



EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

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FIFTH SECTION

Application no. 42165/21
H.M.M. and Others
against Latvia
lodged on 20 August 2021
communicated on 3 May 2022

SUBJECT MATTER OF THE CASE

The application concerns events in the vicinity of the Latvian-Belorussian border starting from 10 August 2021 and allegedly continuing as regards some of the applicants. The applicants are twenty-six Iraqi nationals of Kurdish origin. Sixteen of them are no longer on Latvian territory and have been removed to Iraq by the Latvian authorities. Seven applicants are held in an accommodation centre for detained foreigners in Daugavpils in Latvia. One applicant is in Germany where he has requested international protection. The whereabouts of two applicants are unknown.

According to the applicants, on 10 August 2021 they crossed the Latvian-Belorussian border on foot and on the same day were pushed back by the Latvian authorities to Belarus, which was not a safe third country. The applicants' requests for asylum were not registered and reviewed by the Latvian authorities. As the Belorussian authorities did not allow them to enter Belarus, the applicants were stranded on the border in a forest area for some two weeks.

On 20 August 2021 eleven applicants (six adults and five children) were allowed to enter Latvia on humanitarian grounds. On an unspecified later date, the Latvian authorities took other applicants to a large tent located on Latvian territory, where they spent various periods of time (from several weeks to several months). During that period, they were allegedly pushed back again several times to the territory of Belarus where they were not

allowed to enter or, if they entered, were pushed back to Latvia. On each occasion, upon their return to Latvia, the Latvian authorities took them back to the tent. The pushbacks to Belarus continued until some of the applicants were allegedly forced to agree to be removed to Iraq. Those applicants who so agreed were allowed to enter Latvia and, one or two weeks later, were removed to Iraq without their asylum claims having been registered and reviewed by the Latvian authorities.

The applicants complain that in August 2021 they were returned to the Latvian-Belorussian border zone without their asylum claims having been registered and reviewed by the Latvian authorities and that they did not have access to basic amenities such as food, water, shelter, or medical assistance in that zone. Furthermore, a number of the applicants claim that between August and December 2021 they suffered frequent pushbacks from Latvia to Belarus which was not a safe third country and that the conditions in the tent in Latvia were inadequate – it was crowded and basic amenities were lacking. Some of the applicants claim to have been beaten by the guards and to have had their personal belonging taken and their phones destroyed. They rely on Article 3, taken alone and in conjunction with Article 13 of the Convention. They also rely on Article 4 of Protocol No. 4 to the Convention, taken alone and in conjunction with Article 13 of the Convention.

Some applicants also complain under Article 5 §§ 1 and 4 about their detention in the Daugavpils accommodation centre. One applicant appealed unsuccessfully against his detention there.

QUESTIONS TO THE PARTIES

In relation to applicants nos. 1 – 26

1. Were the applicants within the jurisdiction of Latvia, within the meaning of Article 1 of the Convention, during all the time when the events complained of unfolded? Are all of the events complained of imputable to the Latvian authorities?

2. Having regard to the procedural protection from torture or inhuman or degrading treatment or punishment, was the domestic authorities' refusal to examine the applicants' requests for international protection in breach of Article 3 of the Convention? In particular, did the Latvian authorities consider the applicants' claims that they would be exposed, directly or as a

result of refoulement, to a risk of being subjected to ill-treatment if returned to Belarus?

3. Did the Latvian authorities act in breach of their duties stemming from Article 3 of the Convention in that the material and sanitary conditions in which the applicants lived when stranded near the Latvian-Belorussian border for approximately two weeks in August 2021 were allegedly inadequate? In particular, did the applicants have access to basic amenities such as food, water, adequate medical care, and appropriate shelter and clothing given the weather conditions?

4. Did the Latvian authorities act in breach of their duties stemming from Article 3 of the Convention in that the material and sanitary conditions in the tent in which the applicants were held on the Latvian territory for different periods of time since August 2021 were allegedly inadequate? In particular, did the applicants have access to basic amenities such as food, water, adequate medical care, and appropriate shelter and clothing given the weather conditions?

5. Were the applicants, aliens in the respondent State, expelled collectively, in breach of Article 4 of Protocol No. 4? Reference is made to the applicants' allegation that the officials did not allow them access to the asylum procedure in Latvia and held them, firstly, on the Latvian-Belorussian border and, subsequently, on the Latvian territory from where they were returned back to Belarus and/or Iraq without examination of their personal circumstances.

6. Did the applicants have at their disposal an effective domestic remedy for their complaints under Article 3 of the Convention and Article 4 of Protocol No. 4, as required by Article 13 of the Convention?

In relation to applicants nos. 1 – 11

7. Have the applicants exhausted all effective domestic remedies, as required by Article 35 § 1 of the Convention in respect of their complaints under Article 5 of the Convention?

8. Were the applicants deprived of their liberty in the accommodation centre for detained foreigners in Daugavpils in breach of Article 5 § 1 of the Convention? In particular:

(a) Did the deprivation of liberty fall within one of the exceptions under this provision?

(b) Was their deprivation of liberty “in accordance with a procedure prescribed by law”?

(c) As regards the applicant children, was their deprivation of liberty compatible with the requirements of Article 5 § 1 of the Convention in view of their vulnerability?

9. Did the applicants have at their disposal an effective and accessible procedure by which they could challenge the lawfulness of their deprivation of liberty, as required by Article 5 § 4 of the Convention? In particular, were the applicant children able to exercise this right?

In relation to applicants nos. 1 – 26

10. The Government are requested to submit all documents pertaining to the applicants' complaints – their applications to various domestic authorities, any replies issued by those authorities, transcripts of interviews held with the applicants, decisions authorising their detention and minutes of hearings held in that connection.

11. The parties are requested to provide information about the relevant political and geographical context in which the alleged events took place.

12. The applicants are requested to provide specific information about their arrival at the Latvian-Belorussian border in August 2021. In particular, how did they arrive at the border, why were certain parts of the border (and not border crossings) chosen, and why were they congregating with others from that time in August 2021 onwards?

List of applicants

No.	Name Surname	Year of birth	Nationality
1.	H.M.M.	1990	Iraqi
2.	A.R.O.	1993	Iraqi
3.	S.H.M.	2017	Iraqi
4.	Z.H.M.	2019	Iraqi
5.	H.A.A.	1993	Iraqi
6.	S.A.A.	1992	Iraqi
7.	M.H.A.	2020	Iraqi
8.	M.K.M.	1992	Iraqi
9.	N.J.M.	1998	Iraqi
10.	S.M.K.	2018	Iraqi
11.	B.M.K.	2020	Iraqi
12.	A.M.A.	1996	Iraqi
13.	F.F.A.	1989	Iraqi
14.	Z.A.Y.	1995	Iraqi
15.	A.J.A.	1991	Iraqi
16.	A.S.B.	1996	Iraqi
17.	R.A.H.	1987	Iraqi
18.	J.R.M.	1983	Iraqi
19.	N.R.M.	1985	Iraqi
20.	H.S.N.	1986	Iraqi
21.	N.A.S.	1998	Iraqi
22.	K.S.S.	1990	Iraqi
23.	Y.Y.A.	1973	Iraqi
24.	Y.R.H.	1982	Iraqi
25.	R.Y.Y.	2002	Iraqi
26.	R.Y.Y.	2010	Iraqi