

Inspection of the railway border crossing in Terespol

On 11 August 2016, Joanna Subko and Marcin Sośniak, the representatives of the Commissioner for Human Rights conducted an unannounced inspection of the railway border crossing in Terespol. This is one of the most important points where applications are lodged for international protection by foreigners in Poland.

The inspection was conducted in response to the information received by the Commissioner for Human Rights that a group of around 500 foreigners was attempting to enter the territory of Poland for some time in order to apply for the above-mentioned protection. According to the received information, the Border Guard officers performing the border check procedure do not accept declarations from foreigners about the intention to file for protection, thus preventing them from submitting a relevant application. As a result, they refuse foreigners the right to enter the territory of the Republic of Poland. Despite such a refusal, foreigners repeat their attempts to cross the border, with the same result.

1. The situation at the border crossing as at the inspection date.

On 11 August 2016 **436 foreigners** without visas or any other residence permits allowing them to enter and stay on the territory of Poland tried to cross the border in Terespol. Out of the 436 people, 223 were under 18 years of age. The majority, that is as many as 416 foreigners were the citizens of the Russian Federation (in most cases they declared to be of Chechen nationality). Others came from Armenia (6 persons), Azerbaijan (5 persons), Tajikistan (5 persons) and Belarus (4 persons).

The majority, that is **406 foreigners were refused the right of entry into Poland by the Border Guard** who issued respective administrative decisions in that regard. All decisions were justified by the lack of the right to enter (i.e. visa or permit), which would allow its holder to cross the border. As a result of receiving such a decision, people had to go back to Belarus (the return train to Brest left at around 11:30). Among those who were sent back to Belarus on the inspection day, there were all the foreigners from Azerbaijan, Armenia, Tajikistan and Belarus. **Border Guard officers accepted on that day only 7 applications for international protection.** Those applications covered **a total of 31 persons** (11 adults and 20 children). All applicants were Russian citizens and, as they declared, they came from Chechnya. All of them were allowed to enter the territory of Poland.

2. The scope of the conducted inspection.

The employees of the Office of the Commissioner for Human Rights, as the only representatives of organizations and institutions who have inspected the border crossing so far, were allowed to participate, as observers, in interviews conducted by Border Guard officers with foreigners willing to cross the border. Such interviews aim to determine the purpose of each foreigner's visit to Poland. When they are held, on the basis of information provided by a given foreigner, the officer who conducts the border check procedure decides whether a foreigner will be considered as an individual seeking international protection and will be able to apply for such protection or whether he/she will have to stay in Belarus after the decision refusing him/her the right to enter the territory of Poland. Inspectors were

witnessing such interviews for around 2 hours; they were monitoring 3 border crossing posts at that time. In this way, the Commissioner's representatives participated in interviews with 79 families trying to cross the border on that day.

Apart from monitoring respective stages of the border check, the employees of the Office of the Commissioner for Human Rights also conducted an analysis of selected administrative proceedings which resulted in the refusal of the right to enter Poland. What was also subject to evaluation was the system of accepting, and keeping records of, complaints lodged by travelers and addressed to the Commander of the inspected unit. Inspectors paid particular attention to the conditions at the border crossing, including, in particular, the standard of facilities used by foreigners awaiting border check and then the decision about the refusal of entry or possibly the acceptance of the application for international protection.

3. Conditions on the inspected border crossing and the organization of border checks.

The railway border crossing in Terespol is located in a separate, two-storey building. On the ground floor of that building there is a border check hall and a waiting room used, among others, by foreign nationals awaiting the negative decision refusing entry into Poland. The first floor houses administrative offices of the Border Guard, including rest and refreshment rooms which are made available to people waiting for the acceptance of their application for international protection, as well as two rooms for individuals who may pose a risk to safety and order.

There is an underground passageway leading from the platform at which the Brest-Terespol train stops, to the border check hall. The passageway is accessible by stairs or elevator located directly at the platform. When there is a huge number of people entering Poland **a queue of people awaiting border check forms in this relatively narrow passageway**. In such situations, due to crowd in the passageway, **the waiting itself becomes uncomfortable and in extreme cases it may even pose a risk to travelers' health**.

In the border check hall, border control and customs control are conducted separately for those entering the territory of Poland and leaving it. Passport control for individuals coming to Poland is performed at three border check stands. Behind them there are customs stands where, among other things, travelers' luggage is inspected. After customs clearance foreigners, one by one, approach one of four stands where Border Guard officers are supposed to determine or confirm the purpose of each person's visit to Poland during an individual interview (officers call such an interview a *preliminary questioning*). Every stand has a table and several chairs. **Three out of the four stands are situated at such a short distance from each other that conducted interviews may be easily overheard by third parties (e.g. other foreigners). Lack of any intimacy during such interviews is particularly disturbing when foreigners talk about their personal life.**

After the interview, based on obtained information, a Border Guard officer determines whether the purpose and conditions for the arrival to Poland that a respective foreigner mentioned could be considered plausible and justified. If such interviews are conducted with persons who have a document allowing them to enter Poland (e.g. a visa or residence permit), which they were not aware of, after the confirmation of the purpose of the visit they are admitted to enter Poland. In case of foreigners who do not have such documents, the interview with a Border Guard officer leads, *de facto*, to the assessment whether a given

person should be considered international protection seeker, in which instance the Border Guard officer is obliged to accept an application for such protection and allow him/her to enter the territory of Poland or whether a negative decision should be issued and a given person should be refused the right of entry. If, following such an interview, a foreigner is considered an international protection seeker, an officer directs him/her to the elevator or stairs leading to the first floor where in social rooms he/she awaits the acceptance of the relevant application. A foreigner who is qualified for the entry refusal is directed to the waiting room adjacent to the border check hall. This is where he/she waits until an administrative decision is issued by the Unit Commander to refuse the right of entry to Poland. There are only a dozen or so chairs in the waiting room, so most foreigners, including persons with small children, wait for the issuance of the decision in standing position. It should be pointed out here that after the conclusion of the interview with a Border Guard officer, foreigners are not informed whether they will be allowed to enter Poland or whether they will have to return to Belarus. They live in that uncertainty until they receive the decision declining them the entry.

Decisions refusing the right to enter are handed to foreigners at the desks intended for border checks of travelers leaving Poland. Each person who was refused entry, after hearing his/her surname approaches one of the desks where he/she receives the relevant decision. The receipt of the decision is confirmed by placing a signature, unless someone refuses to do so. However, such a refusal is not, by and large, indicated on the copy of the decision that is kept on record. Having received the decision, foreigners go via the underground passage back to the platform at which the return train to Brest is waiting. One should bear in mind that there are exceptions to the above-mentioned procedure. It sometimes happens that foreigners who in the interview with an officer declared their intention to apply for international protection and that declaration is recorded by the officer, are directed in the first instance to the waiting room and only after a while they are moved to that part of the building in which applications for the said protection are filed.

4. Interviews conducted by the Border Guard officers with foreigners travelling without visas or other documents allowing them to cross the border - observations of inspectors.

Interviews held after passport control and customs clearance are one of the stages of the border check, during which, in compliance with Article 25 (1) of the Act dated 12 December 2013 on foreigners (Journal of Laws - Dz. U. of 2013, item 1650, as amended) every person intending to enter Poland should present and justify the purpose and conditions of the planned stay in our country. At this stage individuals who undergo preliminary questioning are not considered international protection seekers nor do they receive the status of an applicant in the proceedings to grant such protection.

Inspectors, as observers, participated in **79 of such interviews**. They were all conducted in Russian, a language that was understood by foreigners. The questions that officers posed focused on determining the ultimate destination of foreigners, reasons for leaving the country of origin and coming to Poland. Foreigners were also asked about the sources of income they had in the country of origin (or possible in the country of their current residence), family that was left behind, plans associated with their stay in our country. The duration of individual interviews was, on average, 1 to 4 minutes.

In 62 cases, individuals who underwent preliminary questioning did not declare the intention to apply for international protection in Poland at all. They did not even provide information which could suggest that they came to Poland with such an intention. As the reason for their arrival they most commonly mentioned the willingness to improve living conditions, find employment or ensure better education and prospects for the future for their children.

In the course of observed interviews **representatives of 5 families explicitly declared to the officer their intention to file an application for international protection.** They were using a Russian term for a refugee: *беженец (bieżeniec)*. However, **only one from those families was allowed to file such an application. During 12 other interviews,** when asked by Border Guard officers about the reason for leaving their country, **foreigners were describing situations or events which could indicate a coercive nature of that step as they experienced persecution in the meaning of the Convention on the refugee status drawn up in Geneva on 28 July 1951 (Journal of Laws - Dz. U. of 1991, No. 119, item 515, as amended) or the risk to life, personal freedom or safety, resulting from the general situation persisting in the country of origin. From that group also only one family was given the possibility to file an application for international protection.**

In each case, whenever foreigners' answers mentioned risks persisting in the country of origin, officers asked several additional questions about, among other things, specific incidents that could prove such risks and the fact whether such incidents were reported, for example, to law enforcement agencies. In the view of inspectors, although that is a subjective opinion, officers did not attach much importance to information provided in such cases by foreigners and they were focusing more on proving that the reason for leaving the country was of economic nature. After questions about possible risks, they very often moved on to ask further about a profession performed in the country and the intention to find employment in Poland. The declaration of such an intention itself, although again that is the subjective opinion of inspectors, in many cases sufficed for an officer to assume that a given foreigner came to Poland for economic reasons, despite his/her concerns of other nature.

The course of each interview is documented in the form of an entry in a log that an officer maintains (the so called rough draft of the team dealing with preliminary refugee procedures). Such an entry contains only information concerning foreigners' personal details and details of other members of family who accompany him/her, the country of origin, passport numbers and, what is most important, the purpose that the foreigner gives for coming to Poland. The last piece of information is recorded in the form of laconic statements, such as *going to Germany; doesn't want to live with her husband; has no money; wants to live in Poland*. In case the interview results in the refusal to enter the territory of Poland, identical information concerning the purpose of arrival is included in the memo. The memo is attached to the files of the administrative proceedings in which the decision is issued to refuse the right of entry. **This way of documenting interviews which have paramount importance for a possible recognition of a foreigner as a person seeking protection against persecution in the country of origin should be deemed highly insufficient.** Firstly, based on an entry made by an officer, **it is not possible to reconstruct, even roughly, the course of the interview.** Secondly, **a foreigner has no chance to inspect the entry,** and hence cannot in any way refer to it or set the information right.

5. Conditions in rest rooms intended for people awaiting the acceptance of their applications for international protection.

Persons who are considered international protection seekers are directed to rest and refreshment rooms after the preliminary questioning described above. Three such rooms are available to such individuals: the first one plays the role of a waiting room, the second one is the kitchen where it is possible to prepare a meal (self-catering, using own products), in the third one a small playroom for children has been arranged. Foreigners may also use a toilet which is located nearby. Further administrative steps associated with the acceptance of the application for international protection are performed in neighboring rooms adjacent to the rest and refreshment facilities. The whole procedure of accepting applications takes around 10 hours. During that time foreigners may leave the premises of the border crossing, e.g. in order to do shopping, only if they are accompanied by Border Guard officers. Following the acceptance of the application and issuance of an identity document, foreigners leave the Border Guard building and are directed to an open center for foreigners applying for international protection. The center is run by the Office for Foreigners.

6. Conditions in rooms intended for isolating individuals who may pose a risk to safety and order at the border crossing.

On the first floor of the building there are also two rooms for foreigners considered by Border Guard officers as posing a threat to safety and order. Those rooms are connected by a joint corridor where a bathroom with a toilet is located. There is no furniture in those rooms and windows are secured with crates. Personal belongings and luggage must be left before the entrance door. Doors leading to the rooms are not locked, yet there are at least two Border Guard officers who exercise constant supervision over foreigners staying in those facilities. As explanations provided by the Commander of the inspected institution indicate, foreigners may stay in those rooms until they either receive a decision refusing them the entry and in that case they are directed towards the train returning to Belarus or until their application for international protection is accepted.

Apart from individuals who actually committed acts posing a threat, those rooms are also occupied by persons in relation to whom there is only suspicion of posing a threat as well as all men travelling on their own who arrive in groups of foreigners without visas or other documents allowing them to enter the territory of Poland. **In such cases, the restriction of freedom that this temporary isolation constitutes should be considered unacceptable and ungrounded from a legal point of view.**

7. Procedures of accepting and registering complaints concerning actions taken by Border Guard officers, addressed to the Commander of the Post as well as appeals lodged by foreigners against Commander's decisions refusing the right of entry.

As can be concluded from explanations provided by the Commander of the inspected Post, all complaints concerning actions taken by officers or their behavior that are addressed to the above-mentioned institution are recorded in the special register. In that document in respective tables one enters information about, among other things, the date of the complaint receipt, the complainant, the subject matter of the complaint as well as the date and method

of the complaint's settlement. The records in that document show that in 2016 only 3 complaints have been lodged, the last one was from April of this year.

In line with the current practice, only complaints drawn up in Polish are accepted for examination. Complainants who use other languages are requested in writing to submit a translation of the complaint into Polish. In that respect the Border Guard recalls the provisions of the Act of 7 October 1999 on the Polish language (Journal of Laws - Dz.U. of 2011, No. 43, item 224, as amended), which make Polish the official language.

The Border Guard Post separately collects documentation relating to appeals lodged by foreigners against the decision refusing them entry to Poland. Such documentation consists of the copies of appeal letters together with copies of cover letters in reference to which appeals were sent to a higher instance institution. It should be pointed out that in many lodged appeals foreigners stated that during preliminary questioning they declared their intention to apply for international protection in Poland, yet that declaration was not recorded on paper by the Border Guard officer.

Conclusions

- The building of the inspected border crossing is not suitable for handling more than 400 people awaiting border check at one time. None of the places which are available for travelers ensures them proper conditions for waiting for the border check. Additionally, the fact that a huge number of those waiting stand in a narrow and poorly ventilated underground passage may pose a risk to their health.
- Likewise, proper conditions were not ensured in the waiting room where those awaiting the decision to refuse them the right of entry to Poland are directed. In this case, the comfort of many hours of waiting could be improved by, for example, increasing the number of available chairs in that area.
- What gives rise to serious reservations is using isolation on foreigners solely on the basis of a presumption that they may potentially pose a danger to order and safety at the border crossing. What is unacceptable is the practice of putting in isolation, by principle, all men traveling on their own. Conditions in isolation rooms are not appropriate: lack of chairs in this case constitutes unnecessary hardship.
- Interviews aimed at determining the purpose of each foreigner's arrival to Poland, which are of huge importance for possible recognition of a foreigner as an international protection seeker, are conducted in conditions that do not ensure at least a minimum sense of intimacy. Such conditions coupled with a short duration of interviews, necessitated by a huge number of travelers and the departure time of the return train, may affect the course of the conversation and particularly the way foreigners reply to posed questions.
- Interviews mentioned in the preceding item undoubtedly constitute one of the stages of the border check process during which, in accordance with Article 25 (1) of the Act on foreigners, every person intending to enter Poland should present and justify the purpose and conditions of the planned stay in our country. However, if during the interview a foreigner mentions circumstances indicating the intention to apply for international protection in Poland, a relevant application should be accepted from such an individual. This is the task of the Border Guard. Provisions of the Act of 13 June 2003 on granting protection to foreigners on the territory of the Republic of Poland

(Journal of Laws - Dz.U. of 2012, item 680, as amended) do not provide for the possibility of any preliminary verification of data provided by a foreigner performed by the Border Guard officer. The procedure used by the Border Guard for conducting such interviews should be carefully checked, especially in terms of its compliance with applicable legal provisions.

- The inspection confirmed some cases when Border Guard officers did not allow foreigners to file an application for international protection even though they either directly declared such an intention during the interview or mentioned some circumstances which may show that they were persecuted in the country of origin.
- Another aspect that gives rise to reservations is the system of accepting complaints. Its availability and operational effectiveness are doubtful. The Border Guard accepts for examination only those complaints that are drawn up in Polish. Complainants who use other languages are requested in writing to submit a translation of the complaint into Polish. Such a procedure may deter foreigners from exercising their right to lodge complaints.