

Ref: CommHR/DM/sf 016-2022

Mr Jüri RATAS
President of the Riigikogu
Estonia

Strasbourg, 16 May 2022

Dear Speaker of Parliament,

Allow me to begin this letter by expressing my deep appreciation for the solidarity and generosity shown by the Estonian authorities and people in welcoming those fleeing the war in Ukraine.

I am writing to you about the bill amending the State Borders Act and Related Acts 577 SE, which is currently under examination before the Estonian parliament (Riigikogu). The bill introduces several changes to the asylum procedure and to border management. Among others, the bill foresees that, in an emergency situation with a mass influx of migrants and a threat to public order or national security, border guards are allowed to return people without issuing an individual decision. It also allows border guards to refuse an application for international protection if that claim is not made at the designated border crossing.

I am concerned that such provisions present a risk for the rights of persons arriving at Estonia's borders, including under the European Convention on Human Rights (ECHR) and the 1951 Refugee Convention. In particular, they would prevent individuals from applying for asylum and may lead to them being returned in violation of the principle of *non-refoulement*. Protection against *refoulement* should not be denied because a country faces an emergency situation, nor because persons arrive in an irregular manner. As I explained in a 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 the 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, rather than pushing them back.

I am also concerned that the bill in its current form undermines the right to an effective remedy. It is my understanding that an appeal against a decision to immediately return does not have suspensive effect, even in case of an arguable claim of such a return leading to a violation of Article 3 ECHR, as is required by the case-law of the European Court of Human Rights. More generally, not providing a suspensive effect will often make the possibility of challenging a decision moot, since it will severely hamper people's ability to take legal action. I also note that the bill lacks legal certainty, as it is not clear how the decision to declare a situation of emergency in which the bill should be activated will be taken, nor by whom.

Noting that this bill may stem from concerns about the possible instrumentalisation of migration movements by other states, I would like to stress that I have in the past condemned in the strongest terms attempts by states to actively encourage vulnerable people to cross borders whilst knowing this leaves them in a humanitarian or human rights emergency, and that it adds significant burdens on the receiving member state. But, as I have stated before, it is crucial that Council of Europe member states, even when dealing with challenging border situations, uphold fundamental rights. The answer cannot be to punish migrants and asylum seekers in a vulnerable position, who should always be treated humanely. The commitment to upholding human dignity and the emphasis on fair treatment of people fleeing the war in Ukraine should be extended to all people arriving at member states' borders with the same protection needs, regardless of their background or the manner of their arrival.

I therefore call on members of the Riigikogu to ensure that the proposed Bill is amended to be fully in line with Estonia's human rights obligations. I would be grateful if you could disseminate this letter to all members of the Riigikogu.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Dunja Mijatović', with a large, stylized initial 'D'.

Dunja Mijatović