



Iekšlietu ministrija

MINISTRY OF THE INTERIOR OF THE REPUBLIC OF LATVIA

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Ms. Dunja Mijatović,
Commissioner for Human Rights,
Council of Europe

To: 29.07.2022.

CommHR/DM/sf 023-2022

F – 67075 Strasbourg Cedex

Dear Ms. Mijatović,

Let me express my gratitude for your interest and involvement in matters of importance to the Republic of Latvia. The situation at Latvia's border with Belarus is significant in the context of internal security of Latvia therefore your involvement in promoting its stability is especially appreciated. At the same time, upon evaluating the information indicated in your letter of 29 July 2022, the Ministry of the Interior of the Republic of Latvia would like to provide you with its assessment and opinion on the actual situation at Latvia's border with Belarus.

The Cabinet of Ministers of the Republic of Latvia declared emergency situation from 11 August 2021 to 10 August 2022 by the by the Order No. 518 of 10 August 2021 *On Declaration of Emergency Situation* (hereinafter – the Order) in four administrative territories, taking into account the rapid increase in the number of cases of illegal crossings of the State border of the Republic of Latvia and the Republic of Belarus, as well as the large number of cases of illegal crossings of the State border of the Republic of Lithuania and the Republic of Belarus. Accordingly, the Order was adopted to ensure the internal security of the State, within the framework of which one of the essential elements is the effective implementation of prevention of illegal crossing of the State border within the limits of the resources available to the State.

As the European Court of Human Rights (ECHR) has also established in its case-law, States have the right to control the entry, residence and exit of persons and to determine their immigration policies in order to ensure the fulfilment of their bilateral obligations or obligations towards the European Union (see, for example, Paragraph 42 of the ECHR judgment of 21 October 1997 in case 122/1996/741/940 *Boujlifa v. France*) and Articles 67(2), 77 to 79 (in particular Article 79(1) concerning the prevention of illegal immigration) and 80 of the Treaty on the Functioning of the European Union. A key element in ensuring the internal security of States is the establishment of border guarding systems, including border controls, which serve not only the national interests at the borders of which border controls are carried out, but also the interests of all States applying the provisions of the Schengen *acquis* relating to the abolition of border controls at the internal borders of the European Union.

Accordingly, the principle that unlawful crossing of a State border is not permissible or only lawful entry of a person into the State is to be regarded as eligible. Entry of a person into the State shall be considered lawful if the State border is crossed at the place provided for it, as well as the person is able to justify the circumstances allowing the person to enter the State and if the person does not pose a threat to State security, public order and security, public health. Moreover, it is essential that the possibility of lawful entry provided by the State is not only formal (or practically impossible), but genuinely and effectively implemented by any person within a reasonable period of time (see, for example, Paragraph 208 of the ECHR judgment of 13 February 2020 in cases 8675/15 and 8697/15 *N.D. and N.T. v. Spain*; Paragraphs 114-116 of the ECHR judgment of 5 April 2022, in case 55798/16 and 4 other cases *A.A. and Others v. North Macedonia*).

In regards of the possibilities for lodging an application for international protection, it should be noted that Articles 4(1) and 6 (especially Paragraph 3) of Directive 2013/32/EU of the European Parliament and of the Council of 26 June 2013 on common procedures for granting and withdrawing international protection (hereinafter – Directive 2013/32/EU) give States discretion to determine the institutions (including, according to their territorial location), which are competent to accept an application for refugee or alternative status without determining which authorities are to be designated as competent and also without determining their territorial location, including within the State (see, *mutatis mutandis*, Paragraph 114.1 of the CJEU judgment of 25 June 2020 in case C-36/20 PPU *Ministerio Fiscal*).

In general, the aforementioned provisions of Directive 2013/32/EU, using the discretion granted to the Member States as described in the previous Paragraph, have been transposed into the regulatory framework of the Republic of Latvia by the Second Paragraph of Article 6 of the Asylum Law, which provides:

“(2) A person shall submit an application for granting refugee or alternative status in person to the State Border Guard:

1) at a border crossing point or border crossing transit zone prior to entering the Republic of Latvia;

2) in a structural unit of the State Border Guard if the person is located in the Republic of Latvia.

(4) If a person has expressed his or her wish to acquire refugee or alternative status to the Office of Citizenship and Migration Affairs, the State Police or the Prisons Administration, they shall immediately, not later than within three working days, contact the State Border Guard so that the asylum seeker may submit an application.”.

Paragraph 6 of the Order (in the version in force until 5 April 2022) provided that applications of persons for the granting of refugee or alternative status were not accepted in the structural units of the State Border Guard and other institutions located in the territory where an emergency situation was declared. That provision was not intended to deprive the applicant of the right to make an application for the grant of refugee or alternative status in the territory of the Republic of Latvia as a whole, but temporarily change the range of areas where applications could be submitted, within the discretion of the Member States under Articles 4(1) and 6 of Directive 2013/32/EU.

Thus, the Order did not restrict the right of persons to legally enter the Republic of Latvia in accordance with the procedures laid down in laws and regulations or by using the specified border crossing points where the State Border Guard issues one-time unified visas and visas with limited territorial validity, which are laid down in Cabinet Regulation No. 676 of 30 August 2011 *Visa Regulations* (hereinafter – Cabinet Regulation No. 676): road border crossing points “Pāternieki” and “Silene”, railway border crossing point “Indra”, as well as the border crossing point at Riga Airport, which is also the State border crossing point of the Republic of Latvia and the Republic of Belarus for legal entry into the Republic of Latvia.

Thus, any person who arrived at a border crossing point, including in the territory of the Republic of Latvia, had an equal right to justify permission to enter, which may be expressed both in a written or verbal form, for example by explaining the circumstances, and thus obtaining an entry permit on an equal basis.

In view of the above-mentioned, the Order that ensures a reasonable balance between the interests of the State and the interests of the individual, provided for the possibility of lawful entry for persons in a manner that was genuinely and effectively enforceable for any person within a reasonable period of time (see, *mutatis mutandis*, Paragraphs 121, 122 of the ECHR judgment of 5 April 2022 in case 55798/16 and 4 other cases *A.A. and Others v. North Macedonia*).

Namely, some of the grounds for a person that is not a national of a Member State of the European Union (the so-called third-country national) to have the right to enter the Republic of Latvia, if he or she does not have the documents specified in regulatory enactments for entry into the Republic of Latvia, are humanitarian grounds, national interests or international obligations (Article 5 of Regulation (EU) 2016/399 of the European Parliament and of the Council of 9 March 2016 on the Union Code on the Rules Governing the Movement of Persons Across Borders (Schengen Code). In the abovementioned cases, in conformity with Section 13, Paragraph Two of the Immigration Law and Sub-Paragraph 5.4 of Cabinet Regulation No. 676 the State Border Guard shall issue a one-time uniform visa or a visa with limited territorial validity at certain border crossing points.

The humanitarian grounds may constitute, inter alia, the circumstances which may form the basis of an application for asylum in the Republic of Latvia. Furthermore, the reference to humanitarian considerations may be submitted in any form (verbally, in writing, by non-verbal conduct) (see, *mutatis mutandis*, Paragraphs 97, 99 and 100 of the CJEU judgment of 17 December 2020 in case C-808/18 *European Commission v. Hungary*).

It follows from the above that persons who arrived at the border crossing points between the Republic of Latvia and the Republic of Belarus (also within the framework of the emergency situation specified in the Order), had the opportunity without travel documents specified for entry into the Republic of Latvia to point to humanitarian grounds (verbally, in writing, by non-verbal conduct), such as fear of persecution in the State from which the person entered or in the State of origin, to health-related aspects and other conditions; and on the basis thereof to receive a one-time uniform visa or a visa with limited territorial validity issued by the State Border Guard at the relevant border crossing point. The abovementioned visa gives a person the right to move within the Republic of Latvia, including beyond the territory specified in the Order in which an emergency situation has been declared, and also to submit an application for granting

refugee or alternative status.

Thus, the Order provided an opportunity for persons to lawfully enter the Republic of Latvia also in the territories specified in Paragraph 1 thereof, as well as provided an opportunity for persons after the conclusion of the border check and its following entry into the Republic of Latvia to move beyond the territory specified in the Order and, if necessary, to apply for asylum. Accordingly, the Order did not deprive a person of the possibility to legally enter the Republic of Latvia with purpose to apply for asylum, the Order temporary changed the territorial location of the authorities competent to accept asylum applications, taking into account the situation, including at the State border between the Republic of Latvia and the Republic of Belarus, within the discretion of the Member States enshrined in Article 4(1) and Article 6 of Directive 2013/32/EU. At the same time, the Order still provided a real opportunity to enter legally, including to apply for asylum, and provided a real opportunity to apply for asylum shortly after entering the Republic of Latvia (see, for example, Paragraphs 121, 122 of the ECHR judgment of 5 April 2022 in case 55798/16 and 4 other cases *A.A. and Others v. North Macedonia*).

At the same time, as the ECHR has also stated, the principle of lawful entry is not absolute and may be derogated from if a person is able to objectively justify the circumstances in which he or she does not cross the State border in places designated for him or her, such as the threat of immediate persecution in the country from which he or she is seeking to enter. Accordingly, in each individual case, there is an objective assessment of the circumstances put forward by the person, their relevance, their immediate nature, in order to determine whether they are proportionate to failure to comply with legal entry. If it is established that the objective circumstances indicated by the person are justified, the person must be authorised to enter the country in accordance with the principle of non-refoulement.

Objective circumstances justifying non-compliance with lawful entry do not include, for example, the mere presence of a non-national in a border zone without a border crossing point, without any objectively justified indication of the need to enter the country immediately, or merely the use of a situation in which a large number of persons wish to enter the country at the same time, thus posing a threat to the country's internal security and public order as well as the normal exercise of its functions (see, *mutatis mutandis*, for example, Paragraph 121 of the ECHR judgment of 5 April 2022 in case 55798/16 and 4 other cases *A.A. and Others v. North Macedonia*).

In the absence of the relevant objectively justified circumstances relating to the need for the immediate entry of a person into a country outside the procedure laid down for lawful entry, States are entitled, where appropriate, to refuse entry to the State, which does not constitute a breach of the principle of non-refoulement (see, for example, Paragraphs 178, 180, 184-185, 188, 200, 201, 210 of the ECHR judgment of 13 February 2020 in cases 8675/15 and 8697/15 *N.D. and N.T. v. Spain*).

This is also demonstrated by the Second Paragraph of Article A.1 of the United Nations Convention Relating to the Status of Refugees, read in conjunction with Article I of the Protocol Relating to the Status of Refugees, according to which a person, who, by well-founded fear of persecution on grounds of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of which he is a national and who is unable, or by reason of such fear unwilling to avail himself of the protection of that country, or a person who

is not a national and who is unable or unwilling to return to his country of previous residence as a result of such events, is to be considered a “refugee”.

Consequently, any case where a person also wishes to cross the State border of the Republic of Latvia and the Republic of Belarus illegally within the framework of the emergency situation specified in the Order is assessed individually, taking into account the principles of non-refoulement and other human rights norms binding on the Republic of Latvia, as interpreted by international institutions (see, *mutatis mutandis*, for example, Paragraphs 116, 119, 121 of the ECHR judgment of 5 April 2022 in case 55798/16 and 4 other cases *A.A. and Others v. North Macedonia*).

Nevertheless, on 6 April 2022 the Cabinet of Ministers adopted Regulation No. 254 *Amendment to Cabinet Order No. 518 of 10 August 2021 On Declaring an Emergency Situation* (hereinafter – Cabinet Regulation No. 254), which provides for the wording of Paragraph 6 of the Order:

“6. To determine that in the units of the State Border Guard and other institutions located in the territory where the emergency situation has been declared, applications of persons regarding granting of refugee or alternative status shall not be accepted. The above shall not be applicable to border crossing points located in the territories referred to in Paragraph 1 of this Order, as well as to the Accommodation Centre “Daugavpils” for foreigners detained by the Daugavpils Department of the State Border Guard.”

As indicated in the Initial Impact Assessment Report (Annotation) of Cabinet Regulation No. 254, the amendments were made in Order to clarify the wording of Paragraph 6 of the Order, taking into account the judgments of Rēzekne Courthouse of the Administrative District Court in cases A420290221, A420287621, A420291421, as well as taking into account that other cases were also pending before the court at that time. As stated above, Paragraph 6 of the Order did not deprive individuals of the right to apply for refugee status or alternative status in the Republic of Latvia even before the amendment of Paragraph 6 of the Order, but it changed the territorial location of the authorities in which the asylum applications were accepted, within the discretion of the Member States. Thus, the amendments to Paragraph 6 of the Order by Cabinet Regulation No 254 were intended to prevent a different interpretation of wording.

Paragraph 6 of the Order permits an application for refugee status or alternative status to be submitted, within the scope of the Order, at the border crossing points referred to therein and at the accommodation centre of detained foreigners “Daugavpils” of the Daugavpils Administration of the State Border Guard. At the same time, Paragraph 6 of the Order, in the version of 6 April 2022, maintains the principle that, in the presence of objectively justified circumstances relating to the need for immediate entry of a person into a country outside the conditions laid down for lawful entry, persons may be allowed to enter the country and also apply for refugee or alternative status. Accordingly, if the grounds for detention of a person laid down in the Immigration Law are determined, the person may be detained and his or her application for asylum may also be submitted to the accommodation centre of detained foreigners “Daugavpils” of the Daugavpils Administration of the State Border Guard. However, if the relevant grounds for detention cannot be determined, the person may submit an application for asylum at any place in the territory of the Republic of Latvia specified in the Asylum Law or the Order.

In the light of the above, Paragraph 6 of the Order, following the amendment of 6 April 2022,

and the discretion provided for in Articles 4(1) and 6 of Directive 2013/32/EU (in particular paragraph 3 thereof), allows States to determine the authorities that are competent to accept an application for refugee or alternative status (see, *mutatis mutandis*, for example, Paragraphs 121, 122 of the ECHR judgement in case 55798/16 and 4 other cases *A.A. and Others v North Macedonia*).

At the same time, the Order was adopted taking into account human rights provisions binding on the Republic of Latvia, including the UN Convention Relating to the Status of Refugees of 28 July 1951 and its Protocol Relating to the Status of Refugees of 31 January 1967, the UN Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment of 10 December 1984, the European Convention for the Protection of Human Rights and Fundamental Freedoms of the Council of Europe of 4 November 1950, as interpreted by the ECHR in its case-law, as well as non-refoulement and other principles contained in other relevant documents (see, *mutatis mutandis*, Paragraphs 114-115, 121 of the ECHR judgment of 5 April 2022 in case 55798/16 and 4 other cases *A.A. and Others v. North Macedonia*).

With regard to the treatment of persons who have illegally crossed or attempted to cross the State border of the Republic of Latvia and the Republic of Belarus, it should be noted that in accordance with the Order:

- The State Border Guard, the National Armed Forces and the State Police use the means and procedures at their disposal to deter persons from irregular crossing of the State border of the Republic of Latvia and the Republic of Belarus (Paragraph 3),
- The State Border Guard, the National Armed Forces and the State Police, after having established that a person is attempting to cross the State border of the Republic of Latvia and the Republic of Belarus illegally or has irregularly crossed it, has the right to order the person to immediately cease the attempts to cross the State border of the Republic of Latvia and the Republic of Belarus, or to order to return immediately to the country from which the person crossed the border, and to take the necessary measures to ensure that the person concerned complies with that order (Paragraph 4),
- The State Border Guard, the National Armed Forces and the State Police have the right to use physical force and special means to immediately return the person to the country from which he or she irregularly crossed the State border of the Republic of Latvia and the Republic of Belarus in a situation of extreme necessity (Paragraph 5).
- It should be pointed out that the use of physical force is a measure of last resort, so that the necessity and proportionality of its application must be assessed on a case-by-case basis and the exercise of that right depends on the specific situation.

To date, no case has been established when the representatives of the State Border Guard, the National Armed Forces or the State Police have used physical force or special means in a situation of extreme need and no complaints have been received in the State Border Guard regarding the use of physical force and special means from persons who have tried to cross the State border of the Republic of Latvia and the Republic of Belarus illegally.

In addition, it should be noted that the Emergency Medical Service is called on the State border of the Republic of Latvia and the Republic of Belarus, if necessary, to carry out an examination of the state of health of persons. The State Border Guard does not have information at the disposal of the State Border Guard, the National Armed Forces or the State Police, that may

have occurred as a result of the actions of the State Border Guard, the National Armed Forces or the State Police.

The Ministry of the Interior notes that, according to information provided by the Internal Security Office, an application was received on 30 August 2021 for alleged violence by State Border Guard officials against persons from Iraq trying to illegal cross the border of the Republic of Latvia. In order to assess the information provided in the application, the Internal Security Office carried out a departmental investigation¹. Within the framework of the departmental investigation, the video and audio materials appended to the applicant's application, explanations and other materials from the information providers that were obtained during the inspection, including the results of the inspection of the State Border Guard were investigated. As a result, there was no confirmation of the possible violence committed by the State Border Guard or other officials against illegal border crossings. Subsequently, a decision was taken at the Internal Security Office in November 2021 to refuse to initiate criminal proceedings.

Similarly, in response to the published information (<https://latvia-belarus-border.mozellosite.com/findings/violent-half-hbacks/>), an investigation was initiated at the Internal Security Office on 3 May 2022, evaluating the lawfulness of the actions of employees of the State Border Guard and State Police in the amount of the published information. The review is currently ongoing.

Regarding the monitoring of the asylum application procedure and the voluntary departure of persons, it should be noted that on 12 January 2011 the State Border Guard and the Mission of the United Nations Northern Europe and the Baltic Region (hereinafter – UNHCR) signed a Memorandum of Understanding on mutual cooperation to support the implementation of access to the territory of the Republic of Latvia and the asylum procedure of asylum seekers (hereinafter – the Memorandum of Understanding), in the framework of which the partner designated by UNHCR in the Republic of Latvia has the right to visit and carry out surveillance activities in the accommodation centres for foreigners detained by the State Border Guard (hereinafter – the Centre).

The Immigration Law and the Asylum Law also provide for cases in which foreigners and asylum seekers to be expelled have the right to receive legal aid provided by the State. In cases where the foreigner or asylum seeker to be expelled is detained and accommodated in the Centre, the providers of such legal aid shall not be denied the opportunity to visit the Centre for the provision of legal aid.

Each detained foreigner and a detained asylum seeker while in the Centre have the right to meet family members or relatives, as well as representatives of associations and foundations, international organisations.

In accordance with Article 4(3) of the Memorandum of Understanding, the State Border Guard shall take all necessary measures to ensure that UNHCR observers can observe the lodging of

¹ By a departmental investigation within the meaning of the Criminal Procedure Law Section 373 shall be meant an investigation performed by the State authority and officials thereof in respect of possible violation of the law using powers, which are not criminal procedural powers, specified in the law governing the operation of such authority.

asylum applications at border crossing points, the follow-up to the relevant authority that received the asylum application, the reception and accommodation conditions of the persons concerned and the adequacy of the relevant legal requirements in relation to the persons concerned. The partner designated by UNHCR in the Republic of Latvia is an observer of the Latvian Centre for Human Rights, who regularly conducts such monitoring.

In accordance with the Immigration Law, the Ombudsman monitors the expulsion process, has the right to visit the detained foreigner subject to removal, as well as to accompany the foreigner to be expelled to the exit point within the framework of the surveillance process. During the operation of the Order, representatives of the Ombudsman's Office visited both the border areas and the State border of the Republic of Latvia and the Republic of Belarus on several occasions in the administrative territories referred to therein. At the time of the visit, the State Border Guard received no accusations for violations of legal norms from the Ombudsman's Office.

Regarding the information that foreigners are forced to sign voluntary return declarations, no complaints have been received by the State Border Guard regarding the signing of voluntary return declarations, but in practice there were cases when foreigners changed their mind regarding the wish to leave with the support of the International Organisation for Migration (IOM) and the organization of their voluntary return procedure was suspended.

The Ministry of the Interior informs that the willingness of foreigners to leave the European Union is voluntarily confirmed by their own self-completed questionnaires, according to which they are sent to the IOM for organising voluntary departure. After examining the application received, IOM staff sends each specific application information to the IOM office in Iraq for confirmation that the foreigner may return to Iraq. Foreigners who initially wanted to leave the European Union with the support of the IOM, but who change their mind on the use of the voluntary return programme, do not participate in the voluntary return and reintegration programme organised by the IOM. In addition, the State Border Guard, in co-operation with IOM, developed an informative material *Do you want to return home?* translated into several languages (English, French, Arab, Kurmanji, Sorani etc.) and distributed among foreigners; a representative of the IOM Bureau regularly visits accommodation centres for detained foreigners in order to conduct personal interviews with foreigners who completed the voluntary return and reintegration assistance application forms.

The abovementioned facts show that there are several stages to ensure that the foreign national genuinely wishes to leave the Republic of Latvia with the support of the IOM.

Section 14 of the Law on the State Border of the Republic of Latvia provides that the stay in the State border zone is prohibited, except in cases where it is related to:

- 1) border surveillance;
- 2) the maintenance and restoration works of the State land border, the securing structures or elements thereof and the State border zone, which have been co-ordinated with the State Border Guard;
- 3) the maintenance work of communications crossing the State border (for example, pipelines, communication lines, power lines), motorways and railways, which have been co-ordinated with the State Border Guard;

- 4) geodesic and cartography work which has been co-ordinated with the State Border Guard;
- 5) disaster relief works, about which the State Border Guard has been informed.

In accordance with Cabinet Regulation No. 791 of 23 December 2014 *Regulations Regarding the Procedures for the Issuance and Cancellation of Special Passes by the State Border Guard and Sample Forms of Special Passes* the procedures by which the State Border Guard issue and cancel special passes for staying in borderland have been specified. Currently, during the emergency situation, the issue of term passes is temporarily restricted in the borderland along the State border of Latvia and Belarus, but the State Border Guard performs exceptions in relation to planned and organised media visits, temporarily issuing the term passes for the time period of the particular visit.

The presence of mass media in the area next to the State border is permitted under strict supervision of border guards and only taking into account the instructions of officials of the State Border Guard: the presence in the area next to the State border is permitted not closer than 15-20 metres from the State border. Filming of border sign numbers, the opposite side of the border, in direct focus on the territory of the neighbouring country, landmarks (in order not to be able to identify a specific location), identification marks of officials, faces, initials, car numbers, armaments and technical means are not allowed. Representatives of mass media (including foreign journalists) visited the State border of the Republic of Latvia and the Republic of Belarus approximately 20 times in 2021 (August – December). Representatives of the Ombudsman's Office and UNCHR, members of the Saeima visited the State border of the Republic of Latvia and the Republic of Belarus in 2022.

I avail myself of this opportunity, dear Madame, to renew to the Council of Europe and to you personally the assurances of my highest consideration.

Yours sincerely,

Minister

Kristaps Eklons

THE DOCUMENT IS SIGNED WITH A SECURE ELECTRONIC SIGNATURE AND
CONTAINS A TIME STAMP