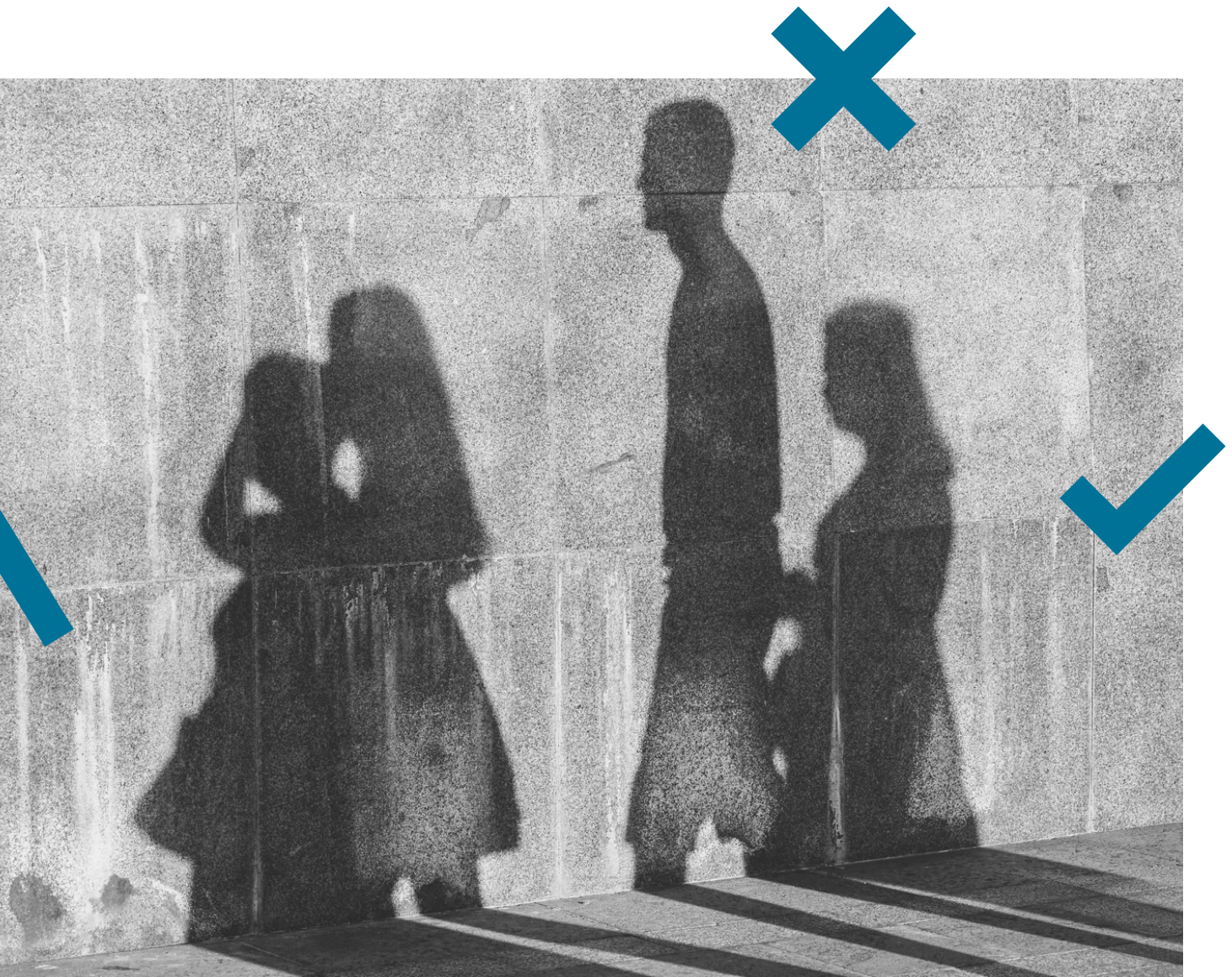


Warsaw | April 2019

# Access to asylum procedure at Poland's external borders

Current situation and challenges for the future



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## **I. Introduction and methodology**

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In 2015, an unprecedented number of asylum applications were lodged in the European Union.<sup>1</sup> Migrants seeking international protection were coming mainly from Middle Eastern and African countries affected by armed conflicts or mass human rights violations, such as Syria, Iraq, Afghanistan, Eritrea and Somalia. The majority of them arrived in Italy and Greece, and the asylum systems of both countries were soon overburdened; however, Member States could not come to an agreement on how to react to the situation. Some of them postulated solidarity and a burden-sharing approach, while others refused, invoking national interest and security concerns.

This phenomenon, known as the “refugee crisis”, despite not affecting the migration situation in Poland, has led to a national debate on receiving refugees and the position on the so-called “EU relocation scheme”. Supporters of this solution underlined a humanitarian approach, a moral obligation to provide safe shelter for those fleeing war or persecution and solidarity among EU Member States. In turn, their opponents highlighted the possible threat to national security. Ultimately, Poland refused to participate in the EU relocation scheme. The issue was widely discussed during the political campaigning for the parliamentary elections held in autumn 2015 and was used by the Law and Justice Party, which strongly opposed the EU scheme, to win the elections.

In 2015, non-governmental organisations started receiving disturbing reports on the unlawful practice of push-backs of asylum-seekers introduced by Polish Border Guards, particularly at the Polish-Belarusian border crossing point in Terespol. According to the testimonies of foreigners present at the border, the majority of asylum-seekers arriving at the border to apply for international protection were being sent back to Belarus. Analysis of statistical data seemed to prove that trend. The number of asylum applications lodged in Poland was falling, while the number of entry refusal decisions was increasing. Instances of push-backs were confirmed by the report of the Polish Commissioner for Human Rights, who visited the border crossing.

On the one hand, Polish authorities consistently denied violating the law at the border, indicating that migrants arriving in Terespol had not been applying for asylum but had been presenting an economic purpose of entry instead. On the other hand, statements of the Minister of the Interior and Administration indicated that it was a deliberate policy aimed at closing the border to those who “only claim to be refugees but are in fact economic migrants” and preventing the establishment of a “new migration route for Muslim emigrants”.

The main purpose of drafting the report was to sum up a series of rulings delivered by national administrative courts on account of complaints concerning the entry refusal decisions lodged by foreigners claiming they had expressed the intention to seek international protection at the border. The report consists of a summary of the situation on the eastern border of Poland in

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<sup>1</sup> Hereinafter referred to as: EU.

2015-2019 and an analysis of the draft amendment bill to the asylum law. Within the framework of the study, the authors have examined national, EU and international provisions on access to asylum, as well as national and European case-law, statistical data and initiatives undertaken by various actors in order to address the situation at the border. Based on the information gathered, the final chapter presents conclusions regarding access to asylum in Poland and the challenges for the future.

## **II. EU and international law on access to asylum procedures**

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### **1. Access to asylum under European Convention on Human Rights, European Court of Human Rights case-law and Council of Europe documents**

The European Convention on Human Rights<sup>2</sup> does not provide for the right to asylum; however, it does provide certain rules relating to international protection to be followed by states when deciding on returning or expelling a migrant.<sup>3</sup> As indicated in Article 1, the rights and freedoms deriving from the Convention shall be secured to everyone within the jurisdiction of the Contracting States. Therefore, it includes migrants, refugees and persons who appear at the border seeking international protection. As provisions of the Convention are applied within the jurisdiction of the state, not within its borders, it is irrelevant whether the person has crossed the border or not, as long as the state performs authority over them.

According to the well-established case-law of the European Court of Human Rights,<sup>4</sup> states have the right to control entry, residence and expulsion of foreigners.<sup>5</sup> However, when exercising that right, they must respect Articles 2 and 3 of ECHR, which guarantee the right to life and the right to freedom from torture. The principle of non-refoulement requires states to refrain from transferring a foreigner to the borders of the country where those rights would be threatened.<sup>6</sup> Indirect expulsions, whereby foreigners are transferred to a state where they face a risk of deportation to a third state in which those threats exist, are also prohibited.<sup>7</sup> ECtHR stressed that the term “expulsion” should be interpreted broadly and include “not admitting foreigners to the territory of a Contracting State” as well. Violation of the Convention may also involve the return of foreigners found in international waters.

According to Article 4 of Protocol no. 4 to the Convention, collective expulsions of foreigners are also prohibited. The expulsion has a collective manner when foreigners are expelled or

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<sup>2</sup> Council of Europe, *European Convention for the Protection of Human Rights and Fundamental Freedoms, as amended by Protocols Nos. 11 and 14*, 4 November 1950, available at: [https://www.echr.coe.int/Documents/Convention\\_ENG.pdf](https://www.echr.coe.int/Documents/Convention_ENG.pdf) (accessed: 22.05.2019), hereinafter referred to as: European Convention on Human Rights, Convention, ECHR.

<sup>3</sup> European Court on Human Rights, Human Rights Education for Legal Professionals series, *COURTalks disCOURs: Bringing the Convention closer to home*, 2016, available at: [https://www.echr.coe.int/Documents/COURTalks\\_Asyl\\_Talk\\_ENG.PDF](https://www.echr.coe.int/Documents/COURTalks_Asyl_Talk_ENG.PDF) (accessed: 22.05.2019).

<sup>4</sup> Hereinafter referred to as: ECtHR.

<sup>5</sup> See: *Paposhvili v. Belgium*, application no. 41738/10 (Grand Chamber).

<sup>6</sup> See: *Sufi and Elmi v. The United Kingdom*, applications nos. 8319/07 and 11449/07.

<sup>7</sup> See: *Hirsi Jamaa and Others v. Italy*, application no. 27765/09; *Khlaifia and Others v. Italy*, application no. 16483/12; *M.S.S. v. Belgium and Greece*, application no. 30696/09.



returned as a group, without individual and objective consideration of each case. ECtHR indicated that lack of access to an interpreter or a lawyer may be one of the elements determining the collective nature of expulsion.<sup>8</sup> It should also be noticed that, according to the recommendation of the Committee of Ministers of the Council of Europe, border guards shall draw particular attention to the obligation to respect the principle of non-refoulement and consider difficulties an asylum-seeker might be experiencing when presenting his asylum request.<sup>9</sup>

In December 2018, the European Court of Human Rights delivered an important ruling in the case of *M.A. and Others v. Lithuania*,<sup>10</sup> finding a violation of Articles 3 and 13 of the ECHR. The case concerned a Chechen family refused entry to Lithuania and sent back to Belarus, despite invoking a request for asylum at the border. ECtHR indicated it was the responsibility of the state to introduce procedures guaranteeing the examination of the risk of violation of Article 3 of the Convention in the event of expulsion or return of foreigners from their territory and to provide them with adequate protection. The Court recommended caution, particularly when the country to which a foreigner is to be transferred is not a party to the European Convention on Human Rights. In the *M.A. and Others* case, the ECtHR found a violation of Article 3, indicating that Belarus cannot be considered a safe country for Chechen refugees. The ECtHR stressed that the lack of suspensive effect of the complaint to the administrative court against the decision to refuse entry also led to the violation of the right to an effective remedy.

The applicant, who later attempted to apply for international protection at the Polish-Belarusian border crossing point in Terespol, also filed a complaint against Poland.<sup>11</sup> The case is currently pending before the European Court of Human Rights.

## **2. EU provisions on access to asylum and the ongoing reform of CEAS**

Article 18 of the EU Fundamental Rights Charter<sup>12</sup> stipulates that the right to asylum shall be guaranteed with due respect for the rules of the Geneva Convention<sup>13</sup> and the New York Protocol.<sup>14</sup> Article 19 of the EU CFR prohibits collective expulsions and expelling foreigners

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<sup>8</sup> See: *Sharifi and Others v. Italy and Greece*, application no. 16643/09.

<sup>9</sup> Council of Europe, Recommendation No. R (81) 16 of the Committee of Ministers to Member States on the harmonisation of national procedures relating to asylum, 5 November 1981, available at: <https://www.refworld.org/pdfid/47fdfb0533.pdf> (accessed: 29.05.2019).

<sup>10</sup> *M.A. and Others v. Lithuania*, application no. 59793/17, available at: <http://hudoc.echr.coe.int/eng?i=001-188267> (accessed: 26.05.2019).

<sup>11</sup> *M.A. and Others v. Poland*, application no 42902/17, available at: <http://hudoc.echr.coe.int/eng?i=001-176484> (accessed: 22.05.2019).

<sup>12</sup> European Union, *Charter of Fundamental Rights of the European Union*, 26 October 2012, 2012/C 326/02, available at: [http://www.europarl.europa.eu/charter/pdf/text\\_en.pdf](http://www.europarl.europa.eu/charter/pdf/text_en.pdf) (accessed: 14.05.2019), hereinafter referred to as: EU CFR.

<sup>13</sup> United Nations, *Convention Relating to the Status of Refugees*, 28 July 1951, available at: <https://www.refworld.org/docid/3be01b964.html> (accessed: 14.05.2019), hereinafter referred to as: Geneva Convention.

<sup>14</sup> United Nations, *Protocol Relating to the Status of Refugees*, 31 January 1967, available at: <https://www.refworld.org/docid/3ae6b3ae4.html> (accessed: 14.05.2019), hereinafter referred to as: New York Protocol.

to states where a serious risk of being subjected to the death penalty, torture or other inhuman or degrading treatment or punishment exists. Specific regulations on the right to asylum are enshrined in the EU secondary legislation acts establishing the Common European Asylum System.<sup>15</sup>

Access to the asylum procedure is regulated in the Asylum Procedures Directive,<sup>16</sup> which applies to all asylum applications lodged within the territory of the EU, including at the borders.<sup>17</sup> The Directive distinguishes three consecutive stages of the application procedure: (1) making an application for international protection, (2) lodging an application, and (3) registration of the application.<sup>18</sup> The provisions do not require applicants to fulfil any formal requirements in order to effectively make an application for international protection; hence, they can express a wish to be granted asylum in any form and towards any authority.<sup>19</sup> Only subsequent stages, i.e. lodging and registering the application, must fulfil formal requirements in order to be effective, such as filing the official application form. Once the foreigner makes an application, he or she is considered an asylum applicant and, from that moment on, they benefit from the rights enshrined in the EU asylum law.<sup>20</sup>

According to the Asylum Procedures Directive, Member States shall provide potential applicants present at the border, including in transit zones and at external borders, with information on the possibility of applying for international protection. They shall arrange an interpreter and ensure that organisations and persons providing advice and counselling to applicants have effective access to applicants present at border-crossing points. Moreover, applicants shall be allowed to remain within the territory of the given Member State until their case is considered.<sup>21</sup> According to Article 43, states can introduce border procedures to make decisions on granting international protection at the borders or in the transit zones.

The provisions of the Schengen Borders Code,<sup>22</sup> containing the rules governing border control of persons crossing external borders of the EU, stipulate that a person who does not fulfil all entry conditions laid down in Article 6(1) shall be refused entry.<sup>23</sup> As an exception, they may be authorised to enter that territory on humanitarian grounds, due to national interest or because

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<sup>15</sup> Hereinafter referred to as: CEAS. More information on CEAS available on the European Commission website at: [https://ec.europa.eu/home-affairs/what-we-do/policies/asylum\\_en](https://ec.europa.eu/home-affairs/what-we-do/policies/asylum_en) (accessed: 20.05.2019).

<sup>16</sup> European Union, Directive 2013/32/EU of the European Union and of the Council of 26 June 2013 on common procedures for granting and withdrawing international protection, 26 June 2013, OJ L. 180/60 -180/95, available at: <https://eur-lex.europa.eu/legal-content/en/ALL/?uri=celex%3A32013L0032> (accessed: 14.05.2019), hereinafter referred to as: Asylum Procedures Directive, Directive.

<sup>17</sup> Art. 3(1) of the Asylum Procedures Directive.

<sup>18</sup> Art. 6 of the Asylum Procedures Directive.

<sup>19</sup> European Asylum Support Office (EASO), *Judicial analysis. Asylum procedures and the principle of non-refoulement*, 2018, available at: [https://www.easo.europa.eu/sites/default/files/asylum-procedures-ja\\_en.pdf](https://www.easo.europa.eu/sites/default/files/asylum-procedures-ja_en.pdf) (accessed: 19.05.2019).

<sup>20</sup> Art. 2(c) and motif (27) of the Asylum Procedures Directive.

<sup>21</sup> Art. 8-9 of the Asylum Procedures Directive.

<sup>22</sup> European Union, Regulation (EU) 2016/399 of the European Parliament and of the Council of 9 March, 2016 on a Union Code on the rules governing the movement of persons across borders (Schengen Borders Code) (codification), 9 March 2016, OJ L 077, available at: <https://eur-lex.europa.eu/eli/reg/2016/399/2016-10-06> (accessed: 14.05.2019), hereinafter referred to as: Schengen Borders Code, SBC.

<sup>23</sup> Art. 14(1) of the Schengen Borders Code.

of international obligations.<sup>24</sup> The refusal of entry decision shall be issued without prejudice to the application of special provisions concerning the right to asylum and to international protection. Hence, persons seeking international protection shall not be refused entry to the EU and their asylum applications shall be received by border guard officers.<sup>25</sup>

According to the Schengen Handbook, foreigners do not have to express their wish to apply for international protection in any particular form, nor do they need to use the word “asylum”. It is enough that they express, in any way, the fear of returning to their country of origin because of the risk of serious harm. The decisive element in every case should be the expression of concern about what may happen to the applicant upon returning home.

### ***Reform of CEAS***

The increased number of migrants, including those seeking international protection, arriving in the EU since 2015 has exposed the shortcomings of the CEAS and revealed the need for a comprehensive reform of EU asylum law, particularly the Dublin mechanism. In April 2016, the European Commission announced the launch of the reform process with its main aims of harmonisation of the asylum provisions within the EU, strengthening the mandate of the European Asylum Support Office,<sup>26</sup> reducing the irregular migration flows and introducing legal and safe routes to the EU for people in need of international protection.<sup>27</sup> Moreover, in June 2018, the European Commission proposed an amendment to the Return Directive,<sup>28</sup> introducing return border procedures following the asylum border procedures.<sup>29</sup>

The Commission proposed revoking the Asylum Procedures Directive and adopting the Regulation on the common asylum procedure, which would be directly applied by all Member States. In the proposed Regulation, three stages of making an asylum claim and considering a foreigner an applicant from the very first stage of the process remained unchanged. However,

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<sup>24</sup> Art. 14(1) and 6(5)(c) of the Schengen Borders Code.

<sup>25</sup> Council of the European Union, Commission Recommendations establishing a common “Practical Handbook for Border Guards (Schengen Handbook)” to be used by Member States’ competent authorities when carrying out the border control of persons, 9 November 2006, 15010/06, available at: <http://register.consilium.europa.eu/doc/srv?l=EN&f=ST%2015010%202006%20INIT> (accessed: 14.02.2019), hereinafter referred to as: Schengen Handbook.

<sup>26</sup> Hereinafter referred to as: EASO.

<sup>27</sup> European Commission, Communication from the Commission to the European Parliament and the Council: Towards a reform of the Common European Asylum System and Enhancing Legal Avenues to Europe, 6 April 2016, COM(2016) 197 final, available at: [https://ec.europa.eu/home-affairs/sites/homeaffairs/files/what-we-do/policies/european-agenda-migration/proposal-implementation-package/docs/20160406/towards\\_a\\_reform\\_of\\_the\\_common\\_european\\_asylum\\_system\\_and\\_enhancing\\_legal\\_avenues\\_to\\_europe\\_-\\_20160406\\_en.pdf](https://ec.europa.eu/home-affairs/sites/homeaffairs/files/what-we-do/policies/european-agenda-migration/proposal-implementation-package/docs/20160406/towards_a_reform_of_the_common_european_asylum_system_and_enhancing_legal_avenues_to_europe_-_20160406_en.pdf) (accessed: 14.02.2019).

<sup>28</sup> European Union, Directive 2008/115/EC of the European Parliament and of the Council on common standards and procedures in Member States for returning illegally staying third-country nationals, 16 December 2008, OJ L 348/98, available at: <https://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2008:348:0098:0107:EN:PDF> (accessed: 14.02.2019).

<sup>29</sup> European Commission, Proposal for a Directive of the European Parliament and of the Council on common standards and procedures in Member States for returning illegally staying third-country nationals (recast), A contribution from the European Commission to the Leaders’ meeting in Salzburg on 19-20 September 2018, available at: [https://ec.europa.eu/commission/sites/beta-political/files/soteu2018-returning-illegally-staying-third-country-nationals-directive-634\\_en.pdf](https://ec.europa.eu/commission/sites/beta-political/files/soteu2018-returning-illegally-staying-third-country-nationals-directive-634_en.pdf) (accessed: 15.01.2019).

unlike the Directive, the Regulation indicates *expressis verbis* that an applicant does not have to use the words “international protection” or “asylum” to effectively make an asylum claim.<sup>30</sup>

Finding common ground on the reform of the Dublin system turned out to be the most challenging part of the reform. There is also no agreement among Member States on the content of the provisions governing the common asylum procedure. Due to the end of the term of the European Parliament, the future of the reform is not clear.

### ***EU-Belarus deal***

Although not a part of the EU legal framework, it is worth mentioning the *Action Document for Helping Belarus Address the Phenomenon of Increasing Numbers of Irregular Migrants* adopted by the European Commission in 2016.<sup>31</sup> Its aim is to support Belarus in fulfilling its obligations related to a future readmission agreement with the EU and to respond to the increased irregular migration flows connected with conflict in Ukraine, the war in Syria and the economic crisis in Russia, which result in an increased number of people seeking entry to the EU via Belarus. The action plan consists of three components, which are: (1) introduction of legislative and institutional amendments, (2) introduction of the voluntary return mechanism for migrants deported from the EU to Belarus, and (3) construction of detention facilities for irregular migrants. Implementation of the project, worth 7 million euro, officially started in August 2018.<sup>32</sup>

### **III. Polish domestic provisions on access to asylum**

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The application for international protection is lodged with the Head of the Office for Foreigners, through the Border Guard. The application is lodged in person on an official application form. The Border Guard shall pass it to the asylum authority within 48 hours.<sup>33</sup> Polish domestic provisions do not provide the “making an application” stage of asylum process as guaranteed by the Asylum Procedures Directive. Instead, the foreigner is considered an applicant and

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<sup>30</sup> European Commission, Proposal for a Regulation of the European Parliament and of the Council establishing a common procedure for international protection in the Union and repealing Directive 2013/32/EU, 13 July 2016, COM(2016) 467 final, available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=COM%3A2016%3A0467%3AFIN> (accessed: 14.05.2019).

<sup>31</sup> Commission Implementing Decision of 20.7.2016 on the Annual Action Programme 2016 in favour of the Republic of Belarus to be financed from the general budget of the European Union. ANNEX II *Action Document for Helping Belarus Address the Phenomenon of Increasing Numbers of Irregular Migrants*, available at: [https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/neighbourhood/pdf/keydocuments/belarus/20161027-belarus\\_aap-2016.pdf](https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/neighbourhood/pdf/keydocuments/belarus/20161027-belarus_aap-2016.pdf) (accessed: 27.05.2019). More information on the implementation of the action programme on the website of International Organisation for Migration at: <http://iom.by/en/2018/10/24/iom-with-the-support-of-eu-helps-belarus-develop-irregular-migration-management-policy> (accessed: 27.05.2019).

<sup>32</sup> More information on the implementation progress of the action plan available on: <https://www.asktheeu.org/en/request/action-document-for-helping-bela#incoming-19737> (accessed: 27.05.2019).

<sup>33</sup> Art. 23-26 of the Act of 2003 on granting protection to foreigners within the territory of the Republic of Poland, 13 June 2003, English translation available at: <https://www.refworld.org/docid/44a134a44.html> (accessed: 14.05.2019), hereinafter referred to as: Law on Protection.



enjoys the rights and procedural guarantees established in domestic and EU legal acts on asylum only when the application is successfully lodged on the official form with the Border Guard. Currently, the government is working on an amendment to the Law on Protection which would introduce border procedures and the broad application of detention of asylum-seekers. It would not introduce, however, the stage of “making an application” as established in EU law.<sup>34</sup>

According to Article 28(2)(2) of the Law on Foreigners,<sup>35</sup> provisions on the rules of entry, including the obligation to possess valid entry documents, do not apply to foreigners who either declared the wish to apply for international protection or who lodged such application. Other foreigners who do not fulfil the entry conditions receive refusal of entry decisions,<sup>36</sup> which can be challenged before the Chief Commander of the Border Guards and, subsequently, the administrative court. The appeal, however, does not have automatic suspensive effect.

According to national law and Border Guard standard operational proceedings, if a foreigner claims to be seeking international protection during the border control, their asylum application should be registered and handed over to the Head of the Office for Foreigners. SBC indicates that the interview on the reasons for entry is held at the second line check. Border Guard Headquarters has developed an algorithm to help its officers to understand the intentions of foreigners who may potentially seek asylum.<sup>37</sup> According to its content, foreigners should be allowed entry to the territory of Poland if they express a need for international protection, even in an indirect or implicit way. For this purpose, at the second line of control, officers of the Border Guard hold an interview which enables foreigners to present their reasons for entry. If they claim asylum, they are asked about the grounds for their request, and, in the event of failure to justify fear related to the return to the country of origin, it is considered that they are using the term “asylum” only to abuse the procedure and enter Poland without the required documents. The algorithm indicates further that Border Guard officers should attempt to: determine grounds for leaving the country, reasons for fear of return and expectations related to Poland. Based on the foreigner’s statement, they assess whether he/she is a person seeking protection or an economic migrant. According to non-governmental organisations monitoring the situation at the border, such assessment made by Border Guard officers is carried out without clear legal basis and may impair the right to asylum by refusing entry to Poland to potential asylum-seekers.

Neither the Law on Foreigners nor Schengen Borders Code specify the form in which the interview held at the second line check should be recorded. According to the established practice of the Polish Border Guard, the only evidence left after the interview is the official

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<sup>34</sup> Draft amendment to the Law on Protection, available at: <https://legislacja.rcl.gov.pl/projekt/12294700> (accessed 20.05.2019).

<sup>35</sup> Act of 2013 on Foreigners, 30 December 2013, English translation available at: <https://www.refworld.org/docid/54c0b9384.html> (accessed: 14.05.2019), hereinafter referred to as: Law on Foreigners.

<sup>36</sup> Art. 28(1)(1) of the Law on Foreigners.

<sup>37</sup> Algorithm is available in Annex B of the report of Legal Intervention Association, At the Border. Report on the monitoring of the access to asylum procedure at the border crossing points in Terespol, Medyka and Warsaw Okecie airport: <https://interwencjaprawna.pl/docs/ARE-216-na-granicy.pdf> (accessed: 29.05.2019).

memo drafted and signed by the Border Guard officer. This practice has been successfully challenged before the Supreme Administrative Court, which ruled in numerous cases that the interview should be recorded in the form of a protocol, signed by both the Border Guard officer and the foreigner.<sup>38</sup> The practice, however, has remained unchanged.

#### **IV. Situation at the eastern border**

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Poland is a party to the Geneva Convention since 1991. Since then, most of the foreigners applying for asylum in Poland have been citizens of former Soviet Union states: Russia, Belarus, Ukraine, Tajikistan, Armenia and Georgia. The year 2000 was the beginning of an increased influx of people fleeing from the North Caucasus region, primarily from the war-torn Republic of Chechnya. Due to its location, Poland has become a natural refuge for people fleeing those countries. Even though Chechnya is currently not in a state of war, human rights violations are still very common there, forcing many people to leave the country.<sup>39</sup>

Statistical data show that every year between four and fifteen thousand foreigners apply for international protection in Poland.<sup>40</sup> Until July 2016, most of them (in some years even up to 90%) were lodging their applications at the Polish-Belarusian railway border crossing in Terespol. Chechens, who traditionally have been the largest group of applicants, usually flee from Russia to Belarus, and from there, via the Brest-Terespol train, they come to Poland. They choose that route because they may freely cross the Russian-Belarusian border without their authorities noticing this fact, which is of great importance to those who fear persecution from the state actors. Although in 2001 Belarus ratified the Geneva Convention, it cannot be considered a safe country for Chechen nationals.<sup>41</sup> Over the last two and a half years, the number of applications submitted at the border crossing point in Terespol has gradually been declining, constituting now only 1/3 of all asylum applications submitted in Poland.<sup>42</sup>

The procedure on receiving asylum applications on the border crossing point in Terespol has been well-established for many years now. Asylum-seekers travel to Terespol from the Belarusian city of Brest on the morning train and, once they arrive in Poland, they go through the border control. The building of the railway station in Terespol is closed for the duration of the border control and neither non-governmental organisations nor lawyers representing

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<sup>38</sup> See for example: judgement of the Supreme Administrative Court of 20 September 2018, case no. II OSK 345/18, available at: <http://orzeczenia.nsa.gov.pl/doc/6422D006AE> (accessed: 14.05.2019).

<sup>39</sup> See: Amnesty International, *Report 2017/18: The State of the World's Human Rights*, chapter: Russian Federation, available at: <https://www.amnesty.org/download/Documents/POL1067002018ENGLISH.PDF> (accessed: 14.05.2019).

<sup>40</sup> Statistical data available on the website of the Office for Foreigners (Polish asylum authority): <https://udsc.gov.pl/en/statystyki/raporty-okresowe/> (accessed: 14.05.2019).

<sup>41</sup> See the justification of the judgement *M.A. v. Lithuania* as well as statistics available on the website of the Ministry of Internal Affairs of the Republic Belarus showing that between 2004 and 2018 no citizen of Russia was granted international protection: <http://mvd.gov.by/main.aspx?guid=69883> (accessed: 20.05.2019).

<sup>42</sup> Office for Foreigners, *Information of the Head of the Office for Foreigners on implementation of the Act of 13 June 2003 on granting protection to foreigners within the territory of the Republic of Poland*, available at: <https://udsc.gov.pl/en/statystyki/raporty-okresowe/raport-roczny-ochrona-miedzynarodowa/2017-2/> (accessed: 14.05.2019).

foreigners are allowed to enter the building. Foreigners without valid entry documents (which is usually the case of Chechen asylum-seekers) are directed to the second line check where a Border Guard asks them the reasons for entry. Generally, if a person declares the wish to seek asylum, the application for international protection should be received and sent to the Office for Foreigners. If a person does not apply for asylum and does not have valid entry documents, he or she is given a refused entry decision and sent back to Belarus by train, leaving Terespol the same day. The interview held conducted by the Border Guard at the second line check is recorded in the form of an official memo, drafted and signed by the Border Guard officer only.

Accounts of foreigners contacting human rights organisations and the inspection of the border conducted by Commissioner for Human Rights<sup>43</sup> show that in many cases Border Guard officers ignore declarations of foreigners invoking fear of persecution, focusing instead on personal or economic reasons for leaving the country. As a result, official memos attached to refusal of entry case files are false or incomplete and do not reflect the actual course of the interview. The lack of audio-video monitoring in the room where the second line check is being conducted, as well as the Border Guards' practice of not allowing UNHCR employees and other external monitors access to the room, result in the lack of possibility to audit the legitimacy of Border Guard actions at that stage of the procedure. Every day, from zero to only a few asylum applications are received by the Border Guard in Terespol, while most of the foreigners who claim they had tried to apply for international protection are being sent back to Belarus. Some of them make several or several dozen unsuccessful attempts to apply for asylum and it is never clear if they will eventually succeed.<sup>44</sup>

Human rights organisations have documented several cases of asylum-seekers who were refused entry to Poland and, consequently, were detained in Belarus and faced deportation or were deported to their country of origin. In June 2015, Tajik activist Shabnam Khudoydodova was apprehended by Belarusian authorities after not being allowed to apply for asylum in Poland, and only the pressure from some human rights organisations and embassies prevented her extradition to Tajikistan. In September 2017, in turn, after several unsuccessful attempts to apply for asylum in Poland, Imran Salamov was deported from Belarus to Russia, where he was immediately apprehended and held incommunicado.<sup>45</sup>

According to the estimations of Human Constanta,<sup>46</sup> the Belarusian non-governmental organisation assisting migrants in Brest, there are currently around 150-200 foreigners staying in Brest who make repeated attempts to apply for asylum in Terespol. Most of them are

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<sup>43</sup> Commissioner for Human Rights, *Inspection of the railway border crossing in Terespol*, 21 September 2016, available at: <https://www.rpo.gov.pl/en/content/inspection-railway-border-crossing-terespol> (accessed: 14.05.2019).

<sup>44</sup> See for example: Human Rights Watch, *Poland: Asylum Seekers Blocked at Border*, 1 March 2017, available at: <https://www.hrw.org/news/2017/03/01/poland-asylum-seekers-blocked-border> (accessed: 14.05.2019).

<sup>45</sup> Helsinki Foundation for Human Rights, Amnesty International and Legal Intervention Association petitioning the Headquarters of the Border Guard and the Commissioner for Human Rights to review the correctness of the proceedings conducted in cases of granting of international protection at the Polish-Belarus border crossing station at Brest/Terespol. Information available at: <http://www.hfhr.pl/en/grave-danger-to-chechens-refused-access-to-refugee-procedure-in-terespol/> (accessed: 14.05.2019).

<sup>46</sup> Information obtained in February 2019.

Chechens, mainly families with children. This is a significant decrease compared to 2016 when the estimated number of 1500-2000 asylum-seekers were living in Brest.

## V. Statistical data

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In 2016, the number of decisions on the refusal of entry doubled compared to 2015. FRONTEX connects this phenomenon with people arriving at the border without a valid visa and seeking international protection.<sup>47</sup> Around 75% of all refusals in 2016 were issued at the Polish-Belarusian border (an increase of 213% comparing to 2015). It is interesting is that the increase concerns only Russian citizens, who are the largest group of asylum-seekers in Poland but not the largest group of foreigners crossing Polish borders. The latter are citizens of Ukraine. Therefore, it might be related to reported problems with access to asylum.

At the same time, since 2015 the number of asylum applications lodged in Poland has been decreasing. In 2018, it fell to 4,144, the lowest number since the beginning of 2000'.<sup>48</sup> Moreover, the percentage of applicants lodging their asylum applications at the border in Terespol has suddenly decreased: from up to 90% to a little more than 30% last year.<sup>49</sup>

## VI. Activities of actors involved in the situation at the border

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Non-governmental organisations have been sounding the alarm about the problems with access to the asylum procedure at Poland's eastern borders for many years now. However, the number of reported violations has significantly increased since the second half of 2015. Since then, NGOs have repeatedly intervened in individual cases of foreigners who were refused entry to Poland despite claiming asylum. In June 2016, the Helsinki Foundation for Human Rights published an open letter to the EU and international human rights bodies on the situation at the border; however, to this day there has been no clear reaction to the reported problems.<sup>50</sup>

Throughout 2016, independent monitoring visits to the border crossing point in Terespol were conducted by: the Legal Intervention Association,<sup>51</sup> Commissioner for Human Rights,<sup>52</sup>

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<sup>47</sup> FRONTEX, *Risk Analysis for 2017*, available at: [https://frontex.europa.eu/assets/Publications/Risk\\_Analysis/Annual\\_Risk\\_Analysis\\_2017.pdf](https://frontex.europa.eu/assets/Publications/Risk_Analysis/Annual_Risk_Analysis_2017.pdf) (accessed: 19.05.2019).

<sup>48</sup> Statistical data available at: <https://migracje.gov.pl/en/> (accessed: 14.05.2019).

<sup>49</sup> Statistical data available on the Office for Foreigners website: <https://udsc.gov.pl/en/statystyki/> (accessed: 19.05.2019).

<sup>50</sup> Helsinki Foundation for Human Rights, *Access to asylum denied in Poland*, available at: [https://tbinternet.ohchr.org/Treaties/CCPR/Shared%20Documents/POL/INT\\_CCPR\\_CSS\\_POL\\_24692\\_E.pdf](https://tbinternet.ohchr.org/Treaties/CCPR/Shared%20Documents/POL/INT_CCPR_CSS_POL_24692_E.pdf) (accessed: 26.05.2019).

<sup>51</sup> Legal Intervention Association, *At the Border*.

<sup>52</sup> Commissioner for Human Rights, *Inspection of the railway border crossing in Terespol*, 21 September 2019, available at: <https://www.rpo.gov.pl/en/content/inspection-railway-border-crossing-terespol> (accessed: 19.05.2019).

Helsinki Foundation for Human Rights,<sup>53</sup> Amnesty International<sup>54</sup> and Human Rights Watch.<sup>55</sup> The results of these monitoring visits turned out to be largely consistent and confirmed the existence of systemic irregularities with accepting applications for international protection at the border. It must be noted, however, that only representatives of the Commissioner for Human Rights were permitted to enter the room where the second line check takes place and, thus, able to witness the interviews conducted by the Border Guard with foreigners. Irregularities occurring at the border are a major problem identified also by the Ombudsman for Children over the years 2016 - 2018.<sup>56</sup> Although the monitoring visit of the border crossing conducted by the Ombudsman's representatives in January 2017 did not directly confirm the practice of push-backs, it did not allow for their exclusion either.<sup>57</sup>

In March 2017, a group of fourteen attorneys from the Warsaw Bar Association arrived at the border in Terespol, with the intention of providing legal assistance on a *pro bono* basis to foreigners present that day at the border who declared a wish to seek asylum in Poland.<sup>58</sup> Despite presenting powers of attorney to represent their clients before the Polish authorities to the Border Guards, the advocates were not allowed to enter the building of the railway station and to participate in administrative activities undertaken at the border. Their clients received decisions refusing them entry to Poland and were returned to Belarus. As a consequence of the legal actions undertaken by the attorneys, all of the cases were brought to the national administrative courts, which overturned the Border Guard decisions on refusal of entry.

In July 2017, Amnesty International, the Helsinki Foundation for Human Rights and Human Rights Watch called upon the European Commission to address Poland's summary returns of asylum-seekers to Belarus, indicating that Poland was violating human rights law, refugee law, EU law and orders of the European Court of Human Rights.<sup>59</sup> In November 2017, the European Parliament adopted a resolution on the rule of law in Poland in which it called upon the Polish government to halt the accelerated expulsions of foreigners to Belarus and respect the interim

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<sup>53</sup> *A Road to Nowhere: The account of the monitoring visit at the Brest-Terespol border crossing between Poland and Belarus*, Helsinki Foundation for Human Rights, 2016, available at: <http://www.hfhr.pl/wp-content/uploads/2016/11/raport-droga-donikad-EN-web.pdf> (accessed: 19.05.2019).

<sup>54</sup> Amnesty International Poland, *Tam i z powrotem: Brześć – Terespol*, 7 December 2016, available at: <https://amnesty.org.pl/tam-i-z-powrotem-brzesc-terespol/> (accessed: 19.05.2019).

<sup>55</sup> Human Rights Watch, *Poland: Asylum Seekers Blocked at the Border*, 1 March 2017, available at: <https://www.hrw.org/news/2017/03/01/poland-asylum-seekers-blocked-border> (accessed: 19.05.2019).

<sup>56</sup> Ombudsman for Children of the Republic of Poland, Information of the Ombudsman for Children prepared in relation to the list of issues prior to reporting (LOIPR) for Poland being drafted by the Committee on the Rights of the Child on the implementation of the Convention on the Rights of the Child, 29 June 2018, available at: [http://brpd.gov.pl/sites/default/files/raport\\_rpd\\_onz.pdf](http://brpd.gov.pl/sites/default/files/raport_rpd_onz.pdf) (accessed: 19.05.2019).

<sup>57</sup> Information on the monitoring visit of Brest-Terespol Border crossing conducted by the Ombudsman for Children on January 2017 is available on: [http://brpd.gov.pl/sites/default/files/informacja\\_o\\_wynikach\\_kontroli\\_przejscie\\_graniczne\\_terespol-brzesc.pdf](http://brpd.gov.pl/sites/default/files/informacja_o_wynikach_kontroli_przejscie_graniczne_terespol-brzesc.pdf) (accessed: 5.05.2019).

<sup>58</sup> Helsinki Foundation for Human Rights, *At the border. Attorneys from Warsaw Bar, HFHR and ALI help asylum-seekers in Terespol*, available at: <http://www.hfhr.pl/en/at-the-border-attorneys-from-warsaw-bar-hfhr-and-ali-help-asylum-seekers-in-terespol/> (accessed: 19.05.2019).

<sup>59</sup> Amnesty International, *Poland: EU should tackle unsafe returns to Belarus*, 5 July 2017, available at: <https://www.amnesty.org/en/latest/news/2017/07/poland-eu-should-tackle-unsafe-returns-to-belarus/> (accessed: 22.05.2019).



measures issued by the European Court of Human Rights.<sup>60</sup> In response, the Polish Ministry of Foreign Affairs stressed that many passages of the resolution “contain a number of sweeping statements, e.g. about the situation of potential asylum seekers at the border with Belarus.” and that “[t]he government believes that the measures introduced at the external border, particularly at the Terespol border crossing, are appropriate in the current migratory situation.”<sup>61</sup>

Despite the repeated reports of non-governmental organisations and the Commissioner for Human Rights, the Polish government denied the application of unlawful practices at the border. At the same time, in many public statements, members of the government, including the head of the Ministry of Interior and Administration, underlined that Poland was strongly against accepting refugees, particularly from Muslim countries, onto its territory.<sup>62</sup> In one press interview, the minister stated that he “will not succumb to the pressure of those who led to the outburst of the migration crisis [in Poland]”. He stressed that the presence of Chechens in Brest is evidence of “an attempt to establish a new migration route” for Muslims coming to Europe.<sup>63</sup> On another occasion, when questioned by a journalist, the minister denied that the Border Guard had received guidelines not to allow asylum-seekers entry into Poland, at the same time stating that the establishment of the new migration route was being tested on the Polish-Belarusian border and that Poland had successfully not allowed it to happen.<sup>64</sup>

In October 2018, the Commissioner for Human Rights called upon the Ministry of the Interior and Administration to introduce into national law provisions which would implement the case-law of the Supreme Administrative Court on the proper way of recording interviews with foreigners appearing at the border. The ministry replied that the current practice of drafting official memos would remain unchanged as the case-law of the Supreme Administrative Court is not legally binding for cases other than those which were examined by the Court.<sup>65</sup>

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<sup>60</sup> European Parliament, European Parliament resolution of 15 November 2017 on the situation of the rule of law and democracy in Poland (2017/2931(RSP)), 15 November 2017, available at: <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+TA+P8-TA-2017-0442+0+DOC+XML+V0//EN> (accessed: 19.05.2019).

<sup>61</sup> Ministry of Foreign Affairs of the Republic of Poland, *MFA communiqué following European Parliament debate on Poland*, 15 November 2017, available at: [https://www.msz.gov.pl/en/p/msz\\_en/news/mfa\\_communique\\_following\\_european\\_parliament\\_debate\\_on\\_poland](https://www.msz.gov.pl/en/p/msz_en/news/mfa_communique_following_european_parliament_debate_on_poland) (accessed: 19.05.2019).

<sup>62</sup> See: Al-Jazeera, *Chechen asylum seekers stranded in Belarus*, 5 October 2016, available at: <https://www.aljazeera.com/indepth/features/2016/09/asylum-seekers-stranded-europe-dictatorship-160919191015494.html> (accessed: 19.05.2019).

<sup>63</sup> TVN24, *Czeczeni koczowali na granicy. Szef MSWiA: rząd PiS nie narazi Polski na zagrożenie terrorystyczne*, 31 August 2016, available at: <https://www.tvn24.pl/wiadomosci-z-kraju,3/szef-mswia-mariusz-blaszczak-o-czecenach-na-polskiej-granicy,672450.html> (accessed: 23.05.2019).

<sup>64</sup> TOK FM, *Błaszczak o Czeczenach na granicy w Terespolu: testowano otwarcie szlaku napływu muzułmańskich emigrantów do Europy. Nieskutecznie*, 1 September 2016, available at: <http://www.tokfm.pl/Tokfm/1,103454,20629694,blaszczak-o-czecenach-na-granicy-w-terespolu-dwa-dni-temu.html> (accessed: 23.05.2019).

<sup>65</sup> The position of the Ministry of Interior and Administration is available at: <https://www.rpo.gov.pl/sites/default/files/Odpowiedź%20MSWiA%2029.10.2018.pdf> (accessed: 20.05.2019).

## **VII. Case-law of national administrative courts on access to asylum**

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Within the framework of the study, all 25 judgements delivered by the Supreme Administrative Court concerning the refusal of entry of potential asylum-seekers between 2015 and 2018 were analysed. The substance of those cases was the fact that the complainants claimed that during the border control they declared a wish to apply for international protection, while according to the Border Guards, they declared only an economic purpose of entry, not related to a fear of persecution. Due to the lack of audio-video monitoring at the border or the presence of external monitors, the only evidence was the official memos drafted by Border Guard officers and attached to the refusal of entry case files. All those cases resulted in revoking administrative decisions to refuse entry issued by Border Guards.

In its well-established case-law, the Supreme Administrative Court stressed that the official memo prepared by the Border Guard officers was not sufficient evidence of the interview held with a foreigner and did not prove what the declared reason of entry had been. According to the Court, the interview shall be recorded in the form of a protocol in accordance with standards deriving from Article 67 § 1 of the Administrative Proceedings Code,<sup>66</sup> i.e. it should be signed by all persons taking part in the interview. The Court also indicated that the questioning or hearing, being a significant part of the procedure, should be carried out in the presence of the foreigner's legal representative, if one is present at the border. The Court concluded that since numerous reports, including the ones of the Commissioner for Human Rights, were informing about irregularities at the border in relation to access to asylum, it was the responsibility of the Border Guard to ask foreigners about the actual reasons for entering Poland and to conduct comprehensive administration procedures during the border control.

In the examined cases, the Supreme Administrative Court pointed out that, although it was not certain, there were many indicators allowing for a reasonable assumption that foreigners had applied for asylum at the border. These indicators were: partially-completed asylum application forms, asylum requests included in the appeals against the decisions on the refusal of entry, and interim measures applied by ECtHR.<sup>67</sup> In a number of cases, the Supreme Administrative Court pointed out that when applying domestic laws concerning refusal of entry, the non-refoulement principle shall be respected. The Court stressed that compliance with this principle is a manifestation of respect for basic human rights by border control authorities.

Although the administrative courts annulled the unlawful decisions on the refusal of entry, in most of the cases administrative proceedings were discontinued. This means that the refusal of entry proceedings cannot be reopened and conducted afresh, according to the instructions deriving from the judgement. Complainants did not gain the right to enter Poland either. Every time they arrive at the border, a separate administrative proceeding is initiated and conducted by the Border Guard. According to the information collected during the study, none of the

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<sup>66</sup> Act of 1960 Administrative Proceeding Code, 14 June 1960, hereinafter referred to as: Administrative Proceeding Code.

<sup>67</sup> See: Supreme Administrative Court, cases nos. II OSK 2511/18, II OSK 2599/18, II OSK 3100/18.

foreigners who successfully challenged his or her case before the court was allowed entry to Poland as a direct consequence of the favourable ruling. In several cases, the Border Guard discontinued proceedings referred to them by the courts, as the complainant has not appeared at the border again.

### **VIII. Refusal of entry cases pending before the European Court of Human Rights and UN Human Rights Committee**

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The Polish government has been notified of four cases on refusal of entry pending before the ECtHR.<sup>68</sup> The allegations refer to Articles 3, 13 and 34 of the ECHR, as well as Article 4 of Protocol 4 to the Convention. The ECtHR applied interim measures in these cases, urging Polish authorities to accept the applications for international protection from the applicants and not remove them to Belarus until their cases are examined by the Court. The Border Guard, however, ignored measures applied by the ECtHR and returned the applicants from the border, preventing them from applying for international protection.<sup>69</sup> According to the Ministry of Foreign Affairs, expressed in an official statement on the Ministry's website, the interim measures of the ECtHR could not be applied as the applicants were not present on the territory of Poland and, therefore, could not be removed. According to the Ministry, as foreigners received decisions on the refusal of entry into Poland at the border, they never actually left Belarus. Therefore, it was impossible to comply with the interim measures and refrain from removing them to that country.<sup>70</sup> In response, non-governmental organisations indicated that, in accordance with the provisions of the Convention, applicants were under the jurisdiction of Polish authorities at the time of the border control. Therefore, the measures applied by the Court were applicable, regardless of whether the foreigners had formally crossed the Polish border or not.<sup>71</sup> In addition, the Polish government was notified of two other cases by the ECtHR concerning the situation at the border. Both concern applicants being detained after making several unsuccessful attempts to apply for international protection at the border crossings in Terespol<sup>72</sup> and Medyka (Polish-Ukrainian border).<sup>73</sup>

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<sup>68</sup> *D.A. and Others v. Poland*, application no. 51246/17, communicated on 7.09.2017, available at: <http://hudoc.echr.coe.int/eng?i=001-177298> (accessed: 28.01.2019), *M.K. v. Poland*, application no. 40503/17, communicated on 13.07.2017, available at: <http://hudoc.echr.coe.int/eng?i=001-176229> (accessed: 28.01.2019), *M.K. and Others v. Poland*, application no. 43643/17, communicated on 21.07.2017, available at: <http://hudoc.echr.coe.int/eng?i=001-176472> (accessed: 28.01.2019), *M.A. and Others v. Poland*, application no. 42902/17, communicated on 3.08.2017, available at: <http://hudoc.echr.coe.int/eng?i=001-176484> (accessed: 29.01.2019)

<sup>69</sup> In 2018, applicants of the *M.A. and Others v. Poland* case managed to lodge asylum applications on the Polish border. See: *M.A. and Others v. Lithuania*, § 25-26.

<sup>70</sup> Ministry of Foreign Affairs, Statement of the Ministry of Foreign Affairs on the interim measure applied by the European Court of Human Rights on 8 June 2017, available at: [https://www.msz.gov.pl/pl/aktualnosci/dla\\_mediow/sprostowania/tytul\\_strony\\_1](https://www.msz.gov.pl/pl/aktualnosci/dla_mediow/sprostowania/tytul_strony_1) (accessed: 18.02.2019).

<sup>71</sup> HFHR and ALI: MFA's statement regarding ECtHR's prohibition of refugee's return to Belarus is groundless available at: <http://www.hfhr.pl/en/hfhr-and-ali-mfas-statement-regarding-ecthrs-prohibition-of-refugees-return-to-belarus-is-groundless/> (accessed: 19.02.2019).

<sup>72</sup> *A.B. v. Poland and T.K. and S.B. v. Poland*, applications nos. 15845/15 and 56300/15, communicated on 14 June 2016, available at: <http://hudoc.echr.coe.int/eng?i=001-168009> (accessed: 5.02.2019).

<sup>73</sup> *M.Z. and Others v. Poland*, application no. 79752/16, communicated on 8 January 2016, available at: <http://hudoc.echr.coe.int/eng?i=001-180603> (accessed: 5.02.2019).

## **IX. Upcoming amendments to the law**

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Currently, the Polish government is working on amendments to the asylum law in Poland. One of the most significant changes would be the introduction of border procedures and a list of safe third countries and safe countries of origin. If Ukraine and Belarus are included on that list, which is the concern of HFHR, most of the asylum proceedings in Poland will fall under the category of border procedures.

For the duration of the border procedure, asylum-seekers will be placed in detention facilities. Their cases will be examined within the period of 20 days. The main concern of non-governmental organisations taking part in the legislative process is that such a short period of time might hinder access to a lawyer, psychological assistance and an interpreter and will be too short to allow the asylum-seeker to gather and submit all evidence. The identification of vulnerable groups, such as victims of torture, might also not be effective.

The decision refusing asylum made under the border procedure will be final. The only remedy available to a foreigner will be a complaint to the administrative court submitted within 7 days from the delivery of the decision. Filing a complaint will not, however, have an automatic suspensive effect. According to the HFHR, these provisions raise serious doubts as to their compliance with the right to an effective remedy enshrined in Article 46 of the Asylum Procedures Directive.

## **X. Conclusions**

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The information collected for the purpose of drafting the report allow a number of conclusions to be drawn regarding access to the asylum procedure on Poland's eastern borders.

First, Polish domestic provisions do not implement Article 6(1) of the Asylum Procedures Directive correctly. The foreigner enjoys rights established in EU and national asylum law only from the moment of formal submission of an application for international protection on the official form to the Border Guard. A foreigner who declares a wish to apply for asylum in any other form is not considered an applicant and does not benefit from the rights enshrined in EU asylum law.

According to the reports of the Commissioner for Human Rights and non-governmental organisations, some foreigners appearing at Poland's eastern border are deprived of the right to apply for asylum. It appears that the practice of the Border Guard is systemic, which constitutes a violation of the provisions of the Asylum Procedures Directive regarding access to asylum. In addition, Polish authorities have failed to implement several interim measures issued by the European Court of Human Rights. The ECtHR has urged Polish authorities not to remove applicants to Belarus and to accept their applications for international protection. Polish authorities have not complied with the measures applied by the Court, have refused to allow foreigners entry and have sent them back to Belarus, which is a clear violation of the ECHR.

All of the decisions on refusal of entry challenged before the administrative courts were overruled and a violation of national law was found in those cases. The Administrative Supreme Court indicated in numerous cases that interviews conducted at the border must be recorded in the form of protocols signed by both Border Guard officers and foreigners. The Court stressed that the lack of proper documentation may have obstructed access to the asylum procedure and that it was incorrect to deprive foreigners of the right to be assisted by their lawyers, who appeared at the border at the time of the border control.

When overruling the decisions of the Border Guard, in most cases the administrative courts discontinued administrative proceedings. This has led to a situation in which foreigners, despite the favourable rulings of the courts, are unable to benefit from judicial protection and have their cases re-examined. During the subsequent border control, a new procedure is being initiated and conducted. According to a statement by the Ministry of the Interior and Administration, the case-law of the Supreme Administrative Court is not applicable in other cases. At the same time, the Ministry refused to introduce amendments to national law to ensure its compliance with the established case-law of administrative courts.

Since 2017, both the number of asylum applications submitted in Poland and the percentage of applications submitted at the border crossing point in Terespol have fallen significantly. It seems that this decrease is caused by the practice of Border Guards, who are not accepting applications for international protection at the border crossings. In this context, the proposed amendments to the asylum law, particularly the introduction of border procedures and a list of safe third countries, seem to be an attempt to institutionalise the unlawful system of sending refugees back from Polish borders.

These changes are part of the European agenda to close the borders to refugees, manifested, among other things, in the proposal of the CEAS reform. It is also manifested in the project of supporting Belarus in activities related to the management of irregular migration. It looks as though the solutions on the eastern border of the European Union are becoming increasingly similar to those which already exist on its southern borders, where, by means of force, legal measures, agreements with third countries and appropriate infrastructure, the practice of returning refugees from EU borders is increasingly sanctioned.





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