



Latvijas Republikas tiesībsargs
Ombudsman of the Republic of Latvia

Baznīcas street 25, Rīga, LV-1010, Latvia, phone +371 67686768, e-mail: tiesibsargs@tiesibsargs.lv, www.tiesibsargs.lv

Riga

27.01.2023. Nr. 1-8/4

To: Prime Minister Krišjānis Kariņš
pasts@mk.gov.lv

On the amendments to Cabinet Order No 518 of 10 August 2021

The Ministry of Interior has prepared draft amendments to Cabinet Order No 518 of 10 August 2021 Regarding Declaration of the Emergency Situation (project No 23-TA-154). It is intended to extend the emergency situation in Ludza, Krāslava and Augšdaugava municipalities, as well as in Daugavpils city until 10 May 2023.

Since August 2021, when the Order was adopted, the Ombudsman has stressed the importance of protecting national security, and there is no doubt that the situation at the border between Latvia and Belarus has not been resolved. At the same time, it should be recalled that any limitation of rights must be proportionate in order to ensure that the overall public benefit outweighs restrictions on individual rights. This should also be considered during the emergency. Similarly, it should be clear to both the public and other bodies not directly involved in the decision-making how this proportionality is ensured and whether regulatory review is carried out on a regular basis.

The Ombudsman has carefully taken note of the reports based on which the state of emergency has been prolonged published in the Legal Acts Portal. At the same time, it is not entirely clear whether, as an alternative, not only the termination of the emergency situation (which has been declared impossible) has been analysed, but also the content of a revalued order. In addition, in a situation where the emergency has been in existence for more than a year, it is necessary to carefully assess whether other alternative solutions are possible.

Since 10 August 2021, when the Order was adopted, both public authorities' awareness of the methods applied by Belarus and the overall awareness of migrant flows have changed. The number of border crossings has not been even since August 2021. According to the information published by the State Border Guard and the data available in the reports, in certain months the border crossing officer should not be considered to be unprecedentedly high, while in others it has increased significantly. Also, of course, during this period, a fence has been erected on the Polish-Belarus border, which also affects

migration routes, and Belarus provides support to Russia in its invasion of Ukraine. Undeniably, these are important factors to be taken into account when analysing the need to continue the emergency situation.

However, human rights considerations are equally important. For example, on 30 June 2022, the Court of Justice of the European Union issued a preliminary ruling in case C- 72/22 PPU *Valstybės sienos apsaugos tarnyba*, where the Lithuanian legislation, which is almost identical to the Latvian rules, was analysed and found to be incompatible with the European Union. There is no doubt that the Latvian authorities are aware of this decision, as it is mentioned in one of the information reports, but no assessment has been given of the findings made therein and the ways in which it would be possible to improve the declaration of emergency order in order to comply with European Union rules. Or if the Cabinet considers that this is not possible, then a much more detailed justification is needed why even after more than a year of emergency, no other solutions are possible for the State (i.e., which of them have been tried or considered). An example of such changes is the fact that, following the judgments of the Administrative District Court, the order was changed, allowing persons to apply for asylum at border crossing points, as well as in the accommodation centre “Daugavpils” for detained foreigners. Such a regular and genuine reassessment of the content of the order is the only way of ensuring compliance with the principle of proportionality.

It is understood that some of the information is restricted, but in such circumstances it is also possible to inform the public.

In the light of the above, I would ask the Cabinet to assess whether extending the emergency situation without changing the other provisions of the Order, in particular those relating to access to the asylum procedure, is the only possible solution to protect national security. Also, please provide a more detailed explanation of which alternative mechanisms the country has considered to address the emergency since 10 August 2021, as this has not been sufficiently reflected in the information reports.

Regards

Ombudsman

Juris Jansons