

# Human Rights Abuse on the Polish-Belarus Border

## Content

Introduction

Description of the Situation

Human Rights Abuse

Polish Constitution

Attempts of several NGOs to help refugees to cross the border

Conclusion

## Introduction

The question of how to handle forced migration has been in the focus of the media since the autumn of 2015. The issue has led to discussions in every part of society and the political responses were the EU-Turkey deal, sealing the borders of the Balkan route and partnerships with Libya to decrease the number of refugees crossing the Mediterranean. Even though the topic received a lot of attention, there is one border which is forgotten: the east side of the Schengen Area, the Polish-Belarusian border. The lack of attention is assumed to be caused by the relatively low number of refugees trying to cross it, even though that does not make it less severe for those affected. At least 1.000 citizens of the Russian North Caucasus republic of Chechnya were in Brest, the Belarus border town, to get asylum in the European Union.<sup>1</sup> When they go on the train to Poland, they are being refused access to the Polish territory, even though they clearly state that they ask for protection. In the following paper, it is discussed whether the behaviour of the Polish border guards is in compliance with human rights and the Polish constitution.

## Description of the Situation

Due to the oppressive and often violent tactics of officials serving under Chechen leader Ramzan Kadyrov<sup>1</sup>, 12,500 Russian citizens applied for Asylum in 2013, most of them Chechens.<sup>2</sup> The violent

---

<sup>1</sup> Ljoma Tsjabajev and Robert Coalson, 'Desperate Chechen Refugees Crowd Belarus Border Town With Dream Of Reaching EU' (*Radio Free Radio Liberty*, 6 July 2016) <https://www.rferl.org/a/chechen-refugees-belarus-border-town-dream-reaching-eu/27841366.html> accessed 29 October 2017.

<sup>2</sup> 'Fleeing Chechen Refugees Stranded on Polish-Belarus Border' (*The Moscow Times*, 31 August 2016) <https://themoscowtimes.com/articles/chechens-running-from-kadyrov-stuck-on-polish-border-55165> accessed 29 October 2017.

circumstances are not a new problem in Chechnya: citizens face illegal detentions, kidnapping, torture and enforced disappearances because of the principle of collective responsibility.<sup>3</sup>

The route through Belarus is the most common for Chechens, because Russian citizens have the right of a three-month-long stay without applying for a visa. When they take the train from Belarus to Poland, they are not allowed to buy one-way tickets and they also need a seat reservation in a specific car which separates them from the “normal” traveller.<sup>4</sup> The separation happens when the asylum seekers buy the tickets at the counter – judged by appearances.<sup>5</sup> As shown in a report from Helsinki Foundation for Human Rights, the separation of asylum seekers and people with a visa or EU passport is expected by the Polish border guards.<sup>6</sup> The distinction enables the Polish border guards to hide the rejection from the “normal” traveller, since these people are allowed to leave the train and pass the border at the first place.<sup>5</sup>

When the asylum seekers arrive at the border control at the train station, they are usually being interviewed about the reasons for coming to Poland. The wish to seek asylum is ignored, instead they ask the asylum seeker whether they want to work in Poland. Because the asylum seekers tend to answer the question in the affirmative, the border guard has the possibility to refuse the asylum seeker because of illegal migration. The border guard hands the asylum seeker a paper in Polish with the demand to sign it. The paper states that the asylum seeker tried to immigrate illegally without a valid Visa. The translation of the paper is only given when the asylum seeker explicitly asks for it. If the asylum seeker signs the paper, he is sent back to Belarus. Nevertheless, there have been very few cases that an asylum seeker wrote “asylum” instead of signing and, after a long discussion, was allowed to pass the border, but this is an exception.<sup>5</sup> The high rate of refusals leads to many unsuccessful attempts of reaching Poland. Human Constanta, a Belarusian Human Rights NGO found that refugees make an average of 19 attempts<sup>3</sup> until they were able to start the procedure. Human Rights Watch reported about a man having tried over 50 times.<sup>4</sup> At a certain point, the asylum seekers lack money to pay for the train tickets, the daily rental fee or food. Because the train ticket is the least necessary to survive, they cut short on that. This means that they can make fewer attempts, even though they need to try daily because they only have a permit to stay in Belarus for three months. Due to the lack of money, some asylum seekers face homelessness and malnutrition.

## Human Rights Abuse

Article 14 of the UN Declaration of Human Rights: “1. Everyone has the right to seek and to enjoy in other countries asylum from persecution. 2. This right may not be invoked in the case of prosecutions genuinely arising from non-political crimes or from acts contrary to the purposes and principles of the

---

<sup>3</sup> Iryna Arekhouskaya and others, ‘Invisible Refugees on Poland-Belarus Border’ (*Human Constanta*, 16 September 2016) <http://www.osce.org/odihr/273021?download=true> accessed 29 October 2017.

<sup>4</sup> ‘Poland: Asylum Seekers Blocked at Border’ (*Human Rights Watch*, 1 March 2017) <<http://www.refworld.org/docid/58b6a7ec4.html>> accessed 30 October 2017.

<sup>5</sup> Luka Fischer, ‘Reisebericht Polen und Weißrussland’ (*Borderline Europe*, 1 July 2017) [http://www.borderline-europe.de/sites/default/files/readingtips/Reisebericht%20Polen%20und%20Wei%C3%9Frusland\\_05\\_2017.pdf](http://www.borderline-europe.de/sites/default/files/readingtips/Reisebericht%20Polen%20und%20Wei%C3%9Frusland_05_2017.pdf) accessed 30 October 2017.

<sup>6</sup> Marta Górczyńska and Marta Szczepanik, ‘A road to nowhere’ (*Helsinki Foundation*, October 2016) <http://www.hfhr.pl/wp-content/uploads/2016/11/A-road-to-nowhere.-The-account-of-a-monitoring-visit-at-the-Brze%C5%9B%C4%87-Terespol-border-crossing-point-FINAL.pdf> accessed 30 October 2017.

United Nations.”<sup>7</sup> The important term is, that everybody has the right to *seek* asylum. In Poland, the asylum seekers cannot even access the asylum procedure. Since in Chechnya people may already get persecuted when they are “dressed or pray ‘inappropriately’”<sup>3</sup>, the clear majority of Chechen asylum seekers, flee because of these sort of ‘crimes’. Consequently, the second sentence of the article usually does not apply.

Because of the missing access to the procedure and the resulting lack of money, even more human right abuses occur. Article 25: “1. Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control.”<sup>7</sup> One could argue, that the lack of ability to cross the border is a “circumstance beyond his control”. If the access to asylum was given, it would also be clear which state is responsible to care for the livelihood in case the persons affected cannot do it themselves. Because this problem can be solved by giving access to asylum, we will focus on answers regarding this problem in the Polish constitution.

Article 8: “Everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the constitution or by law.”<sup>7</sup> Even though access to asylum is a guaranteed right as explained in the following paragraph, it is not possible to access an effective remedy, because they cannot access the Polish territory. This fundamental right, that is supposed to ensure the rule of law, is consequently also violated.

## Polish Constitution

Article 56: “1. Foreigners shall have a right of asylum in the Republic of Poland in accordance with principles specified by statute. 2. Foreigners who, in the Republic of Poland, seek protection from oppression, may be granted the status of a refugee in accordance with international agreements to which the Republic of Poland is a party.”<sup>8</sup> This Article outsources the criteria for international protection. It draws a line between asylum, stipulated in national law, and the refugee status, stipulated in international law. These articles only provide limited information with regard to our question, which is not about who obtains international protection, it is about denial of access to the procedure. The fact, that international protection exists in Poland is only the first half of the answer, for the second half, we need to have a look at the Polish national law: “Asylum applications should be submitted to the Border Guard (SG) which will then transfer them to the Head of the Office for Foreigners. [...] The Head of the Office for Foreigners is competent to examine the claim, so the SG cannot refuse to accept the application.”<sup>9</sup> This phrase declares the border guards’ behaviour to be unlawful.

In addition to that, the EU has some legislations about the obligations of member states in context of access to international protection: Article 6(2) “Member States shall ensure that each adult having

---

<sup>7</sup> UN Declaration of Human Rights, s 8, 14, 25.

<sup>8</sup> Polish Constitution (rev. 2009), s 56.

<sup>9</sup> Helsinki Foundation for Human Rights, ‘Registration of the Asylum Application’ (*Asylum Information Database*) <http://www.asylumineurope.org/reports/country/poland/asylum-procedure/procedures/registration-asylum-application> accessed 30 October 2017

legal capacity has the right to make an application for asylum on his/her own behalf”<sup>10</sup>. Poland does not provide everyone the possibility to make an application for asylum. Therefore, they are violating this law. Also, after the application, the asylum seekers shall be allowed to move freely in the host country: Article 7(1) “Applicants may move freely within the territory of the host Member State or within an area assigned to them by that Member State.”<sup>11</sup> This article emphasizes that the applicant is allowed to stay in the country while his application is checked and does not have to wait abroad.

According to article 77 of the Polish constitution “everyone shall have the right to compensation for any harm done to him by any action of an organ of public authority contrary to law”<sup>8</sup>. This means, that refugees have the right to take Poland to court for the border guards unlawful behaviour. No such lawsuit has happened so far.

## Attempts of several NGOs to help refugees to cross the border

On March 14, 2017 three different NGOs and 14 lawyers accompanied 14 different families. For each one, they had a completed formula of request for asylum including the families’ stories and asked the border guards to be allowed to pass. All 14 requests were rejected and one month later the lawyers were told that everything had happened according to the law and that the refugees were not allowed to pass because of the Schengen Agreement.<sup>5</sup> The claim that the agreement prohibits refugees to enter the Schengen Area is wrong: it only says that the states at the external borders “prevent illegal immigration by nationals of States that are not members of the European Communities.”<sup>12</sup> As explained above, seeking asylum is not illegal immigration. Therefore, arguing with Schengen does not make sense.

## Conclusion

Poland is in a dilemma between the rule of law that permits the refugees to ask for asylum and an increasing unpopularity of immigrants. By giving the border guards the command to act unlawfully, human rights are violated. In other words, by acting democratically, they violate the rule of law and human rights of people that are not represented democratically, because they cannot vote without a citizenship. Unfortunately, the Polish-Belarusian border is only one example of Europe’s trend toward isolation: the Balkan-route, the Mediterranean and the Straits of Gibraltar are places where the same phenomenon can be observed. Like this example shows, the answer to the migration question would be a different one if the states involved would stick to their constitution. Is this not the purpose of a constitution, to provide certain values to times where a guideline is needed?

---

<sup>10</sup> Council Directive 2005/85/EC on minimum standards on procedures in Member States for granting and withdrawing refugee status, para 6.

<sup>11</sup> Directive 2013/33/EU of the European Parliament and of the Council laying down standards for the reception of applicants for international protection [2013] para 7.

<sup>12</sup> Schengen acquia – Agreement on the gradual abolition of checks at their common borders [1985] para 17.