

Dunja Mijatović  
Commissioner for Human Rights

Yours 16.05.2022

Ours 15.06.2022 No 3-8/22-100/3

Dear Commissioner for Human Rights

Thank you for the observations regarding the Bill on Amendments to the State Borders Act and Amendments to Other Associated Acts 577 SE, presented in our letter of 16 May. The Constitutional Committee of the Riigikogu discussed your letter at the preparatory debate for the second reading of the Bill at its sitting on 31 May.

First, I would like to point out that the Bill was drafted in order to prevent and address an emergency situation caused by mass immigration, where aliens enter Estonia illegally through the external border or submit clearly unfounded applications for international protection. The drafting of the Bill was motivated by the hybrid attack by Belarus on the borders of Latvia, Lithuania and Poland in 2021. Current legislation of Estonia does not enable to respond effectively to such hybrid attacks.

According to the Bill, it will be possible in an emergency caused by mass immigration to send aliens who have entered Estonia illegally, **in locations between border crossing points**, back without issuing a precept to leave or making a decision on refusal of entry. Immediate expulsion of an alien who has come across the border illegally is permitted only in the event of a threat to public order or national security and on the condition that the alien had the option of entering Estonia legally by crossing the external border through an open border crossing point.

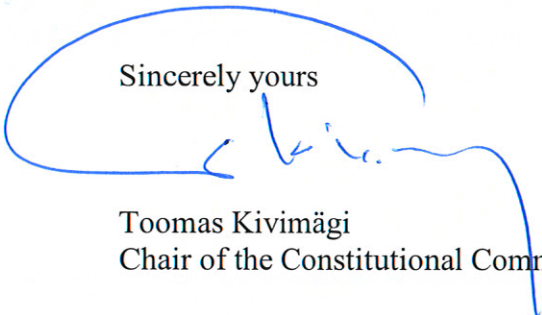
Thus, the purpose of the Bill is to ensure the protection of public order and national security in an emergency caused by mass immigration. Norms of the European Union and international law and case law have been considered when drafting the Bill. The Bill creates a balance between two legal fields: the right of the state to control the entry and stay of aliens in Estonia and the right of aliens to seek protection in case of persecution. The measures for the protection of public order or national security planned in the Bill are connected with the conduct of the persons concerned, which often maliciously disregards the possibilities to enter the country legally.

The Bill is based on the case law of the European Court of Human Rights, which stipulates that in the situations a state has provided the aliens a genuine and effective access to means of legal entry into the country but the aliens cross the border in an unauthorised manner in large numbers and by using force, creating a situation that is difficult to control and endangers public safety, the state cannot be responsible for providing such aliens with guarantees of legal protection (Judgment of the Grand Chamber of the European Court of Human Rights of 13 February 2020 in the case of N.D and N.T v Spain (Application Nos. 8675/15 and 8697/15), paragraphs 201, 231 and 242).

The Bill provides that expulsion of aliens is allowed only in the case it conforms to Article 3 of the Convention for the Protection of Human Rights and Fundamental Freedoms and Articles 32 and 33 of the UN Convention relating to the Status of Refugees. I would also like to point out that § 1 of the Bill (amending § 9<sup>10</sup>(5) of the State Borders Act) gives the Police and Border Guard Board the right to allow an alien into Estonia for humanitarian reasons.

In Estonia, emergency is regulated in a separate Emergency Act. Implementation of the plan for addressing the emergency caused by mass immigration will be decided by the Director General of the Police and Border Guard Board.

Sincerely yours



Toomas Kivimägi  
Chair of the Constitutional Committee