

Ref: CommHR/DM/sf 030-2021

Ms Ingrida ŠIMONYTĖ
Prime Minister of Lithuania

Strasbourg, 10 August 2021

Dear Prime Minister,

I am writing to you in relation to the situation of refugees, asylum seekers and/or migrants arriving at your country's borders. I am fully aware that the recent increased arrivals through the border with Belarus pose a significant challenge for your country and are putting a strain on protection and reception services. However, I feel obliged to share with you my concerns about the impact that Lithuania's response to this challenge is having on the protection of the human rights of those arriving.

At the outset, I want to make clear that I condemn any attempt by states, whether members of the Council of Europe or not, to actively encourage vulnerable people to cross borders whilst knowing this leaves them in a humanitarian or human rights emergency and adds significant burdens on the receiving member state. However, where such actions are taken, the only appropriate response by Council of Europe member states is to address these, as difficult as this is, in a manner that upholds the humanitarian and human rights principles and values to which they have committed, and by not allowing the rights of individuals to become subordinate to political or geopolitical considerations.

In particular, it is crucial that Council of Europe member states, when dealing with challenges related to migration movements, uphold the standards set in the European Convention on Human Rights (ECHR), the 1951 Refugee Convention, and other key legal instruments. Situations of pressure at other member states' borders teach us that responses that do not fully safeguard the human rights of those arriving only end up making the situation worse. This is true for the individuals affected by these responses, but also for the long-term system of protection in the receiving country, as well as the integrity of this system across Europe.

In this context, I particularly recall that the principle of non-refoulement, as enshrined in the above-mentioned instruments, must be the cornerstone of any response to arrivals. This includes ensuring that indications that persons arriving in a state might be subjected to persecution or to torture or inhuman or degrading treatment upon return, are adequately assessed before a decision to expel them is taken. Furthermore, any appeal against such a decision should be subject to a suspensive effect to ensure an effective remedy. Other crucial elements of any response to arrivals at borders include full respect for the prohibition of collective expulsions, preventing arbitrary interferences with the right to liberty, and ensuring humane treatment for all, regardless of their legal status.

In this respect, I was concerned to learn that newly adopted amendments to the Law on the Legal Status of Aliens and the accompanying legislation (No XIVP-719 of 13 July 2021) remove, in the case of an emergency situation, significant safeguards in the asylum procedure, including in relation to: the full examination of asylum claims; the provision of information and legal assistance; and the automatic suspensive effect of appeals against asylum decisions. Such steps would clearly pose a threat to upholding the principle of non-refoulement, as well as the right to an effective remedy. I am also worried that the newly adopted legislation would allow vulnerable persons, such as unaccompanied minors, victims of torture or victims of trafficking in human beings, to be diverted to accelerated procedures, without regard to their specific situation. Additionally, I have noted reports that the way in which newly arrived asylum seekers and migrants are accommodated runs the risk of amounting to de facto detention. I also understand that persons attempting to enter the territory of Lithuania in an irregular manner may have been summarily returned to Belarus. I should like to underline that, when persons at the border are returned without individual identification or procedure, Council of Europe member states cannot establish whether they may be sending them back to human rights abuses and this may thus lead to violations of their obligations to prevent refoulement and to uphold the prohibition of collective expulsions.

Notwithstanding provisions of domestic law, I recall that Lithuania remains bound to ensure that its actions continue to comply with the international instruments to which it is a party, in particular the ECHR. In view of this and of the concerns raised above, I would greatly appreciate hearing from you how your government intends to ensure that the response to the challenging situation at your border nevertheless meets Lithuania's international obligations, and in particular whether the above-mentioned amendments will be revised with a view to making legislation fully compliant with the relevant human rights standards. I would particularly welcome your views on how to ensure the application of safeguards to prevent refoulement and guarantee access to asylum more broadly, including by strengthening the capacity of the relevant migration authority to process asylum applications. Additionally, your views on ensuring that the reception of newly arrived persons does not become deprivation of liberty without adequate safeguards and that alternatives to detention are provided, would also be particularly appreciated. In the meantime, I call on you to guarantee that no returns take place to Belarus or other countries without these being accompanied by sufficient safeguards against refoulement or the prohibition of collective expulsions. I also encourage your authorities to work closely with specialised international organisations, in particular UNHCR, to build a response to the current challenges that is protection-oriented, and to foster closer coordination with and provide additional support to civil society, which also has an important role to play in upholding the human rights of those arriving.

In conclusion, I reiterate that, while Lithuania has its own clear international obligations, there is also an important role for other Council of Europe member states to show solidarity and to ensure responsibility sharing with countries under particular pressure. While I am glad to see steps in this respect are being undertaken, I will continue to call for such solidarity, as I have done consistently throughout my mandate in other situations.

I remain at your disposal to further discuss the situation of refugees, asylum seekers and/or migrants arriving in Lithuania and the above recommendations, as well as effective ways for the government to move forward in addressing the current challenges in full compliance with its human rights obligations. I look forward to receiving your reply and continuing our constructive dialogue on these and other human rights issues.

Sincerely,

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

Dunja Mijatović