

Invisible Refugees on Belarus-Poland Border

Primary assessment of local migration crisis
in Brest-Terespol sector



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I. Information about the Mission

The ad hoc mission of the Belarusian human rights initiative Human Constanta (hereafter referred to as the Mission) started its work on September 6, 2016 in Brest, Belarus with the aim to provide support for the foreigners who transit through Belarus and request refugee status in Poland. The necessity to deploy the mission is connected with 1000 to 3000 citizens (according to various estimates) of the Russian Federation coming from North Caucasus in the Belarusian border city of Brest.

Mission's main objectives are (a) the monitoring of the situation in Brest and the border point of Terespol, (b) conflict prevention, (c) legal training and provision of legal aid to asylum-seekers with the support of the Helsinki Foundation for Human Rights (Warsaw).

The current situation can be described as an escalation of a local migration crisis on the border between Belarus and Poland. As far as the mission is concerned, the crisis was caused by the violation of international obligations to provide asylum by Polish authorities. This document is a primary assessment of the situation based on information that was received from open sources, media, state agencies as well as data collected by mission participants from asylum-seekers who transit through the city of Brest.

II. Executive summary

During the first phase of the Mission (September 6-15, 2016), information on the situation of 30 refugee families (128 people) was collected; 5 escort trips were carried out so as to examine the situation on the ground and represent the interests of the asylum-seekers at the border point of Terespol. 32 complaints were composed on the refusal of the Guard Service staff to accept application for asylum.

During investigation of the causes of the crisis, experts of the Mission came to the conclusion that the Polish Guard Service, which is subordinate to the Ministry of Internal Affairs, systematically violated the procedure of accepting applications for asylum. 500 asylum-seekers arrive to Polish border control point on the Brest-Terespol morning train daily. The majority of them are citizens from Chechnya, the Russian Federation.

Taking advantage of the lack of independent control (including the lack of civic control), border guards refuse to accept oral or written applications from the people. Legal representatives are denied the possibility to be present during the procedure. The border guards also prevent attempts to document the violations and deny that requests for asylum had been filed to them. According to the asylum seekers, only 2-3 families per day, often after numerous tries in previous months, get the opportunity to submit documents for asylum and stay in Poland. The vast majority of the applicants are forcibly sent back on a daytime train to Brest. Entry refusal is made on the grounds of visa absence. The asylum-seekers repeat the same route in a short period time.

Article 33 of the 1951 Refugee Convention provides direct ban to expel the refugees to the border of the country where they might be in danger. Taking into account open border with the Russian Federation and messages about secret presence of Chechen security forces in Brest, one cannot unequivocally assert that Belarus is a safe country for Chechen refugees. Asylum-seekers spend up to some months in Brest, making dozens of attempts to apply for the appropriate status in Poland.

According to the experts of the Mission, the situation of filtering refugees on the Brest-Terespol border alongside with the actions of the border service violate the right to seek asylum, and can be regarded as a cruel treatment degrading human dignity.

III. Context: reasons for escape

The flow of refugees from the Chechen Republic is not a new phenomenon and it is mainly connected with the socio-political situation that has developed in the administrative-territorial unit of the Russian Federation. In the Chechen Republic, the federal center has delegated its authority on combating the armed clandestine forces to local authorities and security agencies under its direct control. Human right defenders describe Chechnya as a "state within a state" pointing to the totalitarian nature of the political system of the country.

The methods that are used to establish control over the local population include illegal detentions, kidnapping, torture and enforced disappearances. The principle of collective responsibility is widely used. Not only can security forces take someone away in an unknown direction, should he or she be suspected of any links (e.g., friendship or kinship) with militants, but they can also do it with those who are dressed or pray "inappropriately". The atmosphere of fear created in Chechnya does not allow to adequately assess the extent of human rights violations. People are afraid to talk to human rights defenders and do not report on the facts of persecution to government departments, reasonably fearing reprisals.¹

¹ Counter-terrorism in the North Caucasus: Human Rights defenders' perspective 2014 – first half of 2016 - Report of the Human Rights Centre "Memorial" – p. 21-35 - http://memohrc.org/sites/default/files/doklad_severnoy_kavkaz.pdf

Refugees from Chechnya cannot receive protection in other regions of the Russian Federation. Numerous reports of persecution of people undesirable for Chechen leadership by groups and individuals associated with the power structures of Chechnya are known throughout the country.² These facts allow to assert that the federal center cannot ensure the safety of internally displaced people, moreover, it denies to admit the systemic nature of the problem. The data that was collected by the mission participants with an anonymous survey prove that persecution by the security forces, torture and threats, together with concerns about the tradition of blood feud are the main reasons for escape.

The information received from several sources indicate that staying in Belarus is also unsafe for Chechen refugees since the border with the Russian Federation is open. Chechen security officials (kadyrovtsy) repeatedly visited refugees at the railway station in Brest with questions regarding this or that person. Thus, after a program on the Belarusian TV channel ONT³ kadyrovtsy were searching for the woman taking part in it. Since she has already crossed the border by that time the situation has not have any consequences according to respondents.

IV. Asylum-seekers: survey data

On September 7-15, 2016 the Mission staff interviewed 30 representatives of refugee families (21 males and 9 females). The average age of the respondents is 33.9 years. The average number of days of stay in Brest is 35 days. The average number of attempts to obtain refugee status is 19 times. One of the interviewees is a Dagestani.

Reasons for escape. Among the reasons for escape 9 respondents mentioned torture, 15 - threat, 6 - blood feuds, 13 - persecution. 8 people referred to other reasons, none of the respondents mentioned economic reasons. It should be noted that respondents could mark several options.

Staying in Belarus. Interviewed families were arriving in Brest from July to September 2016. As of September 10, one of the families had made 47 attempts to apply for asylum.

Marital status and health conditions. 30 interviewed families make up 128 people, 78 of whom (60.9%) are underage. Three women mentioned proceeding pregnancy. Two people said they had a degree of disability.

Personal security. 4 families stated that they felt surveillance in the territory of the Republic of Belarus, 1 family was subject to physical violence from the border crossing staff (Terespol, Poland). Some asylum-seekers also report that Polish border guards used insults related to the religion and the country of birth.

² Same source, c. 35-39

³ <https://youtu.be/NWPllMABfiE>

V. Reasons for the crisis: situation analysis

After the initial communication of the Mission participants with asylum seekers, a hypothesis was formulated that the main reason for local migration crisis is the position of the Polish Border Service and their unlawful actions.

A train from Brest (Belarus) to Terespol (Poland) departs daily at 8:45. The Belarusian border and customs services carry out control at the Brest central railway station. On the train's arrival to Terespol, Polish border control is carried out. Following the procedure, border control guards⁴ have to accept oral or written application for asylum once they meet asylum-seekers. Thereafter, applicants are to be passed to the territory of the country and handed over to the Office for Foreigners for further consideration of their cases. According to the respondents, Polish border guards refuse to accept any applications. The vast majority of asylum-seekers are forced to travel back to Brest with the next train. Borders guards state visa absence as the reason for entrance refusal. Only 2-3 families are allowed to submit their documents daily and stay in the territory of Poland.

Since some asylum seekers still manage to apply after a certain number of attempts (sometimes it can be dozens of tries), and no obvious selection criteria is detected, around 500 people come to the Polish border daily. Asylum-seekers spend up to some months in Brest waiting for their turn, making dozens of attempts to cross the border legally and apply for asylum.

VI. Reasons for the crisis: Mission's investigation

To check the information received and the formulated hypothesis, the Mission carried out 5 escort trips: on September 7, 9, 10, 14 and 15. Several asylum-seeking families authorized Mission members (the power of attorney was written in Polish) before every trip to accompany them and to represent their interests to Polish border guards. The Mission staff was instructing those whom they accompanied and wrote written applications for international protection in Polish, which the asylum-seekers had to present to Polish border guards when undergoing border control.

That is how 11 families were accompanied. None of the applications, neither written nor oral were accepted by Polish border guards. When the Mission staff was undergoing border control and showed their power of attorney to represent the interests of the asylum-seekers, they were immediately separated from their principals and, having gone through border and custom control, taken out of the border service building. The Mission members were never allowed to stay in the room where the asylum seekers' documents were checked. Polish

⁴ According to the requirements of the Council of the European Union Directive 2005/85 / EC of 1 December 2005 on minimum standards on procedures in Member States for granting and withdrawing refugee status; Art. . 14 para 1 and Section 1.1.4.1 of Annex VI PB Schengen Borders Code; as well as the Polish national legislation: Art. 28 hr. 2 para. 2 of the Aliens Act.

border guards either did not react to any statements on procedure violations made by the Mission staff or recommended to contact their authorities directly. It was impossible to identify the border guards that the Mission staff was interacting with, since they refused to say their names and neither names nor any identification numbers were present on their uniform. Presumably, the special procedure for checking the documents of asylum seekers in isolation from the rest of the passengers stems from the intention to hide the evidence that applications have been submitted and to avoid documenting of the procedure violations. On September, 9 two Mission members were detained and isolated for a for a short period of time (less than three hours) under the pretext of lack of sufficient funds on them necessary to enter the territory of Poland. On September 7, 14 and 15 attempts to talk with the chief of the border service were made in order to determine the official position on the issue of the refusal to accept applications from international protection seekers. On September, 7 the Mission members talked to the chief of the border crossing point, and then proceeded to the Commandant's office (Voyska Polskiego Str, 164), where they had a conversation with a man who introduced himself as the chief of the office. On September 14 and 15 the chief refused to meet the Mission representatives; and another representative of the border service held a conversation with the Mission representatives in the same room. In all the cases, the representatives of the Border Service of Poland pointed out that they were well-informed about the situation on the border, asylum applications from those arriving at the border come only in few cases, and all the actions of border guards are performed in accordance with the law. The reason why the Mission cannot be allowed to observe the process and represent the interests of their principles was not stated. On September, 10 the Mission staff was isolated from asylum-seekers right on the train platform.

Every time when the Mission members accompanied an asylum-seeker, they registered the facts the Russian Federation citizens informed in oral and written form about their need to receive international protection. Accompanied families also presented written applications during passport control. According to several respondents, when they tried to write the word "refugee" or "Asyl" (germ. Refuge, shelter) in the documents with refusal of entry, the document and its copy that was supposed to be left to them were withdrawn. Some also reported disrespectful and rude attitude and ironies from border guards. On the border crossing point premises, video and audio recording is made which could serve as evidence for the facts stated in the report.

In none of the cases did the accompanied persons manage to apply for asylum and cross the border. The Mission members helped the asylum-seekers to compose and send 32 complaints about the violation of the procedure and border guards' illegal actions to the Chief Commandant of the Border Service of Poland.

Article 33 of the Convention on the Status of Refugees, 1951, which has been ratified by Poland, provides that "No Contracting State shall expel or in any way return refugees to the frontiers of territories where their life or freedom would be threatened on account of race, religion, nationality, membership of a particular social group or political convictions".

According to the Mission experts, the current situation (as described above) together with the refugees filter system and Polish border guards' unlawful actions violate the right to seek asylum and are, in fact, cruel treatment degrading human dignity.

VII. Recommendations

To Polish authorities:

- 1.Ensure that the norms of international and national law regarding the right of foreigners to seek asylum and escape persecution on the Brest-Terespol border section are respected.
- 2.Immediately conduct an interagency inspection and assess the actions of employees of the Border Guard Service in the city of Terespol;
- 3.Allow observers from national and international human rights organizations to the border control point;
- 4.Provide technical and organizational capacity to simultaneously receive large numbers of refugees, based on the actual applications flow;
- 5.Coordinate the actions to resolve the crisis with Belarusian authorities.

To the Commissioner for Human Rights of the Republic of Poland:

- 6.Within the limits of existing powers to apply to the Ministry of Internal Affairs for an explanation of the situation;
- 7.To ensure the continuous monitoring of the situation in the Brest-Terespol border section with direct staff presence to fix and prevent human rights violations.

To the competent authorities of the European Union:

- 8.To pay attention to the problem and to influence Polish authorities to prevent human rights violations;
- 9.To provide the necessary resource support for the activities necessary to resolve the local migration crisis at the Brest-Terespol border section.

To International organizations working in the field of migration and asylum, as well as their Missions to Belarus and Poland:

10. To examine the situation, hold continuous monitoring and have the appropriate impact on Polish authorities to prevent human rights violations;
11. To provide legal, medical and humanitarian assistance to asylum seekers who are in Brest.

To Belarusian authorities:

12. To carry out comprehensive measures to ensure safe hygienic conditions for migrants;
13. To provide, within available resources, the possibility of accommodation for the families of asylum seekers in transit for a short time (not more than 90 days). These can be gyms, public accommodations, rental housing.

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Human Constanta is a team of experts who share human rights values and follow the horizontal principle of decision making. We make use of technologies and innovations to develop new strategies of promotion and protection of human rights.

Human Constanta is at the frontier of contemporary human rights challenges taking part in the developing of a new agenda for Belarus.

The main activities of **Human Constanta** include:

- 1) promotion and protection of fundamental rights of migrants and refugees and drawing their adequate image in Belarusian society
- 2) Digital Freedoms Lab - research and promotion of values of free Internet, Freedom of information and the Right to privacy online and Data protection;
- 3) Promoting international mechanisms to protect human rights;
- 4) strengthening civil society organizations on the issues of international advocacy, its financial and organizational stability.