



Permanent Mission
of the Republic of Poland
to the United Nations Office
at Geneva

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The Permanent Mission of the Republic of Poland to the United Nations Office at Geneva presents its compliments to the Office of the UN High Commissioner for Human Rights.

With reference to a joint urgent appeal of the Special Rapporteur on the human rights of migrants; the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment (Ref: UA POL 5/2021) the Permanent Mission of the Republic of Poland has the honour to transmit to the Office of the High Commissioner for Human Rights its reply.

The Permanent Mission of the Republic of Poland to the United Nations Office at Geneva avails itself of this opportunity to renew to the Office of the UN High Commissioner for Human Rights the assurances of its highest consideration.



Geneva, 27 September 2021

**Special Rapporteur on the human rights of migrants;
Special Rapporteur on the right of everyone to the enjoyment of
the highest attainable standard of physical and mental health;
Special Rapporteur on torture and other cruel, inhuman or
degrading treatment or punishment;
Office of the UN High Commissioner for Human Rights**

Geneva

Reply to the joint urgent appeal from the Special Procedures

Replying to the joint urgent appeal from the Special Procedures (Special Rapporteur on the human rights of migrants, Special Rapporteur on the right of everyone to the right of enjoyment of the highest attainable standard of the physical and mental health and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment) ref. UA POL 5/2021 dated September 3, 2021 I would like to note what follows.

The Polish-Belarusian state border separates the territory of the Republic of Poland from the territory of the Republic of Belarus. Its course and legal status was finally confirmed and regulated by the *Agreement between the Government of the People's Republic of Poland and the Government of the Union of Soviet Socialist Republics on legal relations on the Polish-Soviet state border and cooperation and mutual assistance in border issues*, signed on 15 February 1961 (initially, its course was defined by the *Agreement between the Republic of Poland and the Union of Soviet Socialist Republics on the Polish-Soviet state border*, signed on 16 August 1945, and some subsequent detailed agreements). Under Article 2 of the *Treaty between the Republic of Poland and the Republic of Belarus on good neighbourhood and friendly cooperation*, signed in Warsaw on 23 June 1992, the Parties confirmed their border and recognised it as inviolable.

Article 41 of the above-mentioned 1961 Agreement obliges the parties – both Poland and Belarus (which is a legal successor of the USSR) – to take appropriate measures to prevent illegal border crossing by any persons. Specialised uniformed formations have been designated by each Party to guard the common state border. None of the aforementioned agreements contain provisions authorising the crossing of a national border for humanitarian reasons.

Pursuant to Article 1(2)(1) and Article 1(2)(2a) of the Act on the Border Guard, the tasks of the Border Guard include protecting state borders on land and at sea as well as preventing and counteracting illegal migration. These tasks are carried out with due diligence, on the basis and within the limits of the law, as required by the national law and also the European Union law. It should be recalled that the eastern border of Poland is at the same time the external border of the European Union, which can be crossed in designated places, i.e. border crossing points.

Due to the recently intensified influx from Belarus of third-country nationals crossing or attempting to cross the border illegally, the Border Guard had to take steps to strengthen the protection of the state border and to ensure state security and public order, as well as to protect public health. In view of the level of threat for the state border, cooperation with the Ministry of National Defence was launched. Pursuant to *Decision Z-4/MON of the Minister of National Defence of 15 July 2021 on the use of divisions and subdivisions of the Polish Armed Forces to provide assistance to the Border Guard under Article 11b(1) of the Act of 12 October 1990 on the Border Guard*, Border Guard officers are currently supported in their task of protecting the state border by the Polish Armed Forces.

Moreover, it might be supposed that the foreigners mentioned in the urgent appeal may have entered the territory of Belarus legally, following which they were taken by Belarusian border guards to the vicinity of the state border with the Republic of Poland and then urged to cross that border illegally. It also needs to be emphasized that the number of persons at the site in question has been constantly changing. It appears that Belarusian services move foreigners from one place to another. In the beginning, the group consisted of about 10 people. At its peak, there were even about 60-70 people there. On 20 August 2021, approximately 30-32 people remained at this location. On the following day it was again observed that the Belarusian services had taken some people out of the site, bringing in other people and thus making a kind of rotation there. According to the information of the Ministry of the Interior, on 1 September 2021 there may have been 24-30 persons in the site.

Given that the foreigners staying at the above mentioned site are outside the territory of the Republic of Poland, the Polish Border Guard does not have a legal possibility to undertake the relevant verification and inspection activities in order to check their identity or to perform any other activities in respect of them, as this would constitute a violation of the border and an obvious interference into the territory of another state (Belarus).

The Polish Border Guard officers are not allowed to cause goods and merchandise to be moved across the border in an unregulated manner. Therefore, due to the lack of a lawful possibility to provide assistance to foreigners directly across the border, Polish authorities decided on 22 August 2021 to offer humanitarian assistance to Belarus to be designated for foreigners, and sent a diplomatic note in this regard. The humanitarian aid convoy was

prepared and set off towards the Bobrowniki border crossing already on 23 August 2021. The Belarusian side has however not allowed the convoy to enter.

On 27 August 2021 the Polish Ministry of Foreign Affairs addressed another diplomatic note to the Belarusian authorities (to the Embassy of the Republic of Belarus in Warsaw) referring to the difficult situation of the group of foreigners staying on the territory of Belarus in the vicinity of the Polish border. By the aforementioned diplomatic note the Polish side also explicitly asked the Belarusian authorities to urgently provide this group of persons with food, water, clothing, access to sanitary facilities, adequate medical care and temporary shelter. At the same time the Polish Ministry of Foreign Affairs recalled the readiness of the Polish side to provide assistance in kind, as declared by the diplomatic note of 22 August 2021. It also noted that no agreement had been granted yet by the authorities of Belarus for the delivery of the assistance offered. The Polish Ministry again declared readiness to send immediately a convoy with humanitarian aid requested by the Court. It also requested the Ministry of Foreign Affairs of the Republic of Belarus to indicate the most urgent needs as to be assessed by the Belarusian side and its competent services. The Belarusian side has not responded yet to the second diplomatic note sent by Poland.

Nevertheless, according to the observations of the Polish Border Guard officers who are on duty in the area at stake, the Belarusian services regularly deliver food, drinks, clothes, fuel and other most necessary goods to the site. Moreover, it cannot be excluded that assistance is also provided by NGOs operating on the territory of Belarus, as well as by representatives of the UNHCR accredited in Belarus, since Belarus is a party to the Convention Relating to the Status of Refugees, adopted in Geneva on 28 July 1951.

The foreigners in question have not submitted applications for asylum (international protection) on the territory of the Republic of Poland, as they are not staying on that territory. The procedure for receiving applications for granting international protection on the territory of the Republic of Poland does not take into account a situation of receiving applications outside this territory, i.e. when a foreigner stays behind the state border line, on the territory of another state (in this case on the territory of Belarus).

The Act on granting protection to foreigners within the territory of the Republic of Poland of 13 June 2003 in its Article 1 states that it defines the principles, conditions and procedure for granting protection to foreigners within the territory of the Republic of Poland.

Pursuant to Article 24(1) of this Act, a foreigner shall submit the application for granting international protection to the Head of the Office for Foreigners through the commanding officer of the Border Guard division or the commanding officer of the Border Guard post. At this point it should again be emphasised that the Border Guard cannot interfere and conduct its activities on the territory of another state.

Therefore, it is not possible for the Polish authorities to receive applications for granting international protection from foreigners staying on the Belarusian side. Neither does the aforementioned Act allow an application to be received through a proxy. Article 26(1) of the Act clearly states that the applicant shall submit the application for international protection in person. On the other hand, Article 28(2)(2) of the *Act on Foreigners* of 12 December 2013 stipulates that a foreigner who, during border control, has declared his/her intention to apply for international protection or has submitted such an application, shall not be refused entry. This provision regulates the situation in which a foreigner intends to cross the border of the Republic of Poland in a place intended for this purpose, i.e. at a border crossing point.

Any action taken from the territory of the Republic of Poland in respect of persons staying on the territory of the Republic of Belarus, without the consent of the Belarusian side, would constitute an interference in the territory of Belarus. Therefore, Border Guard officers cannot allow such contacts by third parties.