

Ref: CommHR/DM/sf 022-2022

**Ms Krista MIKKONEN**  
Minister of the Interior of Finland

Strasbourg, 27 July 2022

Dear Minister,

I am writing to you concerning the bill amending Section 16 of the Border Guard Act, which was approved by the Parliament on 7 July. I understand that these amendments allow the government to decide to restrict access to the border in case of a serious threat to public policy, national security or public health. It is also my understanding that the government may decide to concentrate applications for international protection at one or more border crossing points, either in case of sudden and large-scale arrivals of asylum seekers, or in case there is a reasonable suspicion that the arrivals have been artificially generated by a foreign state, or non-state actor.

Noting that this bill primarily stems from concerns about the possible instrumentalisation of migration movements by other states, I would like to stress that I have in the past [condemned](#) attempts by states to actively encourage vulnerable people to cross borders whilst knowing this leaves them in a humanitarian or human rights emergency, and puts significant burdens on the receiving member state. However, it is crucial that Council of Europe member states, even when dealing with challenging situations at their borders, react to these fully in line with their human rights obligations.

I am aware that the recently-approved text acknowledges that the new measures introduced should not affect the right of any person to international protection. It is crucial, however, that specific safeguards are put in place to ensure that the rights of people arriving at Finland's borders – including under the European Convention on Human Rights (ECHR) and the 1951 Refugee Convention – indeed remain adequately protected if the provisions were to be implemented.

I am concerned that the provisions introduced could prevent individuals from applying for asylum and may lead to them being returned in violation of the principle of non-*refoulement*. This would be the case, in particular, if persons would be turned back without an individual assessment of their situation simply because they do not present themselves at a designated point. As I explained in my recent [Recommendation on ending pushbacks in Europe](#), carrying out individual assessments of the circumstances of each person arriving at a border remains a crucial tool for securing effective and practical protection against *refoulement*, as well as for upholding other rights of refugees, asylum seekers and migrants. Similarly, the fact that certain places are designated as the only ones where applications for asylum can be submitted must not lead to violations of states' obligations under relevant human rights instruments. As such, even if the possibility of applying for asylum is limited to designated places, states can take practical measures to ensure that persons arriving elsewhere at their borders can still exercise their right to make such an application effectively, for example by transporting them to those designated places.

I also note that, according to the case law of the European Court of Human Rights, any exceptions to carrying out individual assessments as required by the prohibition of collective expulsions can only be applied in specific and limited circumstances and should not lead to violations of other rights, such as those protected under Article 3 ECHR. I therefore urge you to make sure that clear regulations and guidance for border guards are put in place to ensure that the enforcement of the above-mentioned provisions does not lead to the denial of a genuine and effective possibility to claim international protection. I hope that my Recommendation can be of assistance in putting the relevant safeguards in place.

I have taken note that the bill provides that exceptions to the above-mentioned provisions may be applied on an individual basis, considering the situation of children, persons with disabilities and of other vulnerable persons. However, I would like to stress that not all vulnerabilities are visible and self-evident,

and that a satisfactory vulnerability assessment can be carried out only in the context of a thorough individual examination.

I also want to highlight the situation of people who may need to flee the Russian Federation through the Finnish border, including those who might be persecuted on grounds related to their opposition to the war in Ukraine, their sexual orientation or gender identity, their work on human rights or other grounds. It is crucial that specific attention is paid to the needs of this group, which could be particularly affected by the proposed measures.

Lastly, I understand a proposal to amend the Aliens Act will soon be discussed in the Parliament. The proposed changes would allow the application of border procedures for applicants coming from countries deemed safe or submitting manifestly unfounded applications in situations of large-scale arrivals or entry under the influence of a foreign actor. I would like to underline that the introduction of border procedures should not result in depriving asylum seekers from an individual, thorough, substantive, and fair examination of their applications. Moreover, any restrictions imposed on individuals during border procedures that restrict their freedom of movement should be proportionate. More generally, border procedures run the risk of leading to the widespread use of detention in centres located at the border, and safeguards must be in place to ensure that any deprivation of liberty fully conforms to applicable human rights standards. I welcome the fact that the proposed amendments identify exceptional cases in which border procedures would not be applied. However, I understand that unaccompanied minors coming from countries deemed safe would not be included in the exceptions. I also note that other vulnerable applicants, such as victims of human trafficking, would be exempted only if they cannot be provided with the necessary support in the framework of the border procedure. I therefore urge the government to ensure that all unaccompanied minors – as well as all other vulnerable applicants – are excluded from border procedures.

I look forward to continuing our constructive dialogue on this and other topics.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Dunja Mijatović', with a stylized, cursive script.

Dunja Mijatović