



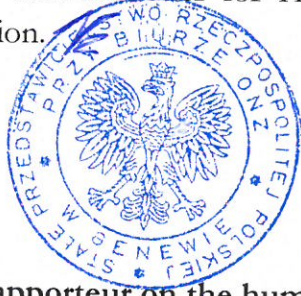
Permanent Mission
of the Republic of Poland
to the United Nations Office
at Geneva

4200/128-2/2022/461

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 of migrants; the Working Group on Arbitrary Detention; the Working Group on Enforced or Involuntary Disappearances; the Special Rapporteur on extrajudicial, summary or arbitrary executions; the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standards of physical and mental health and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment; (Ref: AL POL 3/2022) 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, 27 May 2022

**Special Rapporteur on the human rights of migrants;
Working Group on Arbitrary Detention;
Working Group on Enforced or Involuntary Disappearances;
Special Rapporteur on extrajudicial, summary or arbitrary executions;
Special Rapporteur on the right of everyone to the enjoyment of the
highest attainable standards 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



Warsaw, 16 May 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 March 30, 2022 (Ref. No.: AL POL 3/2022), concerning the situation of migrants and asylum seekers who have reached or attempted to reach Poland through its border with Belarus. Attached please find answer by the Polish party to your letter.

Please let me also assure you of Poland's firm commitment to protect and promote human rights and fundamental freedoms and to continue cooperating with your mandates.

Yours sincerely,

Piotr Wawrzyk
Sekretarz Stanu

To the kind attention of:

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

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

Mr Luciano Hazan, Chair of the Working Group on Enforced or Involuntary Disappearances

Mr Morris Tidball-Binz, UN Special Rapporteur on extrajudicial, summary or arbitrary executions

Ms Tlaleng Mofokeng, UN Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health

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

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**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 3/2022 by UN Special Procedures

I. Humanitarian situation at the border and in forested border areas (item 2)

In view of the current difficult situation on the Polish-Belarusian border, and taking into account the humanitarian aspect and basic needs to be secured in the first contact with foreigners, from the beginning, coordinated actions in this respect have been carried out by the Commander's Plenipotentiary of the Podlaski Border Guard Regional Unit for the Protection of Human Rights and Equal Treatment. A coordinator has been appointed at every branch office of the Podlaski Border Guard Regional Unit (*Podlaski Oddział Straży Granicznej*, hereinafter also "POSG") to determine and verify the current demand for basic needs on an ongoing basis. A network of humanitarian support has been created, allowing to regularly organise collections and donations. This initiative helps to ensure that the Border Guard officers who are on duty in the immediate vicinity of the border have their service vehicles filled with thermal blankets, energy bars, bottled water, vacuum flasks with tea, and such like.

The Border Guard officers carry out thorough checks every time persons are detected in connection with irregular border crossings. In every case, the foreigner's health is assessed and, if necessary, medical intervention or care is provided or ambulances are called. If the doctor assesses that the medical condition requires hospitalisation, the foreigner is immediately transported to the hospital.

From the beginning of the migrant crisis, the Border Guard officers and employees themselves have been involved in the collections. Collections of the most necessary items, including blankets, clothing and shoes, toys, hygiene products and long-term food are conducted on an ongoing basis in close cooperation with POSG officers associated in the "Łączy nas granica [We are united by the border]" Association, as well as on the initiative of the Border Guard and Polish Armed Forces chaplains and the Ombudsman. The cooperation with the Polish Red Cross and CARITAS Poland also allows us to help foreigners by providing the most necessary warm clothes, shoes, blankets as well as food and supplies for small children. In addition, adequate assistance is provided in any case requiring medical intervention.

It should be emphasised that assistance activities in saving the health and lives of migrants were, in the vast majority of cases, carried out by the Border Guard and other services, based on the system of state medical rescue. Some of the migrants were transported to hospitals, and some were given emergency care on the spot. It is worth pointing out that in view of the then approaching winter, in November 2021, permanent medical aid points were established close to the border, with paramedics and doctors, as well as representatives of CARITAS Poland.

Moreover, in June 2021, due to the fact that at present there are no legal grounds for providing food for foreigners who have not been detained but have only been discovered in the immediate vicinity of the border, the coordination of activities within the field of humanitarian assistance to foreigners in the Podlaski Border Guard Regional Unit was taken over by the apparatus of the Commander's Plenipotentiary of the POSG for the Protection of Human Rights and Equal Treatment and coordinators appointed in the establishments. The assistance includes, but is not limited to, the provision of food

for non-detained foreigners. Funds for this purpose are obtained, among others, from non-governmental organisations (an appropriate agreement was entered into).

The Border Guard cooperates on a daily basis with other entities, including UNHCR, IOM, PCK [Polish Red Cross], CARITAS Poland, and the Dialog Foundation, with which it meets periodically to discuss the details of activities aimed at assisting migrants.

On an ongoing basis, Poland tries to provide all necessary assistance to migrants detected after an irregular crossing of the border, in particular humanitarian and medical assistance. The Polish side, however, cannot accept the tools employed by the Belarusian regime in the hybrid war, and automatically accept into its territory all foreigners, who come here with the intention of further irregular migration. Commitments made to protect the EU's external borders do not allow for this. It was decided, therefore, to build a physical barrier on the Polish-Belarusian border, at the section threatened by the highest migration pressure.

Poland always respects the interim measures ordered by the European Court of Human Rights, preventing the removal of a given foreigner from the territory of the Republic of Poland. In 2021, from 25 August to 31 December 2021, the European Court of Human Rights communicated to Poland that it had issued interim measures not to remove the applicant in 50 cases relating to 176 foreigners. In 18 cases, the Court, having reviewed the material submitted by both the government and the applicants' attorneys, revoked the interim measure or did not extend it, and in 29 cases, the Court revoked the interim measure and removed the case from the list of complaints. In 2022, from the beginning to 25 April 2022, the Court communicated the issuance of an interim measure regarding the non-removal of the applicant in 33 cases relating to 80 foreign nationals. As of 25 April 2022, in 17 cases, having reviewed the material submitted by both the Government Party and the applicants' attorneys, the Court revoked or did not extend the provisional measure, while in 2 cases, the Court revoked the provisional measure and removed the case from the list of complaints.

It should be clearly emphasised that there is no such practice in Poland to separate families. Nevertheless, the Border Guard noted cases of separated families being discovered just after crossing the border, where the separation itself had occurred still on the Belarusian side. Each time the Border Guard informed the Belarusian side about such incidents in order to find the family member.

II. Investigations into the death or disappearance of migrants (items 3-4)

With regard to investigations of deaths of migrants, in connection with crossing the border with Belarus, the following investigations are currently being conducted in the area of jurisdiction of the organisational units of the Prosecutor's Office operating in the border territory.

The District Prosecutor's Office in Suwałki is conducting proceedings under case No. 3005-1.Ds.5.2021 concerning the deaths of 10 foreigners in connection with crossing the Polish-Belarusian border. These acts are qualified under Article 155 of the Criminal Code (negligent homicide). The following events are included in the scope of the investigation:

- I. Involuntary manslaughter of an Iraqi citizen, A. H. M. Al Z., whose corpse was discovered on 19 September 2021 on the road leading from the village of Frącki, Sejny County, to the village of Dworczyko, Gmina Giby, Sejny County.
- II. Involuntary manslaughter of a Yemeni citizen, M. M. M. Al-R., whose corpse was discovered on 19 September 2021 in the area of Żubry, Gmina Gródek, Białystok County.

- III. Involuntary manslaughter of an Iraqi citizen, A. H. A., whose corpse was discovered on 24 September 2021 in Chworościany 11, Gmina Nowy Dwór, Sokółka County.
- IV. Involuntary manslaughter of a Syrian citizen, J. I., whose corpse was discovered on 13 October 2021 in Klimówka, Gmina Sokółka, Sokółka County.
- V. Involuntary manslaughter of a Nigerian citizen, G. O., whose corpse was discovered on 7 December 2021 in a forest complex in the area of Olchówka, Gmina Narewka, Hajnówka County.
- VI. Involuntary manslaughter of a Yemeni citizen, Al-S. A. R. A., whose corpse was discovered on 21 February 2022 in the area of Topiło, Gmina Hajnówka, Hajnówka County.

Following a forensic medical autopsy, it was established that the cause of death of the aforementioned persons was acute circulatory and respiratory failure due to hypothermia. However, the Prosecution is still awaiting an expert opinion as to the cause of death of the Nigerian citizen, G. O.

In the course of the investigation, the families of the aforementioned deceased persons were informed about the discovery of their bodies through the embassies of their countries of origin and through proxies established in Poland. The families of the deceased were also notified about the possibility of collecting the bodies, the transfer of the remains, and the method of burial. The corpses of all the aforementioned persons, with the exception of the Nigerian national, G. O., were released to persons or providers of funeral transportation and burial services authorised by the family or embassy of the country of origin. In the case of the named Nigerian national, the burial took place in accordance with the administrative process. The persons closest to the deceased and the diplomatic representations of the countries of origin did not complain in this regard.

The legal proceedings under case No. 3005-1.Ds.5.2021 of the District Prosecutor's Office in Suwałki also include the following cases of deaths of persons of unknown identity:

- VII. Involuntary manslaughter of a man, whose corpse was discovered on 19 September 2021 in Poniatowicze, Gmina Sokółka, Sokółka County; the Prosecutor's Office is still awaiting an expert opinion on the cause of death, after the autopsy.
- VIII. Involuntary manslaughter of a man, whose corpse was discovered on 22 October 2021 near Kuścińce, Gmina Kuźnica, Sokółka County. The autopsy determined that the cause of death was an acute cardiopulmonary failure due to hypothermia, and also revealed a THC substance in the deceased person's body, indicating that he had taken narcotics in the form of marijuana or hashish.
- IX. Involuntary manslaughter of a man (initially identified as a Syrian citizen, B.Y.J.), whose corpse was found on 12 November 2021 in the forest complex of the Borowina unit in the Bielsk Forest District, near Wólka Terechowska, Gmina Czeremcha, Hajnówka County. An autopsy determined that the cause of death was an acute cardiopulmonary failure due to hypothermia.
- X. Involuntary manslaughter of a man, whose corpse was discovered on 24 March 2022 in the Gruszki unit of the Białowieża Forest District. The Prosecutor's Office is awaiting an expert opinion on the cause of death after the autopsy of the corpse, which is now in the autopsy room at the Forensic Medicine Department in Białystok.

In other cases, the corpses of persons of undetermined identity were buried in accordance with Article 10(3) of the Act of 31 January 1959 on Cemeteries and Burial of the Dead (Dz.U. [Journal of Laws] of 2020, item 1947). However, their DNA profile was determined, which can be used for further

comparative studies to identify these individuals. In this regard, actions also were taken with the diplomatic representations of countries that may be their countries of origin.

As part of the proceedings under case No. 3005-1.Ds.5.2021, evidentiary proceedings have been carried out in order to establish and clarify all the circumstances under which the death of the aforementioned 10 foreigners occurred in connection with crossing the Polish-Belarusian border.

In turn, the Regional Prosecutor's Office in Hajnówka is conducting an investigation under case No. 4005-0.Ds.453.2021 into the involuntary manslaughter on 3 December 2021 of A. O. D., a citizen of Iraq, of Kurdish origin. The findings indicate that the victim was admitted to the Anaesthesiology and Intensive Care Department of the Hospital in Hajnówka on 12 November 2021, due to impaired consciousness and respiratory failure, in the course of hypothermia and severe dehydration. On the day she was admitted to the hospital, she was found in a forest complex between the village of Leśna and the village of Siemianówka. She was moving with her husband and five children. She was in a very poor condition and unconscious. The woman was pregnant, and the pregnancy could not be saved. A. O. D. died on 3 December 2021, at Hajnówka Hospital without regaining consciousness. An autopsy determined that the cause of her death was multiple organ failure and septic complications that developed from profound hypothermia. The affected party (victim) in these proceedings is the husband of the deceased, still residing in Poland and represented by two attorneys. The body of A. O. D. was collected from the dissecting room of the Medical University of Białystok. The family was allowed to pay their respects to the deceased, after which her body was taken to the airport and then transported to Iraq for burial. By letter dated 31 December 2021, the Embassy of the Republic of Iraq in Warsaw was informed of the cause of death of A. O. D. and of the planned transportation of her body to Iraq. Neither the victim, nor other family members of the deceased, nor the Embassy of the Republic of Iraq in Warsaw filed any complaints in the course of the investigation. The Prosecution is currently awaiting an expert toxicology opinion.

At the same time, I would like to mention that the persons closest to the deceased are entitled to the procedural rights of a victim in the aforementioned proceedings. Such individuals may turn in person or through appointed legal representatives to the District Prosecutor's Office in Suwałki, referring to the case No. 3005-1.Ds.5.2021 (with respect to acts covered by these proceedings), or with respect to the act covered by the case No. 4005-0.Ds.453.2021 of the Regional Prosecutor's Office in Hajnówka.

The last of the recorded proceedings related to the death of migrants is the investigation under case No. 4166-4.Ds.342.2021, conducted by the Regional Prosecutor's Office in Biała Podlaska, on the involuntary manslaughter of a Syrian citizen, A. Al-H, discovered on 20 October 2021 in Woroblin, Gmina Janów Polaski, Lubelskie Voivodeship. In the course of the investigation, it was established that on 19 October 2021 the soldiers of the Polish Armed Forces on patrol in the area of Woroblin, on the Bug River, met a Syrian citizen in soaked clothes, who stated that he had crossed the Polish border with another Syrian citizen, swimming across the Bug River. A second man drowned during the crossing. A search operation was undertaken, and as a result, the corpse of the man, who was found to be A. Al-H, was discovered on 20 October 2021. An autopsy determined that the cause of his death was sudden drowning. A physical and chemical examination of the deceased person's blood revealed the presence of ethyl alcohol at a concentration of 0.19 per mille. The family of the deceased (his brother) is represented in the proceedings by an attorney. The deceased person's brother also authorised the funeral company, to whom the body of the deceased was delivered, to receive the body of A. Al-H. To date, no complaints have been filed in this case. The proceedings have been conducted to establish the circumstances of the incident, and a decision concluding the investigation is currently being drafted.

The persons closest to the deceased are entitled to the procedural rights of a victim in these proceedings. Such individuals may turn in person or through an appointed legal representative to the District Prosecutor's Office in Biała Podlaska, referring to case No. 4166-4.Ds.342.2021.

The difference between the number of deaths of persons in the border area indicated in your correspondence (19) and the number of cases covered by the present explanations (12) may be due to the fact that some of the deaths of persons crossing the border may have occurred on the territory of Belarus, and therefore within the jurisdiction of that state. In particular, there is no information about the discovery of the bodies of the two children referred to in your correspondence.

The procedure after the death of migrants is governed by the Act of 31 January 1959 on Cemeteries and Burial of the Dead and by the Regulation of the Minister of Internal Affairs and Administration of 22 January 2015 on handling the corpses of foreigners placed in a guarded centre or held in custody for foreigners, and in this case – due to the absence of other regulations – these acts of law are applied accordingly.

In the case of the death of a foreigner detected by the Border Guard or the Police, the competent authority shall notify the relevant diplomatic mission or consular post about the situation each time in order to inform the family about it. This information may also be sent through the minister responsible for foreign affairs.

If contact with the family is established, in accordance with the aforementioned regulation, the family shall be informed in particular about the necessity to notify within 14 days whether they will organise the burial at their own expense, about the possibility to collect the remains of the foreigner within 14 days, and about the consequences of failure to collect them, and in the case of a burial organised by the Polish authorities, about the possibility of applying for notification of the place and date of the burial of the deceased foreigner.

If it is not possible to notify the family of a deceased foreign national due to failure to establish his or her nationality or no information about the family's addresses or telephone numbers, or if the family does not arrange for the burial at its own expense, the corpse may be released to other persons who voluntarily undertake to bury it. A foreigner is buried after the public prosecutor's consent to their burial has been obtained and a death certificate has been issued by the civil registry office with jurisdiction over the place of death.

If the family or other persons do not collect the corpse of a foreigner within 14 days, the competent district governor is informed about the possibility of transferring the corpse for scientific purposes to a public medical university. If the remains are not donated for scientific purposes, the burial of the remains shall be contracted to a funeral home. If family contact has been established, the family is informed of the funeral location and date.

In all cases of migrant deaths disclosed in 2021 and 2022, where the nationality of a deceased foreigner was established, the above procedure was always followed.

In the case of a missing person, search activities conducted by the organisational units of the Polish Police are carried out under the provisions of Order No. 48 of the Chief of Police of 28 June 2018 on conducting a search for a missing person by the police and proceedings in the case of revealing a person of undetermined identity or finding unknown bodies and human remains. Each case of a missing person (of Polish or foreign nationality) reported by an entitled person to the Police organisational unit is analysed and verified in detail. However, it is not possible to carry out search activities in the absence of basic information about the circumstances of the disappearance and the personal data and image

of the missing person. 316 missing foreigners were registered in 2021, with only 6 cases still active, demonstrating the high efficiency and commitment of police officers in the search for missing persons.

III. Detention and guarded centres for foreigners (item 5)

A foreigner can be placed in a guarded centre in particular in order to prepare the foreigner's return to the country of origin, as well as for the purpose of securing the foreigner's presence for the international protection procedures.

Adequate standards are guaranteed in all detention facilities for foreigners. These centres are periodically visited by committees with jurisdiction over detention, such as the CPT and SPT, as well as by the National Preventive Mechanism.

Foreigners who stay in the centres are provided with food, clothing, shelter, including access to sanitary facilities, and medical care. The terms and conditions of stay in the centres for foreigners, including the rules regarding the provision of food, are specified in the Regulation of the Minister of the Internal Affairs and Administration of 24 April 2015 on guarded centres and detention centres for foreigners.

Detention measures are applied to foreigners in accordance with national law, which does not go beyond the framework of EU law, as specified in Article 15 of the Directive 2008/115/EC of the European Parliament and of the Council of 16 December 2008 on common standards and procedures in Member States for returning illegally staying third-country nationals. According to Article 403(1) of the Act on Foreigners, a foreigner for the purpose of the return procedure may be placed in a guarded centre for a period no longer than 3 months. The period of detention may be extended but according to Article 403(3), the time may not exceed 6 months. Only in exceptional situations, in particular when the foreigner does not cooperate in the identification process, the detention may be prolonged for a specified period of time, no longer than 12 months. Pursuant to Article 89(1) and (5) of the Act on Granting Protection to Foreigners within the Territory of the Republic of Poland, a foreigner under the refugee procedure may be placed in a guarded centre for a period of up to 60 days, which may be prolonged under certain circumstances, however, may not exceed 6 months.

In turn, pursuant to Article 406(1) of the Act on Foreigners, the Border Guard shall issue a decision on releasing a foreigner from a guarded centre in the following cases:

- 1) cessation of the reasons justifying the measures, or
- 2) finding of circumstances referred to in Article 400 (the stay in the guarded centre may pose a threat to the life or health of the foreigner, or the foreigner's mental state may justify a presumption that they have been subjected to violence), or
- 3) finding of circumstances, other than those set forth in Article 400, that make it impossible to apply the measures, or
- 4) issuance of a certificate to a foreigner, confirming a presumption that the foreigner is a victim of human trafficking, or when the proceedings are in progress to grant the foreigner a temporary residence permit for victims of human trafficking, or
- 5) detention of a foreigner or any other legal measure resulting in deprivation of liberty, or
- 6) finding that due to legal or factual reasons, the execution of the decision obliging the foreigner to return is not possible.

However, in the case of a foreigner under the refugee procedure, pursuant to Article 89b(12) of the Act on Granting Protection to Foreigners within the Territory of the Republic of Poland, other than the cases indicated above, a foreigner can be released under a decision taken by the Head of the Office for Foreigners. The Head of the Office may issue a decision on release from the guarded centre if the evidence gathered in the case indicates that the applicant and the person on whose behalf the application is made by the applicant have a good chance of fulfilling the conditions for being granted a refugee status or subsidiary protection. Moreover, in such cases as the expiry of the period of stay specified in the court's decision, the transfer of a foreigner to another Member State, the implementation of a foreigner's return, or granting them international protection, a foreigner shall be released from the guarded centre without a decision.

Thus, in this regard, Polish law entails a wide range of grounds for releasing a foreigner from a guarded centre and these grounds are used (in 2021: 817 foreigners released under release orders and 554 foreigners released without orders).

The average period of a foreigner's stay in a guarded centre in 2021 was significantly reduced and amounted to 63 days (as compared to 87 days in 2020). Further, the average length of stay of minors in a guarded centre for foreigners in 2021 was 58 days, while in 2020 it was 70 days.

Penitentiary judges supervise the legality and correctness of foreigners' stay in guarded centres. Penitentiary supervision exercised by a penitentiary judge of the district court consists of inspection and evaluation of the following in particular:

- conditions of stay, medical care, regularity of room occupancy in regard to foreigners, respecting foreigners' rights;
- proper handling of foreigners' complaints and applications;
- organisation and order regulations;
- compliance with regulations on the use of means of direct coercion.

With regard to the facility in Wędrzyn, it should be pointed out that these are quarters of the Army Military Training Centre, temporarily leased to the Border Guard as of 20 August 2021 as a result of an agreement with the Ministry of National Defence. Administratively, the facility falls under the Guarded Centre for Foreigners in Krosno Odrzańskie.

It is to be noted that this facility is used only when there is no possibility to accommodate foreigners in other guarded centres, and only single men are placed there.

All facility security, including bars on the windows and barbed wire on the fence, are within the standards set by law. It is a fact that in most of its guarded centres, the Border Guard has replaced bars in windows with the so-called security windows (without bars); however, such investments are made only in its own facilities, not in facilities temporarily leased from other institutions.

The conditions in the facility in Wędrzyn may have been the least comfortable; however, due to the enormous migration pressure Poland had to face in 2021, the temporary inclusion of this facility in the structures of the Border Guard was the only right solution, certainly better than, for example, organizing separate detention places for migrants in penitentiary facilities, which is allowed by the EU law, including the aforementioned Directive 2008/115/EC.

In principle, the Border Guard has six guarded centres for foreigners within its structures. These centres were profiled in terms of the categories of people placed there, and divided into centres for men and centres for families with children and single women. Throughout 2021, these profiles have been changing due to the need to continually manage sites effectively, and respond to real needs in the

area. It was necessary to increase the reception capacity of the Border Guard in 2021, hence the decision was made to temporarily take over additional facilities from other entities, and these facilities were administratively incorporated into already functioning centres.

Thus, a facility in Biała Podlaska and a facility in Czerwony Bór were taken over and adapted under the agreement with the Office for Foreigners; and a training facility in Wędrzyn was taken over and adapted under the agreement with the Ministry of Defence.

At present, these structures are as indicated below:

- The Guarded Centre for Foreigners in Kętrzyn (for families with children, single women and unaccompanied minors, also with 2 places for the persons with disabilities);
- The Guarded Centre for Foreigners in Białystok (originally for men, now in part for families with children, in part for men), together with the Office for Foreigners facility in Czerwony Bór (for families with children);
- The Guarded Centre for Foreigners in Biała Podlaska, together with the Office for Foreigners facility in Biała Podlaska (for families with children and single women);
- The Guarded Centre for Foreigners in Przemyśl (initially for families with children and single women, now for men);
- The Guarded Centre for Foreigners in Lesznowola (initially for men, then for families with children and for single women, now for men);
- The Guarded Centre for foreigners in Krosno Odrzańskie, together with the facility in Wędrzyn (intended for men).

It should be emphasised that each foreigner, upon being admitted to a guarded centre, shall immediately undergo a medical examination. During their stay, every foreigner has the right to receive medical care and to stay in hospital if it is required by their health condition. The quality and organisation of medical services provided in guarded centres are the responsibility of public healthcare centres or external entities with which civil-law agreements are concluded. The examination costs are funded by the state budget.

After a foreigner is admitted to a guarded centre, the employees of the educational and upbringing section shall conduct an interview with them in order to determine their psycho-physical condition. A health card is established for a foreigner. Each medical examination is completed with an entry in the medical record made by medical staff.

Foreign minors (depending on their age) are subject to mandatory vaccinations, which are carried out in accordance with the calendar recommended by the Ministry of Health (a vaccination card is issued to children).

In addition, it should be pointed out that in 2015 necessary algorithms of proceedings were developed and implemented in all guarded centres, in particular the “Rules of Conduct of the Border Guard with Vulnerable Foreigners,” who also include minors and unaccompanied minors. The algorithm establishes clear rules for who should receive appropriate assistance, including psychological and psychiatric help, and at what stage. It also indicates signals which, after verification, should lead to releasing the foreigner from the guarded centre. According to that document, so-called “return guardians” and “social guardians” were established in all guarded centres. Their task is to maintain the best possible contact with a foreigner, both in order to provide them with up-to-date information about their procedures and to monitor their behaviour and moods. Since autumn 2017, the algorithm has been supplemented by observation sheets, in which the staff of the guarded centre, including medical staff, can enter their remarks and observations about a foreigner. A separate sheet template

is provided for minors. “Rules of Conduct of the Border Guard with Vulnerable Foreigners” were updated in 2019.

Considering the detention of minors, which is allowed under certain conditions, guarded centres for foreigners cooperate with local schools, ensuring access to education for all children, both those under parental care and those who are unaccompanied. Children admitted to the guarded centre, after an interview to check their competence, are assigned to appropriate groups. The activities are conducted on a combined class basis. Teaching plans are developed by teachers in such a way as to enable the implementation of the core curriculum in accordance with Polish regulations. Moreover, in each guarded facility where children may be housed, officers and staff in the education and training sections also conduct voluntary educational and compensatory classes for children, including recreational and sports activities.

Education at the guarded centres was also provided in a distance learning mode (from March to June 2020 and from November 2020 to May 2021). Following the Ministry of Education’s decision to suspend classroom teaching in March 2020 and to introduce distance learning, the guarded centres determined with the principals of the cooperating schools that the teaching will be implemented according to the rules applied to the distance learning of other students. Students in the guarded centres used separate rooms with computer workstations and Internet access. Depending on the school implementing compulsory education, access to drives of virtual schools was provided, where educational materials (also available in editable form) were placed in separate folders. Instructions in educational materials were formulated in a language that students could understand.

In view of the increase in irregular migration, the management of the Border Guard makes every effort to ensure that the management of places in detention not only is effective but also takes into account the welfare of foreigners. Thus, as a result of changing the profile of the Guarded Centre for Foreigners in Lesznów, approximately 200 foreigners could be transferred from the facility in Wędrzyn to the Guarded Centre for Foreigners in Lesznów by the end of February 2022, which contributed to an improvement in their housing conditions.

IV. Alternatives to the detention of foreigners (item 6)

The provisions of the Act on Foreigners of 12 December 2013 and the Act on Granting Protection to Foreigners within the Territory of the Republic of Poland of 13 June 2003 introduced the possibility of applying alternative measures to the detention of foreigners. The purpose of this tool is to secure the presence of the foreigner for the proceedings in question, without applying such restrictive measures to the foreigner as placement in a guarded centre for foreigners.

Both Acts mentioned above provide for issuing a decision on applying certain alternative measures at the stage of assessing the foreigner’s situation by the Border Guard institution, as well as at the later stage of the assessment by the court examining the Border Guard institution’s application for placing the foreigner in a guarded centre. This solution allows to fully secure the guarantees of the foreigner.

Alternatives to detention were applied to a total of 833 foreign nationals in 2021, a 60% increase over 2020, when alternatives to detention were applied to 522 foreign nationals. The largest number of alternative measures to the detention of foreigners was applied in the territory of the Nadodrzański Border Guard Regional Unit, i.e. 36% of the total number of alternative measures to detention applied in the territory of the Republic of Poland.

V. Detention of migrant minors (item 7)

Polish national legislation puts great emphasis on the rights of the child in the placement of foreigners in guarded centres for foreigners, so as to ensure that the interests of the child are paramount. Only children under the care of their parents (legal representatives) and unaccompanied minors in the return procedure who are at least 15 years old can be placed in guarded centres. Unaccompanied minors seeking international protection cannot be placed in detention.

The placement of families with children in guarded centres may only take place in cases where an independent court, taking into account all factors, including the best interests of the child, decides that detention is justified where alternative measures cannot be applied.

Moreover, when considering an application for placement of an unaccompanied minor in a guarded centre in the return procedure, the court is obliged to be guided by the child's best interest and take into account, in particular:

- the degree of physical and mental development of that child,
- their personality traits,
- circumstances of detention,
- and personal conditions supporting their placement in a guarded centre.

In that case, the court may also order that the minor be placed in a foster care facility if it determines that this would be better for the minor.

A total of 571 minors were placed in guarded centres in 2021, including 81 unaccompanied minors (in the return procedure, where most were released due to their declared intention to apply for international protection). However, it should be emphasised that the average period of stay of minors in a guarded centre for foreigners in 2021 was 58 days, while in 2020 it was 70 days.

As Polish law allows for placing minors in guarded centres for foreigners, there are special procedures dedicated to children in those places administered by the Border Guard. In 2018, as a result of cooperation with the NGO "Dajemy Dzieciom Siłę [We Give Children Strength]," a policy "We Protect Children in Guarded Centres" was introduced, including "Procedures for Intervention in Case of Child Abuse in Guarded Centres." This is an algorithm for dealing with the identification of suspected child abuse in a guarded facility, including definitions of child abuse and emotional child abuse. The procedures described therein refer to situations where there is a threat of harm to a child or a suspicion that a crime has been committed by a parent, an employee of a guarded centre, or a third party, including another child. At the same time, the organisation "Dajemy Dzieciom Siłę" conducts training for employees of guarded centres on how to identify cases of child abuse, including sexual abuse, and how to react to such phenomena using introduced procedures. Moreover, the Specialist Training Centre of the Border Guard in Lubań conducts cyclical training sessions entitled "Identification of persons belonging to vulnerable groups (victims of human trafficking, persons with PTSD, with mental disorders) in the context of administrative procedures."

VI. Legal status: ensuring the right to international protection and implementing the principle of non-refoulement. Compliance of existing law with international standards, including in terms of detention (items 8-9)

Poland, as a Member State of the EU, implements all changes in national legislation on the basis and within the limits of EU law, taking into account the standards set out in relevant directives. The amendments to the provisions of the Act on Foreigners and the Act on Granting Protection to Foreigners within the Territory of the Republic of Poland did not concern the issue of detention.

Return issues are regulated by the Directive 2008/115/EC of the European Parliament and of the Council of 16 December 2008 on common standards and procedures in Member States for returning illegally staying third-country nationals. Under Article 6(1) of that Directive, the Member States are in principle to issue a return decision to any third-country national staying irregularly on their territory. However, in accordance with Article 2(2)(a) of the Directive, the Member States may decide not to apply this Directive to third-country nationals who are apprehended or intercepted by the competent authorities in connection with the irregular crossing by land, sea or air of the external border of that Member State and who have not subsequently obtained a residence permit or a right to stay in that Member State. This implies that a Member State may decide not to issue a return decision according to the standards set out in the Directive, in the case of persons apprehended or intercepted in connection with an irregular border crossing.

However, under Article 4(4), the Directive requires the Member States to maintain certain guarantees for the categories of foreigners excluded from the application of the Directive, i.e. to ensure that:

- coercive measures are used in a proportionate manner and with respect for fundamental rights,
- the same standards are applied to conditions of detention,
- emergency medical services are provided and the needs of vulnerable individuals are addressed, and returns are withheld due to physical or mental health conditions,
- the principle of *non-refoulement* is followed.

Polish law provides the above guarantees to persons who, after being apprehended in connection with an irregular border crossing, are ordered to leave the territory of the Republic of Poland. In each case when a foreigner is detected crossing the border irregularly, the Border Guard officers carry out verification activities whose aim is to establish the legal and actual condition of the foreigner. Officers shall question the foreigner on the circumstances of their crossing the border, in particular they shall determine whether the foreigner's statement may be qualified as a declaration of intention to submit an application for international protection. Decisions to issue removal orders are not issued collectively, but separately in each individual case.

As for the issue of ensuring compliance with the principle of non-refoulement in the context of changes in regulations, it should be noted that human health and life are values protected in an absolute manner under Polish law, as stated in Articles 38 and 68 of the Polish Constitution. Moreover, Article 56 of the Polish Constitution grants foreigners the right to obtain asylum and seek international protection in Poland. Subordinate acts, such as statutes, could not and cannot derogate from the provisions of the Constitution.

As of 26 October 2021, the Act Amending the Act on Foreigners and Certain Other Acts entered into force, and introduced – in the case of a foreigner who has been detained immediately after crossing, in violation of law, the external EU border– the possibility to issue a decision on leaving the territory of the Republic of Poland and, on this basis, bringing the foreigner to the border line.

When interpreting laws, they must also be understood through the lens of the legislature's purpose in enacting them. As we read early in the explanatory memorandum to the indicated amendment to the Act: "The draft Act Amending the Act on Foreigners and the Act on Granting Protection to Foreigners within the Territory of the Republic of Poland aims to adapt the provisions of national law to the current migration situation occurring at the external border." Thus, the introduced regulations were closely related to the migratory pressure, which, in a manner controlled by Belarusian services, appeared in the second half of 2021 on the Polish-Belarusian border. The explanatory memorandum goes on to point out the need to ensure access to refugee procedures while ensuring

state security and preventing attempts to abuse the refugee procedure for irregular migration purposes. Attention was also given to streamlining return procedures at the border for those not seeking protection:

“The proposed legislation is primarily intended to ensure that foreign nationals arriving in the territory of the Republic of Poland to seek protection from persecution have access to appropriate procedures for granting international protection, the standards of which are set out in Directive 2013/32/EU. People seeking international protection must be given access to safe and effective refugee procedures. On the other hand, the purpose of the proposed regulations is to create conditions that guarantee internal order and security in the territory of the Republic of Poland in the described context. Persons who abuse the procedures and treat them instrumentally, solely for the purpose of crossing the Schengen border and further irregular migration, should not be granted the right of entry and stay in the territory of the Republic of Poland. [...]”

Therefore, the draft Act contains solutions aimed at counteracting the abuse of the institution of international protection by foreigners who, for purposes other than protection from persecution or serious harm, by submitting an application for international protection obtain the rights of applicants, including the right to cross the border and stay in the territory of the state, which serves to bypass the need to meet the conditions for crossing the external border of the European Union, set out in the Schengen Borders Code.

The purpose of the proposed Act is also to streamline the proceedings conducted by the Border Guard institutions in the case of an irregular crossing of the external border of the European Union, so that for foreigners who are not seeking international protection and have been apprehended immediately after crossing the external border, it is possible to implement urgent actions aimed at arranging for them to leave the territory of the Republic of Poland.”

Thus, as clearly emphasised by the legislator, the introduction of the change in the aforementioned scope was aimed at ensuring efficiency and effectiveness of the proceedings on crossing the border in violation of the law and does not affect persons seeking international protection.

As such, it should be recognised that the statutory solutions introduced due to the specific migration situation do not contradict the principle of non-refoulement because the provisions of the Act on Granting Protection to Foreigners within the Territory of the Republic of Poland still apply within the scope of submitting the declaration of intention to apply for international protection and filing the application in this matter. The above is illustrated by the statistical data. Applications for international protection on the territory of the Republic of Poland were and are accepted from anyone who declares such a will. 4298 applications for international protection were filed in 2021, covering a total of 7252 foreigners, which in comparison to the year 2020 (1535 applications / 2656 foreigners) represents a more than twofold increase.

Due to the large number of persons submitting declarations of intention to file an application for international protection immediately after their detention, and to the limited possibilities of providing interpretation in such conditions, these applications are often accepted not strictly at the Border Guard post located at the border itself, but at the next stage, already in the conditions of a guarded centre for foreigners.

It should be noted that the majority of foreigners deceived by the Belarusian regime have abandoned the risk of further irregular migration and have already benefited from the safe return home offered by international organisations operating also on the territory of Belarus. They declined to take further risks of irregular migration and returned on charter flights organised by the International Organisation

for Migration or the Iraqi Embassy in Moscow, among others. Such offers have already been used by approx. 5 thousand migrants. It is also worth pointing out the often noted discrepancies between the will of volunteers offering their proxies at the border and the will of the foreigners themselves. During their initial contact with the attorneys they meet, foreigners repeatedly declare their willingness to apply for international protection in Poland. However, after a foreigner has been detained by the Border Guard officers, they do not report such a will. This is probably dictated by the fear of legal consequences that would be caused by submitting an application for international protection in Poland, i.e. the creation of procedural links between the person and Poland, which in the future will result in returning the person to Poland regardless of the country they are in. Foreigners, whose country of destination is another EU Member State, are aware of such rules and therefore are not interested in applying in Poland.

VII. Additional information and comments (item 1)

Protection of the state border and prevention of irregular migration fall under the responsibility of the Border Guard. The reliable fulfilment of those duties is essential to ensure internal security and protect public order.

The construction of a physical barrier on the section of the Polish-Belarusian state border commenced on 25 January 2022. The barrier will serve to protect the national border and help counter irregular migration. Deciding to build a barrier on the border against the Belarusian regime's hybrid war, cynically using migration for this purpose, was the only thing that could discourage potential migrants from making further attempts at irregular migration. The barrier will be approximately 187 km long. It is built on the land sections of the state border from the northern bank of the Bug River to the Polish-Belarusian-Lithuanian triangle, excluding watercourses. Included in the construction are 24 opening gates that are about 5m wide for large animal migration, small openings in the foundation sill for small animal migration, and 100 service gates. Along the barrier, there will be a technical road and access roads, allowing quick access to any part of the border.

With regard to the restrictions on access to the border, it should be noted that as of 2 September 2021, there was a state of emergency introduced under the Regulation of the President of the Republic of Poland of 2 September 2021 on the introduction of a state of emergency in the part of the Podlaskie Voivodeship and part of the Lubelskie Voivodeship. It was valid until 30 November 2021. Its introduction was dictated by a particular threat to the safety of citizens and public order associated with the situation on the state border of the Republic of Poland with the Republic of Belarus. The consequence of this was the imposition of certain restrictions on freedoms and rights in the area, including a prohibition from entering the entire area under the state of emergency, except for selected categories of people (such as residents).

However, these were necessary quick and effective countermeasures that had to be taken. At that time, there were many attempts to forcibly cross the border using dangerous objects. There were also provocations on the part of Belarusian services directed at Border Guard officers and soldiers of the Polish Armed Forces. Staying on the Polish-Belarusian border, in the immediate vicinity of the border line, could pose a threat to the safety of bystanders. The provocations in question included incidents of Belarusian officers pointing guns at people on the Polish side, pretending to fire shots, or firing shots most likely with blank ammunition, and the use of pyrotechnics. The introduction of restrictions on entry and stay in the precincts immediately adjacent to the border line was also due to counteracting the criminalisation of migration processes (entry of persons engaged in the smuggling of migrants).

As the scale of irregular migration diminished somewhat in the late fall of 2021, the rules were also changed. The state of emergency was abolished; however, in accordance with the amended Act

on State Border Protection, as of 1 December 2021, it was made possible to impose a temporary ban on staying in a specified area in the border zone adjacent to the external border, if necessary to ensure security or public order in the border zone. Such a ban was introduced on 1 December 2021 by the Regulation of the Minister of Internal Affairs and Administration of 30 November 2021 on the introduction of a temporary ban on staying in a specific area in the border zone adjacent to the state border with the Republic of Belarus, and covered 183 localities. The ban is valid until 30 June 2022. However, in justified cases, the locally competent commander of the Border Guard post may permit to stay, for a specified period of time and under specified rules, in the prohibited area. In particular, this concerns journalists within the meaning of Article 7(2)(5) of the Act of 26 January 1984 – Press Law.

It is worth adding that the Podlaski Border Guard Regional Unit, which de facto confronts the phenomenon of the Belarusian regime's use of migration on the border for the purposes of hybrid warfare, from the beginning of December 2021 until the end of March 2022 provided travel arrangements to the area covered by the entry ban for a total of 243 people from 60 different domestic and foreign media outlets. Since the outbreak of the war in Ukraine, journalists' interest in the Polish-Belarusian border has declined (23 media representatives used the opportunity to travel to the area from the outbreak of the war until the end of March 2022).