



**Input of the Commissioner for Human Rights of the Republic of Poland for the Special Rapporteur's on the Human Rights of Migrants report on pushback practices and their impact on the human rights of migrants**

**Warsaw, 28 January 2021**

**1. Please provide information on any relevant legislation or policy in relation to the right to asylum to seek and enjoy in your country, which guarantees that migrants including asylum seekers' protection needs are examined individually, and they are not back at the international border without access to this assessment and other relevant procedures. Grateful if you could kindly submit the original text of the legislation or policy, accompanied by an English translation if it is in a language other than English, French or Spanish.**

Every person who declares his/her intention to seek international protection should be allowed to enter the territory of Poland, and officers of the relevant Border Guard unit should accept his/her application for the protection. Such approach is intended to ensure actual implementation of the provisions of **the Convention relating to the Status of Refugees, signed in Geneva on 28 July 1951**. It requires States Parties to endeavour **pushed** to assure to persons seeking protection against persecution the widest possible exercise of their fundamental rights and freedoms in another state in which they are safe.

The Border Guard officers' responsibilities in this area, laid down, inter alia, in Article 30 of **the Act of 13 June 2003 on granting protection to foreigners within the territory of the Republic of Poland** are intended to serve the purpose of implementing the right of foreigners to seek the refugee status in Poland. The right to apply for this status in Poland in accordance with the provisions of the aforementioned Convention relating to the refugee status, is a constitutional right guaranteed under **Article 56(2) of the Constitution of the Republic of Poland**. This right is mentioned therein among other constitutionally guaranteed human rights and freedoms.

The right to seek asylum, i.e. the refugee status as named according to the terminology used in the Polish legislation, is also mentioned in Article 18 of the Charter of Fundamental Rights of the European Union. Directive 2013/32/EU of the European Parliament and of the Council of 26 June 2013 on common procedures for granting and withdrawing international protection, in recital 25 of the preamble, provides that every applicant should have an effective access to procedures concerning the examination of their application for international protection. This general principle is made more specific in Article 6(2) of the directive, which requires Member States to ensure that a person who has made an application for international protection has an effective opportunity to lodge it as soon as possible.

**2. Please provide information on existing restrictions or limitations in law and in practice in relation to the right to claim and seek asylum at international borders in your country (e.g., border controls, restricted access to territory) and elaborate the impact of these restrictions on the protection of the rights of migrants crossing international borders.**

Since 2015 the Commissioner for Human Rights has been receiving numerous complaints from foreigners who attempt, in vain, to enter the territory of Poland through border crossings in Terespol (border with Belarus) or Medyka (border with Ukraine) with a view to applying for international protection in Poland. By principle, declarations made at the border crossing during the clearance procedure concerning the intention to apply for international protection in the Republic of Poland should result in foreigner's admission to Poland and acceptance by the Border Guard of a relevant application for this protection. Yet, complaints addressed to the Commissioner for Human Rights as well as observations during the **inspection visits** carried out by the employees of the Office of the Commissioner for Human Rights on border crossings<sup>1</sup> suggest that in many cases **Border Guard officers performing the border clearance procedure do not accept declarations from foreigners about the intention to file for protection**, thus preventing them from submitting a relevant application. As a result, they **refuse foreigners the right to enter the territory of the Republic of Poland**.

Each time when following a border clearance a Border Guard officer decides that there are no grounds for admitting a given foreigner on the territory of Poland, he draws up a note from the conducted interview. Such a note, however, constitutes an internal document only and is usually laconic in nature: in most cases it comprises no more than three sentences. In line with the practice witnessed during the inspection visits, the officer does not describe the course of the whole interview and does not record all statements made by the foreigner but focuses only on information that, in his view, is of key importance for determining the purpose of foreigner's arrival to Poland. The content of the note and selection of comprised information lie solely at the discretion of the Border Guard officer who conducts an interview with the foreigner. Interviews are not recorded in any other way and the notes are not read out to foreigners. Therefore, they have no opportunity to verify or rectify information contained therein. For the same purpose it is also not possible for other Border Guard officers, including superiors of the officers conducting interviews, to verify the notes. The impossibility to verify the course of interviews which have a profound impact on the identification of foreigners seeking international protection in Poland denies that sensitive group guaranteed and effective access to procedures for examining applications for international protection. The

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<sup>1</sup> The inspection visits at the border crossing in Terespol took place on 11 August 2016 and 15 May 2018 and 23 September 2019. The inspection visit at the border crossing in Medyka took place on 6 - 7 October 2016.

need to establish such guarantees derives from the item 25 of the preamble and Article 6(2) of the 2013/32/EU directive on joint procedures for granting and withdrawing international protection.<sup>2</sup> In the opinion of the Commissioner the statutory obligations of officers in terms of documenting the course of an interview with foreigners during border checks should be made more precise. Interviews with foreigners during border checks should, as a rule, be documented using uniform interview forms that include, as an obligatory item, the question whether the foreigner intends to seek international protection in Poland. The Commissioner addressed, inter alia, the Minister of the Interior and Administration with the request to introduce relevant regulations in that matter.

**3. Please provide information on any existing good practices or measures taken (such as screening and referral mechanisms at borders) in your country to ensure that persons crossing international borders in mixed movements are protected according to international human rights law. Please indicate any specific measures aimed at reducing vulnerabilities of migrants, including by applying a human rights-based, gender- and disability-responsive, as well as age- and child-sensitive approach.**

As a result of visits carried out at border crossings by the representatives of the Commissioner the following recommendations were developed:

- To introduce a standardized forms for recording interviews (in which the foreigners may inform the officers about their intention to seek international protection), together with obligatory question about the intention to apply for international protection in Poland, and to read out these reports to the foreigners in a language which they understand.
- To organize training to Border Guard officers and to the employees of the Office for Foreigners on interpretation of assumptions for seeking international protection, which are provided for in the Council of Europe Convention on preventing and combating violence against women and domestic violence.

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<sup>2</sup> The directive of the European Parliament and the Council dated 26 June 2013 on joint procedures for granting and withdrawing international protection (recast, OJ L.2013.18.60, as amended).

**4. Please provide information on any concrete instances of pushbacks, including an analysis on the circumstances of the event.**

Please note the case *M.K. and Others v. Poland* (application nos. 40503/17, 42902/17 and 43643/17): Poland's return of people from Chechnya to Belarus without examining requests for international protection violated the European Convention on Human Rights (ECHR).

On 23 July 2020 the European Court of Human Rights handed down a judgment in the case of *M.K. and Others v. Poland*, which consists of three joined cases, thirteen Russian citizens, including children, brought on the basis of identical facts. All the applicants claimed that the Polish State had repeatedly denied them the opportunity to apply for international protection, which amounted to a violation of Article 3 of the ECHR (prohibition of torture). They also claimed a violation of Article 4 of Protocol No. 4 to the ECHR (prohibition on the collective expulsion of foreigners), arguing that the facts of each case had not been assessed individually and that they were victims of the general policy of the Polish state aimed at minimizing the number of refugees in the country. In their complaints, the claimants also invoked Articles 13 and 34 of the ECHR (right to an effective remedy and right to an individual complaint). All applicants come from Russia, precisely from Chechnya, and tried to obtain international protection by crossing the Polish-Belarusian border at the border crossing point in Terespol, and in a few cases also at the Czeremcha-Połowice crossing point. In the case the European Court of Human Rights concerned the repeated refusal of Polish border guards on the border with Belarus to admit the applicants, who had come from Chechnya and had asked for international protection.

In this judgment the European Court of Human Rights held, unanimously, that there had been: **a violation of Article 3 (prohibition of torture or inhuman or degrading treatment) of the ECHR, and a violation of Article 4 of Protocol No. 4 (prohibition of collective expulsion of aliens) to the ECHR, and a violation of Article 13 (right to an effective remedy) of the ECHR, in conjunction with Article 3 and Article 4 of Protocol No. 4. It also held, unanimously, that Poland had failed to comply with its obligations under Article 34 (right to individual petition) of the ECHR.** The Court found in particular that the applicants had repeatedly arrived at the Terespol border crossing between Poland and Belarus and had made it clear, despite the Polish authorities' statements to the contrary, that they wished to seek international protection. Instead, the border guards had returned them consistently to Belarus, without a proper review of their applications. Furthermore, the Government had ignored interim measures issued by the European Court to prevent the removal of the applicants, who had argued that they were at a real risk of chain-refoulement and treatment contrary to the ECHR. **The Polish State had demonstrated a consistent practice of returning people to Belarus in such circumstances, a policy which amounted to collective expulsion.**

Given the authorities' refusal to implement the Court's interim measures, the Polish State had also failed to live up to its obligations under the ECHR.

The European Court of Human Rights states that the migrants - **applicants were victims of a general policy that was followed by the Polish authorities with the aim of reducing the number of asylum applications registered in Poland.** The conclusion concerning the existence of a wider state policy of not accepting for review applications for international protection and of returning individuals seeking such protection to Belarus is also supported by the statement of the then Minister of the Interior and Administration referred to by the applicants (see paragraphs 209, 115 and 190).

**5. Please indicate any specific challenges that your Government has encountered, in the context of the COVID-19 pandemic, on ensuring the human rights of migrants crossing international borders, either by land or by sea.**

According to the regulation of the Ministry of the Interior and Administration of 13 March 2020 on temporary suspension or limitation of border traffic at certain border crossings **a number of border crossings have been closed, including the railroad border crossing point in Terespol, which is the most frequently used by persons seeking international protection.**

Difficulties in submitting an application for protection are also reported by foreigners already staying in Poland. The foreigners claims that they receive conflicting information from the Border Guard on where and in what form they can submit their declaration of willingness to apply for international protection. One support for persons seeking international protection are currently employees of social organizations and social workers of the Office for Foreigners, who support refugees in their contacts with the Border Guard and help them exercise their rights. The current information chaos causes that people seeking protection in Poland fear that they will not have access to social assistance and medical care.

**6. Please indicate any challenges and/or obstacles faced by Governmental institutions or civil society organizations and individuals in protecting the human rights of migrants at international borders, including those in distress at sea and in situations where pushbacks or pullbacks are likely to take place.**

Over the past year, NGOs began to alarm that the majority of foreigners attempting to submit applications for protection at the Terespol border crossing were being turned away from the border. The analysis of statistics confirmed this trend – the number of applications for international protection began to decrease, while the number of decisions on refusing entry to Poland began to rise sharply.

	2015	2016	2017	2018	2019	2020
No. of asylum seekers <sup>i</sup>	12325	12319	5078	4172	4110	2804
No. of people who received any form of international protection	637	390	559	406	272	400

The monitoring of the Commissioner also indicated cases of illegal refusals to submit applications to foreigners. On the one hand, the Polish authorities did not confirm these reports, taking the view that foreigners presenting themselves at border crossings do not declare their intention to seek protection, but indicate only economic reasons for migration, which justifies denying them entry into Poland. On the other hand, the statements of the Minister of the Interior and Administration indicated that it was a deliberate policy of the Polish authorities to close the border to persons whose status as refugees would be questioned.

It is significant in this context that only the employees of the Office of the Commissioner for Human Rights and the Office of the Children's Rights Ombudsman were allowed to the so-called second line of control, where Border Guard officers conduct a detailed questioning of foreigners about the reasons for their arrival in Poland and take a decision on whether to accept an application for protection from a given person or whether to refuse entry. Representatives of non-governmental organizations are denied not only the possibility to observe this part of the border control procedure, but even access to the railroad station building during the check on foreigners who do not possess documents entitling them to enter Poland.

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*Please find attached the report of the Commissioner for Human Rights on the Inspection of the railway border crossing in Terespol in 2016, and a letter to the Minister of the Interior of 24 September 2018.*

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<sup>i</sup> Data: the Office for Foreigners (<https://udsc.gov.pl>)