan, Iraq and Cuba.

What did the Court find?

It found that the return of a foreign national to an instrumentalising State would not, as such, constitute a violation of the Convention unless the person was vulnerable.

Who is vulnerable?

The Court identified two categories.

First, those who were most vulnerable, such as children, or people with an evident disability. And second, those with a specific reason for claiming that removal would evidently expose them to a real and immediate risk of ill-treatment or death. National authorities must detect such individuals before any removal, and then take the appropriate action to comply with Article 3.

What was the outcome?

The outcome differed by case.

In the case against Poland, the Court found that the applicant was vulnerable, as he belonged to the second category; he was known to be at risk as the Court had granted an interim measure in his case. So, his removal was contrary to Article 3.

In the case against Latvia, it found that the child applicants belonged to the first category, and so their removal was contrary to Article 3, as well as the removal of the close relatives on whom the children were completely dependent.

In the case against Lithuania, the applicants were found not to come within either category, and so their removal was not contrary to the Convention.

Were there any other complaints?

There were many other complaints examined by the Court including about conditions in the border zones, and regarding detention. For more details, please see the information about the cases on the Court's website.