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The image shows a border fence made of vertical metal slats. In the foreground, there is a thick, tangled layer of grey and white material, possibly a net or insulation, with some dry sticks protruding from it. The background shows a wooded area with bare trees. A dark blue, semi-transparent shape is overlaid on the right side of the image, containing white text.

Pushed Back at the Door: Denial of Access to Asylum in Eastern EU Member States

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Summary

“Europe has always been a strong advocate of human rights in Europe and elsewhere. In its struggle to maintain control of its borders however, it is being tested on its adherence to human rights. Through slowly stripping away the rights of asylum seekers and migrants, Europe is creating a scary new ‘normal’. [...] European countries must offer safe and regular channels for mobility. It is the only way that European countries will regain full control of their borders.”

The appeal of **François Crépeau**,
UN Special Rapporteur on the Human
Rights of Migrants to the European Union
18 February 2016

The report **‘Pushed Back at the Door’** by NGOs from five Eastern EU Members States (Bulgaria, Czech Republic, Hungary, Poland and Slovenia) presents a bleak picture of Europe’s response to the biggest humanitarian crisis since the Second World War. Increased border control and the construction of physical and legal barriers restricting access to protection for people fleeing war and terror characterize this ‘scary new’ reality. The political discourse shaping legislative and policy measures in the participating countries is centred around issues of security and terrorism, while little or no room is left for the obligation to grant the right to asylum and to protection.

The responses given by these countries to the emergency situation and the increased number of asylum-seekers vary and range from violent push-backs, through the denial of entry, to proposed legislative changes restricting access to protection. The following country reports provide an overview in each country with case studies and recommendations.

As illustrated by the findings of this report, increased border controls and physical barriers (such as the fences in Bulgaria and Hungary) have proven to be ineffective as they could not divert asylum-seekers from seeking protection. In Bulgaria, most third-country nationals are still intercepted within the country and Hungary had to supplement its barbed wire fence with the so-called push-back law “legalizing” illegal push-backs from within the territory of the country. The wide-spread nature of reports on violence in both countries accompanying these police measures is of serious concern.

The lack of transparency and proper oversight of border control practices result in the violation of the principle of *non-refoulement* at the Prague Airport where border guards are reported to refuse to register asylum claims. The situation is similar at the eastern border crossing points of Poland where reports of people being denied the possibility to ask for asylum and enter the country are on the rise;

a worrying trend confirmed also by the report of the Polish Ombudsman. In both countries decisions issued by the border guard/police on the refusal to enter are relatively high. While the denial of access to Slovenia is not seen as a systemic issue, there is a legislative attempt at the time of writing to impede access to the territory of the country and the asylum procedure.

Despite all these measures, those fleeing for their lives continue to arrive and find the gates of Europe closed. The European Union, which is founded on the unquestionable respect for human rights, must find the right balance between protecting its borders and providing access to those who need protection. Currently, this is not the case.

The report makes several recommendations so that this 'scary new' reality could not be considered as the new normal. Among others, states are urged to fully respect relevant human rights obligations, to introduce effective border control mechanisms with involving external actors in monitoring and training their staff, and to allow access to border check-points to facilitate transparency and adherence to human rights. NGOs and international organizations are encouraged to cooperate in producing information materials for asylum-seekers and establish cross-border cooperation to follow up on human rights violations.

1. Relevant domestic legal provisions

The legislation in Bulgaria does not have a legal definition of the term “push-back” or a provision that specifically bans such acts. The negative obligation of “*non-refoulement*” stems from the 1951 Refugee Convention and respective EU legislation. Under the Bulgarian Law on Asylum and Refugees (LAR)¹ any foreigner can apply for asylum in Bulgaria. A foreigner who enters Bulgaria in an illegal manner in order to apply for asylum is obliged to appear without delay before the competent authorities.² Under LAR all administrative measures regarding deportation are suspended for the duration of the asylum procedure.

2. The current situation regarding push-backs

The national political context in Bulgaria reflects, to a great extent, the overall European trends post-opening and closure in March 2015-2016 of the West Balkans route with radical populist restrictions vis-à-vis irregular entries and migration taking over. In this context Bulgaria faced the additional challenge to be serving as an external land border between Turkey and the European Union.

Following the formal closure of the West Balkans’ route in the beginning of 2016 the Bulgarian authorities intensified their effort in securing the Bulgarian–Turkish border, fearing the redirection of the migration flow. Work on the barbed wire fence (which is planned to stretch along the 230-km long border with Turkey until January 2017) also intensified. Speaking before the Council of Ministers on 7 January 2015, the Bulgarian Prime Minister stated that the main purpose of the facility is to channel refugees towards official border crossing points.³

Statistics show, however, that the fence had an adverse or no effect as the vast majority of people continued to be intercepted inside the country territory or at its exit border with Serbia. As of 10 December 2016, the Bulgarian Ministry of Interior (MOI) reported⁴ to have apprehended 18,045 irregular third country nationals, of whom 18%⁵ at national entry borders; 34%⁶ at national exit borders and 48%⁷ inside the country’s territory.

1 Law on Asylum and Refugees, last amended 6 Dec 2016.

2 Article 4, LAR.

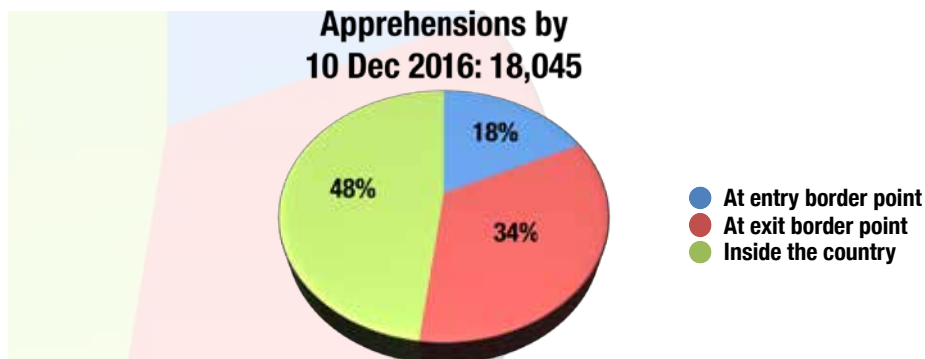
3 http://www.dnevnik.bg/bulgaria/2015/01/27/2461215_bejanci_sa_spreni_na_granichen_punkt_vupreki/, available in Bulgarian only.

4 MOI, *Migrations statistics* as of 10 December 2016;

5 Ibid., 4527 individuals apprehended at the national entry borders;

6 Ibid., 4901 individuals apprehended at the national exit borders;

7 Ibid., 8619 individuals apprehended inside the territory of the country;



In comparison with 2015⁸, asylum applications demonstrated a 48% decrease in total number of the new arrivals; moreover, a continuing decrease of those arrested on entry, a similar decrease (yet still high) numbers of those arrested on exit and exponential growth of those who are arrested inside the territory of Bulgaria.

Compared to previous years, asylum-seekers' access to territory remains difficult. State policies and practices continue to treat people fleeing war and persecution as migrants who leave their countries mostly for economic reasons. There are no institutional or practical measures to ensure any differentiated approach that would ensure effective access to territory and protection for those who are asylum-seekers or forcibly resettled from their countries of origin.

Together with the government's reinforcement of border security in 2016, the Bulgarian Helsinki Committee (BHC) started receiving a growing number of reports from asylum-seekers at transit centres of cases of violent push backs by Bulgarian police authorities at the Bulgarian-Turkish border.

3. Case studies

During the period of May to October of 2016, BHC received 33 reports of robbery, physical violence and degrading treatment.⁹ According to the reports, at least 600 people trying to cross the border illegally were affected but the actual numbers are probably higher. The collected data is based on BHC's systemic border monitoring, including interviews with asylum-seekers, which the organization performs as part of its official agreement with authorities.

⁸ MOI, Migrations statistics as of 31 December 2015 - 34,056 irregular immigrants: 10,709 individuals at the borders on entry; 11,710 individuals at the borders on exit and 11,637 individuals arrested inside the country's territory;

⁹ <http://bghelsinki.org/en/news/press/single/bhc-calls-authorities-investigate-reports-systemic-human-rights-violations-regarding-refugee-access-territory-and-international-protection/>

The most serious concerns regarding difficult access were a result of the often-used practice by authorities of indiscriminately pushing back migrants, among whom there are potential asylum-seekers. Various groups of asylum-seekers reported throughout the year that the Bulgarian border police, including the mixed patrols deployed for state border protection, pushed them back into the Turkish territory not only from the border line but also from inland border areas.

The majority of received reports (80 percent) concerned the seizing of cash, valuables or even the food they carried without preparing a protocol upon the detention of asylum-seekers by the Bulgarian police authorities. There were individual reports about inappropriate treatment by the police: using rude language, setting personal belongings on fire and strip searches.

A significant share of the reports by asylum-seekers (around 45 percent) concern physical violence including knocking to the ground, kicking, beating people with batons and in one case – a handgun grip. In six cases, police dogs were used for intimidation during the arrest, which resulted in one case of a dog bite. In several other cases, the policemen used warning shots (shooting in the air). In a similar incident on 15 October, 2016 a 19-year old Afghani man was killed after a border policeman allegedly used a warning shot and the bullet ricocheted killing the person. In June of 2016, the Burgas Regional Prosecutor's Office discontinued the investigation because, the Office concluded, the result of the officer's conduct was coincidental and could not have been foreseen.

4. Recommendations

- Increase institutional control and training of mixed border and national police patrols at the Bulgarian-Turkish border.
- Increase FRONTEX's participation in ground patrols at the "green border" areas.
- Effective investigation of reports of push-backs in cases where the victim is unwilling or unable to participate fully in the process.
- Ensure access to territory by disseminating clear instructions for the processing of asylum applicants appearing at official border police crossing points.

1. Relevant domestic legal provisions

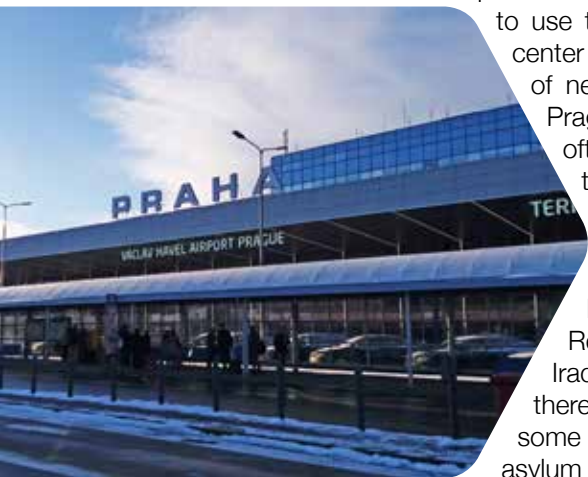
The only external border with third countries in the Czech Republic is at the Prague Airport Transit Zone. According to §3a of the Czech Asylum Act 325/1999 Coll, a foreigner has the right to submit an asylum application to the police at the border crossing. After lodging the application, the person is to be escorted to the airport reception centre for asylum-seekers where the procedure continues according to section §73 et al. of the Czech Asylum Act.

2. The current situation regarding violent push-back

In 2015 and 2016, the Organization for Aid to Refugees (OPU) has been monitoring numerous complaints against the Aliens Police conduct at the Prague Airport Transit Zone. The police are not enabling refugees to submit asylum applications. The Czech Asylum act implements EC Procedural directive provisions regarding the transit zone procedure and the Prague Airport Transit Zone has a special reception center for asylum-seeker in the airport building. But for practical purposes, this procedure is completely dysfunctional and almost none of the

potential asylum-seekers have the possibility to use this procedure. The airport reception center is empty most of the year. The numbers of newly admitted asylum-seekers at the Prague Airport in 2015 and 2016 were often between 0-2 persons monthly. At the same time the transit zone police issues every month, on average, 30-40 decisions on entry refusal, for persons from countries including, but not limited to, the Democratic Republic of Congo, Sri Lanka and/or Iraq. Based on OPU clients' testimonies there are serious reasons to conclude that some of these persons intended to apply for asylum but they did not have the possibility.

Instead being enabled to access the asylum procedure, some asylum seekers were imprisoned for arriving with allegedly forged passports. Said imprisonments took place for the primary purpose of expelling the asylum seekers. Further, a number of asylum seekers were expelled directly from the transit zone, despite the fact that they arrived with a valid visa. Recently, OPU even monitored a case where the border police planned to cancel a valid specially pre-approved entry visa. In the Prague Airport Transit Zone, without any internal control mechanism, the principle of *non-refoulement* is being breached. The Aliens



police catastrophically and systemically fail to screen possible asylum seekers, to assess the danger that refugees face in case of forced return. The authorities also fail to conduct the screening for vulnerable persons like victims of torture, other violence or victims of human trafficking.

3. Case studies

Situation 1: Refugee arriving with a forged document

OPU interviewed a man from Sri Lanka, currently imprisoned in prison Prague 6. He had been long persecuted by the state authorities in Sri Lanka and experienced torture including sexual violence. He ultimately fled Sri Lanka with a forged document as it was not safe for him to get real documents. On 12th December, 2015, around 11 AM, he arrived to the International Vaclav Havel Airport Prague. He intended to immediately ask for asylum. During a border check at the transit zone, the police noticed his forged document and did not let him continue. The man tried to explain he was a refugee, but the police did not understand him. They placed him in a police cell, while the man did not know what was happening. He waited there for six hours. He did not receive anything to drink, anything to eat, and he was not allowed to use a toilet even after he repeated the words “toilet” and “bathroom”. His mobile phone and money were confiscated. Later that evening, after six hours in captivity, an interpreter arrived, and police began an interview with the man. The man immediately said he was a refugee and wanted to seek asylum in the Czech Republic. The interpreter said it was not possible to ask for asylum in the Czech Republic and that the man must return to his home country. The man replied he cannot return. After that, the police only asked the man about his name, date of birth and address, and concluded the interview. The man does not know what was written in the protocol as no one interpreted it for him. That night, he was escorted to one more cell where he believes he had a “court” procedure but did not understand what was happening during the procedure. There was an interpreter present, but the interpreter did not translate to the asylum seeker any of the procedure. There was no lawyer present and no legal aid was provided to him. The following day he was escorted to the Prague 6 prison where he has been for 5 months for now, currently ordered to stay there for 8 months. He is in a cell with 16 persons, none of whom speaks Tamil. No one of the prison staff speaks his language. He receives food regularly, but often it is meat he cannot eat based on his Hindu religion. He gives the meat to other inmates who save bread for him in exchange. He can never go outside because the prison has no outer court. He submitted an asylum application from the prison on 2 March, 2016, but no one from the Ministry visited him. He spends his days in the cell with a small window that can sometimes be open. He got ill during the winter months with a high fever most likely because it was very cold in the cells. The staff doctor gave him some painkillers initially, but later stopped giving him the medicine in all likelihood indicating to the asylum-seeker that he would need to pay for the

medicine, which the man did not understand exactly. He suffers needlessly, and indicated in the interview that he has never committed any crime in any country.

Situation 2: Refugee arriving with a valid document and valid visa

In November 2015, OPU interviewed a female refugee from Armenia who arrived with two minor children. She arrived by plane, with a valid visa for herself and both of her children. There were police present right in front of the airplane exit, who took her passport and told her in simple English and hand gestures that she needed to return to Armenia immediately, together with her two small children. She testified that both her and her children had Schengen visas and properly booked tickets to another EU country where her brother lives and where she intended to apply for asylum. She had a hotel in Prague booked for her and the children as well as proofs of her brother's address. The police did not accept her proof of booking and insisted on her needing to return to Armenia via Kyiv. She repeated she could not return home, but the police did not accept her statement. When she refused to return on the same flight, the police took her and the children to a police cell. The entire time, there was no interpreter present. The police wanted the woman to sign some papers which she guessed meant agreeing with returning to Armenia via Kyiv. She refused to sign. After that, she and her children had to wait for an extended period of time in front of the police cell, standing, as there was nowhere to sit. According to the woman, she felt physically sick the entire time of the police interrogation, with a strong headache caused by her increased blood pressure. She also stated her children were hungry while waiting at the police cell. She tried to ask for medicine and food for children, but the police did not understand her. She was very much afraid of being forcibly returned to her home country where she would face persecution. She was never informed about any procedural rights, such as being allowed to contact a lawyer or being entitled to ask for asylum. In the end, she managed to call her friend and the friend provided a lawyer. The lawyer assisted the woman with expressing her asylum intent and the family was escorted from the police cell to the reception centre.

4. Recommendations

- Internal and external monitoring mechanism within the border police should be set in place, including, but not limited to, quality monitoring of each case file and quality interpretation.
- The system of border screening mechanisms of refugees must be completely overhauled. In some cases, the border police were absolutely ignorant and misinformed, including making the argument that the foreigners “calmness” or “clothes” was not an indication of refugee status.
- The procedure of cancelling a valid visa upon border entry without further reasoning and/or explanation should be abolished EU-wide, or at least scrutinized thoroughly.

1. Relevant domestic legal provisions

By 2015, the Hungarian-Serbian border section had become one of the three main entry points for irregular migrants and asylum-seekers into the EU. During the summer of 2015, in addition to the legislative amendments that prevent access to Hungary's asylum system (e.g. Serbia regarded as a safe third country, unfair procedural rules), Hungary has also constructed a barbed-wire fence first along the 175-kilometre long the Serbian-Hungarian, then at the Croatian-Hungarian border, with the explicit aim to divert refugee and migration flows. Since the completion of the fence along the Serbian border on 15 September 2015, entering Hungary through the border fence has become a criminal act in violation of Article 31 of the 1951 Refugee Convention¹⁰. Two transit zones were created along both the Serbian and Croatian border sections where immigration and asylum procedures are conducted.

Recent amendments to the Hungarian Asylum Act and the Act on the State Border, which took effect on 5 July 2016, oblige the Hungarian police to automatically escort back to the external side of the border fence any migrants who are apprehended within 8 kilometers of the border fence along the Serbian-Hungarian or the Croatian-Hungarian border. This measure effectively legalized push-backs from Hungarian territory to Serbia and denies migrants and refugees the right to seek international protection, in breach of Hungary's legal obligations under international and European Union law. These people are then stranded for weeks in inhumane conditions before gaining access to the transit zones.

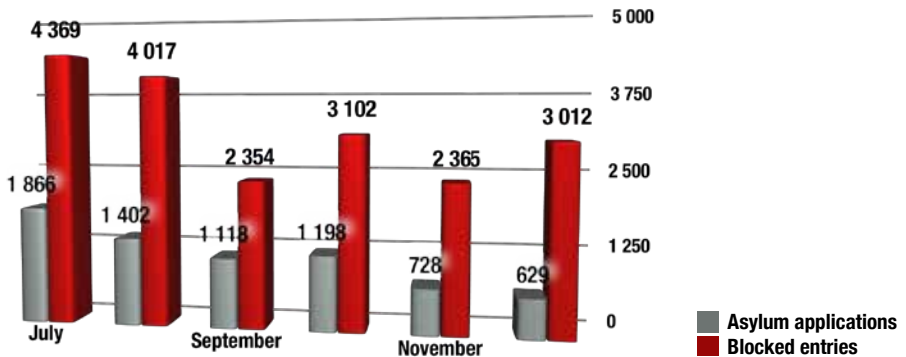
2. The current situation regarding push-backs

The transit zones have become the only way to gain access to Hungary and to Hungary's asylum procedure in a lawful manner since 15 September 2015. These transit zones, however, in Tompa and Röszke have limited capacities, and on average, only 20-30 asylum-seekers are allowed to enter per day. Inhumane conditions in the pre-transit area and the long and arbitrary wait compel migrants to try other ways to enter and seek protection.

As a result of the legalization of push-backs, in the period between 5 July and 31 December 2016, **19,219** migrants were denied access (prevented from entering or escorted back to the border) at the Hungarian-Serbian border. These migrants were not only denied the right to apply for international protection, despite most of them coming from war zones such as Syria, Iraq or Afghanistan, but many of them were also physically abused by personnel in uniforms and injured as a consequence.

¹⁰ In case of asylum-seekers – see also the UNHCR [Summary Conclusions](#) on the interpretation of this provision

The below chart illustrates the number of asylum applications submitted and the number of migrants who were blocked from entering at the border since 5 July 2016 thus being prevented from applying for asylum.



The Hungarian Helsinki Committee (HHC) has been receiving a growing number of alarming reports about serious abuses and ill-treatment committed against migrants and would-be asylum-seekers since the beginning of spring 2016. The most well-known case is that of a young Syrian man who drowned in the Tisza river while attempting to cross into Hungary from Serbia on 1 June 2016¹¹. The increasing and systematic pattern of violence against would-be asylum-seekers is further evidenced by reports released by Human Rights Watch and Amnesty International¹². The doctors of Médecins Sans Frontières (MSF) in Serbia treat injuries caused by Hungarian authorities on a daily basis. This shocking reality is evidenced by a set of video testimonies recorded by a Hungarian news portal on 24 August 2016 in English¹³. A Frontex spokesperson has described the situation in an article of the French newspaper *Libération* on 18 September 2016¹⁴ as “well-documented abuses on the Hungary-Serbia border”.

Alarmed by the unprecedented number of reports of violence committed at and around the Hungarian-Serbian border, the HHC turned to the Hungarian Police urging investigations into these allegations on 14 June 2016. On 23 June 2016, the Police responded by stating that it “guarantees humane treatment and the enforcement of fundamental human rights in all cases.” The response failed to address any of the reported abuses and only promised to pay particular attention

¹¹ See for example the UNHCR’s press release on the incident: <http://www.unhcr-centraleurope.org/en/news/2016/unhcr-alarmed-at-refugee-death-on-hungary-serbia-border.html>

¹² HRW’s reports are available here: <https://www.hrw.org/news/2016/07/13/hungary-migrants-abused-border> and <https://www.hrw.org/news/2016/09/20/hungary-failing-protect-vulnerable-refugees>

¹³ http://hvg.hu/itthon/20160824_roszke_horgos_tompa_szerbia_hatar_menekultek_sor_embercsempesz_video_eroszak

¹⁴ http://www.liberation.fr/planete/2016/09/18/a-la-frontiere-serbe-frontex-s-embourbe-dans-la-galere-hongroise_1501920

to instructing police personnel on duty at and around the border to guarantee the lawfulness of police measures. Since then, however, according to information available to the HHC, no internal investigation or criminal procedure has been launched in this matter.

3. Case studies

Case study No. 1



On 12 August 2016, the HHC, on a visit to Serbia, met a group of Pakistani single males who attempted to cross into Hungary close to Tompa on 11 August. The group walked for 8 hours before stopping on a corn field to rest. They were woken up by two Hungarian policemen in blue uniforms. Soon 13 other men in green uniforms arrived and requested each Pakistani to hand over their mobile phones. Some of the phones were simply checked, some were disassembled and their IMEI number noted down. After a thorough check of their belongings, they were escorted to the closest road and were made to board a green van.

They were driven to a gate on the border fence and were made to cross it one by one and were ordered to sit down and wait for further instructions. Once everyone was sent through the gate, the men in uniform surrounded them, immediately in front of the fence, still on Hungarian territory. One of the men in uniform shouted something in Hungarian and then all the 15 uniformed men started beating the Pakistani men. They attempted to flee and some of them had to leave their belongings behind. Two of them suffered serious injuries, one of them was treated in Subotica, the other in Belgrade.

Case study No. 2

On 31 May 2016, HHC monitors met three minors from Afghanistan who had crossed to Hungary on 15 May. After the crossing, the minor children were subsequently beaten, kicked and pepper sprayed by Hungarian police. Dogs were unleashed on them, and two weeks later the traces of dog-bites were still visible on the nose of one of the minors. There was no medical record of the injuries, nor any follow-up treatment at the reception center in Hungary.

4. Recommendations

- The law legalizing push-backs, breaching Hungary's legal obligations under international and European Union law, should be revoked.
- Police measures taken at the border should always be documented and appropriate safeguards should be in place to guarantee the respect for human rights. Subjects of police measures should be informed of their rights to complain and there should be an adequate complaint mechanism in place.
- Given Frontex's role at the Hungarian-Serbian border, Frontex should make its findings public and should ensure that FRONTEX-operations play an active role in preventing and investigating the widespread violence at the Serbian-Hungarian border.
- Ensuring access to territory by expanding the capacity and opening times of the transit zones could divert irregular migration towards regular channels.

1. Description of the relevant domestic legal provisions

Domestic legal provisions directly provide for the right of asylum-seekers to enter Polish territory when applying for international protection despite the lack of valid visa or other document allowing them to enter that territory. Relevant provisions in place stay in line with European and international law in this regard. If foreign nationals explicitly express their intention to seek international protection, in accordance with Article 28(2)(2)(b) of the Foreigners Act¹⁵, the possibility of issuing them a decision on the refusal of entry based on the absence of a valid visa is excluded. Under the provisions of the Protection Law¹⁶, Border Guard personnel shall receive an application for international protection, register it and send the application to the Head of the Office for Foreigners within 48 hours¹⁷. The latter is the administrative body responsible for examining the asylum case and issuing a decision on granting or refusing international protection. The role of the Border Guard is limited to the receipt of the application and the submission thereof to the relevant administrative authority.

2. The current situation regarding push-backs

Despite the legislative framework, for the past several months, non-governmental organizations providing assistance to refugees have been observing an increase in the number of reports from individuals who were denied the possibility to apply for international protection at the eastern border crossing points of Poland, in particular in Brest-Terespol, which is a border crossing point between Belarus and Poland¹⁸. According to the reports of foreigners, mostly of Chechen origin, despite their repeated, clearly formulated requests, in which they invoke their experience of persecution in the country of origin, they were refused the right to lodge an application for international protection and enter Poland. Reportedly, only two or three families are allowed daily to submit such application, but the selection of these families is based on unclear criteria. These claims could not be verified because the administration of the Border Guard Station in Terespol denies access to the location where the initial interviews with foreigners arriving at the border are conducted to non-governmental and international organizations, including UNHCR.

¹⁵ Act of 12 December 2013 on Foreigners (Journal of Laws 2013, position 1650, with further amendments, hereinafter: Foreigners Act), available in Polish at: <http://goo.gl/510YPm> [accessed on 2/11/2016].

¹⁶ Act of 13 June 2003 on granting protection to foreigners within the territory of the Republic of Poland (Journal of Laws 2012, position 680, with further amendments, hereinafter: Protection Law), available in Polish at: <https://goo.gl/82sMW0> [accessed on 2/11/2016].

¹⁷ Article 30(1) of the Protection Law.

¹⁸ Border crossing point in Brest-Terespol is the most common place of applying for international protection by citizens of Russian Federation and former Soviet Republics. It is a border between Poland and Belarus where citizens of RF can travel on visa-free basis. Since every year about 80% of all applicants for international protection in Poland are Chechens, the vast majority of all applications are submitted at Brest-Terespol border crossing point.

3. Case studies

In July of 2016, the Helsinki Foundation for Human Rights (HFHR) published an open letter¹⁹ to national and international human rights bodies, trying to draw public attention to the problem of denial of access to asylum at the Polish eastern border. The letter was sent, among others, to the United Nations Human Rights Office of the High Commissioner, Human Rights Watch, FRONTEX Fundamental Rights Officer and the EU Fundamental Rights Agency. However, the situation has not improved. In August, Polish and Belarusian media covered the topic of a demonstration in Brest where about 150 Chechens were protesting the Polish policy of “closed doors.”²⁰ At the same time, the Polish Minister of the Interior and Administration announced, during a television interview, that the Polish government will not allow for the formation of a “new migration route” through the Polish territory and will not expose Poland to the threat of terrorism. He added that, since there is no ongoing war in Chechnya, people coming from its territory are not refugees.²¹

On 11 August 2016, due to the numerous complaints received by the Polish Ombudsman Office, its representatives carried out an unannounced monitoring visit to the border crossing point in Terespol. Under the Ombudsman’s mandate, the monitoring team was granted access to the place where initial interviews with foreigners arriving at the border take place. The visit confirmed²² cases where the Border Guard officers did not allow foreigners to apply for international protection despite their clear declarations of an intention to apply for such protection and/or facts pointing to possible persecution in the country of origin during the initial interview at the border. Moreover, in the post-monitoring communication, the Ombudsman Office underlined that the provisions of the Protection Law do not provide Border Guard for the possibility of any initial verification of information provided by the foreigner.

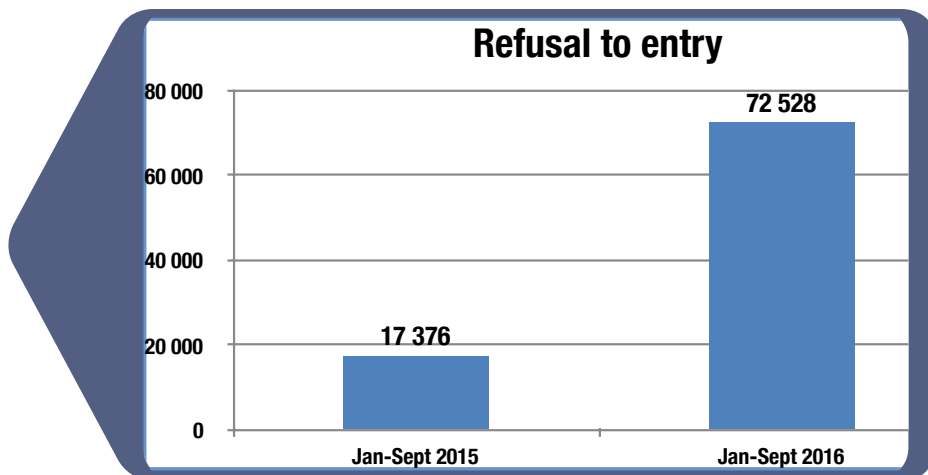
¹⁹ Letter of HFHR can be found here: <http://goo.gl/jiGo2L> [accessed on 24/11/2016].

²⁰ Article in Wyborcza.pl on the demonstration in Brest: <http://goo.gl/k7AUsz> [accessed on 23/11/2016] and in BBC: <http://goo.gl/c6usv7> [accessed on 24/11/2016].

²¹ Interview with Polish Minister of the Interior and Administration, Mariusz Blaszczak, in TVN24: <http://goo.gl/XLE8zx> [accessed on 22/11/2016].

²² Polish Ombudsman, Communication on the visitation of railway border crossing point in Terespol, 21 September 2016, available in Polish at: <http://goo.gl/7iZqb3> [accessed on 22/11/2016].

Additionally, monitoring visits to the Brest-Terespol border crossing point were conducted in the past few months by several Polish and Belarusian non-governmental organizations, including: Legal Intervention Association²³, Helsinki Foundation for Human Rights²⁴ and Human Constanta²⁵. Their findings appear to be consistent with the Ombudsman's conclusions and prove that during the initial interviews at the border, Border Guard officers often ask questions that are not necessarily related to the fear of persecution declared by a foreigner trying to apply for international protection. Instead, the Border Guard officers ask about foreigner's professional status in the country of origin, family members living in the other EU Members States, their intention to take up work in Poland, etc. This manner of conducting the questioning is a clear attempt to demonstrate that foreign nationals' motives behind seeking entry to Poland are mainly economic and have nothing to do with persecution.



Available statistical data also seem to confirm the described trend of push-backs. During the period of January–September 2015 the total number of 17,376 decisions on the refusal of entry were issued by the Border Guard at Polish-Belarusian border. Just one year later, during the same period, the number of such decisions has quadrupled to 72,528.²⁶ The vast majority of

²³ Legal Intervention Association, At the border. Report on monitoring of access to the procedure for granting international protection at border crossings in Terespol, Medyka, and Warszawa-Okęcie Airport, 2016, available at: <http://goo.gl/OsVpxe> [accessed on 22/11/2016].

²⁴ Helsinki Foundation for Human Rights, A road to nowhere. The account of a monitoring visit at the Brześć-Terespol border crossing between Poland and Belarus, October 2016, available at: <http://goo.gl/A651Pk> [accessed on 22/11/2016].

²⁵ Human Constanta, Invisible Refugees on Belarus Poland border, September 2016, available at: <http://goo.gl/4rMGLp> [accessed on 22/11/2016].

²⁶ Statistical data published by the Border Guard Headquarters available in Polish at: <http://goo.gl/YqQv6u> [accessed on 22/11/2016].

such decisions were issued towards citizens of Russian Federation (61,267). That number contains all cases of foreigners who did not fulfil the conditions to enter Polish territory; therefore, it is impossible to estimate how many of them unsuccessfully tried to apply for international protection at the Polish borders and were subsequently rejected. The huge increase in the number of entry refusals likely indicates a disturbing trend.

In consequence of the above, it is clearly reasonable to argue that the conduct of the Border Guard officers from Terespol (i.e., preventing the initiation of the procedure of granting international protection to foreign nationals who express the intent to seek such protection) violates EU and international law. Further, a refusal of entry into Poland issued to a person seeking international protection based on this person having no valid entry document violates Article 28(2)(a) of the Polish Foreigners Act.

Personal story

During the monitoring visit to Brest in October 2016, HFHR research team spoke to 16 families of asylum-seekers who have been unsuccessfully trying to apply for international protection at the Polish border. Most of them were of Chechen origin. One such family was forced to leave Chechnya due to persecutions which included torture of some of the male members of the family. One of the children in the family, a 17-year-old boy, suffered a serious head injury and his eyesight was irreversibly damaged as the result of a severe beating. The family arrived in Brest at the end of July of 2016. They made numerous attempts to apply for international protection in Poland at the Border Guard Station in Terespol. They were repeatedly refused. At the beginning of September, due to the lack of financial means to continue renting a room in the city, the family – including two minor children - was forced to move to the railway station in Brest to live there. In October, HFHR lost contact with the family, most likely because they were no longer able to stay in Belarus. They did not enter Polish territory.

4. Recommendations

- Ensure the transparency of the actions of the Border Guard.
- Grant both non-governmental and international organizations access to the initial interview conducted by Border Guard officers with foreigners arriving at the Polish border in order to make sure that an application for international protection is properly received from every person claiming asylum.

1. Description of the relevant domestic legal provisions

Republic of Slovenia lies on the Balkan migration route. Most irregularly arriving asylum seekers enter the country with the aim to transit into Italy or Western and Northern Europe. In recent years, around 300 persons have applied annually for asylum in Slovenia. In 2016, the number of application will be higher than previous years, with already more than 1,000 applications submitted by the end of November. Between October 2015 and March 2016, nearly a half million migrants transited through Slovenia as part of massive migratory movements.

The Slovenian immigration and asylum policy is enacted in two key pieces of legislation – the Aliens Act²⁷ and the International Protection Act²⁸, both of which generally guarantee access to the asylum procedure and prohibit *refoulement*. Nevertheless, since the beginning of 2016, the Slovenian Government has made several attempts to adopt legislative measures that would severely restrict access to territory and procedure, in ways clearly contravening EU and international law.

During the parliamentary legislative procedure for adoption of the new International Protection Act in early 2016, the main coalition party (SMC) proposed an amendment, according to which an asylum application would be deemed inadmissible if “it is evident, based on the circumstances of entry, that the applicant entered Republic of Slovenia from another EU Member State.” If implemented, the provision is quite clearly in breach of the EU asylum acquis – in particular the Asylum Procedures Directive and the Dublin Regulation. This proposal would have designated as inadmissible essentially all asylum applications in Slovenia (as all neighbouring countries are EU Member States). Furthermore, this would be done without establishing another country as responsible (as required by the Dublin Regulation) and without any guarantee that another country would consider itself responsible for the person in question. Fortunately, the amendment was eventually scrapped, following opposition and advocacy by the civil society.

Currently, the Slovenian legislature is again attempting to impede access to territory and procedure by amending the Aliens Act. In January of 2017, the Slovenian Parliament is expected to vote on a bill, prepared by the Government, according to which the Parliament would be entrusted with the power to effectively “close the borders,” if such closing was deemed necessary due to a serious threat to public order and security caused by migration²⁹.

²⁷ Official Gazette RS, No. 50/2011 and subsequent amendments

²⁸ Official Gazette RS, No. 22/2016

²⁹ The proposed text contains no criteria for what constitutes a serious threat to public order and security.

The new amendment would create a scenario whereby all persons³⁰ arriving irregularly and expressing intent for asylum in Slovenia would be forcefully returned without their asylum claims being heard. This law would unduly prevent access to territory and procedure to refugees and would clearly contravene Slovenian obligations under EU and international law.

2. The current situation regarding violent push-back

Violent push-backs have so far not been detected at Slovenian borders.

3. Case studies

Legal-informational Centre for NGOs (PIC), a Slovenian NGO carrying out monitoring of border Police stations, only occasionally detects individual cases of denial of access to territory and procedure. This is not seen as a systemic issue in Slovenia.

4. Recommendations

- The Slovenian Government must resist the impetus to respond to the European refugee crisis by adopting measures preventing asylum-seekers' access to the international protection procedure in Slovenia.
- The European refugee crisis is a political crisis. The European Union must do all in its powers to achieve a rational and united response of the Member States to refugees seeking protection in Europe. The described legislative attempts of the Slovenian Government and similar initiatives (and in some cases adopted measures) by other Member States can be seen as a reaction to the dysfunctional aspects of the Common European Asylum System and the failure to achieve a European political consensus during the massive movements of refugees in 2015-2016.
- More attention on the EU level should be given to attempts of national governments to restrict access to territory and procedure. Member States should be dissuaded from adopting national legislation in clear violation of international and EU refugee law.

³⁰ The only exceptions are predicted for persons in immediate danger of loss of life, persons who would be in danger of inhumane and degrading treatment in the country of return, persons whose return would not be possible due to medical reasons and/or persons assessed to be unaccompanied minors (the assessment of all of the above circumstances would be conducted by the Police in the field).

Common Recommendations

The following recommendations are made with regard to the five EU Member States covered by the report:

- States are urged to fully respect relevant human rights obligations emanating from international and EU law concerning access to territory and protection. Legislative frameworks legalizing extra-judicial push-backs should be revoked (e.g. Hungary) and such attempts should be prevented in the future (e.g. Slovenia).
- States are encouraged to introduce an effective border monitoring mechanism enhancing the transparency of the border procedure and facilitating access to the territory and the asylum procedure. Monitoring by independent external actors should be complemented by an internal control mechanism.
- States are encouraged to involve NGOs, international organizations and other international entities such as the Fundamental Rights Agency (FRA) in monitoring and training activities.
- States are encouraged to make the maximum use of already existing training resources such as EASO and FRONTEX training curricula and materials.
- States are urged to allow access to the border check-points, transit zones, short-term holding border facilities and other relevant sites where initial interviews take place for entities providing legal assistance and conducting monitoring.
- States, NGOs and UNHCR should cooperate in producing specific information materials for asylum-seekers attempting to access the European asylum system.
- NGOs and international organizations are encouraged to intensify cooperation and establish cross-border cooperation in order to monitor and follow-up on cases of human rights violations such as *refoulement*, push-back and other cases of violence.



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