

*MINISTER OF THE INTERIOR
FINLAND*

**Commissioner for Human Rights
Dunja Mijatović**

Helsinki August 3, 2022

Regarding your letter of 27/07/2022, Strasbourg

Dear Commissioner,

I wish to thank you for reaching out and opening the dialogue regarding this important matter related to Human Rights. Your insights concerning the bill amending Section 16 of the Border Guard Act, Aliens Act and right of any person to international protection are much appreciated.

Firstly, I assure you that the important principles underlined in your letter; the possibility to seek and enjoy asylum in Finland in accordance with our international obligations and relevant EU law, as well as the respect of the principle of *non-refoulement*, will guide the application of the new and proposed legislation. There will be no exceptions to these guiding principles and obligations.

The purpose of the amendments to the Border Guard Act has been to strengthen border security by improving Finland's ability to prepare for and respond to disruptions in normal conditions and situations of emergency. The amendments to the Border Guard Act enable a gradual intervention to the situation at hand depending on its severity. The amendment to the Border Guard Act also makes it possible to concentrate applications for international protection if the situation so requires and specific conditions are met. However, the application for international protection may not be concentrated more than what is absolutely necessary to combat a serious threat to public order, national security or public health. When deciding on the implementation of measures under section 16, the Government is obliged to fully comply with national and international fundamental and human rights obligations and EU legislation.

In the practical application of the provisions, the significance of case-by-case consideration, respect for fundamental and human rights, and consideration of the rights of children, persons with disabilities and other persons in a particularly vulnerable position are emphasized as well. When carrying out measures, account must be taken of the actual possibility of persons to use a border crossing point open for international protection for entry into the country and of safeguarding the rights of persons in need of special protection. These aspects are also covered in

the training given to the border guards and, if the decision is implemented, in the guidelines issued to authorities operating at the national border.

Legislation enabling the border procedure is one of the Government's many ways to prepare for addressing hybrid influence activities that exploit migration and exceptionally large-scale arrivals of persons. The proposal is based on the EU's Asylum Procedures Directive that lays down the purpose of the border procedure and the conditions for its application. However, in Finland the scope of the procedure will be narrower than what is allowed by the directive: it is proposed that it can only be introduced in cases where an exceptionally high number of persons arrive in a short period of time or in cases of instrumentalisation of migrants by a state or some other party. In addition, the introduction of the border procedure is not automatic, but it requires a decision by the government, and thus an assessment of the situation and the effective means for responding to it.

It is specifically emphasized in the government proposal that the border procedure does not prevent anyone's right to apply for international protection. Each application made in Finland is examined individually in order to ensure that international protection is granted to those in need and the principle of *non-refoulement* is respected. The application of the border procedure will end if the conditions for its continuation no longer exist, for example because grounds for receiving international protection have emerged during the examination of the application, as required in the directive. The rules on the application of the procedure to vulnerable persons follow strictly what is required in the directive, and the possibility to apply it to unaccompanied minors is narrower.

The purpose of the border procedure is that the applicants are not allowed to enter the territory of the Member State in the full legal sense, but are kept at the border, in the transit area or in its vicinity for the duration of the procedure. This was also noted by the European Court of Justice in its judgment in joint cases C-924/19 and C-925/19. How to implement this in practice is left to the discretion of the Member States. According to the proposal, in Finland the asylum seekers will have an obligation to stay on the grounds of the reception centre assigned to them located at or near the border and they can move freely within its grounds, and the normal rules regarding reception conditions apply. As a rule, the asylum seekers will thus not be detained, but detention is possible in individual cases if the general conditions for the use of precautionary measures as well as specific conditions for the use of detention are met.

This proposed amendment of the Aliens Act will be discussed in the Parliament during autumn and we anticipate that the very same points highlighted by you will be scrutinized and debated in the forthcoming discussions. Simultaneously, we will also actively participate in the EU-level discussions on the reform of the asylum and migration system and on ways to address situations of instrumentalisation of migrants.

I look forward to continuing our dialogue on this topic, as I believe that it will also contribute to the ongoing national discussion on our possibilities to address situations of instrumentalisation of migrants and to further enhance the realization of human rights in Finland also in those situations.

I wish you the best of success in your demanding and important work and remain at your disposal.

Sincerely,

A handwritten signature in blue ink, appearing to read 'Krista Mikkonen', written over a horizontal line.

Krista Mikkonen
Minister of the Interior
Finland