



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

4200/29-3/2022/276

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 communication of the Special Rapporteur on the human rights defenders; the Working Group on Arbitrary Detention; the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; the Special Rapporteur on the human rights of migrants and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment (Ref: AL POL 1/2022) 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, 22 March 2022



Warsaw, 18 March 2022

**Ministry
of Foreign Affairs
Republic of Poland**

Secretary of State
Piotr Wawrzyk

Dear Special Rapporteurs and Experts,

On behalf of H.E. Prof. Zbigniew Rau, Minister of Foreign Affairs of the Republic of Poland, I would like to thank you for your letter dated January 24, 2022 (Ref. No.: AL POL 1/2022), concerning the situation on the Polish-Belarusian border as well as for your interest in the matter. Attached please find answer by the Polish party to your letter.

Please let me also assure you of Poland's constant readiness to cooperate with your mandates on matters related to promotion and protection of human rights and fundamental freedoms.

Yours sincerely,

Piotr Wawrzyk
Sekretarz Stanu

To the kind attention of:

Ms. Mary Lawlor, UN Special Rapporteur on the situation of human rights defenders

Ms. Miriam Estrada-Castillo, Vice-Chair of the Working Group on Arbitrary Detention

Ms. Irene Khan, UN Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression

Mr Filipe González Morales, UN Special Rapporteur on the human rights of migrants

Mr Nils Melzer, UN Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment

Al. J. Ch. Szucha 23
00-580 Warsaw

Phone: +48 22 523 72 41

Fax: +48 22 523 72 43

pwawrzyk.sekretariat@msz.gov.pl

**Attachment to letter by H.E. Piotr Wawrzyk
Secretary of State in the Ministry of Foreign Affairs of the Republic of Poland**

Reply to the letter No. AL POL 1/2022 by UN Special Procedures

Referring to the letter received from Special Procedures of the UN Human Rights Council dated January 24, 2022 (Ref. No.: AL POL 1/2022), concerning the alleged attacks on and harassment of human rights defenders, providing assistance to migrants near the Poland-Belarus border, Poland is pleased to present the following explanations:

I. General clarification concerning protection of the border

Since mid-2021, increased migratory pressure of an unprecedented scale has been observed on the Polish-Belarusian section of the state border. As a result, specific and strong countermeasures have been taken to ensure the security of Poland's border. Protecting the state border and preventing irregular migration is one of the statutory tasks of the Border Guard. The actions performed by the Border Guard were carried out according to and within the limits of the applicable law.

As part of further remedial actions, a state of emergency was introduced on September 2, 2021 on the basis of the Regulation of the President of the Republic of Poland of September 2, 2021 on the introduction of a state of emergency in parts of Podlaskie and Lubelskie provinces. Its introduction was dictated by a particular threat to the security of citizens and public order, linked to the situation at the national border of the Republic of Poland with the Republic of Belarus. As a consequence, certain restrictions on freedoms and rights were imposed in the area, including a ban on entering the whole area affected by the state of emergency, except for the selected categories of persons (e.g. residents).

At that time, numerous attempts took place in the frontier zone to forcefully cross the border, which involved the use of dangerous objects. The Belarusian services also staged provocations targeting the Polish Border Guard officers and soldiers of the Polish Armed Forces. Staying around the Poland-Belarus border, in the immediate vicinity of the border line, could pose a threat to the safety of bystanders, which continues to be the case. The provocations in question include incidents where Belarusian officers point weapons at persons on the Polish side, feign shots and fire shots most probably using blank ammunition, as well as using pyrotechnics.

The state of emergency was effective until November 30, 2021.

On November 17, 2021, the President signed an act amending the *State Border Protection Act*, which entered into force on December 1, 2021. In accordance with the amended provisions of the Act, in particular Article 12(a)(1) thereof, where security or public order must be ensured in the frontier zone in connection with a threat to the life or health of persons or property resulting from the unlawful crossing or attempted crossing of the state border, or in

connection with a justified risk of other offences, a temporary ban may be imposed on entering certain areas within a frontier zone adjacent to an external border.

Following this amendment, the Minister of the Interior and Administration issued the regulation of November 30, 2021 introducing a temporary ban on entering certain areas in the frontier zone adjacent to the state border with the Republic of Belarus. This ban was in force from December 1, 2021 to March 1, 2022 and applied to 183 localities.

Importantly, in accordance with Article 12(b)(2) of the amended *State Border Protection Act*, as of December 1, 2021, in justified cases, the commander of a Border Guard post with local jurisdiction may allow entry to the prohibited area, for a specified period and under certain conditions. This applies in particular to journalists within the meaning of Article 7(2)(5) of the Act of January 26, 1984 – *Press Law*.

Furthermore, it should be stressed that if Border Guard officers receive information from activists that foreign nationals are illegally present on Polish territory, they always act on such a notification, go to the place indicated by the activists, proceed with initial control and verification activities and, if necessary, call medical assistance. Where a foreign national grants the power of attorney to a third party (activist), the power of attorney is taken into account in the course of the activities carried out and the representative has the full right to communicate with his/her principal.

II. Individual cases

Referring to the individual cases mentioned in the letter, according to information obtained from the Provincial Police Headquarters in Białystok, the Command Support System does not contain records to indicate that on November 26, 2021 Police officers intervened against Mr Jakub Sypiański, an activist of *Grupa Granica*, in the area of Michałowo. This is evidenced not only by the lack of official documentation on the incident and information in Police IT systems, but also by the interview given by Mr Jakub Sypiański on December 2, 2021 to a *Polityka* journalist, in which he described the course of the incident in detail. In Mr Jakub Sypiański's account there is no mention of Police officers' involvement in the incident. According to the statement made by the Commander of the Podlaskie Border Guard Unit on the event of November 26, 2021 with the participation of Border Guard officers, it was confirmed a fact that, inter alia, Mr Jakub Sypiański's ID card was checked on that day around 1 a.m. in the vicinity of the location of Nowa Wola. The reports presented by the Border Guard officers participating in the incident show that the persons towards whom the activities were undertaken, treated the officers in an unfriendly manner and refused to follow the instructions given to them. The activities were taken due to justified suspicion that the persons checked could be involved in collecting perpetrators of illegal border crossing.

It was also confirmed that on November 26, 2021 in the afternoon, Mr Jakub Sypiański, together with [REDACTED] contacted the Border Guard Post in Michałowo in order to obtain data of the military unit involved in the night event. During the visit, Mr Jakub Sypiański underlined that he had no objections to the activities performed by the Border Guard officers. It should be also stated – after appropriate checks and analysis of service documents – that the Border Guard officers

reacted adequately to the situation, within the limits of and with respect to the law. This can also be confirmed by the fact that Mr Sypiański has not filed a complaint or petition in relation to the incident.

According to Article 3(2) of the *Military Police and Military Law Enforcement Bodies Act* of August 24, 2001, the Military Police are the competent authority to conduct preparatory proceedings in cases where such persons are suspected of having committed a prohibited act punishable by law. For the above reason, the report on the intervention of November 16, 2021 was sent to the Military Police department in Białystok which instigated a review procedure, case no. WPs37/21, regarding an act under Article 231(1) of the Criminal Code.

As regards the reporters Mr Maciej Nabrdalik, Mr Maciej Moskwa and a photojournalist (not mentioned by name in the letter by Special Procedures), detained on November 16, 2021, Police officers intervened near the village of Wiejki following a request from the Polish Armed Forces. In this case, the activities carried out were limited to checking the journalists' identities, offering them medical assistance, and informing them that they had the right to submit a complaint concerning the intervention to the Municipal Police Headquarters in Białystok. With these, the Police officers completed their activities with regard to the above-mentioned persons. It should be stressed that according to reports by Police officers, Mr Maciej Moskwa [REDACTED] whereas information available online indicates that he is a Polish photographer, [REDACTED] and [REDACTED]. [REDACTED] Therefore it is incomprehensible why accusations levelled at the Polish side claim that Mr Moskwa neither speaks nor understands Polish and that, according to his own statement, he was denied the assistance of an interpreter during the police investigation.

The chief of the Municipal Police Headquarters in Białystok has not yet been notified of a crime or an offence committed by Mr Jakub Sypiański or Mr Maciej Moskwa, or by other persons accompanying them during the events described in the letter by Special Procedures. Moreover, the above-mentioned persons have not yet lodged any complaint about the actions or failure to act by Police officers with regard to the events of 16 and 26 November 2021.

As for the described event of November 30, 2021 in the area of Narewka, concerning Ms Olivia Kortas and Mr Christoph Kürbel, please be kindly informed that there is no confirmation in the IT systems and service documentation of possible involvement of Border Guard officers in the event in question.

III. Actions undertaken by the Polish Armed Forces

It should also be added that the operation to protect the state border is conducted pursuant to classified documents: decision Z-4/MON of the Minister of National Defence of July 15, 2021 on the use of troops and sub-units of the Polish Armed Forces to assist the Border Guard and decision Z-47/DORSZ of the Minister of National Defence of August 9, 2021 on allocating troops and sub-units of the Polish Armed Forces to assist the Border Guard. These documents shall not be published under the provisions of the *Protection of Classified Information Act* of August 5, 2010. Additionally, on August 11, 2021 the President of the Republic of Poland approved decision Z-4/MON on the use of troops and sub-units of the Polish Armed Forces to assist the Border Guard.

Activities of the Polish Armed Forces (including the Territorial Defence Forces) are undertaken as part of the operation by the Armed Forces Operational Command to support the Border Guard in the border crossing territorial scope and in the frontier zone, pursuant to Article 11b of the *Border Guard Act* of October 12, 1990. According to section 5 of the aforementioned provision, soldiers serving in troops and sub-units of the Polish Armed Forces allocated to assist the Border Guard are, to the extent necessary for the fulfilment of their tasks and with regard to all persons, vested with powers of Border Guard officers stipulated in Article 11(1)(2), (4-5a), (5b)(a and b), (6), (7), (7a) and (10), as well as in Article 23 of the said Act. These powers shall be exercised in accordance with the rules and under the procedure set out for Border Guard officers. Thus, soldiers support Border Guard officers in the physical protection of the state border and in the patrolling of the protected area. However, they do not take part in administrative activities carried out with regard to foreign nationals.

Soldiers of the Territorial Defence Forces in active military service referred to in Article 59(1)(3) of the Act of November 21, 1967 on the *Universal Duty to Defend the Republic of Poland*, i.e. non-professional military service, as well as professional soldiers within the meaning of the Act of September 11, 2003 on the *Military Service of Professional Soldiers*, who on 26 and 30 November 2021 detained the persons in question had been, in the case of non-professional soldiers, assigned in turns during their territorial military service to perform their duties outside their parent army unit to assist the Border Guard, or had been seconded for this purpose following a decision by a military human resources office.

Activities undertaken by the Territorial Defence Forces soldiers, which entailed i.a. checking ID documents or detaining persons, were in each case based on universally binding provisions of law, and in particular resulted from powers which under Article 11b(5) of the *Border Guard Act* were conferred on them to the extent necessary to perform their duties. Additionally, every incident was reported to representatives of the Border Guard.

It should also be added that during their military service, soldiers of the Polish Armed Forces take part in a number of training courses and exercises that coordinate and maintain their preparedness and readiness to carry out their tasks at the highest possible level. This includes both practical training (e.g. training ground exercises and camps, certification of sub-units of the Polish Armed Forces, shooting exercises, etc.) as well as theoretical training held regularly in lecture halls of military units where soldiers do their military service (the classes cover such topics as the International Humanitarian Law of Armed Conflicts, the rules for operating and using firearms as well as measures of direct coercion, and many others). The training is based on normative documents governing the legal order of the Republic of Poland (e.g. the Criminal Code or the Code of Administrative Offences) as well as normative documents issued by the Minister of National Defence that govern training courses for soldiers.

IV. Compliance by Poland with interim measures indicated by the European Court of Human Rights

Since the beginning of the current migratory and humanitarian crisis on the Polish-Belarusian border in July 2021, the European Court of Human Rights has addressed to the Polish Government interim measures in a total of 61 cases concerning in total 192 persons, while in

four cases the Court did not allow requests for such measures. In most of those cases, the applicants stayed in Poland or claimed to be on Polish territory allegedly with a view to seeking international protection, and their requests fell under Article 3 (prohibition on inhuman or degrading treatment) and Article 2 (right to life) of the European Convention on Human Rights. The interim measures were indicated on the basis of Rule 39 of the Rules of Court. The first of these measures was addressed on August 25, 2021 and the most recent one – on January 28, 2022.

Apart from one specific case of 32 migrants who stayed in the temporary camp on the Belarusian territory near the Polish border in the area of Usnarz Górny (which was an exceptional case in that Poland did not have jurisdiction over the applicants – see more information on it below), the Polish authorities have received from the Court sixty decisions on interim measures covering 160 persons and asking not to remove the applicants from the Polish territory, usually on the condition that the information available to the Court was correct and the applicants were indeed staying on that territory. In eleven of these cases (concerning 39 persons) the Polish authorities were also asked by the Court to provide the applicants with medical and/or humanitarian assistance.

Merely in few of these cases the applicants' stay on the Polish territory was not confirmed by the Polish authorities (these cases were eventually struck out by the Court of its list of cases). In the vast majority of cases the Polish authorities disclosed the applicants on the Polish territory and fully and promptly complied with the Court's requests not to remove the applicants. The persons concerned received the necessary medical assistance and were placed in the facilities at the disposal of the Border Guard where they were provided with food and other necessary means as well as with access to medical care. They were offered a possibility to lodge asylum requests if they so wished. There was no case of Poland's disobeying any of the Court's interim measures.

In those cases where the applicants availed themselves of the possibility to apply for international protection in Poland, the return proceedings were stayed or cancelled and the proceedings for granting international protection in Poland were launched as to the merits. The fact of launching the proceedings for international protection as to the merits precludes the possibility of expelling the applicants.

In some cases the applicants waived however a possibility to seek international protection in Poland, declaring their intention to apply for asylum rather in other EU countries, e.g. Germany or Belgium. As reported by the Polish Border Guard, during the current migratory crisis, at the stage of preparing applications to the Court many of the foreigners coming from Belarus declared – before their attorneys – intention to seek international protection. However, once the Court's interim measure had been indicated and implemented by Poland, some of those persons failed to declare such intention before the Polish authorities. This could be explained by the fact that lodging an application for international protection in Poland produces legal effects under the EU law resulting in the establishment of a procedural connection between the person concerned and Poland, whereas the destination country of that person may in fact be another EU Member State. In some of the above cases the

applicants escaped from the temporary reception centres where they had been placed by the Polish authorities as requested by the Court and probably left to other EU countries.

So far, following the information submitted by the Polish authorities and the applicants, the Court has lifted or decided not to prolong interim measures in 52 cases concerning 144 persons. This usually concerned cases where the applicants' presence on the Polish territory was not confirmed; or the applicants later left the reception centres where they had been placed; or failed to communicate with the Court and their attorney; or the proceedings for granting international protection were instituted in respect of the applicants. At present, interim measures remain in force in nine cases only, concerning 48 persons. Moreover, more than twenty of the applications have been struck out of the Court's list of cases.

V. Compliance by Poland with interim measures indicated by the European Court of Human Rights in the case of R.A. and Others v. Poland (no. 42120/21)

As far as the case concerning a group of migrants (hereinafter referred to as "the applicants") stranded near the Polish Border with Belarus in the area of Usnierz Górny is concerned the following should be noted.

It appears that the applicants 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 with a view to crossing that border illegally. From August 2021 to October 23, 2021 a group of foreigners was staying in a temporary camp on the territory of the Republic of Belarus near the Polish-Belarusian state border in the vicinity of Usnierz Górny and were under the Belarusian jurisdiction. As established by the Polish Border Guard, the camp was located between border mark no. 523 and border mark no. 524 directly behind the state border line – on the territory of Belarus.

On August 9, 2021 the Polish Border Guard officers in the vicinity of Usnierz Górny recorded for the first time an attempt of illegal crossing of the Polish-Belarusian state border (constituting the external border of the European Union) – in a place not designated for that purpose, by a small group of foreigners. Such a conduct constituted a violation of Article 5 § 1 of Regulation (EU) 2016/399 of the European Parliament and of the Council of 9 March 2016 *on the Union Code on the rules governing the movement of persons across borders*, and Article 14 § 1 and Article 15 § 1 of the *Act of 12 October 1990 on the Protection of the State Border*. This attempt was hindered by the Polish Border Guard acting pursuant to Article 1 § 2 points 1, 2a and 4 of the *Act on the Border Guard* of 12 October 1990 in conjunction with Article 5 § 1 of the *Schengen Borders Code* and Article 14 § 1 and Article 15 § 1 of the *Act on Border Protection*.

Following this first attempt of illegal crossing of the Polish border, the Polish Border Guard noticed that the foreigners did not leave this area but instead they began to organize themselves into a larger group which was staying all the time on the Belarusian side of the border. The number of persons at the camp on the territory of the Republic of Belarus was however constantly changing. It appears that Belarusian services were moving foreigners from one place to another. In the beginning there were about 10 persons there. At its peak, there could be even about 60-70 people. On August 20, 2021, approximately 30-32 persons

remained at this location. On the following day it was again observed that the Belarusian services must have 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 Polish Ministry of the Interior and Administration, on September 1, 2021 there may have been 24-30 persons in the site. The Polish authorities did not carry out identification procedures in respect of those persons as they were outside the Polish jurisdiction. Therefore, the Polish side does not have information on the identity of the persons staying in the camp at the respective stages and is not able to confirm whether and when the applicants arrived there.

On August 22, 2021 the Polish MFA sent a diplomatic note to the Belarusian authorities offering humanitarian assistance for migrants in connection with the migratory crisis. The humanitarian aid convoy was prepared by Poland and set off towards the Bobrowniki border crossing already on August 23, 2021, in the vicinity of which it was waiting to be received ever since. However, the Belarusian side did not allow the convoy to enter.

Nevertheless, according to the observations of the Polish Border Guard officers on duty in the area at stake, the Belarusian services regularly delivered food, drinks, clothes, fuel and other most necessary goods to the site.

On August 25, 2021 the European Court of Human Rights (the duty judge) decided, in the interests of the parties and the proper conduct of the proceedings before it, to request the Polish Government under Rule 39 of the Rules of Court, without prejudice to any duties that Belarus may have under international law regarding the situation of the applicants, to provide all the applicants with food, water, clothing, adequate medical care and, if possible, temporary shelter. The Court clarified at the same time that this measure should not be understood as requiring Poland to let the applicants enter the Polish territory.

On August 27, 2021, following the Court's request to the Polish Government, the Polish Ministry of Foreign Affairs addressed another diplomatic note to the Belarusian authorities referring to the difficult situation of the group of foreigners staying on the territory of Belarus in the vicinity of the Polish border and informing about the Court's decision to indicate an interim measure based on Rule 39 of the Rules of Court.

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 August 22, 2021. It also noted that no agreement had been granted yet by the authorities of Belarus for the delivery of the assistance offered. In order to meet the most urgent needs of foreigners staying on the territory of Belarus near the border with Poland and to implement the decision of the European Court of Human Rights, the Polish Ministry again declared readiness of Poland 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 assessed by the Belarusian side and its competent services. To date, the Belarusian side has not responded to the second diplomatic note sent by Poland.

According to the communiqués published on the governmental website of the Republic of Belarus (<https://gpk.gov.by/>) visits were held at the site by representatives of the UNHCR in Belarus on August 25, 2021 (<https://gpk.gov.by/news/gpk/117984/>) and representatives of the UNHCR and Red Cross in Belarus on September 1, 2021 (<https://gpk.gov.by/news/gpk/119961/>). The latter press release confirms that the humanitarian aid was delivered to the persons staying at the site and that the representatives of the UNHCR assured that such assistance would continue to be delivered to these persons until the solution of the situation would be found. The photos published on the website prove that also temporary shelter, i.e. tents, were provided.

The presence of the UNHCR and Red Cross was also noted by the Polish Border Guard officers. On August 25, 2021 the Polish Border Guard observed that “at 12.30 nine persons in civilian clothes (including an interpreter, a person with a film camera, a person with a camera), most likely representatives of a charity organization, approached the site from the Belarusian side”.

On September 1, 2021 the Polish Border Guard reported that “at 12.50 p.m., representatives of UNHCR and the Belarusian media were observed in the area on the side of the Republic of Belarus – five persons (persons with the UNHCR logo and a photographer), accompanied by three high-ranking soldiers approached the site.” “At 1.50 p.m., one of the Polish soldiers heard UNHCR representatives urging foreigners to return inside the Republic of Belarus, promising them, among others, the rights to housing, school, work and money in exchange for signing a declaration. Some foreigners were for signing the declaration, some were against.”

As further reported, “At 2.30 p.m. 15 representatives of the Red Cross and six Belarusian soldiers came to the site. These persons brought packages to the site (blankets and filled black bags with the Red Cross logo).” “At 2.50 p.m. Belarusian journalists interviewed one of the men staying at the site. One of the reporter’s questions was whether it was possible for the Polish side to accept them. The answer could not be heard because of the man’s quiet tone.” “At 3.25 p.m. Belarusian soldiers brought a large number of packages, including clothes and food.”

On 15 and 27 September 2021 the Court (duty judge) decided to prolong the above-mentioned interim measure indicated under Rule 39 of the Rules of Court.

According to the observations of the Polish Border Guard officers patrolling the state border in the vicinity of Usnierz Górny, on October 20, 2021 in the morning hours, there were 32 foreigners in the migrant camp on the Belarusian side, including 27 men and 5 women. The Polish Government have no information as to whether the applicants were in this group, as the Polish Border Guard officers had not been able to establish the personal data of these persons.

According to the observations of the Polish Border Guard, no foreigner has been staying in the camp on the Belarusian side in the vicinity of Usnierz Górny since October 23, 2021 – following an attempt undertaken by the persons staying in the camp (probably supported by the Belarusian forces) on October 20, 2021 to storm and forcibly cross the border and invade the Polish territory.

The proceedings concerning application no. 42120/21 are currently pending before the European Court of Human Rights. The Polish Government submitted their observations on the admissibility and merits on December 16, 2021. The European Court of Human Rights has not pronounced itself yet on the case.

The Polish Government did not exercise jurisdiction over the applicants staying in the camp in question and in consequence could not be held responsible for the conditions of their stay. It should be also clearly emphasised that the Belarusian officers were supervising the area of the camp and were looking after the foreigners staying there, providing them with food and the necessary equipment (tents, sleeping bags etc.). Consequently, the Belarusian side did not deny the fact that the camp was located on their side of the border.

In the light of the factual circumstances of the present case the Polish Government cannot be held *ratione personae* and *ratione loci* responsible for the acts of the Belarusian authorities with regard to the camp located on the Belarusian side, where the applicants claim to have been located. In the case at stake no particular circumstances occurred that could be interpreted as exceptional and to create a situation extending the Polish jurisdiction beyond its territory, especially to the territory of Belarus and/or over the Belarusian forces acting on the Belarusian territory. Any actions taken from the Polish territory in respect of the persons staying on the territory of Belarus (without the latter's consent) would have constituted an interference into the Belarusian territory and could have met with a reaction on the Belarusian part.

The European Court of Human Rights did not ask Poland to let these persons enter the Polish territory but to provide them with humanitarian assistance. Poland took steps to comply with the Court's interim measure to the extent possible. For legal reasons it was not possible to deliver humanitarian aid directly on site as the foreigners were staying on the Belarusian territory. Such a direct transfer of goods would have amounted to illegal border crossing and illegal export.

However, after the Court's decision had been announced, already on August 27, 2021 Poland sent a diplomatic note to the Belarusian authorities informing them about the Court's decision and asking them to provide this group of persons with food, water, clothing, access to sanitary facilities, adequate medical care and temporary shelter. Poland also reiterated its readiness to provide Belarus with assistance in kind by sending a humanitarian aid convoy. Such offer had been made to the Belarusian authorities for the first time at the own initiative of Polish authorities and even before the Court's decision to apply the interim measure. Although, unfortunately, no agreement was given by the Belarusian side to the Polish offers, the Belarusian authorities in fact and in practice complied with the call made by Poland. The foreigners staying at the border actually received humanitarian aid from the Belarusian services and from the Belarusian bureau of the UNHCR and Red Cross, as evidenced inter alia by the information published on the Belarusian government website. Representatives of the UNHCR in Minsk also confirmed that such assistance would continue to be delivered to these persons until the solution of the situation was found.

Furthermore, bearing in mind that the number of people staying in the camp was changing, reaching at certain times even 60-70 persons (as reported by the Polish Border Guard) it can be concluded that the persons staying there were not imprisoned by the Belarusian services and had an opportunity to change their location. What is also of importance here, the applicants have never exhausted existing legal means designed exactly for the purpose of entering and seeking international protection in Poland and thus they did not give the Polish authorities a chance to have their individual situation examined and verified from the point of view of the grounds for granting them such protection. It should be indicated that a foreigner may submit an application not only while already on the territory of the Republic of Poland but also during the border control (within the meaning of Polish regulations), i.e. by declaring such a wish during border checks at designated border crossing points. A possibility of legal entry onto the territory of the Republic of Poland by appearing at the border crossing point was not restricted by Poland in respect of the applicants (or any other persons legally entering Belarus with the intention of further travel to the European Union). Moreover, the applicants, who had previously arrived in Belarus, could have applied for a visa at the Polish consular representation in that country (or any other country where they had been staying before the arrival in Belarus), in particular a humanitarian visa, invoking the political situation in their country of origin and any risk of being subjected to torture and inhuman treatment there. Notably, the applicants could have freely applied for a visa at the Embassy of the Republic of Poland in Minsk, the Consulate General of the Republic of Poland in Brest and the Consulate General of the Republic of Poland in Grodno. However, they failed to exercise that possibility. Due to the fact that the applicants were present in Belarus, and most probably their presence there was legal, their appearance at the Polish-Belarusian border in order to submit an application for international protection or to the Polish consulate when applying for a visa would not have caused them reprisals on the part of the Belarusian authorities.

In this context it should also be noted that in parallel, overall 1,288 people were evacuated by Poland from Afghanistan, including 113 via Germany. Until November 21, 2021, applications for international protection in Poland were registered for 991 people from the evacuated groups, including 113 people relocated from Germany. With regard to persons applying for international protection among the evacuees, 724 decisions on granting international protection and 181 decisions to discontinue the proceedings were issued. It demonstrates that the Polish authorities favourably approached the requests for evacuation and/or international protection from Afghanistan if submitted by interested persons within the applicable legal frameworks.

In sum, the European Court of Human Rights did not oblige Poland to admit the applicants to the Polish territory. In such circumstances the modus operandi chosen by Poland to comply with the Court's interim measure to provide the applicants with humanitarian aid was the most appropriate and legally admissible and – what is also important – avoided any interference in the Belarusian territory in the current difficult and fragile political and security context marked by the Belarusian provocations at the Polish-Belarusian border. Although the Polish Government are not able to conclude whether the conditions in which the applicants had been staying since their arrival at the Polish-Belarusian border were consistent with international human rights commitments of Belarus, nevertheless the Polish authorities took

all the necessary and possible measures to support the compliance by the Belarusian authorities with their obligations to secure to the applicants conditions compatible with inter alia Articles 6 and 7 of the International Covenant on Civil and Political Rights.

Finally, it must be underlined that since 2001 Belarus has been a party to the *Geneva Convention on the Status of Refugees* and despite some shortcomings of its asylum system, as acknowledged internationally over recent years, it is a country that is fully capable of providing effective international protection to people who are allowed to enter its territory legally. As Belarus is a member of the United Nations it would seem natural if the Special Rapporteurs addressed their concerns and critical remarks regarding the humanitarian situation of the applicants to the Belarusian rather than the Polish authorities.