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Mr Māris KUČINSKIS

Minister for the Interior of Latvia

Strasbourg, 27 January 2023

Dear Minister,

I want to firstly congratulate you on your appointment on 14 December 2022 as Latvia's new Minister for the Interior and wish you every success in this important office.

As Council of Europe Commissioner for Human Rights, I am mandated to foster the effective observance of human rights in all 46 member states of the Council of Europe. To this end, I engage in dialogue with the governments of member states to assist them in addressing possible shortcomings in their laws and practices. The human rights of refugees, asylum seekers and migrants are a central thematic area of this work.

I have been following closely the situation at Latvia's border with Belarus since August 2021. On 29 July 2022, I [wrote](#) to your predecessor, expressing my concern about reports of refugees, asylum seekers and migrants having been violently prevented from entering Latvia, held in inhumane conditions in the forest, denied access to the asylum procedures, and forced into signing voluntary return declarations. I also called on the Latvian authorities to guarantee full access to the border area for representatives of civil society, relevant international organisations and the media to ensure that adequate humanitarian assistance and legal aid could be provided to all those in need. Access has been hindered by the state of emergency that has been in force in the four municipalities bordering Belarus ever since 11 August 2021.

In his [reply](#), former Minister Eklons assured me that it was possible to cross the border from Belarus into Latvia when humanitarian grounds could be put forward, including through non-verbal conduct, and to subsequently apply for asylum. He also pointed to ongoing monitoring being carried out in the border region by the Latvian Centre for Human Rights and the Latvian Ombudsman.

Since that exchange, however, I have continued to receive well-documented reports of violent pushbacks at the Latvian-Belarusian border. Médecins sans Frontières [warned](#) on 15 December 2022 that repeated pushbacks in harsh winter temperatures, that were causing serious injuries and limb amputations due to frostbite in men, women, and children, would eventually lead to deaths. Indeed, deplorably, the death of an Afghan man of hypothermia was [reported](#) at the end of last year. [Your Ministry informed](#) in early January 2023 that people had been stopped from irregularly crossing the state border from Belarus since 10 August 2021 in 7,562 cases, with a peak in such returns in December of 2022.

I have consistently stressed that individuals and organisations that provide vital humanitarian assistance to refugees, asylum seekers, and migrants and act to protect their rights play an essential role in Council of Europe member states, and I have expressed concern at the increasing tendency to criminalise them. I am alarmed by the fact that a [criminal investigation](#) was initiated against two members of the organisation 'I want to help refugees' who went to the border area on 12 January 2023 out of concern for the lives of seven Syrians. I note that the European Court of Human Rights indicated interim measures to the government of Latvia on 11 January 2023 not to remove these seven Syrians, who were reportedly pushed back and forth several times between Belarus and Latvia, from Latvian territory until 8 February 2023 and to provide them with necessary humanitarian assistance. I want to stress in this context that human rights defenders play a key role in making state policies human rights compliant and holding authorities accountable, and that member states have committed themselves to protecting their activities and creating a favourable environment for them.

I am concerned that the continued state of emergency, which is currently in force until 10 February 2023, remains an obstacle to Latvia meeting its human rights obligations with respect to international protection needs. The state of emergency has significantly limited the ability of independent institutions and the media to monitor the situation at the border and uphold public scrutiny. The Ombudsman of Latvia, for instance,

is required to pre-announce his visits to the border area, and it is my understanding that he was last there in January 2022. In addition, and as evidenced by the case of the above-mentioned human rights defenders, the state of emergency continues to prevent access to the border region for civil society organisations engaged in providing legal aid and direly needed humanitarian assistance to refugees, asylum seekers, and migrants.

I understand that you have argued, like representatives of other member states, that Latvia's pushback-related practices can be justified in view of the European Court of Human Rights' case-law, especially since the Grand Chamber's judgment in *N.D. and N.T. v. Spain*. I want to reiterate that the Court [held](#) that domestic rules governing border controls may not render inoperative or ineffective the rights guaranteed by the Convention, and in particular by Article 3, and that it follows from that case-law that a person's irregular entry cannot be considered a reason to deprive them of the absolute protection against *refoulement*. I further refer to [UNHCR's observations](#) on Latvia's state of emergency, pointing out that the *non-refoulement* principle would be rendered meaningless if requests for asylum at the border do not lead at least to temporary admission for an individual assessment to be conducted prior to any removal.

Pushbacks at the Latvian-Belarusian border expose individuals to a range of important risks. Leaving them in the border area in the middle of winter and without humanitarian assistance in and of itself places their lives and physical integrity in immediate danger. I am further concerned that anyone who is pushed back from Latvia to Belarus may face an acute risk of ill-treatment and thus exposure to violations of Article 3 of the European Convention, given the consistent reports about the systemic nature of grave violations at the hands of Belarusian state agents. This is in addition to the fact that the Court has, on several occasions, found that [summary returns to Belarus place individuals at risk of chain-refoulement](#) to their countries of origin, as there is no guarantee that asylum applications would be seriously examined by the Belarusian authorities.

I understand that you have suggested a sixth extension of the state of emergency for another three months beyond 10 February 2023 to allow for adequate border control measures while the construction of a border fence is still ongoing. Your Ministry has also [proposed amendments](#) to the Law on the State Border Guard with a view to clarifying the entitlement of border guards to use physical force and special means to prevent attempted irregular border crossings, or to immediately return a person to the country from which they came. I note that the immediate return shall be prohibited if there is "in the light of an assessment of the overall situation in that country" reason to believe that there is a real risk to their life or a real risk of torture in that country. However, I fear that these amendments could lead to the endorsement of continued pushbacks being carried out by Latvian border guards, which – as I note above – are carried out in such a way that they expose people to serious risks of violations of their rights under Articles 2 and 3 of the Convention.

As I explained in my recent [Recommendation on ending pushbacks in Europe](#), it is crucial that an *individual* assessment of the circumstances of each person arriving at the border is conducted before any removals in order to secure practical and effective protection against *refoulement* and safeguard other basic human rights. The individual assessment should be carried out by trained professionals and with procedural safeguards, including adequate interpretation, which would go beyond the remit of a state border guard. With respect to the proposed amendment to provide for an exception in the case of persons with visible signs of disability or acute health conditions, 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 by a trained professional.

I reiterate that border control must be exercised in full compliance with a state's obligations under the European Convention and the absolute prohibition of *refoulement*. The human rights of those arriving must be safeguarded even during challenging conditions and including when they attempt to cross in an irregular manner.

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

Yours sincerely,



Dunja Mijatović