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Increased migration pressure on the borders of Latvia, Lithuania and Poland with Belarus

Report¹

Committee on Migration, Refugees and Displaced Persons

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Summary

The report is a response to the unfolding situation of increased migration and asylum pressures at the borders of Latvia, Lithuania and Poland with Belarus. These pressures appear to have been orchestrated by the Belarus authorities in response to European Union sanctions against Belarus.

The report seeks to clarify the current emergency situation at these borders and to suggest concrete recommendations concerning human rights safeguards in the situation of such an unexpected migration and asylum influx into Council of Europe and EU member States.

The proposed resolution calls on the Belarus authorities to refrain from instrumentalising migrants, asylum seekers and refugees for political purposes and it calls on the Governments of Latvia, Lithuania and Poland to refrain from pushbacks to Belarus, and to provide necessary safeguards to guarantee the human rights of those seeking entry to their territory.

At the same time it encourages Council of Europe member States to assist in establishing effective arrangements to ensure reception and accommodation facilities for those arriving in these countries while providing adequate systems for identifying people with special needs. Access to information about asylum procedures, and social and other services for new arrivals while their applications for asylum are being processed in fair and prompt procedures, also needs to be supported.

1. Reference to committee: Bureau decision, Reference 4612 of 27 September 2021.



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A. Draft Resolution²

1. The Parliamentary Assembly is concerned by the unfolding situation of hybrid attacks by the Belarusian authorities resulting in increased migration and asylum pressures at the Belarus border with Latvia, Lithuania and Poland. This is all the more worrying as it has been orchestrated by the Belarusian authorities in response to European Union sanctions against Belarus imposed for harsh violations of human rights. It condemns any instrumentalisation of migrants, refugees and asylum seekers by States for political purposes.
2. The Assembly notes with concern that recent arrivals of migrants and asylum seekers created significant challenges for Latvia, Lithuania and Poland, putting a strain on their migrant and refugee reception capacities.
3. The Assembly however reiterates the obligations of all Council of Europe member States to uphold human rights and humanitarian principles as well as refugee law and the right to seek asylum. Member States should furthermore ensure necessary humanitarian assistance to people in need of protection, paying a special attention to the situation of vulnerable groups, including families with small children, unaccompanied and separated children and people with disabilities and special needs. In this they should consider a gender perspective in terms of protection needs.
4. The Assembly considers that effective border management by Council of Europe member States should be accompanied by adequate responses to the rights of asylum seekers. Border management should be fully compliant with European and international law and in particular the European Convention on Human Rights (ETS No. 5) and the 1951 Convention Relating to the Status of Refugees.
5. The Assembly condemns the growing tendency to restrict the right to seek asylum of persons crossing a border irregularly and any practice by member States of pushbacks of migrants and asylum seekers to third countries, where international protection needs may not be guaranteed. It recalls the obligation of member States to respect the principle of *non-refoulement* and the prohibition against collective expulsion of aliens.
6. The Assembly is highly concerned that the situation at the EU's eastern border provoked a new wave of anti-migrant rhetoric, which resulted in countries being forced to build new fences in Europe to prevent the neighbouring authoritarian regime from instrumentalising migrants, asylum seekers and refugees for its political goals.
7. The Assembly welcomes the efforts of the European Union to reconsider its reception procedures and solidarity mechanism, including the resettlement solution in the New Pact on Migration and Asylum. The situation at the EU's eastern border has shown that the Temporary Protection Directive of the European Union should be reanimated in order to be used in exceptional situations where there is a mass influx of migrants, asylum seekers and refugees. It is also important to develop a comprehensive migration risk assessment algorithm allowing for the elaboration of effective reaction strategies.
8. In response to the current situation at the border with Belarus, the Assembly calls on governments of member States of the Council of Europe to support Latvia, Lithuania and Poland by:
 - 8.1. providing urgent financial and technical assistance to ensure necessary protection of migrants, asylum seekers and refugees;
 - 8.2. establishing effective support arrangements for these countries so that they can ensure efficient reception, adequate accommodation, effective identification of people with special needs, timely access to information about asylum procedure and social and other services for new arrivals while their applications for asylum are being processed in fair and prompt procedures;
9. The Assembly calls on the authorities of Belarus to:
 - 9.1. stop the instrumentalisation of migrants, refugees and asylum seekers, in particular those in a vulnerable situation, and stop facilitating travel to Belarus of third country nationals under false pretences of tourism.
 - 9.2. take full responsibility under applicable international law for third country nationals present in Belarus territory, especially those in vulnerable situations, and refrain from illegal actions such as taking away their travel documents or forcibly pushing them towards the border;

2. Draft resolution adopted unanimously by the committee on 28 September 2021.

- 9.3. co-operate with its neighbours, Latvia, Lithuania and Poland, as well as with the European Union, on cross-border arrangements in order to solve ongoing problems in terms of irregular migration flows across these borders.
10. The Assembly also calls on the authorities of Latvia, Lithuania and Poland to:
- 10.1. provide access to asylum procedures to all those seeking asylum;
 - 10.2. refrain from pushbacks to Belarus, and provide necessary safeguards to ensure the human rights of those seeking entry to their territory;
 - 10.3. ensure that detention of asylum seekers is only used as a last resort and alternatives to detention are explored. When detention is resorted to, it should be carried out with all relevant safeguards, including an assessment on the circumstances of the individuals and their families. Children should never be detained regardless of their migratory status;
 - 10.4. in co-operation with the European Asylum Support Office, provide adequate reception, accommodation, identification of people with special needs, access to information about the asylum procedure and social and other services to new arrivals;
 - 10.5. ensure that the United Nations High Commissioner for Refugees (UNHCR) and organisations providing humanitarian assistance and legal aid are provided with unhindered access to migrants, asylum seekers and refugees, including at the border;
 - 10.6. despite the state of emergency, ensure that vulnerable groups, such as unaccompanied minors, survivors of torture, sexual violence and other forms of serious violence are exempted from accelerated asylum procedure and referred to more adequate and safe reception facilities, and ensure that those who need psychological support have access to specialist services;
 - 10.7. guarantee that returns of migrants to third countries do not take place without sufficient safeguards for the rights of those being returned, and work with Belarus and the European Union to solve ongoing problems in terms of irregular migration flows across these borders;
11. The Assembly welcomes the support offered by the UNHCR to the countries concerned in order to provide legal and technical expertise on reception, site management and processing of asylum applications, and encourages the UNHCR and the International Organization for Migration to further strengthen their monitoring of migratory pressure situations, in co-operation with other human rights organisations, in order to provide early warning of impending problems.
12. The Assembly proposes the creation, within the Council of Europe, of a permanent group or body on the human rights situation in Belarus, one of the tasks of which will be monitoring the situation of migrants, refugees and asylum seekers from Belarus.

B. Explanatory memorandum by Ms Anne-Mari Virolainen, rapporteur

1. Introduction

1. This report was initiated by the Chairperson of the Polish delegation to the Parliamentary Assembly, Mr Mularczyk, who requested that an urgent affairs debate be held during the Assembly's 2021 September part-session on: "The situation on the borders of Latvia, Lithuania and Poland in connection with the increased migration pressure on borders with Belarus".
2. In May and August 2021, Lithuania and Latvia faced a sudden influx of migrants, including refugees and asylum seekers, crossing the border irregularly from Belarus. The number of irregular arrivals to Lithuania increased by 110 times compared to 2019. The majority of persons who crossed the border were Iraqi nationals, but there were also persons from Afghanistan, Cuba, the Russian Federation, Sri Lanka and India. As reported by officials of the countries concerned, Belarusian security forces were directly involved in sending third country nationals across these EU external borders, something denied by the Belarus authorities
3. During August and September 2021, several dozen persons from Iraq and Afghanistan were stranded at the Polish-Belarusian border, the Lithuanian-Belarusian border and the Latvian-Belarusian border, as a result of the introduction of border control measures by these countries, which took steps to deny the right to seek asylum and access territory for those intercepted crossing irregularly.
4. Some persons from these groups were denied access to Polish/Latvian/Lithuanian territories and asylum procedures. Furthermore, the groups rarely had access to humanitarian assistance or legal aid organisations. The United Nations High Commissioner for Refugees (UNHCR) was denied access to one group at the Polish-Belarusian border.
5. According to the authorities of the countries concerned and several statements by European Union officials, this migratory pressure was organised by the Belarusian authorities which were allegedly involved in the transfer of nationals of third countries and bringing them to the borders of Latvia, Lithuania and Poland, thus creating a human rights emergency situation.
6. As stated in the letter of Mr Mularczyk "the increased migration pressure on borders with Belarus started several weeks before the dramatic change of the internal situation in Afghanistan. This fact confirms that the developments in question have been politically inspired by the Belarusian authorities seeking to destabilise the situation in Poland and other countries highly involved in providing support and assistance to the Belarusian society. It also seems to be an act of retaliation for sanctions introduced by the EU on the Minsk regime."
7. On 27 July 2021, the UNHCR issued a statement raising its concerns about "the instrumentalization of refugees and migrants by States to achieve political ends."³
8. This report seeks to clarify the current emergency situation at the EU's Eastern external border and to suggest concrete recommendations concerning human rights safeguards in the situation of such an unexpected migration and asylum influx.

2. Situation at the Lithuanian border

9. Lithuania has the longest EU border with Belarus – 678 km. The sudden increase of irregular migrants crossing the Lithuanian border from Belarus started in May 2021. Since then, more than 4 100 irregular crossings of the border were registered in 2021, compared to 80 irregular arrivals in 2020.
10. As reported, migrants originated from 40 different countries, but the vast majority were from Iraq, but also from Congo-Brazzaville, Cameroon and Syria. There were also some Russians, Afghans and Belarusian nationals.
11. According to Lithuania, the Belarusian authorities recently launched new flights from Iraq to Minsk.⁴ Taking into account these developments, and also new routes from Afghanistan via Russia and then buses to Belarus, the Lithuanian authorities estimate the arrival of 15 000 more irregular migrants by the end of 2021.

3. www.unhcr.org/news/press/2021/7/6100014d4/unhcr-urges-states-protect-refugees-rights-instrumentalize-plaint.html#:~:text=UNHCR%20urges%20states%20to%20protect%20refugees%E2%80%99%20rights%2C%20not,migrants%20by%20states%20apparently%20to%20achieve%20political%20ends.

4. Lithuania, EU say Belarus using refugees as 'political weapon' | Reuters.

12. On 30 July 2021, Frontex, the EU's border agency, launched a rapid border intervention in Lithuania, in the framework of which 60 additional standing corps officers were deployed to support the country with migration management due to increased pressure at the border with Belarus. In total, the agency is currently deploying 100 officers, 30 patrol cars and two helicopters in Lithuania.

13. Furthermore, in response to this emergency situation, the Lithuanian Government decided to introduce a state of emergency on 2 July 2021, as a framework to accelerate decision making and strengthen the response capacity. In addition, the construction of a barrier on the Belarusian-Lithuanian border started in July. A special Law on the Installation of a Physical Barrier on the territory of the Republic of Lithuania at the EU External Border with the Republic of Belarus was passed by the parliament on 12 August 2021. The Lithuanian Government also announced a plan to offer migrants who agree to return to their country of origin €300 each, the national broadcaster LRT reported.

14. Following the declaration of the state of emergency, fast track amendments to the Law on the Status of Aliens were adopted by the Lithuanian Parliament on 13 July. On 2 August, an emergency decision from the ministry of Interior further restricted access to territory and asylum, which triggered additional amendments to the said law on 10 August (article 67).

15. These amendments raise very serious human rights concerns, as regards:

- Restrictions on access to territory and asylum procedures: Provisions include that applications for asylum may be submitted at official border points, and that asylum applications of persons crossing irregularly will not be accepted, unless exceptionally for vulnerable cases (a.67). In practice, after the entry into force of this provision, there have been no asylum applications processed in Lithuania, to the UNHCR's knowledge, and the number of arrivals has substantially decreased.
- Use of force as a deterrent to prevent entry: The use of force against refugees and migrants who cross irregularly is foreseen, with a reference to "proportional use of violence", the latter is being justified if there is a "threat to life and/or integrity of the police forces".
- Penalisation for irregular border crossing: This proposed provision allows for the detention of asylum-seekers who have arrived irregularly, for a period of up to 6 months, with the possibility to extend this by 12 more months. In practice, this has created two categories of asylum seekers, namely persons who arrived prior to the law amendments, who are entitled to adequate material reception conditions and freedom of movement, and then persons who arrived after the amendments, who are subject to detention until a final decision on their asylum application is issued.
- Border procedures without adequate safeguards: Border procedures are applied without exception to all categories of asylum seekers (including persons with specific needs), removing the previous provision which foresaw that unaccompanied minors, survivors of torture, rape or other forms of serious physical or sexual violence would be channelled through the regular procedure.
- Limited access to information, interpreters, social and psychological services, the UNHCR and other refugee assisting organisations, and access to employment can be temporarily and "proportionally" restricted in times of emergency.
- Inadequate access to effective remedies, legal aid and interpretation: The adopted amendments introduce an administrative appeal stage against decisions of the Migration Department, without automatic suspensive effect, which need to be lodged within 7 days from their notification. This coupled with limited availability of legal aid and interpretation services triggers concerns over access to effective remedies.

16. The government has reported that as of 16 August 2021 a total of 1 300 persons have been denied entry. This has led to allegations of pushbacks. In several interviews, members of the government have claimed that this policy is not in violation of international and European law, as they maintain that access is available across the official border points or applications can be launched at embassies. A further consequence of this is that the number of arrivals has decreased significantly from a daily average of between 100-200 persons.

17. As Lithuania never had such a high number of irregular arrivals, its reception capacity was not ready to host such an important number of people and was not able to provide them with basic assistance, and in some instances acute medical assistance.

18. As reported by civil society actors, all those who arrived in an irregular manner were detained, including children and other vulnerable asylum-seekers.

19. On 28 July, the UNHCR raised serious concerns about access to asylum, detention, freedom of movement restrictions and absence of legal safeguards.⁵
20. On 24 August 2021 the Commissioner for Human Rights Council of Europe, Dunja Mijatović, published a letter addressed to the Lithuanian Prime Minister, expressing concerns regarding the removal of safeguards in the asylum procedure, detention, and possible pushbacks in response to arrivals across the Belarusian border. In reply, the Lithuanian Prime Minister indicated the deep concern of the Lithuanian authorities to the instrumentalisation of migrants by the Belarus authorities and addressed the recent legislative changes in Lithuania requiring asylum applications to be submitted at designated points and introducing a mandatory pre-trial procedure for appeals against negative asylum decisions. The government also indicated that it had reinforced the capacity of the relevant authorities to process asylum applications.
21. The Lithuanian Red Cross, Caritas, Maisto Bankas and other humanitarian organisation are helping the government to provide first aid to migrants, however their capacity is limited, and more international assistance is needed. The local population actively responds to the calls of NGOs for donations to cover the basic needs of migrants, however more co-operation is required from the part of border guard to make this response more needs oriented.
22. The Lithuanian authorities asked the international community, in particular the European Union, to provide them with technical and political support.
23. Some media resources have indicated an increase in tension at the level of local communities, in particular in Dieveniskės⁶ and Rudninkai, where people are worried about their security, as they have witnessed an unprecedented presence of police on their streets.⁷

3. Situation at the Latvian border

24. As reported by the Latvian authorities, at the beginning of August, 295 irregular migrants were detained on the border with Belarus, while so far, a total of 355 persons were apprehended and sent to reception facilities.
25. As in Lithuania, the majority of these persons were from Iraq, but there were also persons from other countries. Among these persons were women and unaccompanied minors. The Latvian authorities have said that all these persons applied for asylum and their applications would be considered individually.
26. On 10 August 2021, the Latvian Government and Parliament declared a state of emergency in four regions at the Latvian-Belarusian border, lasting from 11 August to 10 November 2021. During the state of emergency, border guards are allowed to pushback by force any new arrivals and can refuse asylum applications.
27. As reported by Reuters⁸, after the introduction of the state of emergency, persons arriving irregularly were pushed back and asked to cross the border at the official border crossing points in order to apply for asylum. In August 2021, 41 persons from Iraq (30 adults and 11 children, including 2 children under the age of one) were stuck at the border between Belarus and Latvia in dire conditions and were not able to ask for asylum.⁹
28. Latvia's Interior Minister, Marija Golubeva, reported that 59 migrants had been turned back since the introduction of the state of emergency. Latvian border guards were reinforced by police and military forces and the construction of a temporary border fence was started. The Minister confirmed that "in co-operation with non-governmental organisations on the ground, border guards were handing out food, clothing and the necessary medicines" to people who were on the Belarusian side of the border.¹⁰
29. The Latvian Prime Minister, Arturs Krišjānis Kariņš, accused the Belarusian authorities of launching a hybrid war against the European Union in response to sanctions and called other EU countries to show a strong resistance to what it saw as Belarusian manipulation.

5. UNHCR legal observations on the amendments to the Law of the Republic of Lithuania on Legal Status of Aliens (No XIV-506), 28 July 2021, available at: www.refworld.org/docid/610d26971a1.html.

6. www.euronews.com/2021/07/24/lithuanian-border-town-protests-over-number-of-migrants-from-belarus.

7. <https://apnews.com/article/europe-immigration-migration-lithuania-6d98dd6bd84c0f968b2f856b60f800cf>.

8. [Lithuania says Belarus officers illegally crossed border while pushing in migrants | Reuters](https://www.reuters.com/article/lithuania-says-belarus-officers-illegally-crossed-border-while-pushing-in-migrants).

9. www.youtube.com/watch?v=j6C3NZuc3qA.

10. www.currenttime.tv/a/31440853.html.

4. Situation at the Polish border

30. In August 2021, Poland, which has a 418,24 km long border with Belarus registered an important increase of irregular border crossings. As reported by the Polish Interior Ministry, between 1 and 18 August, some 2 100 migrants tried to enter Poland via Belarus, out of whom 1 342 were prevented from entering.¹¹ More than 700 migrants were placed in closed centres.

31. The Polish Government reacted by sending troops to reinforce the border and started the construction of a border protection fence, as was announced by the Defence minister on 23 August 2021.¹² Human rights organisations, such as the Helsinki Foundation for Human Rights and Amnesty International claimed that the Polish border guards were conducting pushbacks. The Polish foundation Ocalenie, which was monitoring the situation at the border reported on its social media sites that some migrants were sick, however they had not received any medical assistance from the Polish authorities.

32. The situation in Poland became highly mediatised when journalists filmed 32 asylum-seekers from Afghanistan and Iraq, including 4 women, 27 men and 1 teenage girl, stuck at the Polish border, in Usnarz Gorny, without food, clean water, and any hygienic facilities.

33. The amendment to the Regulation of the Minister of the Interior and Administration of 13 March 2020 on the temporary suspension or restriction of border traffic at specific border crossing points was passed on 20 August 2021. These new provisions aim to simplify the return procedure of foreigners who are not listed in the regulation. Such persons are returned to the border line. This act raises serious concerns in relation to the 1951 Refugee Convention.

34. On 21 August 2021, at the request of Prime Minister Morawiecki a video conference was organised with the Prime Ministers of Lithuania, Latvia and Estonia. They exchanged information on ongoing measures and the situation at the EU border and agreed that the ongoing border protection measures were having a positive effect, as there had been a decrease in the number of attempts to illegally cross the border. They agreed that the Belarusian authorities bore full responsibility for the situation on the border and that there was a need for joint action in the field of providing precise information which was important for the public and international partners.

35. After these developments, the Polish Government¹³ introduced a state of emergency in two provinces Podlaskie and Lubelskie, bordering Belarus, in this way restricting access to the border area. This was strongly criticised by Amnesty International, whose Director for Europe, Nils Muižnieks, said: "A state of emergency allows a State to restrict certain human rights in extreme circumstances where there is a "threat to the life of the nation". No such threat exists in Poland where the authorities are attempting to cynically exploit this power to target asylum seekers and those who support them".¹⁴

36. During the period of the state of emergency, the following types of limitations of human and civil liberties and rights were introduced:

36.1. suspension of the right to organise and hold assemblies in the area covered by the state of emergency;

36.2. the obligation to have an identity card or other document confirming identity by persons, 18 years of age or older, in public places in the state of emergency, and for schoolchildren under 18, a school ID card;

36.3. a ban on staying at designated places and facilities located in the area at the set time under a state of emergency;

36.4. prohibition of recording by technical means the appearance or other features of specific places, objects or areas located in the area covered by the state of emergency;

36.5. limiting the right to possess firearms, ammunition, explosives and other weapons in the area of the state of emergency;

11. <https://balkaninsight.com/2021/08/30/poland-delivers-another-blow-to-international-rights-of-refugees/>.

12. www.euractiv.com/section/europe-s-east/news/poland-to-build-fence-double-troop-numbers-on-belarus-border/.

13. <https://dziennikustaw.gov.pl/D2021000161301.pdf>.

14. www.amnesty.org/en/latest/news/2021/09/poland-state-of-emergency-risks-worsening-already-dire-situation-for-32-asylum-seekers-at-border/.

36.6. restrictions on access to public information regarding activities carried out in the area covered by the state in connection with the protection of the State border and the prevention and counteracting of illegal migration.

37. On 25 August 2021, the Council of Europe Commissioner for Human Rights addressed a letter to Poland calling on Warsaw to find a solution to protect the human rights of the people stranded at the border and to ensure that their humanitarian needs were met. She also asked the authorities to ensure that migrants stuck at the border had access to organisations providing humanitarian or legal assistance, and that people should be able to apply for international protection for which they are entitled.

38. In reaction to these events, on 25 August 2021, the European Court of Human Rights issued interim measures calling on Poland and Latvia to provide “food, water, clothing, adequate medical care and, if possible, temporary shelter”¹⁵ to these persons. On 15 September 2021 the Court decided to prolong until 27 September 2021 the interim measure indicated under Rule 39 of the Rules of Court.

39. The Polish authorities said they sent a humanitarian aid convoy to Belarus, which was stopped at the border by Belarusian forces. It appears that Belarus rejected the offer of assistance, thus indicating a lack of interest to de-escalate the human rights emergency.

40. However, as reported by the UNHCR on 1 September 2021, in co-operation with the Belarusian Red Cross, the group of Afghan migrants and asylum seekers were ultimately provided with necessary humanitarian assistance.

41. It should be stressed that Polish civil society has strongly mobilised to oppose their government’s restrictive policy towards asylum seekers. They mobilised many Polish citizens who were ready to accommodate migrants and asylum seekers in their homes. Even the Polish Archbishop, Wojciech Polak, called the government to show good will and hospitality towards new arrivals.

42. In a letter to the Polish Prime Minister, sent on 23 August 2021, the Polish Human Rights Ombudsman, Marcin Wiącek, said that “refusing to accept applications for international protection from foreigners residing in the border area was a violation of international law”¹⁶. He asked the minister of Interior and Administration to oblige the border guards to accept asylum applications from migrants blocked at the frontier.

43. On 17 September 2021, the Polish Sejm voted in favour of a draft law prepared by the ministry of Interior aimed at restricting access to territory and asylum to persons entering Poland outside official border crossings.

44. As reported by the media on 19 September, four bodies were found by the Polish authorities near the border with Belarus. Three migrants died after crossing the Polish border and one migrant was found dead on the Belarusian side of the border.¹⁷ This is regrettably one of the consequences of the restrictive measures taken.

5. European Union’s reaction on the situation at the its external borders

45. The European Union has taken a firm position on the situation at the Belarusian border by condemning the Belarusian authorities and expressing support for Lithuania, Latvia and Poland.

46. On 30 July 2021, the Council of the European Union issued a declaration by the High Representative on behalf of the European Union on the instrumentalisation of migrants and refugees by the Belarusian authorities.¹⁸ The declaration clearly stated that “people who had no right to stay should be returned”, and that the EU would apply targeted measures against migrant smugglers abusing human rights. It also announced the immediate deployment of the Frontex rapid border forces and provision of technical assistance.

47. On 18 August 2021, an extraordinary meeting of Home Affairs ministers was organised on-line in the framework of the Integrated Political Crisis Response mechanism, the European Council’s crisis framework for co-ordinating responses to the crises at the highest political level. The EU High Representative for Foreign Affairs, Joseph Borrell, the European Commissioner for Home Affairs, Ylva Johansson, as well as the

15. <https://hudoc.echr.coe.int/eng-press#>.

16. <https://polishnews.co.uk/the-situation-on-the-polish-belarusian-border-construction-of-a-fence-dr-hanna-machinska-deputy-ombudsman-comments/>.

17. Four found dead near Polish-Belarus border, officials say | Euronews.

18. www.consilium.europa.eu/en/press/press-releases/2021/07/30/belarus-declaration-of-the-high-representative-on-behalf-of-the-eu-on-the-instrumentalisation-of-migrants-and-refugees-by-the-regime/.

representatives of Frontex, European Asylum Support Office (EASO) and Europol took part in the meeting. In the [Presidency Statement on the situation at the EU's external borders with Belarus](#) issued by the Slovenian Presidency as a result of the meeting,¹⁹ the ministers “condemned and rejected Belarus’ use of migratory pressure, its contribution to the organisation of illegal border crossing to Lithuania, as well as Poland and Latvia, and its attempts to instrumentalise human beings for political purpose”.

48. The statement also underlined that the EU member states had already “provided their technical and human resources assistance to the countries in need, including providing funding to increase reception capacities, facilitate the integrated border management and develop adequate legal frameworks to ensure effective protection of EU external borders and effectively tackle future situations, when migration is used for political purpose.” The EU will grant emergency assistance to the three countries to extend their border surveillance system on the border with Belarus. The statement also underlined the importance of dialogue and partnership with third countries of origin and transit on readmission and return of migrants. The Slovenian Presidency will also organise a discussion on the implementation of Article 25 of the Visa Code on issuing visas with limited territorial validity as a priority measure in special cases.

49. On 26 August 2021, the European Commissioner for Home Affairs stated that the situation on the Belarus border was “not a migration issue, but part of the aggression of Lukashenko towards Poland, Lithuania and Latvia, with the aim to destabilise the EU”.

50. On 2 September 2021, the European Parliament, and in particular its Committee of Foreign Affairs, held an exchange of views with high officials on the situation at EU's external border. During this meeting the high official from the European External Service (EEAS) reported that new sanctions were in preparation against Belarus over the flood of migrants across the country's borders.

6. Response of the Belarusian authorities

51. As has been indicated earlier in the report, the Belarusian authorities have denied as unfounded the accusations that they have been organising illegal migration channels and that they are attempting to politicise the issue by waging a so called “hybrid” war by means of use of illegal migration channels. They wrote to the President of the Assembly, Rik Daems, and also to the Committee on Migration, Refugees and Displaced Persons to express their concerns.

52. They seek to explain that the curtailment of cross-border co-operation projects on border issues and international technical assistance as a result of sanctions has reduced their possibility to stop the irregular flow of migrants, asylum seekers and refugees. They furthermore state that they have reached out to the European Commission with proposals to hold consultations, but that these advances have not been reciprocated. In addition, they have informed the Assembly that they continue to implement measures to combat organised forms of illegal transit migration, and that in the first half of 2021, they stopped 11 channels of illegal migration to the EU (which is reportedly 6.5 times higher than in 2020). Furthermore, the Belarusian authorities are critical about the pushbacks being conducted by their neighbours and the treatment which many of these persons have faced by the authorities in question.

7. Human rights concerns

53. The situation at the Belarus border raises a number of serious human rights concerns.

54. As reported by the authorities of the countries concerned, the majority of migrants and asylum seekers appear to have arrived in Belarus by organised flights from Baghdad to Minsk. Some of them paid important amounts of money being promised to be brought directly to an EU country. Some of the persons concerned arrived from the Russian Federation. When in Belarus, they were transferred by cars or other transport to the border, escorted by masked military men. This appears to show that the unprecedented increase in migration flows at the Belarusian border was artificially organised, as promised by President Lukashenko at the end of May in response to sanctions imposed by the European Union in June. An estimated by Frontex indicates that 3 000 to 11 000 persons of Iraqi nationality are currently still in Belarus”. Manipulation of migrants for political purposes by the Belarusian authorities can be classified as a serious violation of human rights. As indicated by the UNHCR in its general statement on 27 July 2021: “When States encourage population outflows to

19. <https://slovenian-presidency.consilium.europa.eu/en/news/home-affairs-ministers-express-solidarity-with-the-eu-member-states-at-the-border-with-belarus/>.

neighbouring countries, they create grave risks and compound the trauma and suffering of people fleeing. It drives risky onward movements, exposes people to potential exploitation, and can overwhelm reception capacities in other countries”.

55. This is exactly what happened at the Belarus border with Lithuania, Latvia and Poland. These countries have never experienced such an important inflow of migrants and asylum seekers and did not have appropriate accommodation facilities ready, and trained staff to welcome them. This however cannot justify their inadequate response to the needs of asylum seekers, and as recorded by human rights organisations, many migrants and asylum seekers have been blocked for several weeks on the border in very difficult and inhumane conditions, without access to drinking water and food, medical assistance, sanitation facilities and shelter.

56. The use of force by border guards was reported by some migrants to the media. In Lithuania, most of the sites where migrants are placed are overcrowded, have no air-conditioning/heating and no separated hygienic facilities. Some migrants have been placed in tents and with winter coming they will not be able to survive without heating, and adequate accommodation. Such reception conditions pose a serious threat to these persons' lives and health.

57. As for the situation with the 32 asylum seekers blocked at the Polish border, the authorities failed to respond to their asylum requests and to provide adequate humanitarian assistance, which was reflected by the European Court of Human Rights in its interim measures indicated on 25 August 2021 in the cases of *Amiri and Others v. Poland* and *Ahmed and others v. Latvia*.²⁰ The Council of Europe Commissioner for Human Rights, as noted earlier, has appealed to Poland and Latvia, reminding these countries of their obligations to fully respect the rights of refugees, migrants and asylum seekers and enable those who wish to apply for asylum the opportunity to do so.

58. In response to the European Court's decision, the Latvian authorities indicated that they would fully respect the interim measures, while the Polish authorities claimed that they were not able to provide necessary assistance due to the refusal of co-operation by the Belarusian authorities. In response to the Court's decision, the Latvian authorities admitted 11 migrants (6 adults and 5 children) onto Latvian territory for humanitarian reasons, therefore on 15 September the Court decided to lift interim measures in the case *Ahmed and Others v. Latvia* (application no. 42165/21).

59. At the same time, the European Court of Human Rights in the same decision ruled that Poland and Latvia did not have the obligation to allow Iraqi and Afghan asylum seekers on their territories, as the States “have the right... to control entry, residence and expulsion of aliens”.

60. Under European Union law and the 1951 Refugee Conventions, the EU member States have the obligation to provide humanitarian assistance to asylum seekers and ensure individual assessments of their asylum claims. The right to asylum is a fundamental human right and it is applied to regular and irregular migrants. The denial of entry to a territory or pushbacks without the possibility to apply for asylum could be considered as a violation of international law.

61. Another decision on interim measures, in respect of Afghan nationals at the Lithuanian Belarusian border was issued by the European Court of Human Rights on 8 September. The case concerns five Afghans who were not able to enter Lithuania and were stranded at the border. Since 5 September 2021 they were hiding on Lithuanian territory and asked not to be expelled back to Belarus. The Court banned Lithuania from sending these persons back. Meanwhile, the Lithuanian border guards detained the Afghans 250 meters from the Lithuanian border with Belarus and announced that they would be able to apply for asylum in Lithuania.²¹ On 15 September, the media reported that Lithuania will ask the European Court of Human Rights to lift its interim measures regarding the five Afghan nationals due to the fact that the applicants provided the Court with false information.

62. The Commissioner of Human Rights in her letter to the Prime Minister of Lithuania on 10 August 2021 stressed that “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 (ETS No. 5), the 1951 Refugee convention, and other key legal instruments.”²² She also recalled that the principle of *non-refoulement* should be respected in any response to migration pressure situation.

20. <https://hudoc.echr.coe.int/eng-press#>.

21. www.lrt.lt/en/news-in-english/19/1496815/five-afghan-migrants-request-asylum-in-lithuania.

22. <https://rm.coe.int/letter-to-ms-ingrida-simonyte-prime-minister-of-lithuania-by-dunja-mij/1680a37aae>.

63. An extensive use of detention in these situations is particularly worrying. The accelerated procedures of legislative amendments in all countries concerned introducing a number of restrictive measures significantly affects the safeguards of migrants and asylum-seekers, including vulnerable persons. The Assembly has firmly expressed its position in a number of its resolutions that migrants and asylum seekers should never be detained solely for having crossed a border irregularly.

64. Unfortunately, the situation at the EU eastern border has shown that Europe is not ready for such a migratory and asylum challenge, despite many indicators of possible migration flows. Moreover, this situation provoked a new wave of anti-migrant rhetoric, which resulted in building new fences in Europe to prevent the arrival of migrants, refugees and asylum seekers.

65. It is clear, that the European Union urgently needs to reconsider its reception procedures and solidarity mechanism. It is also important to develop effective contingency preparedness with flexible and adjustable reception mechanism, human-centred responses and adequate funding. The UNHCR, International Organization for Migration and Organisation for Economic Co-operation and Development (OECD) will have an important role to play in this process.

8. Conclusions

66. The Assembly should call on the Belarusian authorities to stop the instrumentalisation of migrants, refugees and asylum seekers, in particular those in a vulnerable situation

67. The Assembly considers that effective border management by Council of Europe member States should be accompanied by adequate responses to the rights of asylum seekers. Border management should be fully compliant with European and international law standards and in particular the European Convention on Human Rights and the Convention Relating to the Status of Refugees.

68. Access to territory and asylum procedures should be granted without exception to those who wish to apply for asylum. Individual assessments of the situation of each asylum seeker should be undertaken prior to any removal from European territory. Adequate reception conditions, medical assistance and unhindered access for organisations providing humanitarian assistance and legal aid also need to be ensured.

69. At the same time, Council of Europe member States should assist Latvia, Lithuania and Poland to establish effective arrangements to ensure reception and accommodation and provide access to fair and prompt asylum procedures.