Seven Months in the Freezing Forest

Why events at the Latvian-Belarus border were long hidden from the public

Aleksandra Ancite-Jepifánova

15.11.2022 doi: 10.17176/20221115-215612-0

On 10 November 2022, Latvia extended the emergency situation at its border with Belarus for a further three months – now until February 2023. Introduced in August 2021 in response to the perceived 'hybrid attack' organised by Minsk, the state of emergency has since been renewed five times, effectively becoming a permanent condition.

In practical terms that means that Latvia will continue carrying out systematic pushbacks – despite the very low number of border crossing attempts and allegations of gross violations of human rights. On 12 October 2022, Amnesty International (AI) released a lengthy report on Latvia's ill-treatment of non-EU nationals crossing into the country from Belarus. Titled 'Return home or never leave the woods', the report accused the Latvian authorities of practices that go far beyond a mere deprivation of the right to seek asylum and amount to inhuman and degrading treatment or even torture.

Informed by in-depth interviews with the persons affected and other sources, AI described how a small number of asylum-seekers – predominantly from the Middle East – were forced to remain in the forest for several months in freezing temperatures and subjected to constant pushbacks. It is testified that in between pushbacks, Latvian special forces deployed at the border forcibly detained people in heavily-controlled tents in undisclosed locations, exposed them to intimidation, verbal abuse and physical violence, including beatings and electric shock, as well as confiscated their phones. Latvia is also accused of abusing the IOM assisted voluntary return procedure by coercing people into signing voluntary return declarations as the only way to be taken out of the forest.

Hateful comments and complete denial

Amnesty findings are consistent with my own research into the situation at the Latvia-Belarus border, which is partly based on interviews with nearly 40 non-EU nationals involved. The preliminary findings of my study are referenced in the AI report and have appeared on several platforms, including *Verfassungsblog* (see also here, here and here).

The AI report was met with outrage by the Latvian authorities who were swift to denounce the 67-page document as 'bogus' and 'absurd'. The publication became target of massive and extremely hostile online attacks, directed not only at AI itself but also me as one of its reference sources. In their comments, (mostly unidentified) social media users suggested that Amnesty and I were funded by the Kremlin, claimed that the testimonies were entirely falsified or the persons interviewed were instructed by the Belarusian security service, as well as referring to people crossing from Belarus in the most derogatory and even openly racist terms. Some users not only targeted me in hateful comments but went as far as to send me private messages threatening to kill me. In addition, Latvian right-wing and anti-migrant media earlier described my research in an equally derogatory manner.

Given that Member States tend to dismiss allegations of border violence (see, e.g., here), this type of reactions is indeed unsurprising. What makes the Latvian case stand out, however, is that, unlike in Poland or Lithuania, the asylum seekers' rights perspective has been entirely absent from the Latvian public space. At present, my study and Amnesty report remain the only attempts to critically assess the Latvian domestic law and practices and give voice to

those affected. As someone who has been researching this topic since November 2021, I have witnessed first-hand how a small group of protection-seekers remained trapped in the freezing forest for up to seven months in life-threatening conditions, completely isolated from the outside world. This became possible not only due to the exceptional indifference shown at the local level, but also – to a significant extent – inadequate responses of EU and international level actors, most notably the European Commission, UNHCR and IOM.

Latvian emergency legislation violates EU and international law

The Latvian Cabinet of Ministers Order, introduced in August 2021 under emergency powers, legalised push-backs and explicitly suspended the right to seek asylum at the country's border with Belarus, including at official border crossing points – in direct violation of the non-refoulement principle that needs to be observed even in situations of declared emergency. The Latvian authorities are also allowed to use physical force and special means, such as electric shock devices, to return people, who attempt to cross the green border, to Belarus. In addition to regular border guards, the law enforcement personnel deployed by Latvia at the border included police, military and the police special operations unit (SUB).

Since August 2021, access to the border area for media and independent observers has been severely restricted. During their visits, journalists need to be accompanied by border guards at all times; media presence during the 'return operations' (i.e., push-backs) is not allowed. Unlike in Poland, however, Latvian media have not publicly criticised this policy and exclusively framed the issue as a security threat and 'hybrid attack' without publishing in-depth interviews with the people affected.

Applicants in H.M.M. v. Latvia were subjected for pushbacks for months

In August 2021, Latvian and international media reported about several groups of people, including children, stranded on the border line with Belarusian border guards on one side and Latvian border guards on another side. The largest one involved 41 Kurdish-ethnic Iraqi nationals who subsequently became applicants in the case *H.M.M. and Others v. Latvia* (the proceedings are still ongoing). On 26 August, Latvian NGOs announced that the people disappeared from the border line and their whereabouts were no longer known. No further information about the relevant groups appeared in media, either.

The topic attracted my attention precisely due to the total absence of reports on the situation on the ground. In November 2021, I contacted Latvian NGOs who were now able to put me in touch with two non-EU nationals who were stranded at the border in August and agreed to talk to me. They told that on 23-24 August, the Latvian authorities forcefully removed people from the border line, drove them to different border pillars and ordered to cross into Belarus. According to their testimonies, this procedure was accompanied by brutal violence by Latvian special forces referred to as 'commandos' and described as armed masked men in dark uniforms.

Over the subsequent weeks and months, protection seekers became subjected to daily push- and pull-backs. Every night, the Latvian authorities transported them to a tent set up in the Latvian territory and drove them back to the Belarus border the following morning. During the day, people were transported back to Latvia by Belarusian border guards who did not allow them to return to Minsk. One of my interviewees, a young adult who had meanwhile returned to Iraq, arrived at the border in August 2021 with his parents and then 10-year-old sibling. The family was forced to remain in the forest for nearly three months. It was not until November that they were transferred to the closed detention centre for foreigners in the Latvian city of Daugavpils on so-called 'humanitarian grounds'. There, they were detained as 'illegal migrants' and pressured into signing a voluntary return declaration without having been given any opportunity to apply for asylum.

No access to the detention centre for foreigners in Daugavpils

My interviewees put me in touch with another family who was still detained at the Daugavpils centre and wished to talk to me. My request to visit the centre, however, was rejected by the Latvian State Border Guard – first on the basis of 'security considerations' and later on the pretext of quarantine. The border guard spokesperson could neither reply to my question as to when exactly the quarantine was introduced, nor refer me to any official documentation confirming this. In mid-December, having spent four months at the centre without their asylum claim being registered, the family agreed to sign a voluntary return declaration and return to Iraq. I documented their return procedure at Riga airport (see also here).

My first interviewees introduced me to several other people who were with them in the forest and had meanwhile returned from Latvia to Iraq. They, in turn, helped me contact further informants. It was not always easy to arrange interviews, as people were intimidated and feared retaliation by the Latvian authorities in case they attempt to reach Europe again (like in the case of Ahmad). For many, the decisive factor was that I was a Germany-based scholar not affiliated with any Latvian institution and intended to publish my research findings in English.

The overwhelming majority of my interviewees were Iraqi nationals of Kurdish (incl. Yazidi) origin;[1] only a few could speak fluent English. The interviews were conducted over online video-calling tools with the help of a Kurdish interpreter. Most people I have spoken with showed signs of severe emotional trauma caused by the events at the border; several of them, irrespective of their gender, broke into tears during the interview.

Silence and enforced disappearances

From my interviewees I learned that several dozen people still remained in the forest – including some of those stranded at the border in August. As my contact network grew, I also began to be approached by the missing persons' relatives who shared their passport copies and asked for help. With their phones destroyed or confiscated, the people trapped in the forest were left in unknown locations with no access to their outside world. The situation was further aggravated by the fact that the Latvia's border with Belarus is over 170 km long and the border area is very sparsely populated. Unlike in Poland or Lithuania, there were no locals or volunteers helping people at the border. As temperatures dropped to up to -20C, their lives were in danger.

My attempts to bring attention to their desperate situation, however, remained unsuccessful. In December, I approached a journalist from the Latvian public television who subsequently managed to interview three persons previously stranded at the border. For some reason, however, the story was never aired. I also contacted numerous EU and international organisations, including the European Commission, Frontex and the CoE Commissioner for Human Rights. Of these, only the latter consistently showed interest in the developments on the ground and subsequently made her concerns public.

34 names on the missing persons list

Based on the data supplied by their relatives and people already returned from Latvia to Iraq, I compiled a list of persons trapped at the border. I shared it with the UNHCR Representation for the Nordic and Baltic Countries who then made a formal request to the Latvian authorities. In addition, in December 2021 Member of the European Parliament Tineke Strik sent a letter to the Latvian authorities asking to provide information about eight persons included in my list at the time. In their replies to both UNHCR and MEP Strik, the Latvian government claimed they had no information about their whereabouts.

Over the following weeks, I kept regularly updating the list and sharing the updated versions with the

[1] While Kurdish-ethnic Iraqi nationals make up the majority of those who attempted to cross into Latvia from Belarus, people trapped at the border also included Iraqi nationals of other backgrounds, as well as nationals of Afghanistan, Syria, Guinea, Pakistan, Sri Lanka, Eritrea and Turkey.

UNHCR who, in turn, was expected to make further requests to the Latvian authorities. By early February, there were 34 persons on my list. It was only several weeks later that I learned that the UNHCR had only made one request and never sent the updated versions to Latvia – without having informed me about this.

Forcible voluntary returns and manipulated data

Despite the earlier claims of the Latvian authorities, the persons from my list were gradually transferred to Daugavpils on 'humanitarian grounds' after having spent up to seven months in the forest. From there, they were typically returned to Iraq via IOM within several days. In a situation where the right to seek asylum was explicitly suspended and people regularly complained of having signed declarations under pressure, the IOM continuous involvement in organising returns is highly problematic (for my and AI exchanges with IOM, see here and here).

In total, I have interviewed around 40 persons who were admitted in the Daugavpils centre at different times from mid-August 2021 to March 2022. With several of those interviewed travelling with their family, the testimonies collected account for around 60 people; this, in turn, represents over one third of the individuals transferred to the Daugavpils centre on 'humanitarian grounds' over this period (156 people by April 2022).

My research suggests that those brought to Daugavpils make up the absolute majority of persons who ever attempted to cross into Latvia from Belarus after the introduction of the state of emergency. Although Latvian border guards currently claim having prevented over 7,500 such attempts, those behind these figures are largely the same people who were subjected to daily pushbacks for weeks or months (this has been confirmed by the Latvian authorities on multiple occasions, e.g., here and here). According to my estimates, the total number of individuals who attempted to cross the border up until April 2022 is as low as around 250.

Against this background, the Latvian policy of deterrence at any cost not only grossly violates EU and international human rights law, but is also highly disproportionate from the public policy perspective. Having welcomed over 40,000 people fleeing Ukraine, Latvia is ready to invest tens of millions of euros (this includes salary increase for those deployed in the border area and the erection of a permanent fence) to deter a handful of non-European asylum-seekers from crossing into the country from Belarus.

Latvian Ombudsman: People crossing from Belarus have no right to seek asylum

Strikingly, the Latvian government policy enjoys nearly absolute support at all levels, including from the country's Ombudsman and political movements that position themselves as liberal and pro-European. The former and current Latvian ministers of interior – Marija Golubeva and Kristaps Eklons – actively advocated for extending the state of emergency despite being members of 'Attīstībai/Par!', a political alliance that defines itself as liberal. Moreover, Latvian president and former ECtHR and CJEU judge Egils Levits went as far as to argue that Belarus is a safe third country where people should claim asylum, whereby 'border security and Latvia's national security come absolutely in first place'. Similar statements were recently made by Latvian Ombudsman Juris Jansons who claimed that those seeking entry from Belarus had no right to claim asylum in Latvia under international law because they arrived in Belarus legally and then attempted to irregularly cross into the EU.

Such statements are highly confusing and display lack of awareness of the basic principles of international asylum law – something that could hardly be expected from officials in the above mentioned roles. Under international law, every person who crosses the border, either regularly or irregularly, and expresses a wish to apply for asylum, should have their application registered and individually examined. Second, Belarus does not fulfil the criteria of a safe third country. Belarus is not a party to the European Convention on Human Rights; besides, Belarusian authorities subjected foreign nationals to inhuman and degrading treatment by not letting them return to Minsk and effectively forcing to remain in the forest – with no opportunity to claim asylum in Belarus.

Testimonies are supported by various types of evidence

It is peculiar that the Latvian authorities admit pushbacks are taking place yet deny any violence was used against the persons involved. It should, however, be stressed that alleged physical violence is only one of the many elements of inhuman and degrading treatment they were subjected to. While it is nearly impossible to document violent episodes without a phone, there is extensive evidence proving they were stranded in the forest for months – the fact that has hardly been given any attention.

The accounts of my interviewees are highly consistent and describe the events at the border in great detail – including border pillar numbers and nearby surroundings, weather conditions in the area, the conditions in the tent, as well as the behaviour and equipment of Belarus and Latvian authorities. The collected testimonies have been supported by various types of documents issued to my interviewees at the Daugavpils centre, IOM documentation, Belarus visas and entry stamps, as well as photos showing the same people at both sides of the border at different times of the year (the pictures were taken by Latvian and Belarusian authorities who agreed to send them to the asylum-seekers' relatives to show they were alive). The interviews normally lasted several hours, with some people being interviewed multiple times. After the interviews, I have maintained regular contact with my informants on social media and am still in touch with many of them.

Latvian investigators have not interviewed my sources

Although Latvian domestic legislation is clearly incompatible with EU law, the Commission has failed to initiate infringement proceedings against Latvia. In this context, the possibilities to hold the Latvian authorities accountable are limited. Several persons are currently preparing complaints to the Latvian prosecutor's office; a Lithuania-based NGO representing applicants in *H.M.M. and Others v. Latvia* has also made a submission to the UN Committee against torture (CAT).

In May 2022, Latvian NGOs submitted the findings of my research to the general prosecutor who then passed them over to the Internal Security Bureau (IDB) – a body tasked with investigating crimes committed by the Interior Ministry subordinates. It was not until mid-September when the IDB emailed me asking to provide the names and contact details of my interviewees. Although I was able to share the contact information of several people who explicitly agreed to be approached, they subsequently revealed the IDB made no attempts to interview them. In mid-November, the IDB closed the preliminary investigation on the grounds that the State Border Guard personnel had not been found to have committed violence against the individuals involved.

The quality and independence of the investigation is highly questionable – not only because the investigators have failed to interview my informants, but also because the IDB is silent about any actions of other state agents deployed at the border. My interviewees have consistently underlined that those being violent towards them were not regular border guards but unidentified masked men in dark uniforms. Further, whilst only referring to alleged physical violence, the IDB has chosen to ignore that people were forced to remain in the forest for months in inhuman conditions. The latter approach, however, is hardly surprising, given that pushbacks have been legalised in the Latvian domestic law.

Latest developments

Following the decision of Rezekne district administrative court in March 2022, non-EU nationals have been allowed to submit asylum claims at official border crossing points and the Daugavpils centre. The amendments, however, do not go far enough, as intermediaries normally bring people to places outside border crossing points. The Ministry of Interior statistics suggests that pushbacks still remain systematic practice. In September 2022, for instance, the border guards report having stopped around 300 attempts to cross the green border, with similar numbers being

recorded in October. It is most likely that behind these figures is a much smaller number of people who, like previously, are pushed back and forth multiple times.

ABOUT THE AUTHOR

Aleksandra Ancite-Jepifánova

Dr Aleksandra Ancite-Jepifánova is a researcher in European and comparative migration, asylum and nationality law. She holds a PhD in law from Queen Mary University of London and is currently a Senior Fellow at the Rule of Law Clinic at CEU Democracy Institute. She is also a Research Affiliate with the Refugee Law Initiative, University of London.Dr Aleksandra Ancite-Jepifánova is a researcher in European and comparative migration, asylum and nationality law. She holds a PhD in law from Queen Mary University of London and is currently a Senior Fellow at the Rule of Law Clinic at CEU Democracy Institute. She is also a Research Affiliate with the Refugee Law Initiative, University of London.

SUGGESTED CITATION

Ancite-Jepifánova, Aleksandra: Seven Months in the Freezing Forest: Why events at the Latvian-Belarus border were long hidden from the public, Verfassungsblog, 15.11.2022, doi: 10.17176/20221115-215612-0.

Licensed under CC BY-SA 4.0.

Langzeitarchiviert bei IntRechtDok unter: doi.org/10.17176/20221115-215612-0.