

Warsaw, 1 February 2021

L.D./091/2021/DW

Mr. Felipe González Morales
The UN Special Rapporteur on the
human rights of migrants
Office of the High Commissioner for
Human Rights
Palais Wilson, Rue des Paquis, 52
1201 Geneva, Switzerland
migrant@ohchr.org

Dear Mr. Morales,

As a response to your call for submissions on pushback practices and their impact on the human rights of migrants¹, please find our input concerning **Poland**.

As an informal group of 9 organisations (hereinafter: the Consortium)² which provide support to immigrants and refugees in 4 different regions throughout Poland, we appreciate the opportunity to submit this document. The Consortium was formed in May 2017 during a meeting of organisations that support immigrants and refugees from Visegrád Group countries. The following organisations are members of the Consortium: Amnesty International Poland, Migrant Info Point [Fundacja Centrum Badań Migracyjnych], “Our Choice” Foundation [Fundacja Nasz Wybór], the Polish Migration Forum Foundation [Fundacja Polskie Forum Migracyjne], the Helsinki Foundation for Human Rights (hereinafter: HFHR) [Helsińska Fundacja Praw Człowieka], the Polish Hospitality Foundation ([Fundacja Polska Gościnność] as a legal representative of Bread and Salt [Chlebem i solą] informal group), Homo Faber Association [Stowarzyszenie Homo Faber], the Association for Legal Intervention [Stowarzyszenie Interwencji Prawnej], and the Nomada Association [Stowarzyszenie NOMADA].

QUESTIONS

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 pushed 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.

Due to the word limit reserved for this input, we kindly inform that the main legal provisions on the right to seek asylum without being pushed back at the international border, are set out in the

1 Office of the High Commissioner for Human Rights, *Call for inputs for the Special Rapporteur’s report on pushback practices and their impact on the human rights of migrants*, available at: <https://www.ohchr.org/EN/Issues/Migration/SRMigrants/Pages/Pushback-practices.aspx>

² The Consortium, information available at: <https://konsorcjum.org.pl/>

recent judgement of the European Court of Human Rights (hereinafter: ECtHR) *M.K. and Others v. Poland* (Application Nos. 40503/17, 42902/17, 43643/17). which became final on 14 December 2020.³ The provisions are available both in English⁴ and in Polish.⁵

The key legal provisions in this regard can also be found in the English summary⁶ of the report ‘*Access to asylum procedure at Poland’s external borders. Current situation and challenges for the future*’ released by Helsinki Foundation for Human Rights in April 2019 (hereinafter: HFHR’s 2019 report). The full version of the report - containing these provisions in the national language is also available online.⁷

2. 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.

According to the provisions of the law, identification of vulnerable applicants shall be conducted by the Border Guard while registering the application for international protection and by the Head of the Office for Foreigners. The Border Guard shall assess whether an applicant may belong to one of these two groups: victims of trafficking in human beings or persons subjected to torture.⁸ The Head of the Office for Foreigners is obliged to assess whether these persons need special treatment in the proceedings regarding granting international protection or regarding social assistance. However, NGOs report that the system of identification envisaged in the law does not work in practice. In 2019, the UN Committee Against Torture pointed out the problem with the appointment of experts to determine whether the foreigner is a victim of torture.⁹

More detailed information on guarantees for vulnerable groups as well as compliance with them can be found in the ECRE's AIDA Country report on Poland.¹⁰

³ ECtHR, *M.K. and Others v. Poland*, Application Nos. 40503/17, 42902/17, 43643/17, 23 July 2020, final on 14 December 2020, available at: <http://hudoc.echr.coe.int/eng?i=001-203840>

⁴ *Ibidem*

⁵ ECtHR, *M.K. and Others v. Poland*, Application Nos. 40503/17, 42902/17, 43643/17, 23 July 2020, final on 14 December 2020, Non-official translation in Polish available at: <http://hudoc.echr.coe.int/eng?i=001-207580>

⁶ Helsinki Foundation for Human Rights, *Access to asylum procedure at Poland’s external borders, Current situation and challenges for the future*, Warsaw, April 2019, English summary available at: https://www.hfhr.pl/wp-content/uploads/2019/06/0207_report-HFHR-en.pdf

⁷ Helsinki Foundation for Human Rights, *Access to asylum procedure at Poland’s external borders, Current situation and challenges for the future*, Warsaw, April 2019, full version in Polish available at: <https://www.hfhr.pl/wp-content/uploads/2019/04/Dost%C4%99p-do-procedury-azylowej-v2.pdf>

⁸ It is the information required in the asylum application form: Regulation of 5 November 2015 on the asylum application form (Rozporządzenie Ministra Spraw Wewnętrznych z dnia 5 listopada 2015 r. w sprawie wzoru formularza wniosku o udzielenie ochrony międzynarodowej), available (in Polish) at: <http://isap.sejm.gov.pl/isap.nsf/download.xsp/WDU20150001859/O/D20151859.pdf>

⁹ European Commission for Refugees and Exiles, Asylum Information Database, 2019 country report on Poland prepared with the support of Helsinki Foundation for Human Rights, available at: https://asylumineurope.org/wp-content/uploads/2020/04/report-download_aida_pl_2019update.pdf

¹⁰ *Ibidem*

Moreover, in July 2020 in the ruling *M.K. and Others v. Poland* (Application Nos. 40503/17, 42902/17, 43643/17), ECtHR confirmed that persons crossing international border in Terespol might not be properly identified as persons seeking international protection and might be pushed-back to Belarus in breach of international human rights law. The Court also stated that “*the independent reports concerning the situation at checkpoints had indicated that the applicants’ cases had constituted an exemplification of a wider state policy of refusing entry to foreigners coming from Belarus, regardless of whether they had been clearly economic migrants or whether they had expressed a fear of persecution in their countries of origin*”.

3. 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.

First of all, it should be pointed out that Polish domestic provisions do not implement Article 6(1) of the Asylum Procedures Directive correctly.¹¹ In Poland, 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 Polish Ombudsman and numerous NGOs, foreigners appearing at Poland’s eastern border are frequently deprived of the right to apply for asylum.¹² It appears that the practice of the Border Guard in this regard is systemic, which was confirmed by the ECtHR in the *M.K. and Others* ruling.¹³ The decisions on the refusal of entry issued by the Border Guards in such cases which had been challenged before the administrative courts were all overruled and a violation of national provisions was found in those cases. The Supreme Administrative Court delivered 25 judgements concerning the refusal of entry to Poland to asylum-seekers between 2015 and 2018. **These judgments perfectly illustrate the restrictions and limitations both in law and in practice in relation to the right to claim and seek asylum at the external borders of Poland.**

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 **(a) the lack of audio-video monitoring at the border, (b) the lack of presence of external monitors and (c) the lack of access to legal representatives, the only evidence was the official memo drafted by Border Guard officers and attached to the refusal of entry case files**. In its well-established case-law, the Supreme Administrative Court stressed that the official memo drafted 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 signed by both Border Guard officer and the foreigner. The Court also indicated that the questioning or hearing, being a significant part of

¹¹ 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>

¹² Information on these reports can be found in the answer to the fourth question.

¹³ Helsinki Foundation for Human Rights, *Access to asylum procedure at Poland’s external borders, Current situation and challenges for the future*, Warsaw, April 2019, English summary available at: https://www.hfhr.pl/wp-content/uploads/2019/06/0207_report-HFHR-en.pdf

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 Ombudsman, 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.¹⁴ In the examined cases, the Supreme Administrative Court also 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 carried by foreigners, asylum requests included in the appeals against the decisions on the refusal of entry, and interim measures applied by the ECtHR.¹⁵ In a number of cases, the Supreme Administrative Court pointed out that when applying domestic laws concerning the refusal of entry, compliance with the *non-refoulement* principle shall be a manifestation of respect for basic human rights by border control authorities.¹⁶

Although the judgements of the Court resulted in annulment of the unlawful decisions on the refusal of entry, in many cases, the administrative proceedings were discontinued. This means that the refusal of entry proceedings **could not 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 resulting in the decision refusing them entry.¹⁷

In October 2018, the Polish Ombudsman **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,**¹⁸ thus it did not change the described practice.

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

In 2015, NGOs 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. 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

¹⁴ *Ibidem*

¹⁵ *Ibidem*

¹⁶ *Ibidem*

¹⁷ *Ibidem*

¹⁸ 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>

border.¹⁹ Throughout 2016, independent monitoring visits to the border crossing point in Terespol were conducted by: the Association for Legal Intervention,²⁰ Ombudsman,²¹ Helsinki Foundation for Human Rights,²² Amnesty International²³ and Human Rights Watch.²⁴

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.²⁵

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 measures* issued by the European Court of Human Rights.²⁶

At the same time, 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. Furthermore, the 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'.²⁷

The detailed information containing a summary of the situation on the eastern border of Poland in 2015-2019 is available in the HFHR's 2019 report.²⁸

The pushbacks were confirmed in the *M.K. and Others* judgement of the ECtHR which became final on 14 December 2020.²⁹ The judgement contains the detailed analysis of the **circumstances of the events of pushbacks at the Polish border**. The judgement concerns the group of Chechen asylum seekers, who had repeatedly been refused an opportunity to file an application for asylum

¹⁹ 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

²⁰ 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>

²¹ Ombudsman, *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>

²² *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/wpcontent/uploads/2016/11/raport-droga-donikad-EN-web.pdf>

²³ Amnesty International Poland, *Tam i z powrotem: Brześć – Terespol*, 7 December 2016, available at: <https://amnesty.org.pl/tam-i-z-powrotem-brzesc-terespol/>

²⁴ 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>

²⁵ 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/>

²⁶ 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:

https://www.europarl.europa.eu/doceo/document/TA-8-2017-0442_EN.html?redirect

²⁷ Helsinki Foundation for Human Rights, *Access to asylum procedure at Poland's external borders, Current situation and challenges for the future*, Warsaw, April 2019, English summary available at: https://www.hfhr.pl/wp-content/uploads/2019/06/0207_report-HFHR-en.pdf

²⁸ *Ibidem*

²⁹ *Ibidem*

by the Polish Border Guard. The applicants were among the group of persons who received *pro bono* legal assistance at the border crossing with Belarus in Terespol on 17 March 2017, which was provided by attorneys from the Warsaw Bar Association³⁰ working with NGOs such as the Helsinki Foundation for Human Rights, Association for Legal Intervention and Brest-based Human Constanta. On that day the applicants, together with fifty other persons represented by the lawyers from Warsaw, were again refused to apply for asylum in Poland. The Court found that – contrary to the claims of Polish authorities – the foreigners had applied for international protection and that these applications were ignored by the Border Guard. The ECtHR further held that the refusals had been a part of consistent practice at the Terespol border crossing, which was confirmed by sources such as reports of NGOs and Polish Ombudsman. The applicants were granted *interim measure*, in which the ECtHR prohibited Polish authorities from returning the applicants to Belarus. However, in an unprecedented move, the Polish government decided to ignore the order. The applicants later made several, equally unsuccessful, attempts to apply for international protection. The ECtHR found that Poland had **violated** the following articles of the European Convention on Human Rights: **Article 3** due to the risk that Belorussian authorities may hand over the applicants to Russian authorities, who may have the applicants transferred to Chechnya, from where the applicants fled in fear of torture; **Article 4 of Protocol No. 4** - the Court found that Poland had no right to return the applicants to Belarus and that such a practice constituted an element of a wider policy of push-backs conducted by the Polish authorities; **Article 13** - which resulted from the fact that decisions refusing entry were immediately enforceable; **Article 34** in conjunction with Rule 39 of the Rules of Court - namely Polish authorities' refusal to comply with the ECtHR *interim measure* prohibiting the applicant's return to Belarus and obliging Poland to accept the applicants' requests for international protection for a proper review.

Furthermore, the new case on the access to asylum was communicated to the Polish government on 7 September 2017 (*D.A. and Others v. Poland*, Application No. 51246/17) concerning citizens of Syria who were refused entry to Poland at the Terespol border crossing despite *interim measure* granted by the ECtHR.³¹ Another case was communicated on 16 December 2020 (*Jama SHEROV and Others v. Poland*, Applications Nos. 54029/17, 54117/17, 54128/17, 54255/17).³² The case concerns a group of refugees from Tajikistan who at the turn of 2016 and 2017 tried to submit applications for international protection at the Polish-Ukrainian border crossing in Medyka but the Polish Border Guard did not accept these applications and the foreigners were returned to Ukraine.³³

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.

³⁰ Warsaw Bar, Advocates at the Border, information available at: <https://informator.ora-warszawa.com.pl/2018/numer-e382018/projekt-adwokacinagranicy-zakonczyl-sie-sukcesem/>

³¹ ECtHR, *D.A. and Others v. Poland*, Application No. 51246/17, communicated on 7 September 2017, available at: <http://hudoc.echr.coe.int/eng?i=001-177298>

³² ECtHR, *Jama SHEROV and Others v. Poland*, Applications Nos. 54029/17, 54117/17, 54128/17, 54255/17, communicated on 16 December 2020, available at: <http://hudoc.echr.coe.int/eng?i=001-207441>

³³ Helsinki Foundation for Human Rights, information available at: <https://www.hfhr.pl/kolejna-sprawa-odmowy-wjazd-dla-uchodzcow-zakomunikowana-polskiemu-rzadowi-przez-etpc/>

In Poland, in addition to the problems identified above (pushbacks), the **COVID-19** epidemic and the restrictions caused by it also **contributed to the reduction of the number of asylum applications** submitted in Poland in 2020.

The Office for Foreigners has suspended on 16 March 2020³⁴ direct customer service. Personal visits in the office were possible only in matters ‘absolutely necessary’ and only after a prior telephone appointment. Foreigners were asked to contact the Office for Foreigners in writing (by post and e-mail) or by phone. In the building of the Office for Foreigners in Warsaw, there is also a Border Guard Station, where asylum applications are being submitted, which had a significant impact on the access to asylum. The direct customer service was resumed by the Office on 22 May 2020³⁵ and since then foreigners are served in accordance with the sanitary rules resulting from the epidemic status associated with SARS-CoV-2 virus in Poland.

As a result of the introduction of border restrictions, after 15 March 2020, asylum applications were accepted only in ‘urgent cases at border crossings with authorized border traffic’.³⁶ The asylum applications have been registered again from 11 May 2020.³⁷ According to the Border Guard,³⁸ the border service together with the authority competent for examining asylum claims (the Head of the Office for Foreigners), made every effort to develop the right course of action, so that the fundamental rights of persons seeking asylum on the territory of Poland would be guaranteed.³⁹ However, the restrictions introduced after 15 March 2020 at border crossings with authorized border traffic - including **the suspension of international rail connections - caused a large decrease in the intensity of border traffic.**⁴⁰ The Polish Ombudsman confirmed that this situation resulted from the fact that many border crossings have been closed, including the rail border crossing in Terespol most frequently visited by people seeking international protection - it was closed due to the suspension of rail connections.⁴¹ The Ombudsman also stated that the introduction of a pandemic state cannot justify refusing to accept refugees in Poland and pointed out that in *the regulation of the Ministry of Interior and Administration of 13 March 2020 on the temporary suspension or limitation of border traffic at specific border crossing points*, persons intending to apply for asylum were not included as persons allowed to enter the Polish territory, making access to the asylum procedure illusory in many cases.⁴² In the opinion of the Commission of Experts of the Ombudsman, the lack of effective access to the asylum procedure during a pandemic is a violation of international and national law.⁴³

³⁴ Head of the Office for Foreigners, information available at: <https://udsc.gov.pl/en/suspension-of-direct-customer-service/>

³⁵ Head of the Office for Foreigners, information available at: <https://udsc.gov.pl/en/resumption-of-direct-customer-service/>

³⁶ Poland, Border Guard, Border Guard Headquarters (Straż Graniczna, SG), e-mail, 31 March 2020.

³⁷ Poland, Border Guard, Border Guard Headquarters (Straż Graniczna, SG), e-mail, 25, 29 June 2020.

³⁸ Poland, Border Guard, Border Guard Headquarters (Straż Graniczna, SG), e-mail, 31 March 2020.

³⁹ *Ibidem*

⁴⁰ Border Guard, Border Guard Headquarters (Straż Graniczna, SG), statistical data for 2020 available at: <https://www.strazgraniczna.pl/pl/granica/statystyki-sg/2206,Statystyki-SG.html>

⁴¹ Ombudsman, information available at: <https://www.rpo.gov.pl/pl/content/sytuacja-migrantow-pandemii-stanowisko-rpo-i-komisji-ekspertow-ds-migrantow>

⁴² *Ibidem*

⁴³ *Ibidem*

The official statistics show that in the second quarter of 2020, no asylum application was lodged in Terespol.⁴⁴

Nevertheless, during the period when asylum applications were not registered, mostly ‘the declarations of intention to submit the asylum application’⁴⁵ were accepted and registered. Such a declaration may be submitted by e-mail or by post to the nearest Border Guard station.⁴⁶ It is worth mentioning that the persons who ‘declared the intention to submit the asylum application’ are not covered by the medical and social assistance since they are not considered as yet as asylum applicants in the national law.⁴⁷ The Consortium, in the letter to the Minister of Interior and Administration, raised the need to include these persons in the social system for asylum seekers.⁴⁸

As a result of the above, **the number of applications for international protection lodged in Poland in 2020 is at the lowest level in years.**⁴⁹ In 2020, only 1620 applications for international protection (first and subsequent) were submitted which covered 2803 individuals. **It is the lowest number since 1999**^{50 51 52 53 54}. For example in the year 2019, 1958 asylum applications (first and subsequent) were registered, which covered 4095 individuals.⁵⁵

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.

The access to asylum in Poland is still a persisting concern.⁵⁶ After the delivery of the *M.K. and Others* ruling, the Minister of Interior and Administration issued the statement, which shows that

⁴⁴ Border Guard, Border Guard Headquarters (Straż Graniczna, SG), statistical data for 2020 available at: <https://www.strazgraniczna.pl/pl/granica/statystyki-sg/2206,Statystyki-SG.html> .

⁴⁵ ‘The declaration of intention to submit the asylum application’ is the Polish equivalent of the institution indicated in the Article 6 of Directive 2013/32/EU as ‘making application for international protection’. The ‘acceptance of the asylum application’ mentioned in the Border Guard’s statement and the Polish law is respectively the equivalent of ‘lodging’ the application for international protection mentioned in art. 6 of Directive 2013/32/EU.

⁴⁶ Article 70 (1) of the Act on granting protection to foreigners within the territory of the Republic of Poland. Information provided by the Border Guard Headquarter to the Association for Legal Intervention on 25 March 2020 r.

⁴⁷ Article 70 (1) of the Act on granting protection to foreigners within the territory of the Republic of Poland.

⁴⁸ Appeal to the Minister of Interior and Administration, available at: <https://www.hfhr.pl/wp-content/uploads/2020/03/Wyst%C4%85pienie-NGOs-do-MSWiA-2020.03.26.pdf>

⁴⁹ Head of the Office for Foreigners, report, e-mail, 8-9 January 2021.

⁵⁰ Head of the Office for Foreigners, statistical data for the period of 1992-2000, available at: https://udsc.gov.pl/wp-content/uploads/2014/12/41206412b98bd_nsuch_gotowe.xls

⁵¹ Head of the Office for Foreigners, statistical data for the period of 2001-2003, available at: https://udsc.gov.pl/wp-content/uploads/2014/12/4097756888bac_polski.zip

⁵² Head of the Office for Foreigners, statistical data for the period of 2003-2005, available at: https://udsc.gov.pl/wp-content/uploads/2014/12/442266f618809_dane_2003_2005.zip

⁵³ Head of the Office for Foreigners, statistical data for the period of 2006-2008, available at: https://udsc.gov.pl/wp-content/uploads/2014/12/biul_2006_2008_pol.xls

⁵⁴ Eurostat, Asylum and first time asylum applicants by citizenship, age and sex Annual aggregated data (rounded) for 2008-2017, available at: http://appsso.eurostat.ec.europa.eu/nui/show.do?dataset=migr_asyappctza&lang=en

⁵⁵ Head of the Office for Foreigners, report, e-mail, 8 January 2019.

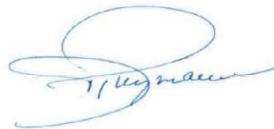
⁵⁶ ECtHR, *M.K. and Others v. Poland*, Application Nos. 40503/17, 42902/17, 43643/17, 23 July 2020, final 14 December 2020, available at: <http://hudoc.echr.coe.int/eng?i=001-203840>

the **challenges and obstacles faced by the NGOs and attorneys regarding the effective access to migrants at the border**, in order to ensure their right to seek asylum, **are still valid**.⁵⁷

The **Minister**, in the answer to one of the MP's question about the violation of the European Convention on Human Rights at the eastern border of Poland, **stated that M.K. and other applicants had not applied for asylum at the border and had therefore been refused entry**. The Minister did not mention that the Court found that the applicants, in this case, had asked for asylum, only their applications had been ignored or that the ECtHR found that the policy of refusing entry at the border was a systemic problem. **The Minister also stated that the interviews conducted at the border are documented only by the mean of an official memo drafted by the Border Guards officer**. However, the Minister did not mention that such practice was found to be inadequate by the Supreme Administrative Court in the numerous judgements.⁵⁸ **The Minister did not mention that according to case-law of the Court, the attorney representing a foreigner should be allowed to participate in the procedures at the border**.⁵⁹ The Minister also stated that *interim measure* is not a basis for allowing a foreigner to enter the territory or for accepting his or her asylum application.⁶⁰

Therefore, the **unlawful practices facilitating push-backs, described in the *M.K. and Others* judgement and numerous rulings of Polish national courts, remain unchanged and access to asylum at the eastern border of Poland is still restricted. Now, in the times of COVID-19, even more than ever.**

Sincerely,



On behalf of the Consortium

Danuta Przywara
President of the Board
Helsinki Foundation for Human Rights

⁵⁷ Minister of Interior and Administration, statement available at: <http://www.sejm.gov.pl/sejm9.nsf/InterpelacjaTresc.xsp?key=BT8J9B>

⁵⁸ Warsaw Bar, Advocates at the Border, information available at: <https://informatorka-warszawa.com.pl/2018/numer-e382018/projekt-advokacinagranicy-zakonczyl-sie-sukcesem/>

⁵⁹ Helsinki Foundation for Human Rights, *Access to asylum procedure at Poland's external borders, Current situation and challenges for the future*, Warsaw, April 2019, full version in Polish available at: <https://www.hfhr.pl/wp-content/uploads/2019/04/Dost%C4%99p-do-procedury-azylowej-v2.pdf>

⁶⁰ Minister of Interior and Administration, statement available at: <http://www.sejm.gov.pl/sejm9.nsf/InterpelacjaTresc.xsp?key=BT8J9B>