

To the UN Special Rapporteur on human rights of migrants

Answer of the Republic of Latvia to the information request

The answer is laid out in four parts which consists of 1) recently adopted domestic legislation, 2) current border legislation, policy and measures, 3) information on how the “safe third country” concept is applied and bilateral agreements, 4) information on progress made in developing independent border monitoring mechanisms at the national level. This is to inform the Special Rapporteur’s report to the 50th session of the Human Rights Council.

I Recently adopted domestic legislation

The national legal framework adopted since May 2021 temporarily changes the regulation only in respect of place where an application for the granting refugee or alternative status can be submitted, but does not remove the right to apply for asylum. The Cabinet of Ministers Order No. 518 adopted on 10 August 2021 introducing emergency situation in some border areas (hereinafter - Order) states that:

“It shall be determined that the application of persons regarding granting the status of a refugee or alternative status shall not be accepted by units of the State Border Guard and other institutions located in the territory where the emergency situation has been declared.” The English translation of the Order is available here: <https://likumi.lv/ta/en/en/id/325266-regarding-the-declaration-of-emergency-situation>

II Recent and current border legislation, policy and measures

On 27 September 2021 amendments to the Immigration Law came into force. The amendments concern Article 9, paragraph 5, clause 23 of the Immigration Law by providing that:

“The right to employment without restrictions is granted to third-country nationals who have received an identification document of an asylum seeker and has not received a decision of the Office (The Office of Citizenship and Migration Affairs) to grant the status of a refugee or alternative status or to refuse to grant it within three months after submitting a submission regarding granting the status of a refugee or alternative status, and it has not happened due to his or her fault. The right to employment shall remain until the moment when the final decision to grant the status of a refugee or alternative status or to refuse to grant it has entered into effect and is no longer disputable.” The English translation of the Immigration Law is available here: <https://likumi.lv/ta/en/en/id/68522-immigration-law>

III Information on how the “safe third country” concept is applied and bilateral agreements

The assessment of a safe third country takes into account all considerations, this includes participation of the country concerned in relevant human rights instruments, such as, the Convention on the Status of Refugees and its Protocol on the Status of Refugees, the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment of 10 December 1984, and the UN International Covenant on Civil and Political rights and the situation in the country regarding different groups of society in the context of the possible threat to the asylum seeker. This is provided by the following paragraphs of the Asylum Law:

“Safe third country – a country where an asylum seeker has resided prior to arrival in the Republic of Latvia and where, as it is laid down in the international legal acts, his or her life and freedom are not threatened due to his or her race, religion, nationality, membership of a specific social

group or his or her political views, where the prohibition to return the asylum seeker to such country where his or her life and freedom are threatened due to his or her race, religion, nationality, membership of a specific social group or his or her political views and where he or she might be tortured, and also exposed to a cruel, inhuman and degrading attitude or an inhuman and degrading punishment is observed, and where the asylum seeker has the opportunity to request refugee status and, if he or she is recognised as a refugee, to acquire protection in accordance with the Convention Relating to the Status of Refugees adopted on 28 July 1951, and where the asylum seeker has the grounds for heading to.”

“The asylum seeker has the right, until the end of the initial interview, to express considerations that the first country of asylum or safe third country cannot be deemed the first country of asylum or safe third country in his or her individual situation and circumstances and in relation to him or her being recognised as a refugee or a person who has the right to alternative status, and also the possibility to express remarks and provide clarifications in relation to any inaccurate translation or misunderstandings in the content of the minutes”.

“(1) A decision to leave the application without examination shall be taken, if at least one of the following conditions exists:

- 1) another Member State has granted international protection to the asylum seeker;*
- 2) a country, which is not a Member State, is regarded as the first country of asylum of the asylum seeker;*
- 3) a country, which is not a Member State, is regarded as the safe third country for the asylum seeker.*
- 4) the asylum seeker has submitted a repeat application in the Republic of Latvia after a decision to refuse to grant refugee or alternative status has entered into effect, and such circumstances are not referred to therein, which would have significantly changed for the benefit of the asylum seeker and might serve as justification for granting refugee or alternative status. If the application has been submitted at a border crossing point or in the border crossing transit zone and the issue regarding acceptance of the application for examination or leaving without examination is being decided, the State Border Guard shall ensure corresponding and appropriate support to the asylum seeker who has special procedural or reception needs so that he or she could exercise the rights laid down in this Law and comply with the obligations laid down in this Law during the asylum procedure.”*

“An official authorised by the head of the Office shall assess the conformity of the application with the conditions of Section 33, Paragraph one or Section 37, Paragraph one and Section 40, Paragraph one of this Law, if the safe third country does not allow the asylum seeker to enter its territory.” The English translation of the Asylum Law is available here: <https://likumi.lv/ta/en/en/id/278986-asylum-law>

Latvia as a Member State of the European Union is bound by bilateral agreements of the European Union (EU) on the readmission of persons entering and residing illegally. EU has bilateral agreements with Albania, Bosnia and Herzegovina, North Macedonia, Georgia, the Russian Federation, Montenegro, Moldova, Pakistan, Serbia, Sri Lanka and Ukraine.

In addition, thereto Latvia has bilateral agreements on the readmission of persons entering and staying illegally with Armenia, Austria, Estonia, Lithuania, the Netherlands, Belgium, Luxembourg, Bulgaria, Denmark, France, Greece, Georgia, Croatia, Iceland, Italy, Kazakhstan,

Liechtenstein, Norway, Poland, Portugal, Romania, Slovenia, Finland, Spain, Switzerland, Ukraine, Hungary, Uzbekistan, Germany and Sweden.

Bilateral agreements on the readmission of persons in English concluded by the Republic of Latvia are available at: <https://www2.mfa.gov.lv/en/policy/bilateral-agreements?title=&signer=&country=0&organization=0&branch=24&status=0&date=&search=true>

The Republic of Latvia does not apply automatic readmission of foreign nationals who are nationals of a particular country, each readmission case is assessed taking into account all legal and factual circumstances of the case.

IV Information on progress made in developing independent border monitoring mechanism(s) at the national level

The Republic of Latvia already implements a monitoring mechanism in the framework of the asylum and expulsion procedure. This means that respect for fundamental rights, the right to human dignity, the right to receive health services in accordance with the procedures specified in laws, prohibition of torture and inhuman or degrading treatment or punishment, respect for the principle of prohibition of discrimination, the right to access the asylum procedure is being monitored.