

IN THE EUROPEAN COURT OF HUMAN RIGHTS

H.M.M. and Others v. Latvia

(Application no. 42165/21)

Written Submissions

on behalf of

AMNESTY INTERNATIONAL

Pursuant to the notification of 4 October 2024 that the President of the Grand Chamber has granted leave to intervene under Rule 44 § 3 of the Rules of the European Court of Human Rights

18 OCTOBER 2024

I. INTRODUCTION

1. Amnesty International provides this written submission pursuant to the leave to intervene as a third party in the European Court of Human Rights (hereinafter this Court's) proceedings granted by the President of the Grand Chamber under Rule 44 § 3 of the Rules of Court.
2. Amnesty International is of the view that the case raises important questions regarding Article 3 of the European Convention on Human Rights (Convention), which guarantees the prohibition of torture (including in its non-refoulement components), Article 13 on the right to an effective remedy, and Article 4 of Protocol 4 (A4P4) which prohibits collective expulsions.
3. As discussed further in this brief, in July-August 2021, thousands of refugees and migrants entered or attempted to enter Poland, Lithuania, and Latvia across the land borders shared with Belarus.¹ The Belarusian authorities sought to – often violently - push migrants and refugees towards the European Union (EU) border.² In a coordinated reaction, Poland, Lithuania, and Latvia declared the movements the result of a “hybrid attack” by Belarus.³ The authorities implemented measures that disproportionately negatively affected migrants and refugees at their borders,⁴ authorizing forced, often violent, returns back towards Belarus and prohibiting people from seeking asylum in the EU.⁵
4. Lithuania, Latvia and Poland spearheaded the theorisation of the facilitation of migration movements by a third country as a tactic of “hybrid warfare”.⁶ EU institutions embraced this concept, describing the issue as the “instrumentalization” of migration movements.⁷ The European Commission first proposed targeted measures to support Poland, Latvia and Lithuania that would allow the countries to derogate from EU asylum law standards, which were however not adopted by the Council. Later, the Commission introduced the possibility for all member states to derogate from ordinary EU asylum standards in situations of “instrumentalization” by proposing a new Instrumentalization Regulation.⁸ These provisions were finally included within the Crisis and Force Majeure Regulation, which was formally adopted in May 2024 as part of the EU “Pact on Migration and Asylum” and is expected to enter into implementation by mid-2026.⁹
5. Latvia, Lithuania, and Poland (as well as Finland)¹⁰ have adopted domestic practices that largely exceed the powers allowed under the Regulation and have been asking for political and financial support from the EU.¹¹
6. Latvia's practices have not been the object of international scrutiny. Also, unlike in Lithuania and Poland,¹² Latvia managed the border situation through an extended use of an executive act of the Committee of Ministers, a State of Emergency order (hereinafter “SoE”). The authorities maintained the SoE in force for almost two years, passing legislative amendments to regulate the situation only in June 2023. The extended use of the SoE raises issues regarding the necessity and proportionality of the regime introduced in Latvia, and its compliance with international law and standards.
7. In seeking to assist this Court in its adjudication of this matter, this submission is structured as follows: **Section A** discusses the “political and geopolitical context” of the events at Latvia's border, detailing the scope of the measures introduced under the SoE. **Section B** discusses Amnesty International's research (including the methodology) relevant to this matter. Where not otherwise specified, statements and information in this submission are based on Amnesty International's October 2022 report on Latvia; later publications of November 2022 and June 2023 on developments in Latvia; and the organisation's published research about refugees and migrants in other affected EU countries and in Belarus. This will also include the Latvian authorities' response to Amnesty International's findings. **Section C** discusses the patterns of behaviour of Latvian authorities against refugees and migrants, as documented in Amnesty International's research, and some of the legislative developments and migration control between 2023-2024. **Section D** briefly discusses the applicable human rights law provisions and standards. We bring it to the Court's attention that, with leave of this Court, Amnesty International submitted

¹ Latvia: Refugees and migrants arbitrarily detained, tortured and forced to ‘voluntarily’ return to their countries, 12 October 2022, EUR 52/5913/2022, <https://www.amnesty.org/en/documents/eur52/5913/2022/en/> (hereinafter, Amnesty International's Latvia Report), p.11.

² Belarus' actions were “in large part retaliation for the EU sanctions introduced after widespread human rights violations following the 2020 Belarusian presidential election, the official outcome of which was widely disputed and led to mass peaceful protests”. Amnesty International's Latvia Report, p.13 (footnotes omitted)

³ Amnesty International's Latvia Report), p.11

⁴ Amnesty International's Latvia Report), p.11, citing Amnesty International, Poland: State of emergency risks worsening already dire situation for 32 asylum-seekers at border, 2 September 2021; Amnesty International, Lithuania: Forced out or locked up – Refugees and migrants abused and abandoned, EUR 53/5735/2022.

⁵ Amnesty International's Latvia Report, p.11, citing: Amnesty International, Poland: cruelty not compassion, at Europe's other borders, EUR 37/5460/2022, 11 April 2022.

⁶ Amnesty International's Latvia Report, p.11, citing: The Chancellery of the Prime Minister of Poland, Statement of the Prime Ministers Ingrida Šimonytė (Lithuania), Arturs Krišjānis Kariņš (Latvia), Kaja Kallas (Estonia) and Mateusz Morawiecki (Poland) on the hybrid attack on our borders by Belarus, 23 August 2021, <https://bit.ly/3nWdpL3>.

⁷ Amnesty International's Latvia Report, p.14. Footnotes omitted.

⁸ Amnesty International's Latvia Report, p.14. Footnotes omitted.

⁹ Regulation 2024/1359 of the European Parliament and of the Council of 14 May 2024 addressing situations of crisis and force majeure in the field of migration and asylum and amending Regulation (EU) 2021/1147.

¹⁰ Amnesty International, Finland: Emergency law on migration is a “green light for violence and pushbacks at the border”, 10 June 2024, www.amnesty.org/en/latest/press-release/2024/07/finland-emergency-law-on-migration-inconsistent-with-eu-law-and-must-be-rigorously-scrutinized/

¹¹ Cabinet of Ministers of the Republic of Latvia, Joint letter by the leaders of Latvia, Lithuania, Estonia, and Poland to the President of the European Council and the President of the European Commission, 27 June 2024, www.mk.gov.lv/en/article/joint-letter-leaders-latvia-lithuania-estonia-and-poland-president-european-council-and-president-european-commission

¹² Poland made legislative amendments in September and October 2021, and Lithuania as early as July, August, and December 2021. See: Amnesty International, Lithuania: Forced out or locked up, above in full, p. 10, 11, 16, and: Poland: cruelty not compassion, above in full, p. 5.

a third-party intervention in the case of *C.O.C.G. and Others v. Lithuania*,¹³ published on our website. That submission provides a detailed analysis of states' obligations under the Convention in cases of summary returns at the border, and critical observations on the Court's case-law initiated with the *N.D. and N.T. v. Spain* judgment.¹⁴

A. THE "POLITICAL AND GEOPOLITICAL CONTEXT" OF THE EVENTS AT LATVIA'S BORDERS

8. Latvia first declared a "state of emergency" (SoE) on 10 August 2021,¹⁵ affecting four administrative territories (Ludza, Augšdaugava, Krāslava and Daugavpils city) at its borders with Belarus. The SoE gave the Border Guard, assisted by the army and police, powers to stop border crossings by returning those who had crossed irregularly (that is, without further procedure and/or formal authorization),¹⁶ and the right "to use physical force and special means in a situation of extreme necessity" to ensure the execution of the order in case of non-compliance.¹⁷ The SoE eliminated the possibility to seek asylum in the areas affected, providing that asylum applications "were not accepted in the structural units of the State Border Guard and other institutions" in areas affected by the SoE.¹⁸ The SoE was in force until August 2023.
9. An amendment to the SoE of April 2022 finally allowed people to submit asylum applications at "border crossing points and at the Daugavpils detention centre", but other areas under the SoE remained excluded.¹⁹ According to the UN High Commissioner for Refugees (UNHCR), "the amendments do not resolve the situation of asylum-seekers prevented from entry at the border areas."²⁰ The powers granted to Latvian authorities under the SoE exceed the derogations under the new "Crisis and Force Majeure" Regulation, which allows states to delay the registration of asylum applications and extend the use of border procedures.²¹ and raise issues regarding Latvia's compliance with absolute rights under the Convention, which cannot be derogated from even under a time of emergency.
10. Under the SoE, access to the border area for media workers and independent observers was limited.²² Latvia also increased the deployment of officers to the border and announced the continuation of the construction of a Belarus-Latvia border fence.²³ In September 2022, the Latvian authorities introduced a three-month SoE at the borders with Russia.²⁴
11. The Latvian authorities have on occasions attempted to discredit the concerns of human rights actors. In January 2022 the then Minister for Foreign Affairs claimed that "human rights organisations were interested neither in Latvia's security nor defence", and expressed hope that the statements of human rights organisations "were not written in Minsk or Moscow."²⁵ In March 2022, the head of the Border Guard responded to allegations of violence against people at the border raised by Ieva Raubiško, former researcher from the think tank PROVIDUS, stating that "a hybrid attack also consists of the dissemination of disinformation" and that he did not "rule out the possibility that the relevant information is part of a hybrid attack."²⁶ Latvian authorities' attempt to discredit and dismiss human rights concerns are also evidenced by their response to Amnesty International's research, discussed below. In 2023, the authorities opened criminal proceedings for smuggling against two members of the NGO, I Want to Help Refugees, including Raubiško, for their work assisting refugees and

¹³ European Court of Human Rights (ECtHR), *C.O.C.G. and Others v. Lithuania*, no. 17764/22; Amnesty International, Lithuania: Written submissions to the European Court of Human Rights on behalf of Amnesty International in the case of C.O.C.G and Others v Lithuania 26 April 2023, EUR 53/6749/2023, at: <https://tinyurl.com/4d7wxryp>

¹⁴ ECtHR, *N.D. AND N.T. v. Spain*, nos. 8675/15 and 8697/15)

¹⁵ Order of the Cabinet of Ministers no. 518 of 10 August 2021 on the declaration of the state of emergency, at: <https://likumi.lv/ta/id/325266-par-arkartejas-situacijas-izsludinasanu>

¹⁶ Amnesty International's Latvia Report, p.12; Para 5, Order of the Cabinet of Ministers no. 518 of 10 August 2021, cited above in full.

¹⁷ This wording was the result of an amendment of October 2021. The original wording did not require for the use of force to be justified by a situation of extreme necessity, nor required as a condition that the person did not comply with the order to return." Unofficial translation. Order of the Cabinet of Ministers no. 861, Amendments to the order of the Cabinet of Ministers of August 10, 2021 no. 518 "On declaring a state of emergency", 17 November 2021, para 1.2, <https://likumi.lv/ta/id/327799>.

¹⁸ Order of the Cabinet of Ministers no. 518 of 10 August 2021, cited above in full, para. 6.

¹⁹ Order of the Cabinet of Ministers No. 254, Amendment to the order of the Cabinet of Ministers of 10 August 2021 no. 518 "On declaring a state of emergency", 6 April 2022, para. 1, <https://bit.ly/3PqLa2y>

²⁰ Amnesty International's Latvia Report, p.12, footnotes omitted.

²¹ Regulation 2024/1359, above in full, Art 10-11.

²² Amnesty International's Latvia Report, p. 55; Commissioner for Human Rights, Latvian authorities should investigate human rights abuses at border with Belarus, 9 August 2022, <https://bit.ly/3Uzn6xQ>; Diversity Development Group and PROVIDUS Center for Public Policy, National Integration Evaluation Mechanism (NIEM) comparative report on the influx of irregular migrants across the Belarus border, 30 June 2022,

https://providus.lv/wpcontent/uploads/2022/06/NIEM_comparative_report_Lithuania_Latvia.pdf. Objection to the proposal to extend the SoE of "I want to help refugees", 28 July 2022, at: https://tapportals.mk.gov.lv/legal_acts/6297cbe9-3d25-4437-82a8-d38c466719b1; Delfi, Despite the objections, the government decides to extend the state of emergency, ; Delfi, Despite the objections, the government decides to extend the state of emergency, www.delfi.lv/news/national/politics/neskatoties-uz-iebildem-valdiba-lemj-pagarinat-arkartejosituaciju-baltkrievijas-pierobeza.d?id=54623778;www.delfi.lv/news/national/politics/neskatoties-uz-iebildem-valdiba-lemj-pagarinat-arkartejosituaciju-baltkrievijas-pierobeza.d?id=54623778;

²³ Amnesty International's Latvia Report, p.11 and 56. Relevant sources: footnotes no. 12 and 255.

²⁴ Amnesty International's Latvia Report, p.56, citing: Order of the Cabinet of Ministers no. 671 of 27 September 2022 (Prot. No. 49 § 60), <https://likumi.lv/ta/id/335925-par-arkartejas-situacijasizsludinasanu>

²⁵ Amnesty International's Latvia Report, p. 19, citing: NIEM comparative report, in full above, p. 33, (cross-citations omitted).

²⁶ Amnesty International's Latvia Report, p. 19, citing: NRA.lv, Pujāts: If the state of emergency had not been declared, Belarus would have tried to "push" more than 10,000 people into Latvia, 16 March [unofficial translation], 2022, <https://nra.lv/latvija/375490-pujats-ja-nebutu-izsludinata-arkarteja-situacija-baltkrievija-censtoslatvija-iestumt-vairak-neka-10-000-cilveku.htm>

migrants at the border. A trial against Raubiško is ongoing.²⁷ Two Dutch nationals are also facing investigation for assisting a group at the border.²⁸

B. AMNESTY INTERNATIONAL'S RESEARCH ON THE LATVIA-BELARUS BORDER AND THE AUTHORITIES' RESPONSE

12. Amnesty International documented the abuses committed by the Latvian authorities against refugees and migrants at the border with Belarus in a report titled "*Latvia: Return home or never leave the woods: Refugees and migrants arbitrarily detained, beaten and coerced into 'voluntary' returns*" (the "report"), of 12 October 2022. The report is based on:
- 12.1 Interviews and written exchanges with 17 migrants, asylum-seekers and refugees, conducted between March and July 2022. Interviewees were mostly from Iraq. They entered or attempted to enter Latvia at the Belarus border as members of larger groups of people, in most cases after the introduction of the SoE in August 2021.²⁹
- 12.2 An in-person visit by Amnesty International staff to Latvia in March 2022, including to places of 'detention' and the reception of refugees and migrants. Latvian authorities held and accommodated people who had crossed from the Belarus border in the detention centres of Daugavpils and Mucenieki (so called "detained foreigners' accommodation centre"), and the Mucenieki open reception centre. Other sites relevant to Latvia's migration control operations at this border included the official border crossing points and offices of the Border Police Guard and Border Guard. Amnesty International delegates visited the Mucenieki detention centre and reception centre and conducted interviews with detainees and staff at the detention centre, and one resident of the reception centre. Latvian authorities denied the organization's request to visit the detention of Daugavpils, alleging that Covid-19 related quarantine measures were in place at the time, despite later stating that such measures ended on 28 February 2022. Several people interviewed for our research reported being held in the Daugavpils detention centre, and our report documents allegations of abuses and other human rights concerns relating to this centre. The Latvian authorities did not respond to Amnesty International's requests to visit the land border or Silene border crossing point and inspection post, the Border Police Guard Station in Silene, and the Administration of the State Border Guard in Daugavpils.³⁰
- 12.3 In May and September 2022, Amnesty International submitted written requests for information to the Latvian authorities, including the Deputy Prime Minister and Minister for Defence, and the Chief of the State Border Guard on issues including: data on border crossings; information on humanitarian admissions; data on asylum applications at border crossing points; information on detention and return orders, on the assessment of individual cases at the border and on the internal inquiry into the actions of law enforcement officers. The Latvian authorities replied in writing but did not address all our requests. The responses are reflected in the report where relevant. The organization also engaged with the Latvian Ombudsman, the Head of office of the International Organization for Migration (IOM) in Latvia, and FRONTEX.³¹
13. Amnesty International informed the Latvian authorities about the research ahead of its publication, giving them the opportunity to reply to our findings. The summary research findings were communicated to the Latvian authorities on 22 July 2022. Minister Eklons responded on 29 July 2022 and his response was reflected in the text of the report and in a separate annex to the report.³² The report was initially scheduled for publication on 10 August 2022, but on 9 August 2022, Amnesty International decided to postpone the publication. On 9 August, the organization informed Latvian authorities and IOM about the postponement. On 8 September 2022, the organization informed them that the report would be published in October 2022, in the same version prepared for publication in August, and asked for information and updates on the situation in the country, so that they could be reflected in the report. A response letters from the Minister of Interior of Latvia of 22 September 2022 is reflected in an addendum to the report.³³
14. Amnesty International notes its concerns about biased reactions by Latvian authorities to Amnesty International's human rights investigations. The authorities publicly criticized the research starting on 12 August 2022, prior to its publication, although they did not receive or read the full report until the date of publication, on 12 October.³⁴ Of concern is also the reaction of the Ombudsman of Latvia, who published a letter on 10 August 2022 rejecting the research findings, arguing that the organization chose to ignore the information his office had provided, and described Amnesty International's claims as "false and misrepresented".³⁵ Amnesty International notes that, at the time of these statements the research findings were not available to the Ombudsman, hence his comments are pure conjecture.
15. On 12 August 2024, the Head of the Border Guard dismissed Amnesty International's findings stating that the "allegations [...] about mistreatment of migrants on Latvia's borders are one-sided and not substantiated by evidence", and that "not a

²⁷ Amnesty International, Annual Report 2023 – Latvia; Frontline Defenders, Ieva Raubiško, who is on trial for assisting asylum seekers, is facing a final hearing, www.frontlinedefenders.org/en/case/ieva-raubisko-who-trial-assisting-asylum-seekers-facing-final-hearing

²⁸ The Guardian, Dutch pair face jail in Latvia after 'helping refugees in act of compassion,' 3 June 2024.

²⁹ Amnesty International's Latvia Report, p. 9.

³⁰ Amnesty International's Latvia Report, p. 9, 40-48,

³¹ Amnesty International's Latvia Report, p.9-10, 54.

³² Amnesty International's Latvia Report, p. 10

³³ Amnesty International's Latvia Report, p. 53-54

³⁴ Amnesty International's Latvia Report, p. 58; The Baltic Times, Allegations about mistreatment of migrants by Latvia are one-sided and not substantiated by evidence - Border Guard chief, 12 August 2022, <https://bit.ly/3DFaYp4>

³⁵ Amnesty International's Latvia Report, p. 58; Ombudsman of Latvia, Regarding the situation on the Latvian-Belarusian border and statements made by Amnesty International, 9 August 2022, www.tiesibsargs.lv/en/resource/regarding-the-situation-on-the-latvian-belarusian-border-and-statements-made-by-amnesty-international/; ENG.LSM.lv, Ombudsman calls Amnesty's claim on Latvia's treatment of migrants deceitful, 10 August 2022, <https://eng.lsm.lv/article/society/society/ombudsman-calls-amnestys-claim-on-latvias-treatment-of-migrants-deceitful.a468751/>

single migrant has been seriously injured or killed on the border”. He added: “members of Amnesty International met with a number of representatives of Latvian state institutions who provided comprehensive information about the situation on the Latvian-Belarusian border, but there is none of this information in the organization's report, which therefore is one-sided.”³⁶ Contrary to the above, information shared by the Border Guards and the Ombudsman is reflected in Amnesty International's report.

16. After the report's publication, the Minister of Interior and the Border Guard publicly rejected the findings of the research, calling them “absurd” and stating that “Until now, not a single case has been found when [the authorities] have used physical force or special means, and the [Border Guard] has not received complaints about the use of physical force and special means from persons who tried to illegally cross the [...] border”.³⁷ The then Minister of Foreign Affairs, now President of Latvia, Edgars Rinkēvičs, referred the findings as “bogus accusations”.³⁸

C. PATTERNS OF BEHAVIOURS ADOPTED BY LATVIAN AUTHORITIES AT THE BORDERS WITH BELARUS

i. Human rights concerns relating to Latvia's state of emergency at the border with Belarus.

17. Amnesty International's research found that, Latvia's invocation and maintenance of the State of Emergency (SoE) was neither necessary or proportionate as required under EU, regional and international law.³⁹
18. **The repeated extension of the SoE:** Latvian authorities first invoked the SoE in August 2021 and extended it repeatedly in consecutive orders of the Cabinet of Ministers (an executive act of the government) between October 2021 and May 2023.⁴⁰ Cumulatively, the SoE was in place for 2 years. All extension decisions of the SoE are based on the same considerations (unofficial translation): “the rapid increase in the number of cases of illegal crossing of the state border between [Latvia and Belarus] as well as taking into account the large number of cases of illegal crossing” recorded in Lithuania at the border with Belarus.⁴¹ The annotations (Anotācija) accompanying the decisions provide more context to the authorities' reasoning.
19. There was lack of transparency around the authorities' reporting of the number of people attempting to cross the border, which are a factor in the decision to maintain the SoE. The Latvian authorities estimated a total of 4,445 prevented crossings [which are to be interpreted as pushbacks] in 2021 (for the period starting from 11 August 2021) and 5,286 for the whole of 2022.⁴² Between August 2021 and 22 September 2022, only 173 persons who had entered “irregularly” from Belarus were allowed to enter Latvia on “humanitarian grounds”. Between 2021 and April 2022, 508 people were detained in connection with irregular border crossings.⁴³
20. In 2023, the number of prevented crossings grew to 13,863 (and 428 humanitarian admissions).⁴⁴ During this time, the authorities operated first with the extensive powers under the SoE until August 2023, and then under the ‘enhanced’ border protection regime, introduced with the June 2023 legislative amendments.⁴⁵ As of 16 October 2024, the authorities report that there were 4,856 prevented crossings and only 21 humanitarian admissions in 2024.⁴⁶
21. **Multiple crossings:** In the past, Latvian authorities have acknowledged that many of the same people have attempted to cross the border multiple times, but have also claimed that there is no data on repeat crossings.⁴⁷ Research published in March and May 2022 estimated that the number of people at the borders between Belarus and Latvia since August 2021 was “as low as 250.”⁴⁸ Some people interviewed by Amnesty International also reported experiencing multiple summary returns. The failure of the Latvian authorities to account for multiple crossings potentially results in a skewed picture of the magnitude of people attempting to cross and the manageability of the phenomenon as a whole.
22. Save for the amendment of April 2022 which introduced the possibility to claim asylum at border crossing points (BCPs) and in Daugavpils detention centre, the scope of the SoE was left mostly unchanged for its duration, irrespective of changes in the numbers of crossings at the border over time. The first half of 2022 saw a significant decrease in attempted crossings.

³⁶ The Baltic Times, Allegations about mistreatment of migrants by Latvia are one-sided and not substantiated by evidence, above.

³⁷ Apollo, The Ministry of the Interior responds to accusations by "Amnesty International" about "brutal" treatment of refugees (unofficial translation), 13 October 2022, <https://www.apollo.lv/7625712/iekslietu-ministrija-atbild-uz-amnesty-international-parmetumiem-par-nezeligu-izturesanos-pret-begliem>

³⁸ Infomigrants, Latvia rejects Amnesty International report on migrant abuse as 'bogus', 14 October 2022, www.infomigrants.net/en/post/44010/latvia-rejects-amnesty-international-report-on-migrant-abuse-as-bogus

³⁹ Amnesty International's Latvia Report, p. 5 and p.14, citing: Article 4, UN International Covenant on Civil and Political Rights, Article 4; Article 15 ECHR

⁴⁰ Cabinet of Ministers Orders extending the SoE up to August 2023 can be found at the following links: www.vestnesis.lv/op/2021/205 (October 2021) www.vestnesis.lv/op/2022/24 (February 2022), www.vestnesis.lv/op/2022/90A.1 (May 2022); www.vestnesis.lv/op/2022/153B.1 (August 2022); www.vestnesis.lv/op/2022/216.23 (November 2022); www.vestnesis.lv/op/2023/25.26 (February 2023); <https://www.vestnesis.lv/op/2023/85A.2> (May 2023).

⁴¹ Order of the Cabinet of Ministers no. 518 of 10 August 2021, cited above, and subsequent.

⁴² Amnesty International's Latvia Report p.12 (footnotes omitted). Amnesty International Annual Report – Latvia 2023.

⁴³ Amnesty International's Latvia Report p. 5, referring to: Border Guard of Latvia, In general, the situation on the border between Latvia and Belarus is stable and peaceful, 12 April 2022, www.rs.gov.lv/lv/jaunums/kopuma-situacija-uz-latvijas-baltkrievijas-valsts-robezas-ir-stabila-un-mieriga.

⁴⁴ Border Guard of Latvia, December 31, 2023 at the state border and within the country, 3 January 2024, www.rs.gov.lv/en/article/december-31-2023-state-border-and-within-country

⁴⁵ Amnesty International, Latvia: Legal amendments would empower border guards to torture and push back migrants and refugees, 21 June 2023, www.amnesty.org/en/latest/news/2023/06/latvia-legal-amendments-would-empower-border-guards-to-torture-and-push-back-migrants-and-refugees/

⁴⁶ Border Guard of Latvia, October 16, 2024 on the border of the country and inside the country, 17 October 2024, www.rs.gov.lv/lv/jaunums/2024-gada-16-oktobris-uz-valsts-robezas-un-valsts-iekstienu

⁴⁷ Amnesty International's Latvia Report p. 17, referring to statements made in a documentary by the German channel ARTE of February 2022, where a representative of the Latvian border guards in Daugavpils confirms that people apprehended are “...mostly the same” (footnote omitted).

⁴⁸ Amnesty International's Latvia Report p. 17, citing: Aleksandra Jolkina, Trapped in a Lawless Zone: Humanitarian crisis at the Latvia-Belarus border, Preliminary findings, 2022, www.latviabelarus-border.com and <https://bit.ly/3M9NpqR>. Aleksandra Jolkina, Trapped in a Lawless Zone - Forgotten Refugees at the Latvia-Belarus Border, 2 May 2022, <https://verfassungsblog.de/trapped-in-a-lawless-zone/>

- In April 2022, the Latvian Border Guard reported that the situation at the Belarus border had “stabilized”.⁴⁹ Yet, in May 2022, the SoE was extended until August 2022, despite the authorities acknowledging that in April and May, only 22 total cases of prevented crossings were reported.⁵⁰ In this instance, the authorities’ declarations supporting the extension mentioned as an “important factor”, Russia’s invasion of Ukraine and Belarus’ support for the latter.⁵¹
23. Official data indicates that in the months of June and July 2022, the number of prevented crossings amounted to 96 and 17 respectively.⁵² Yet, despite the small numbers and while acknowledging the decrease, the authorities justified the proposal to extend the SoE in August 2022 pointing to Russia’s invasion of Ukraine and to the situation at the borders of Lithuania and Poland, including the more advanced state of the construction of fences at their borders compared to the one in Latvia.⁵³ They suggested that Belarus “may take advantage” of the lack of this permanent infrastructure in Latvia.⁵⁴ In the extension decisions between May 2022 and May 2023 (final extension), the authorities state that “in the event that [the SoE] is not extended, there are risks that the number of persons who illegally cross the state border [...] may increase rapidly, as equivalent protection of the region along the borders of the Republic of Belarus would not be ensured”.⁵⁵ This argument disregards the evidence that, under the SoE, crossing attempts have both increased and decreased, suggesting that the SoE does not per se rule out this risk. The increase in arrivals in 2023, discussed above, supports this conclusion.
 24. In the wake of new arrivals being recorded at the Lithuanian borders with Belarus,⁵⁶ around August 2022, Latvian officials also reported an increase of attempted crossings in Latvia.⁵⁷ Yet, numbers seemed to remain modest.⁵⁸
 25. Since August 2022, the proposals to extend the SoE continue to mention Russia’s invasion of Ukraine. In the February 2023 annotation, this is not only presented as a “risk factor” but as “possible motivation” for Belarus to “continue its efforts to destabilize the situation” on Latvia’s border that is, “to put pressure on the EU and NATO.”⁵⁹
 26. **Objections of national authorities:** In July 2022, Latvia’s Minister of Justice (MoJ) objected to the proposal to extend the SoE, arguing that the “factual circumstances” presented as grounds to extend the state of emergency were not in line with the requirements of the law on emergency situations in Latvia.⁶⁰ The MoJ noted, *inter alia*, that the authorities acknowledged the “significant decrease” of attempted crossings, and had argued that “such information could not be the basis for maintaining (prolonging) the emergency situation”. The Minister also remarked that: “the assumption that the construction of a fence in Poland or Lithuania may increase the number of illegal border crossers, and the absence of a fence in Latvia,” invoked in the annotation “cannot be a basis for prolonging the declared emergency situation.”⁶¹
 27. The MoJ has continued to object to the further extension of the SoE. In October 2022, the MoJ argued that the SoE Order “mostly determine measures that can be implemented within the framework of the existing legal framework”, that is, without the need to activate emergency powers.⁶² In January 2023, the MoJ submitted that since the start of the SoE the authorities had failed to use both “more effective” and “more lenient” tools to address the situation at the border.⁶³ In April 2023, the MoJ noted that while the SoE does enable the authorities to respond to situations that they were unprepared for and could not be addressed with the existing framework, “the fact that the state of emergency has been declared for 20 months now shows that the situation has become permanent rather than an emergency”. The MoJ added that as arrivals had overall decreased since the start of the SoE, the reasons for the further extension would not be clear in the absence of “an in-depth assessment” of “what would prevent illegal border crossing, if the [SoE] would not be prolonged”.⁶⁴
 28. **Failure to secure alternative means to enter the country legally:** The Latvian authorities, in publicly accessible statements and in their correspondence with Amnesty International, claimed that the right to asylum was preserved under the SoE. However, their arguments have been unclear and inconsistent. In the annotation to the first version of the SoE (August 2021), the Minister of the Interior submitted that the SoE “provides for the establishment of a legal way for persons legally travelling to submit an application for refugee or alternative status”. Based on the annotation, the “legal way” consists of the right of an asylum seeker “to submit an application for granting refugee or alternative status at border crossing points”

⁴⁹ Amnesty International’s Latvia Report p. 55; Border Guard of Latvia, In general, the situation on the border between Latvia and Belarus is stable and peaceful, 12 April 2022, above in full.

⁵⁰ Amnesty International’s Latvia Report p. 55; Ministry of the Interior, The state of emergency on the Latvian-Belarusian border is extended until 10 August, 10 May 2022, [in Latvian], <https://www.iem.gov.lv/lv/jaunums/arkartejo-situaciju-latvijas-baltkrievijas-pierobeza-pagarina-lidz-10-augustam>.

⁵¹ Amnesty International’s Latvia Report p. 55. <https://www.iem.gov.lv/lv/jaunums/arkartejo-situaciju-latvijas-baltkrievijas-pierobeza-pagarina-lidz-10-augustam>

⁵² Amnesty International’s Latvia Report p. 56, footnotes omitted.

⁵³ Amnesty International’s Latvia Report p. 56, citing: TV3.lv, The state of emergency on the border of Belarus has been extended until November, 9 August 2022, <https://zinas.tv3.lv/latvija/arkarteja-situacija-baltkrievijas-pierobeza-pagarinata-lidz-novembrim/>; Nra.lv, The Government supports the allocation of 123,000 euros for the protection of the Latvian-Belarusian border, 9 August 2022, <https://bit.ly/3Lq9jFK>.

⁵⁴ Annotation to 22-TA-2155: Draft Ordinance (Amendment), at: <https://tapportals.mk.gov.lv/annotation/40573785-60ed-4f75-aeed-fc54f1cb22b9>

⁵⁵ See footnote no. 40 for the links to the relevant decisions, and annotations.

⁵⁶ Amnesty International’s Latvia Report p. 55; LRT.lt, Belarus directs irregular migrants to Lithuania, says border guard chief, 4 August 2022, www.lrt.lt/en/news-inenglish/19/1751843/belarus-directs-irregular-migrants-to-lithuania-says-border-guard-chief

⁵⁷ Amnesty International’s Latvia Report p. 55; ENG.LSM.lv, Migrant flow on Latvia-Belarus border picks up again, 12 August 2022, <https://bit.ly/3xzpT0h..>

⁵⁸ Amnesty International’s Latvia Report p. 55; footnotes omitted.

⁵⁹ Annotation to the proposal no. 23-TA-154, 3 February 2023, Draft Ordinance (Amendment): <https://tapportals.mk.gov.lv/annotation/91d685e0-4603-49eb-b582-48e30e9a18af>

⁶⁰ Amnesty International’s Latvia Report p. 54, citing: Objections of the Minister of Justice (“TM”), of 26 July 2022, at: https://tapportals.mk.gov.lv/legal_acts/6297cbe9-3d25-4437-82a8-d38c466719b1. Other footnotes omitted.

⁶¹ Amnesty International’s Latvia Report p. 54; Unofficial translation from Latvian. Objections of the Minister of Justice (“TM”), of 26 July 2022, above in full.

⁶² Objections of the Minister of Justice of 27 October 2022, <https://tapportals.mk.gov.lv/reviews/resolutions/7081c470-0300-4928-8a36-7ce56170756f>

⁶³ Objections of the Minister of Justice of 26 January 2023, https://tapportals.mk.gov.lv/legal_acts/409fe3e1-2f34-45e9-8553-3f24a164ccd6

⁶⁴ Objections of the Minister of Justice of 3 May 2023, https://tapportals.mk.gov.lv/legal_acts/004842ea-ec74-412f-b264-40d686318b95

(BCPs), notably "Paternieki" and "Silene".⁶⁵ This claim seems inconsistent with the provision in the SoE whereby asylum applications are "not accepted" in institutions in the territory affected by the SoE. The Ombudsman of Latvia also seemed to interpret the SoE as preventing applications at BCPs, stating that there were "reasonable doubts as to whether persons have real and effective opportunities to apply for asylum."⁶⁶ At any rate, only the amendment to the SoE order of April 2022 explicitly clarified that the ban on asylum applications in the territory affected by the SoE did not apply "to the border crossing points" and in the Daugavpils detention centre.⁶⁷

29. In a written response to the preliminary findings of Amnesty International's research, of 29 July 2022, then Minister of the Interior argued that prior to the April 2022 amendment, people could approach BCPs and had the opportunity "to point to humanitarian considerations" and receive a visa giving them permission to move beyond the areas under the SoE and to apply for asylum. The response maintains that prior to the April 2022 amendment, the provision in the SoE order whereby asylum applications were not "not accepted" at institutions in areas under the SoE "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", in line with member states' powers under Articles 4(1) and 6 of Directive 2013/32/EU. The response states that the SoE rules "did not restrict" people's right to enter the country legally, including by approaching BCPs where the Border Guard would issue "one-time unified visas and visas with limited territorial validity." Some of the BCPs mentioned include the "Pāternieki" and "Silene" BCPs, the "Indra" railway border crossing point, and Riga airport.⁶⁸
30. Amnesty International's research findings on effective and accessible ways to legally enter and seek protection in Latvia indicate a contrary context to the above.
- 30.1 First, until April 2022, the SoE prohibited the possibility for asylum applications to be received in affected areas.
- 30.2 Second, after April 2022, there is no evidence that the above avenues have been used, successfully or otherwise, by people of the nationalities identified as victims of summary returns at the borders with Belarus or admitted in the country on humanitarian grounds, which include people from Iraq, Afghanistan, Syria, Guinea, India, Sri Lanka.⁶⁹ As of March 2022, at the Silene BCP, humanitarian visas were only granted to Russian, Belarusian and Ukrainian citizens.⁷⁰ In May 2022, Amnesty International requested information from the Latvian authorities about the number of asylum applications received at BCPs since 6 April 2022. On 10 June Latvian authorities responded that no asylum applications were "received" at Latvian BCPs during that time.⁷¹ On 8 September 2022, we requested information on asylum applications made at BCPs since 10 June, and on the number of visas granted on humanitarian grounds at BCPs with Belarus since August 2021. The authorities responded that between 10 June and 14 September 2022, only six asylum applications were received at a BCP between Latvia and Belarus, all of which were from Russian nationals. Between August 2021 and 14 September 2022, the authorities granted 149 humanitarian visas at the BCP of Silene and 76 at the BCP of Pāternieki, but only to citizens of Armenia, Belarus, Moldova, Russia, Ukraine, Azerbaijan and Tajikistan. Latvian authorities did not provide data regarding asylum applications received at BCPs before April 2022.⁷²
- 30.3 Third, BCPs should be practicable options for asylum purposes not only in law but in practice.⁷³ In March 2022, the Latvian authorities reported to the European Parliament's Committee on Civil Liberties, Justice and Home Affairs (LIBE Committee) that people rejected at the border were directed to BCP and consular offices where they could apply for asylum.⁷⁴ Yet, none of the people interviewed by Amnesty International, who had experienced returns, mentioned being given such information after Latvian authorities returned them to Belarus. On the contrary, people interviewed by Amnesty International stated that after being returned, Belarusian authorities would typically apprehend them and forcibly return them back to Latvia. In these conditions, it is doubtful that people would be able to independently and safely move towards BCPs to apply for asylum there.⁷⁵ This engages the issue of accessibility of means of legal entry under A4P4, as addressed by this Court in the case of *S.S. v. Hungary*, where the Court found that there was "nothing indicating that the domestic authorities satisfied themselves that the applicants would be able to effectively access the asylum procedure" in transit zones at the border.⁷⁶
31. **Access to asylum at borders and guarantees against non-refoulement:** In the annotation to the first SoE, the authorities state that the order "enshrines the principles of the territorial integrity and the rule of law of the State, that is to say, persons

⁶⁵ Annotation to the Order of the Cabinet of Ministers no. 518, cited above in full, <https://www.vestnesis.lv/op/2021/152A.1>

⁶⁶ Amnesty International's Latvia Report p. 13; Latvian Ombudsman, Regarding emergency situation on the border of Latvia and Belarus, 12 August 2021, www.tiesibsargs.lv/en/news/regarding-emergency-situation-on-the-border-of-latvia-and-belarus/

⁶⁷ Order of the Cabinet of Ministers No. 254, Amendment to the order of the Cabinet of Ministers of 10 August 2021 no. 518 " On declaring a state of emergency", 6 April 2022, <https://likumi.lv/ta/id/331452>

⁶⁸ Amnesty International's Latvia Report p. 12, 56, 63, citing: Written response to Amnesty International's preliminary research findings, 29 July 2022.

⁶⁹ Amnesty International's Latvia Report p. 57.

⁷⁰ Amnesty International's Latvia Report p. 13, 57, EU Parliament Committee on Civil Liberties, Justice and Home Affairs (LIBE), Mission Report following the LIBE mission Vilnius, Lithuania, and Riga, Latvia, 1 to 3 March 2022, published on 14 July 2022, p. 6 at:

www.europarl.europa.eu/meetdocs/2014_2019/plmrep/COMMITTEES/LIBE/DV/2022/07-13/MissionreportLT-LV_EN.pdf

⁷¹ Amnesty International's Latvia Report p. 13.

⁷² See Amnesty International's Latvia Report p. 13, 57-58.

⁷³ See Amnesty International's Latvia Report p. 13, footnotes omitted.

⁷⁴ See Amnesty International's Latvia Report p. 13, citing: LIBE Committee, Mission Report, cited above, p.4.

⁷⁵ Amnesty International's Latvia Report p. 13.

⁷⁶ ECtHR, *S.S. and others v. Hungary*, nos. 56417/19 and 44245/20, para. 66

- who are nationals of third countries would not be able to benefit from it by violating the law or illegally crossing the state border”, with an exception for “persons in need of international protection in the event of a real imminent threat.”⁷⁷ At the time the authorities did not expand on how the existence of a “real imminent threat” would be assessed or how they would ensure access to asylum or the principle of non-refoulement.
32. In their response to Amnesty International’s summary findings, on 29 July 2022, the authorities note in the absence of “objective circumstances” justifying a person’s entry outside of legal channels, the authorities have the right “to refuse entry”, without breaching the principle of non-refoulement. The response does not provide more clarity on what could constitute “objective circumstances” justifying a person’s entry, but mention that these do not include “the mere presence [...] 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”.⁷⁸ In the same response, the authorities claimed that the individual situation of people who cross into Latvia from Belarus “illegally” under the SoE is assessed “taking into account the principles of non-refoulement and other human rights norms”.⁷⁹ The reference to “objective circumstances” justifying people’s entry at the border was introduced in the annotation to the last extension of the SoE in May 2023.⁸⁰
33. Amnesty International’s research indicates that border officials did not assess of the situation of people returned at the border for the purposes of preventing refoulement or granting them access to asylum.
- 33.1 **First:** in response to Amnesty International’s query of 10 June 2022 regarding how Latvian authorities track and account for potential multiple crossings by the same individuals, the authorities expressly claimed that the border guards did not identify people returned at the border, stating: “the State Border Guard does not carry out identification and registration of persons prevented from illegal border crossing, so there is no data on how many persons were repeatedly prevented between 10 August 2021 and 12 April 2022.”⁸¹ This statement raises serious concerns about the ability of Latvian authorities to adequately and demonstrably assess people’s individual circumstances.
- 33.2 **Second:** testimonies collected in Amnesty International’s report, consistent with other independent research and reports, indicate that Latvian authorities have summarily, repeatedly returned people at the border. People interviewed by Amnesty International, who were travelling in bigger groups, recounted that they had been subjected to repeated forced returns between Latvia and Belarus.⁸²
34. Amnesty International’s research documented instances where Latvian authorities conducted some form of registration of refugees and migrants at the border, but this was done as part of unofficial procedures and with the aim of returning people, rather than with a view to assessing their international protection needs or protecting them from refoulement.⁸³ The only individual assessment that the Latvian authorities have conceded is that in the context of “humanitarian admissions”, whereby Border Guards exceptionally allowed people with certain needs to cross the border.⁸⁴ Responding to Amnesty International’s request to clarify the procedure for such admissions,⁸⁵ Latvia’s Acting State Secretary stated that the assessment of “humanitarian grounds” was not regulated in the law and left to the Border Guard to determine, and that the measure was “applicable in exceptional cases, i.e. special circumstances linked to a person’s individual severe moral distress or severe physical pain”. The State Secretary clarifies that while medical services may be involved in the examination of people’s health, “the assessment of ‘humanitarian grounds’ regarding the authorization of a person to cross the border [...] shall be carried out only by the State Border Guard, without the involvement of any third party.”⁸⁶
35. Humanitarian admissions are therefore not based on an individual’s international protection needs, and do not guarantee an individual’s access to asylum or long-term stay in Latvia.⁸⁷ According to Latvia’s Acting State Secretary, as of 25 May 2022, out of the 156 people admitted on humanitarian grounds, the Border Guards registered only 58 applications for asylum or “alternative status”.⁸⁸ People who have been admitted on these grounds typically were merely transferred from the border to a detention facility.⁸⁹ The procedures for humanitarian admissions also lack transparency as they are not

⁷⁷ Annotation to the first SoE Order, at: https://likumi.lv/wwwraksti/ANOTACIJAS/TAP/2021_08/EMANOT_09082021.1905.DOCX

⁷⁸ See Amnesty International’s Latvia Report p. 63.

⁷⁹ See Amnesty International’s Latvia Report p. 17, 64.

⁸⁰ Annotation to the proposal to extend the SoE (May 2023), and MoJ’s objection to the proposal of 20 April 2023, (see: “Izziņa”), https://tapportals.mk.gov.lv/legal_acts/004842ea-ec74-412f-b264-40d686318b95

⁸¹ See Amnesty International’s Latvia Report p. 17, citing: Written response of 10 June 2022 from Latvia’s Acting State Secretary.

⁸² See Amnesty International’s Latvia Report p. 17. Also, the research does not include indications of instances where the Latvian authorities assessed people’s individual circumstances or international protection needs for the purposes of allowing them to apply for asylum in Latvia or to protect them from refoulement

⁸³ See Amnesty International’s Latvia Report p. 18.

⁸⁴ See Amnesty International’s Latvia Report p. 18-19. Referring to: Order of the Cabinet of Ministers no. 604, 1 September 2021, para 1.1 and 1.2.

The Ombudsman of Latvia acknowledged that the authorities were keeping “two registers” concerning people at the border, including one for healthcare needs. Meeting in Riga with representatives of the Ombudsman of Latvia, 9 March 2022.

⁸⁵ Amnesty International asked to “provide a detailed account of the criteria and procedures” used to admit people on humanitarian grounds, the legal acts or regulations on which the assessment was based and whether any third-party organization, NGO, or institution was involved in the assessment.

⁸⁶ For the full definition see Amnesty International’s Latvia Report p. 20, citing: Written response of 10 June 2022 from Latvia’s Acting State Secretary.

⁸⁷ See Amnesty International’s Latvia Report p. 18, 20.

⁸⁸ See Amnesty International’s Latvia Report p. 20, referring to the Written response of 10 June 2022 from Latvia’s Acting State Secretary

⁸⁹ Amnesty International’s Latvia Report p. 20, referring to LIBE Committee, Mission Report, above, page 5. UNHCR observations on the Order of the Cabinet of Ministers of the Republic of Latvia on the Declaration of Emergency Situation (No 518), 13 October 2021, www.refworld.org/docid/61767bea4.html

subjected to internal or independent scrutiny.⁹⁰ Insofar as relevant, reference should be made to the 2022 ruling of the Court of Justice of the EU (CJEU) on the compatibility with EU law of Lithuanian discretionary rules to consider asylum claims by people in vulnerable situations.⁹¹

ii. The experiences of refugees and migrants of the Latvian authorities' actions in 2021-2022

36. In the October 2022 report, Amnesty International documented a wide catalogue of abuses committed by Latvian Border Guards and other law enforcement bodies in cooperation with unidentified special forces in black gear, armed and with covered faces (referred to by interviewees as “commandos”) beginning in July/August 2021.
37. **Summary forced returns:** People interviewed by Amnesty International reported that upon crossing into Latvia, law enforcement officers typically apprehended them, and handed them over to the commandos. In some cases, commandos would directly return them to Belarus as part of summary and therefore unlawful, forced returns.⁹² Some people reported being returned repeatedly. Belarusian authorities would then similarly summarily force people back to Latvia. In some cases, Latvian authorities conducted such forced returns by use of severe physical violence.⁹³ Amnesty International documented cases where people who entered Latvia since the SoE reported spending prolonged periods of time stranded at the border in-between pushbacks. In some cases, they faced dire living conditions, freezing temperatures, and other dangers.⁹⁴ Among other authoritative actors,⁹⁵ in 2022 the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment documented allegations of summary forced returns and violence in Latvia.⁹⁶
38. **Detention in tents in the forest:** In some cases, in between repeated summary returns to Belarus, people were held in tents staffed by commandos, in isolated, forested areas for varying periods of time and without access to external means of communication, as Latvian authorities generally confiscated their phones. Testimonies indicate that these tents were used as outposts for conducting unlawful forced returns to Belarus. People reported that they were transferred to tents daily, sometimes over a period of months, but generally spent only a brief time inside on each occasion, with periods ranging from hours to days. In most cases, Latvian authorities transferred people to tents upon apprehending them at the border, kept them in the tent over night until the early morning, and then forcibly returned them to Belarus.⁹⁷ Latvian authorities have admitted to using these tents at the border as humanitarian outposts. However, the circumstances around people’s transfers to the tents, the conditions maintained therein, and treatment people endured at the hands of commandos there strongly indicate that the tents are on par with unofficial detention facilities used for the deprivation of liberty of migrants and refugees and as outposts to “organize” and carry out summary returns. People stated that they were heavily restricted by commandos in their freedom to move outside and even while inside tents and described the presence of armed commandos and vehicles surrounding the tents. In some cases, people reported experiencing or witnessing violence by commandos for alleged “misbehaviour” or as a punitive measure for not obeying instructions. Latvian authorities routinely held people in tents in unspecified and unrecognized locations and otherwise left them stranded at the border, without access to communication or safe alternatives and continuously violently shuttled people back and forth between Latvia and Belarus, despite the prohibition of “secret detention” and the absolute prohibition against enforced disappearance.⁹⁸
39. The NGO “I want to help refugees” and independent researcher Aleksandra Jolkina similarly reported that they were each contacted by relatives of over 30 refugees and migrants that were feared as having gone missing in Latvia.⁹⁹
40. **Violence:** In several cases, people reported experiencing or witnessing violence against others while at the border (as well as in detention facilities on the territory of Latvia), including behaviour which raises serious issues relating to torture and other ill-treatment. People lamented the gratuitous, cruel use of electroshock devices on various parts of their bodies, including genitals, as well as beating through kicks and punches and were subjected to other abusive behaviour, such as strip-searches. Testimonies indicate that the Latvian authorities used physical and verbal abuse to threaten people, dissuading them from crossing back into Latvia or forcing them to comply with orders. In some cases, this intimidation and coercion appeared instrumental in convincing people to return to their country of origin.¹⁰⁰
41. **Registration:** Based on testimonies received by Amnesty International and as noted above, it appears that Latvian officers implemented a system to register individuals that they had apprehended, including while in the forest. As part of this process, some people reported being photographed and fingerprinted through specialized equipment at the border. Others

⁹⁰ Amnesty International’s Latvia Report p. 20 and sources in footnote no. 87.

⁹¹ M.A. v Valstybės sienos apsaugos tarnyba, (C-72/22 PPU), 30 June 2022, Court of Justice of the European Union, Judgment of the Court (First Chamber), para. 67, <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=ecli%3AECJI%3AEU%3AC%3A2022%3A505>

⁹² Amnesty International’s Latvia Report p. 5 and 18

⁹³ Amnesty International’s Latvia Report p. 19.

⁹⁴ Amnesty International’s Latvia Report p. 18, 30.

⁹⁵ Médecins Sans Frontières (MSF), Concerns for migrant welfare in Lithuania and Latvia as projects close, 11 January 2023, www.msf.org/serious-concerns-migrant-welfare-lithuania-and-latvia-remain-projects-close, Council of Europe (CoE), Commissioner for Human Rights, Latvia: Parliamentarians should uphold the human rights of refugees, asylum seekers and migrants, 21 June 2023, www.coe.int/en/web/commissioner/-/latvia-parliamentarians-should-uphold-the-human-rights-of-refugees-asylum-seekers-and-migrants. Also LIBE Committee, Mission Report, above in full, page 6-7.

⁹⁶ CoE, European Committee or the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), Report to the Latvian Government on the periodic visit to Latvia carried out by the European Committee or the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 10 to 20 May 2022, published 11 July 2023, p. 4 and 23 <https://rm.coe.int/1680abe944>

⁹⁷ Amnesty International’s Latvia Report p. 6, 26-32

⁹⁸ Amnesty International’s Latvia Report 6, 26-32, 29 and 34-36

⁹⁹ Amnesty International’s Latvia Report, p.6 and 35-36

¹⁰⁰ Amnesty International’s Latvia Report, p.19, 24, and 32-34

spoke about Latvian authorities keeping ‘lists’ of names of people at the border, by which they would record their length of stay there and organize returns. As also noted above, it is clear from the testimonies that this registration was aimed at returning people, rather than with a view to assessing their international protection needs or protecting them from refoulement.¹⁰¹

42. **Practices forcing people to return “voluntarily”:** Amnesty International documented the practice by Latvian authorities of forcing people to agree “voluntarily” to return to their country. In some cases, people reported that they had no other way out of the border area but for agreeing to return. Some “agreed” to return after spending extended periods in the tents or stranded in the border area in abysmal living conditions. In some cases, they agreed after physical abuse or threats. Other people stated that they were misled or forced into signing return papers after being transferred to detention facilities or police stations.¹⁰²
43. Amnesty International did not observe instances where people crossings or attempting to cross the Latvian borders did not cooperate with the authorities. To the contrary, as discussed above, the condition of people interviewed by Amnesty International who have experience summary returns was one of subordination and helplessness and is better defined as a situation where people were “entirely under the control” of the Latvian authorities.¹⁰³
44. Amnesty International submits that, if public safety was endangered, this was a result of actions by Belarusian and Latvian authorities, who pushed people across the border.¹⁰⁴ A recent report documented that “according to officially confirmed information, seven people on the move died in the Latvian territory between August 1, 2021 and March 1, 2024”, including “four confirmed fatalities are unidentified individuals discovered in the border area”.¹⁰⁵ While the examination of the risks people faced in Belarus or at the hand of Belarusian authorities was beyond the scope of Amnesty International’s research on Latvia, the organization has separately documented the patterns of human rights abuses committed by Belarusian authorities in a research of December 2021, and in the research reports on Lithuania and Poland.¹⁰⁶

iii. Developments occurred after Amnesty International’s research of October 2022

45. In November 2022 Amnesty International expressed concerns about the investigation of Latvia’s Internal Security Bureau “into possible violence by [Border Guard officers] against migrants and refugees”.¹⁰⁷
46. In June 2023, the organization expressed concerns about the amendments to the State Border Law, which introduced the “enhanced” border protection regime, and about the Border Guard Law, which introduced new powers to “prevent” irregular entries at the border at all times, including using force.¹⁰⁸ The enhanced border regime was triggered between August 2023-February 2024 and is currently in force until the end of 2024.¹⁰⁹

D. APPLICABLE INTERNATIONAL AND EUROPEAN HUMAN RIGHTS STANDARDS

47. **States’ obligations under the Convention when facing hurdles in the management of migration:** This Court had held that “problems with managing migratory flows cannot justify having recourse to practices which are not compatible with the state’s obligations under the Convention” and the “special nature of the context as regards migration cannot justify an area outside the law where individuals are covered by no legal system capable of affording them enjoyment of the rights and guarantees protected by the Convention [...]”.¹¹⁰ This principle is relevant in the context of Latvia, Lithuania, and Poland, who rely on the claim that they are facing a situation of “instrumentalization” in their exercise of border control measures.
48. The UNHCR recently stated that “refugees should not be sanctioned or considered as a security threat due solely to the fact that they are arriving or are seeking asylum as part of a so-called ‘instrumentalized’ movement”¹¹¹.
49. **The “own conduct” test under A4P4:** A detailed analysis of Amnesty International’s position and criticism of the so called “own conduct” test developed by this Court in its assessment of claims under A4P4, particularly in the case of *N.D. and N.T. v. Spain*, has been presented in Amnesty International submission in the case of *C.O.C.G. v. Lithuania*.¹¹² The general observations made in that analysis, particularly under para. 25-29, remain valid and relevant for the present submission.

¹⁰¹Amnesty International’s Latvia Report, p. 6, 18, 31-32 and 38-40

¹⁰² Amnesty International’s Latvia Report, p. 6-7, 37-40. Reference should be made to the standard of this Court whereby the decision to waive one’s right to protection, must be “knowing and intelligent”. ECtHR, *M.D., and other v. Hungary*, no 60778/19, para. 39 and 44

¹⁰³ As observed by the court in *Shahzad v. Hungary*, no 12625/17, para. 61.

¹⁰⁴Amnesty International, Written submissions in the case of C.O.C.G, above in full.

¹⁰⁵Fundacja Ocalenie, Sienos Grupė, Gribu palīdzēt bēgļiem (I Want to Help Refugees), Human Constanta, No Safe Passage.Migrants' deaths at the European Union-Belarusian border, July 2024, p.32-33, https://en.ocalenie.org/wp-content/uploads/2024/07/ENG_No-Safe-Passage.-Migrants-deaths-at-the-European-Union-Belarusian-border.pdf

¹⁰⁶ Amnesty International, *Belarus/EU: New evidence of brutal violence from Belarusian forces against asylum seekers and migrants facing pushbacks from the EU*, 20 December 2021, www.amnesty.org/en/latest/news/2021/12/belarus-eu-new-evidence-of-brutal-violence-from-belarusian-forces-against-asylum-seekers-and-migrants-facing-pushbacks-from-the-eu/; Amnesty International, Lithuania: Forced out or locked up, above in full; Amnesty International, Poland: cruelty not compassion, at Europe’s other borders, above in full. Also: Amnesty International, Written submissions in the case of C.O.C.G, above.

¹⁰⁷ Amnesty International, Latvia: Internal Security Bureau must publish investigation report into abuses against refugees and migrants, Index Number: EUR 52/6215/2022, 15 November 2022, <https://www.amnesty.org/en/documents/eur52/6215/2022/en/>

¹⁰⁸ Amnesty International, Latvia: Legal amendments would empower border guards to torture and push back migrants and refugees, 21 June 2023, at: www.amnesty.org/en/latest/news/2023/06/latvia-legal-amendments-would-empower-border-guards-to-torture-and-push-back-migrants-and-refugees/

¹⁰⁹ LSM, Latvia extends enhanced border security mode, 10 September 2024, <https://eng.lsm.lv/article/society/defense/10.09.2024-latvia-extends-enhanced-border-security-mode.a568211/>

¹¹⁰ *Shahzad v. Hungary*, no 12625/17, para. 51.

¹¹¹ UNHCR, Legal considerations on asylum and non-refoulement in the context of ‘instrumentalization,’ 26 September 2024,

¹¹² For a more detailed analysis see: Amnesty International, Written submissions in the case of C.O.C.G, above in full, para 25-29,

Amnesty International considers it useful to recall, for the purposes of this submission, that in examining the conduct of the applicants for the purposes of the above test, the Court has ruled out a violation of A4P4 in a case where it noted that the “situation was entirely under the officers’ control and that the migrants, including the applicant, followed the orders given by the officers”.¹¹³

50. **The existence of avenues for legal entry:** In cases engaging A4P4, this Court considers whether the contracting state had provided genuine and effective access to means of legal entry, and if it did, whether there were cogent reasons for the applicants not to make use of it which were based on objective facts for which the respondent state was responsible.¹¹⁴ In countries sharing their border with external border to the Schengen area, the Court considers that states must “make available genuine and effective access to means of legal entry, in particular border procedures for those who have arrived at the border”.¹¹⁵ While states are not precluded from “requiring applications for international protection to be submitted at the existing border crossing points”, these must “secure the right to request protection under the Convention, and in particular Article 3, in a genuine and effective manner”.¹¹⁶
51. The accessibility of such means in practice is key to determine their effectiveness. In *Shahzad v. Hungary*, the Court found that Hungary had failed in its obligations in this sense. While the applicant maintained that “he could physically reach the area surrounding the transit zones, he could not have made use of the asylum procedure because of the limited access to the transit zones resulting from the limit on the daily number of applications”.¹¹⁷ Similarly, in *M.H. and others v. Croatia*, the Court objected to the Government’s claim that undocumented people would be able to enter the country legally by seeking entry “on humanitarian grounds under section 36 of the Aliens Act”.¹¹⁸ The Court noted that the Government had not provided “any decision granting entry [under this legal provision] for the purpose of seeking international protection”.¹¹⁹
52. **The prohibition of refoulement:**¹²⁰ The absolute prohibition under Art. 3 of the Convention implies an obligation not to remove an individual where substantial grounds have been shown for believing that the person concerned would face a real risk of being subjected to treatment contrary to Art. 2 or 3 in the receiving country, in line with the principle of non-refoulement.¹²¹ This Court outlined its standards on the assessment of the risk upon return in several cases and notably in *F.G. v. Sweden*.¹²²
53. This Court has developed specific standards regarding return to an intermediary country,¹²³ with particular focus to the returning state’s obligation to assess if the applicant would have access to effective protection procedures in the country of return, and a right to stay in the country until the assessment of their claim.¹²⁴ Such assessment is particularly important when the intermediary country is not a state party to the Convention, such as Belarus.¹²⁵ In this sense and in relation to risks in Belarus, reference should be made to this Court’s ruling in *M.A. and Others v. Lithuania*.¹²⁶
54. Amnesty International submits that the fact that the intermediary country has exposed the applicants to dangers and exploitation, including by luring them to the border behind false promises and forcing them to cross the border,¹²⁷ involving violence (such as in the context of events of so-called “instrumentalization”) should be considered as a factor against their return to such country. In their legal considerations on “instrumentalization,” UNHCR has noted that “the forcing, encouraging, or facilitating of movements of people to neighbouring or other countries creates grave risks and compounds the trauma and suffering of people on the move. This may include violations of their right to physical integrity, including by leaving them in situations of destitution.”¹²⁸
55. Amnesty International also remarks that in cases engaging risks on return under Art.3, this Court has considered the conditions that refugees and migrants find themselves in at borders and how this can affect their ability to present their claims.¹²⁹ Not being assisted by a legal representative, not having access to an interpreter and not speaking the language in which the proceedings were conducted, can also affect people’s ability in this sense.¹³⁰

¹¹³ *Shahzad v. Hungary*, no 12625/17, para. 61

¹¹⁴ *N.D. and N.T. v. Spain*, in full above, para. 201; *Shahzad v. Hungary*, in full above, para. 59

¹¹⁵ *Shahzad v. Hungary*, in full above, para 62

¹¹⁶ *Shahzad v. Hungary*, in full above, para 63

¹¹⁷ *Shahzad v. Hungary*, in full above, para. 63

¹¹⁸ *M.H. and Others v. Croatia*, no. 15670/18 43115/18, Para 296

¹¹⁹ *M.H. and Others v. Croatia*, para. 297-298

¹²⁰ For this section reference should be made to: Amnesty International, Written submissions in the case of C.O.C.G, above in full.

¹²¹ ECtHR, *Paposhvili v. Belgium* no. 41738/10, para. 172-73, among others.

¹²² Among others: ECtHR, *F.G. v. Sweden*, no. 43611/11, para. 110-127; *M.K. and others v Poland*, nos. 40503/17 and 2 others, para. 169; *Ilias and Ahmed v. Hungary*, no. 47287/15, para. 127.

¹²³ *S.S. and others v. Hungary*, no. 56417/19 44245/20, para 64-66

¹²⁴ *M.K. and Others v. Poland*, para. 173-179; *Ilias and Ahmed v. Hungary*, para. 134, among others.

¹²⁵ *Hirsi Jamaa and Others v. Italy*, no. 27765/09, para. 146-147. Also: Amnesty International, Written submissions in the case of C.O.C.G, above in full.

¹²⁶ ECtHR, *M.A. and Others v. Lithuania*, no.59793/17, para. 104, 113-115

¹²⁷ Amnesty International, *Belarus/EU: New evidence of brutal violence from Belarusian forces against asylum seekers and migrants*, above in full.

¹²⁸ UNHCR, Legal considerations on asylum and non-refoulement in the context of ‘instrumentalization,’ above.

¹²⁹ *M.A. and Z.R. v. Cyprus*, no. 39090/20, para. 83 stating: “, the Court cannot ignore that [the applicants] had been stranded at sea for two days, under the control of the Cypriot Marine Police [...] and did not allow them to disembark. Under these circumstances, the applicants must have had very limited contact with the outside world and little access to facilities to collect evidence or to officially make their claims”. See also: *M.D. and other v. Hungary*, no. 60778/19, para. 58-59.

¹³⁰ *M.D. and Others v. Russia*, nos. 71321/17 and 9 others, para. 92.