Marta Górczyńska
Marta Szczepanik

A ROAD TO NOWHERE

The account of a monitoring visit at the Brześć-Terespol border crossing between Poland and Belarus

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

Authors: Marta Górczyńska i Marta Szczepanik

We would like to express special thanks to our Belarusian partners: Roman Kisliak and the human rights initiative Human Constanta for their much-appreciated support during our visit to Belarus.

HELSINKI FOUNDATION for HUMAN RIGHTS

Warsaw
October 2016

Contents

I. INTRODUCTION

On 2-5 October 2016, we conducted a monitoring visit as representatives of the Helsinki Foundation for Human Rights in order to investigate the situation at the Brześć-Terespol (Brest-Terespol) border crossing between Belarus and Poland. The purpose of our monitoring was threefold: (1) Uncovering the general situation of those of the foreign nationals present in Brest who express intention to seek international protection in Poland, and specifically the scale of the phenomenon, types of problems and aid actions taken on-site; (2) Observation of access to the procedure of filing an application for international protection at the Terespol border crossing point; (3) Conducting interviews with foreign nationals present in Brest with the purpose of exploring the expressed reasons for them seeking international protection and their experiences in contacts with Polish Border Guard (Straż Graniczna).

The monitoring included several concurrent activities, namely participant observation at the Brest railway station, talks with representatives of other aid organisations: the Belarusian human rights initiative Human Constanta and Polish International Humanitarian Initiative Foundation (IHIF), independent Belarusian human rights lawyers and volunteers providing aid to refugees, among others. Moreover, at one instance we accompanied a group of foreign nationals during their attempt to file an application for international protection at the Terespol border crossing point; at this occasion, we travelled with the group by train between Brest and Terespol and participated in the passport check procedure. We also interviewed 16 foreign nationals staying in Brest who had already made numerous unsuccessful attempts to file their applications for international protection at the Polish border crossing point in Terespol.

This is our account of the observations we made at the railway station in Brest and information received from the interviews with foreign nationals who sought protection. The following description of the train travel between Brest and Terespol and that of our attempt to observe the actual accessibility of the procedure for granting international protection for foreign nationals is a subjective account of a single visit at a border crossing point, which does not present an assessment of the general behaviour of the Border Guard officers from the Border Guard Station in Terespol towards persons expressing their intent to seek international protection.

II. SITUATION OF FOREIGN NATIONALS IN BREST

According to both the estimates of representatives of organisations working in Brest and the accounts of foreign nationals, during our monitoring visit there were **approx. 1500-2000** persons present in the city who unsuccessfully attempted to file applications for international protection at the Polish border crossing point in Terespol. Apart from Chechen nationals, who comprised the overwhelming majority of this group, the group of foreign nationals included also citizens of the Russian Federation with different Norther Caucasus ethnicities (the Ingush, Dagestani) and at least one Georgian family and one Tajik family. Several of our interviewees said that the number of the foreign nationals seeking protection in the border area has decreased recently (according to media reports from August and September, up to 3,000 persons could be staying there in the past). Reportedly, the main cause of the decrease was "the closure of the border", namely the Polish Border Guard's refusals to receive applications for international protection and the issuance of decisions

denying entry to Poland. These practices could have persuaded some of the foreign nationals to return to their countries of origin. Also, some of the foreign nationals who planning to travel to Brest could have decided to remain in their home countries for the time being upon learning about the situation in Brest.

According to the information we have received during the monitoring visit, the majority of foreigners reside in apartments rented in Brest, paying the charges calculated on a daily basis (ca. EUR 15-20 per day), that are substantially higher than long-time rental costs. During our monitoring visit, six families who could no longer afford the rent (ca. 50 persons, including 30 children) **lived on the premises of a railway station** spending nights at the station's waiting area. Foreigners told us that Belarusian authorities tolerated this situation as long as the persons residing at the railway station refrained from lying on the waiting area's benches (only sitting was permitted).

In general, the interviewees did not complain against the attitude of Belarusian authorities or law enforcement services. From what we understood, such services took a neutral stance: foreign nationals were not forced to leave the station but at the same time did not receive any assistance. Moreover, it was obvious that Belarusian services have constantly been monitoring the situation at the railway station in Brest. Belarusian volunteers mentioned that already before our arrival the Belarusian police on several occasions stopped them to check their identity documents, asking about the purpose of the volunteers' presence at the station. A Belarusian customs officer stopped and checked the identity document of one of the authors of this report, inquiring about the purpose of her stay at the station. After we provided a detailed and truthful explanation, we experienced no obstacles in carrying on the monitoring. It was mentioned in an interview that a doctor working in a medical facility at the station was impatient with the presence of refugees and frequently sick children but did not refuse to help them. Furthermore, during an interview that we needed to conduct in a cafeteria at the railway station, the manager asked us to leave because, as she claimed, the presence of refugees "scares other guests off". We complied with her request.

Pursuant to **Belarusian immigration laws**[1], foreign nationals are obliged to register their residence in Belarus and complete all immigration formalities within five days after entry. However, this obligation is waived in respect of, among others, the citizens of the Russian Federation, who may lawfully stay in Belarus without registration for a period of 90 days. Our interviewees from the Republic of Chechnya exercised this right but as none of them stayed in Brest for a period longer than 90 days we do not know if after the expiry of this timeframe they decide to return to their home country or rather try to register their stay in Belarus.

Our – understandably cursory – **assessment of the needs of foreigners**, and, in particular, those living at the railway station and the evaluation of the aid they receive enable us to argue that the humanitarian aspect of the situation is difficult yet not dramatic. Volunteers are present at the station every day. Warm clothes and footwear, collected by Human Constanta and the IHIF, were distributed among the persons who arrived in Brest in the summer without winter clothing. Employees of these organisations keep and constantly up-

1 Information obtained from the website of the Belarusian Ministry of Internal Affairs: http://mvd.gov.by/main.aspx?guid=3131.

date a list of needs and make sure that food and medicine are distributed according to needs.

What should be noted, however, is that **the situation of children** is particularly worrying. Children of the school age do not attend school and do not have access to education in any form. For some children, this state of affairs has been continuing for as long as several months – there are families who declared to have arrived in Brest in July 2016. Furthermore, children witness the difficult situation of their parents, which is an exceptional emotional burden. The minors are exposed to stressful situations, anxiety and humiliation experienced by parents whom they accompany during all the attempts of crossing the border that their parents make. An IHIF volunteer qualified to work with children is present at the station on an ongoing basis. Her main goal is to animate the everyday activities of children so that they may – at least momentarily – focus their attention on something else than the difficulties they suffer. Thanks to the volunteer's help, the parents may run their errands with a peace of mind for a few hours a day, leaving their children under her care.

The foreign nationals staying in Brest have access to **psychological care** provided by Russian-speaking qualified psychologists from the IHIF. Currently, two psychologists are working on-site, providing – whenever possible – professional counselling to foreign nationals in need of psychological support. The psychologists also diagnose the cases of torture victims and psychological disorders such as the post-traumatic stress disorder (PTSD), and also issue abridged psychological assessment reports to foreigners, who then may present the reports to competent Polish authorities.

Our observations reveal that members of the **Chechen community** are very supportive of each other. For example, they mentioned that money was being raised for persons who had no longer financial means to support themselves; such persons have most often stayed in Brest for the longest time and made the most attempts to cross the border. The foreign nationals describe such attempts, which involve the travel to Terespol and back (cost: BYR 18.00 or EUR 8.00), using the Russian word *"попытка"*. Recently arriving persons frequently support financially those who have the longest record of attempts. Moreover, interviewees also mentioned the support they receive from families residing in Western Europe and Chechens living in Germany, Austria and Belgium.

III. MONITORING OF ACCESS TO THE PROCEDURE FOR GRANTING INTERNATIONAL PROTECTION

One of the activities we undertook was the observation of foreign nationals' access to the procedure of filing an application for international protection at the Terespol border crossing point. At this stage, we did not reveal our presence which meant that the officers of the Border Guard Station in Terespol had not been notified of our visit in advance. This was designed to give us an opportunity to observe the natural behaviour of Border Guard officers towards foreign nationals and to review the information about systemic large-scale deficiencies in the Border Guard's application of legal procedures. Such deficiencies had been repeatedly reported to the HFHR via phone calls received from the foreign nationals over the course of more than ten weeks preceding the monitoring visit. In order to ensure our ability to be present during the actual procedure of submitting an application for international protection in Poland and, if a need arises, to take part in the denial of entry procedure,

we asked two families of foreign nationals for a written power of attorney to represent them in the above proceedings.

At 8.45 am on 4 October, we boarded a train leaving the Brest Central Station for Terespol in the company of two Chechen families who granted us the relevant powers of attorney. On the previous day, we asked our clients to purchase tickets for us and gave them the money. By doing this, we wanted to make sure that we would be travelling in the same car that carried persons seeking protection. This was because we previously heard from foreign nationals that Belarusian citizens and EU passport holders are sold tickets in cars one and two while refugees are assigned seats in end cars of the train.

After we arrived at the Terespol station, which took us about 40 minutes, the passport check procedure started (we have been advised of this beforehand). First passport checks were performed on passengers travelling in cars designated with the lowest numbers (one and two), to be continued in the following cars. Together with our clients, we found ourselves at the end of the queue of protection seekers who, after leaving a platform, waited in an underground passage for the opening of the two double glass doors with the *All Passports* sign to the passport check area.

After an hour or so, one of the authors was noticed by a Border Guard officer who was watching the queue through a glass wall. She was told to leave the queue through a side door. This happened before we reached the passport check desk and the author was singled out from the crowd evidently based on her external appearances, which were different from those of the remaining persons gathering in the passageway. After some time, also the other author was noticed and told to leave the passageway through a side door.

Having been separated from the group of the foreign nationals who arrived at the Polish border with the intent to file applications for international protection, we were escorted out of the building and approached by the Head of Foreign Nationals Unit of the Border Guard Station accompanied by several officers. We immediately introduced ourselves as employees of the Helsinki Foundation for Human Rights and representatives of two families of foreign nationals. At the same time, we asked why we had not been subjected to a passport check together with the foreign nationals. The manager said that this was because "this is the protocol that applies at the facility" and explained that "as Polish nationals we are subject to a simplified procedure". However, he did not give any concrete reasons that would prevent us from undergoing the passport check procedure as part of a group of foreign nationals and responded to all our questions invoking "the station's internal procedures".

In the next part of our conversation with the manager we told him we wanted to submit two applications to take part in the procedures related to the receipt of our client's applications for international protection, and – should the latter be rejected, to take part in the proceedings involving the denial of entry into Poland. Our application also included the request for a written advice of the legal grounds for its rejection, should such a rejection occur. At first, the manager declined to accept the submission, explaining that all submissions should be filed with the station's registry office, which was located at a different address whereas the station itself does not have a receipt confirmation stamp. However, since we insisted, he ultimately decided to receive our applications and have one of the officers to stamp their copies at the registry office and bring them back to us. Still, we could not return to the building and

observe the passport check procedure or "the first questioning"– the initial interview that our clients had with Border Guard officers, a procedural step we have learnt about from our interviewees from Brest. On the other hand, we were assured that we would be admitted to further procedural acts involving our clients.

We were told the officers will call us to let us know when we can come back to the station.

After about one hour, the manager told us over the phone that the application for international protection of one of the families we represented would be received while the other family would receive a decision denying them entry into Poland. At that moment, we needed to act separately. In consequence, the narrative presented below is divided into two parts:

Description of the denial of entry proceedings – Marta Szczepanik

Violation of Art. 6(2) of the Procedural Directive (foreign nationals being deprived of access to the international protection procedure)

Since the manager told me that my clients would be given a decision denying them entry into Poland and given that I had expressed the intention to take part in the procedural acts conducted by Border Guards as part of the denial of entry procedure, I was escorted by the manager to the border crossing station's building. We went to a room behind the passport control desk where luggage is usually inspected. That was where my clients were waiting. When I arrived, they were signing the receipt of their denial of entry decisions. I was asked if I wanted such decisions delivered to me. I responded that the decisions may remain in the possession of my clients. Next, I asked the manager to receive, as part of then-ongoing proceedings for the denial of entry, my submissions that included my clients' statements in which they declared their intention to file an application for international protection in Poland. The manager once again referred to the difficulties related to the absence of receipt confirmation stamp at the station but ultimately agreed to receive my submissions, confirming the receipt with his autograph signature with a date. After these procedures were concluded, I left the border crossing station and went on a train heading to Brest together with my clients.

Description of the procedure for granting international protection – Marta Górczyńska

Violation of Art. 30(1)(6) of the International Protection Act and Art. 12(1)(b) of the Procedural Directive (failure to provide an interpreter's assistance)

After about two hours of waiting, my client called me from a Border Guard's phone and told me that he was about to be questioned as part of the procedure of registration of his application for international protection in Poland and that I was allowed to be present during the questioning. Given the above, I returned to the Border Guard station. The questioning took place in a private room, in the presence of the foreigner, his wife and son (aged two). The other persons present were myself and the female Border Guard officer who was filling out the application form. After about 15-20 minutes, the wife and son left the interview room. The main sections of the application form were completed in the sole presence of the applicant, the officer and myself. There was no interpreter present during the questioning because the officer knew Russian. However, in my assessment, she had only a basic command of the language. On several occasions, the officer had difficulties with understanding the specialist vocabulary the foreign national used with reference to torture or sports, for example. While giving the account of his personal history, the foreigner described in detail the torture he was subjected to in his home country, using such Russian words as "tok" (*ток*, electricity) or "shlang"

(*шланг*, a hose). However, the officer did not know these words and noted the non-specific description "I have been beaten" in the justification section of the form. She asked about the meaning of the words and made necessary corrections in the form only after I reminded her that she was obliged to write down the exact content of the foreign national's statements and describe the specific type of torture he had been exposed to. Furthermore, when asking the foreign national questions, the officer slipped in some words in Polish, most likely because she did not know their Russian equivalents (for example, she was repeatedly using Polish word "walka" (a fight, struggle) instead of Russian "*борьба*"), which hindered the free exchange of information between her and the foreign national.

On several instances, the officer incorrectly interpreted the words of the foreigner and inaccurately noted down his statements in the application. For example, the filling of the "occupation" field proved to be problematic:
The officer: What's your current occupation?
The foreign national: I've been in sports for 20 years[2].
The officer: But is this an official job? A registered one ("зарегистрирована")?
The foreign national (confused): I don't know what you mean about registration, I guess it's not.
The officer: Then I'm going to write down "an unemployed".
Only after I intervened, and the foreign national was asked additional questions about whether he was a professional athlete and received remuneration on this account, it was established that he was a professional athlete and made his living off sports hence he could not be described as "an unemployed". Finally, the "occupation" field was completed with the name of the sports discipline the foreign national had professionally practised in his country of origin.

My general impression was that the officer tried to complete the foreign national's application as quickly as possible. She explained several times that "this is not the only family who makes their application today" and that "there are still many formalities to complete, which may take the whole day until the evening". For these reasons, she asked the foreign national to present his reasons for seeking international protection in Poland in a concise and summary-like way. After I offered that the foreign national would like to provide a detailed description of all the circumstances that forced him to flee his country, the officer said that "a full account of the reasons for seeking international protection may be presented during the interview that will be conducted at a further stage of the proceedings by the Head of the Office for Foreigners. At this point, a few-sentence long description is entirely sufficient." It took me several minutes to explain to the officer why it is important that the foreign national describe in detail all the facts and circumstances confirming the existence of a reasonable fear of persecution in the country of origin. I explained that the credibility of foreign nationals' statements is often challenged by administrative bodies because of a phenomenon known as "the escalation of testimony". If this happens, the Head of the Office for Foreigners justifies a denial of international protection for a given foreign national referring to the fact that the they gave non-specific statements at the border and only expanded their narrative at the stage of the statutory interview before a first instance body, which may show that they had made up their story for the purposes of the refugee proceedings, for instance after

2 At this point, the foreign national talked about a specific discipline but we are not going to disclose this information in this report because we wish to protect his identity.

they learnt, while staying in Poland, how to present their story in order to improve their chances for obtaining international protection. For this reason, I argued that it was crucial that the foreign national is given an opportunity to present a full account of his personal history already at the stage of the submission of a refugee application. Even though I seem to have failed to persuade the officer that my argument is sound, she agreed to write down an unabridged version of the man's history. She asked the foreign national to describe reasons for him seeking international protection in Poland but she did not write his statement down in the application form, moving on to next questions instead. After I asked the officer why she did not record the foreign national's explanations, she said she was going to do that "at a later stage". It was not until the officer completed the remainder of the application when she came back to the question about the main reasons for seeking protection and asked the foreign national to describe it all to her once again so she could write it down. It is worth noting that because of such a manner of completing the application the applicant is unnecessarily forced to revisit often traumatic memories from his country of origin which seems wholly unreasonable and unjustified.

The officer recorded the foreign national's answers in the international protection application form in a very superficial manner. I was under the impression that this was a consequence of both her being in a hurry and the relative communication barrier that existed at the time of the hearing. On many occasions, I brought to her attention the fact that the foreign national told her more than she was able to note down or that she noted down something entirely different from what she had been told. On such occasions, the officer would ask the foreign national additional questions or correct the text already noted down.

After she filled in the whole section of the application form's provided for the justification of the applicant's request, the officer decided to finish this part of the questioning and moved on to next questions. Only after I asked her to let the foreign national to finish his narrative, she took an additional sheet of paper from me on which she wrote down the remainder of the foreign national's personal history. When the foreign national talked about certain issues, e.g. him seeking protection from national authorities, the officer would tell him "we will write this down in another section of the application". Only after I stepped in, she would include all the things said by the foreign national in the justification section of the form.

The circumstances presented by the foreign national were also incorrectly recorded in another part of the interview: this happened when the foreign national answered the question whether or not he has taken any measures to obtain protection of the domestic authorities of his home country. The foreign national said he had wanted to complain against his tormentors to a prosecutor's office but the official whom he approached had not accepted his complaint because the perpetrator is a person with a close connection to Ramzan Kadyrov – the President of the Chechen Republic. Because of this, the complaint has not actually been registered. Having established that the complaint had not officially been registered, the officer wanted to disregard this part of the foreign national's statements and had no intention to record the fact of him contacting a prosecutor's office. As I noted that this was an important part of the statement and should have been noted down, the officer consistently refused to do so, claiming that "the complaint has not formally been submitted". I needed to persuade her very firmly to have her note down

this part. Furthermore, the officer provided a negative answer to one of the questions (about whether or not the foreign national has been a victim of sexual violence) on her own, without waiting for the foreign national's actual answer.

I was also concerned with the officer's attempts to evaluate, on a prima facie basis, the personal credibility of the foreign national.
The following excerpt of the conversation is a good example of such practices:
The foreign national: I think they were Ramzan Kadyrov's people.
(The officer is not writing the answer down)
I (Marta Górczyńska): Please write down that the foreign national suspects that they were Ramzan Kadyrov's people.
The officer: But there's no evidence of that.
(The officer is still not writing down anything)
Only after I told the officer that the justification contains the foreign national's account of the circumstances, which are presented – for obvious reasons – in a subjective manner, she would note down the foreign national's actual statement.

What is more, the officer initially refused to record the foreign national's statement of his repeated (yet always unsuccessful) attempts to file an application for international protection at the Terespol border crossing station. The officer said that the foreign national "most likely must have failed to express his intent to claim the refugee status" and tried to disregard this section of the foreign national's testimony. However, recording this portion of the testimony is important because it explains why the foreign national did not file an application for international protection immediately after his escape from the country of origin but did so only two months later. This fact may influence the assessment of the foreign national's case made by the Head of the Office for Foreigners, which is a direct consequence of Article 42 (4) and Article 43 (3) of the International Protection Act. The above section of the testimony was recorded (on a separate sheet of paper, appended to the application) but only after I emphasised how important this piece of information was.

Violation of Art. 30(2) of the International Protection Act (failure to ensure an appropriate degree of confidentiality in receiving an application)

The process of completing the application was interrupted on several occasions as either the officer or the foreign national were called to another room (for example, the foreign national was taken for a medical examination and the officer was asked by her colleague "to step into the other room for a second". Apart from that, another person entered the room twice in order to collect or bring documents or communicate some information to the officer conducting the hearing. I offered the remark that such a way of interviewing the foreign national does not ensure an appropriate degree of confidentiality and distracts the interviewee, making it difficult for him to present his account of events. The officer responded that the process was handled this way because many procedural acts must be performed simultaneously with the foreign national's submission of an application for international protection. The officer also said that on that day several other families submitted their applications, which reportedly prevented the Border Guard from organising its work in a different way.

The foreign national's answers to certain questions were read out to him immediately after the completion of relevant sections of the application form but the content of the entire application was not read out to him before he signed it. Moreover, the foreign national was asked to sign the application (on its page 18) already before the entire application form was completed (prior

to the completion of the justification section of the form). After I noted that the foreign national had effectively signed a "blank" document, which was incomplete, the officer said that "maybe other officers do this differently, but this is how I complete application forms". She also argued that the signature on page 18 pertained only to a part of the application, and not to the whole application.

Violation of Art. 26(4) of the International Protection Act (refusal to enclose appendices to an application in the presence of a foreign national)

Upon the completion of the entire application form, I exercised my right as the applicant's legal representative and I made a formal request for the admission of all the documents that the foreign national submitted at the border while expressing his intent to seek international protection as appendices to the application for international protection. These included, among other things, a psychological evaluation report that confirmed that he was a victim of torture in his country of origin. The officer assured me that all documents would be appended but she said she could not present them to me or fill in the application's section "attachments" in my presence because "they are elsewhere". She also said that the documents "will surely be delivered to the Head of the Office for Foreigners together with the application."

Violation of Art. 73(1) of the Code of Administrative Procedure (denial of access to case files)

Despite my request, the Border Guard officials refused to issue a photocopy of the application to the foreign national, claiming that the document remains at the disposal of the Head of the Office for Foreigners and its copy may not be issued to a foreign national until the application is actually delivered to this body. The manager also denied me access to files of the case (the completed application with appendices), arguing that a legal representative may access the files only during the phase of the proceedings before the Head of the Office for Foreigners. The manager suggested that I should apply for access to the latter body. Ultimately, I was denied access to case files and the right to make a photocopy of the application. This means that I did not have an opportunity to make sure that all the appendices had actually been enclosed to the application or that the first instance body receives the extra sheet of paper which contains the supplementary part of the application's justification.

IV. INFORMATION OBTAINED FROM INTERVIEWS WITH FOREIGN NATIONALS

4.1. Remarks on the methodology used

The interviews with foreign nationals staying in Brest were conducted on 3 and 4 October on the premises of the railway station, in a secluded section of the station's waiting area or in the station's cafeteria. Moreover, an interview with one of the families was conducted in an apartment rented by foreign nationals; this venue was selected because an interviewee moved on crutches and had problems with reaching the railway station on his own.

In one case, the interviewees were clients of the HFHR: they had approached us already before our visit at Brest, asking for help with a difficult situation at the border. Another family was referred to us by a psychologist working for the IHIF who had evaluated one of the family's members and found out that he was a victim of torture. Another family was referred to us by our partners from Human Constanta, an organisation that earlier assisted the family, preparing their appeal against the denial of entry decision, among other things. The remaining 13 interviewees were persons who stayed at the Brest railway station on 3 and 4 October, knew about our visit and were willing to talk to us. It must be noted at this point that due to a short duration of our visit we

were unable to interview all the persons who expressed interest in talking to us. This caused significant frustration on the part of those foreign nationals whom we did not interview for the lack of time.

The persons whom we talked to were informed about the purpose of our visit, which was primarily to assess the situation rather than to provide individual legal aid. For understandable reasons, most interviewees also expected that we would provide them with assistance in solving their problems. All persons received extensive information on the scope of available aid. In most cases, such aid involved the provision of a sample letter of appeal against a decision to refuse entry, which could be completed by foreign national supported by local Belarusian lawyers.

The duration of interviews with foreign nationals was between 30 and 90 minutes. Although interviews were unstructured and unscripted, we tried to ask each interviewee several recurring key questions. The key questions concerned the reason for leaving the country of origin, previous attempts at obtaining protection from domestic authorities, experienced violence, time spent in Brest, the number of attempts to submit an application for international protection and description of conversations with Border Guard officers at the passport check desk. As a rule, we conducted individual interviews but in some cases we also simultaneously interviewed two family members who preferred to be interviewed together.

4.2. General characteristics of interviewees

Considering the need to protect our interviewees' safety and in order not to disclose their identities, below we present only a general description of their experiences and frequently faced problems.

Chechens constitute a majority of our interviewees. Three families were of Ingush origin, and one family came from Georgia. The interviewees were aged 19 to 46. The proportion of men and women was similar. Apart from a single case when we interviewed a widower travelling alone, all the other interviewees stayed in Brest together with their families (each family consisted of a spouse and/or children, there were three to eight children in a family). Several young women were in advanced pregnancy. In a few cases, we dealt with multi-generational families: for example, a young couple with children was accompanied by an elderly parent (or parents). Most interviewees came to Brest in July or August 2016, which means that they had been staying in Belarus for at least two months on average. The longest-staying family that we were able to interview had arrived at Brest on or about 20 July.

Reason for leaving the country of origin

All interviewees said that their departure was forced by the following circumstances: the fear for the life or health of an interviewee or members of their family. Only one interviewee mentioned a difficult economic situation, which, however, was still a consequence of the persecution suffered by the interviewee's family that led to the death of the family's breadwinner. Some of interviewees mentioned that their financial situation was (or had been) relatively good: they said, for instance, that they had bought a house prior to their departure or that they had been successful in business. They said they had not planned on leaving the country until they had been targeted by persecution.

The majority of interviewees from both Chechnya and Ingushetia claimed they had been victims of persecution committed by the security forces of the Kadyrov's regime and fled their countries in fear of further atrocities, often in a hurry, without baggage or spare clothes, in an attempt to avoid raising suspicions among their neighbours. Persecution was often a consequence of the families' male members' participation in both Chechen Wars and also of the relatively recent reopening of security forces' investigations against those men. Security officials needed to "show results" and whenever they were unable to apprehend former militants, they applied the principle of collective punishment and tormented the fugitives' families, even if a suspect had already left Chechnya or maintained no contact with his next of kin. The other basis for persecution was accidental contacts with persons who appeared in "the Register" (Russian: *"учёт"*), or a list of persons identified by the regime as criminals mainly because of their connections with militants or persons who left to fight in Syria. Most frequently, persecution took form of night raids of uniformed and masked individuals at interviewees' homes, searches, threats of death and injury or sexual violence, in-home kidnappings, forced disappearances (which involved a person's being abducted for several days and then re-appearing severely beaten), beatings and torture used to extract information and a confession. In certain cases, interviewees escaped from family feuds, which are a form of administering justice against members of the family of a perpetrator by a victim's own family, practised in the North Caucasus. In reality, security services are often involved in family feuds, especially if a revenge-seeking family has their "own people" in the regime's security apparatus.

Previous attempts at obtaining protection from domestic authorities

Some of interviewees said that prior to leaving their country of origin they had attempted to seek protection against persecution from the police, prosecution service or in courts. However, such attempts were usually unsuccessful as these bodies are manned by Kadyrov's supporters. In some instances, attempts of making a complaint intensified persecution and interviewees were forced to withdraw their complaints. Many of interviewees have already tried to move to other regions of Russia, relocating to cities located outside the Caucasus area. However, these attempts failed to resolve their problems because security services continued to harass the family members who stayed in Chechnya. Also, in certain cases, the services learnt about interviewees' new locations and continued persecution outside Chechnya. Many persons have already decided to flee Russia but needed to wait until they received a passport. The waiting time might be shortened but only after the payment of a substantial bribe.

Violence suffered

The majority of interviewees claimed to have experienced, at least once, physical or psychological violence. The following types of violence were reported: beatings with heavy objects, kidnappings, forced disappearances, dead threats and threats of sexual violence. Several interviewees suffered torture, which involved for example confinement in a dark room lasting several days, smothering with a plastic bag, electric shocks or suspension. Victims of violence were usually young males, including minors. Some of interviewees insisted on being given an opportunity to show us signs of torture injuries, mostly scars on the chest or extremities. Since the conditions of interviews did not ensure intimacy, we did not ask them to do that.

Submission of an application for international protection

All interviewees have made repeated attempts to apply for international protection in Poland at the Border Guard Station in Terespol. The number of such attempts varied from three to 34. During interviews, many of interviewees showed us bundles of validated train tickets for the Brest-Terespol-Brest route, which proved their multiple attempts to enter Poland and also bundles of decisions on the refusal of entry issued by the Border Guard and/or passport stamps that confirmed that they had been denied entry to Poland. When we asked about the reason for entry presented by the interviewees to Border Guard officers, all interviewees answered that they had been asking for the refugee status using Russian words *"азуль"*, *"статус беженца"* or *"убежище"*. Some interviewees reported that the officers listened to their stories and explanations concerning the reasons for their escape from the country of origin but their requests for protection had been "ignored". However, majority of interviewees said that they had not been given an opportunity to give a complete account of their situation because officers interrupted them, rushed them or asked other questions. Moreover, almost all interviewees who admitted to have been tortured claimed that they had not revealed this fact to Border Guard officers due to the conditions of the "first questioning" (according to the foreign nationals, the "first questioning" is an initial interview conducted during the passport check procedure, based on which an officer decided whether to commence the process of submitting an application for international protection or to issue a decision on the refusal of entry to Poland). The first questioning is not conducted in private or confidential conditions because other foreign nationals are present nearby the conversing foreign national and Border Guard officer. According to some of interviewees, a public disclosure of the fact of having been tortured or persecuted in another way could expose them or their families to a deadly threat in Chechnya. As one of our interviewees put it, "nobody knows if they enter Poland" thus the foreign nationals do not want to reveal the reasons for their departure, fearing the consequences such a disclosure may bring after they come back to Chechnya. Many of the interviewees were also certain that the community of foreign nationals in Brest had been infiltrated by agents of the Kadyrov's regime.

Interviewees told us about the questions they were asked by the Border Guard officers during the aforementioned "first questioning": "Why haven't you got a visa?", "Where are you going?", "Why don't you ask for asylum in Brest?", "How will you support yourself in Poland?". One of the foreign nationals answered the Border Guard's question "Why are you going to Poland?" with the reply that he wants to go to Poland because it is a safe country, to which the officers retorted that there were no jobs for them [foreigners] in Poland. Officers reportedly repeated this line of questioning on many occasions. Officers told some interviewees to show their hands, so they can see if foreign nationals have been doing manual work. Questions were often accompanied by laughter and taunts. An interviewee mentioned that when he told an officer that he was escaping to Poland from Kadyrov's men, the officer responded: "Do you think Kadyrov won't find you in Poland?".

In some cases, foreign nationals have been making dramatic attempts to persuade the Border Guard to hear their requests for applying for international protection, writing down the words *"азуль"*, *"убежище"* or *"беженец"* (a "refugee" in Russian) in the recipient's signature field of a Border Guard's decision to refuse entry. This triggered negative responses from the officers,

including taking away or even tearing the refusal document, a new copy of which was issued only after a foreign national signed it with their own name.

Foreign nationals informed us that every day Border Guard officers "let pass" several families arriving at the border (enable those families to apply for international protection) but none of the interviewees could tell us how the families were selected. For example, foreign nationals claimed that the selection was not based on the number of previous entry attempts because sometimes entry was given to families who has just arrived at Brest while sometimes those with the history of dozen attempts were let in. An interviewee suggested that "preference" was given to married couples without children whereas the most difficulties were faced by families with many children or single males. However, this observation was not confirmed by other foreign nationals. According to the majority of foreign nationals, the criteria guiding the acceptance of submissions of applications were completely random and impossible to foreseen.

Conditions in which foreign nationals wait for the submission of an application

We were able to observe the conditions in which foreign nationals underwent the passport check procedure at the time when we were crossing the border between Belarus and Poland on 4 October together with a group of foreign nationals. During the waiting period (ca. 90 minutes) preceding an interview with Border Guards officers, foreign nationals were not given seating places and needed to wait standing. This was the case also with women in advanced pregnancy, elderly persons, persons with a disability or sick persons, which could potentially threaten the health of such persons. According to foreign nationals, they are not given sitting places also in another room where the "first questioning" is conducted. The Border Guard provided chairs for foreign nationals at this stage of the proceedings only on the day of our monitoring, by way of an exception.

During our visit, a female foreign national fainted on the train and was carried by other foreign nationals through an underground corridor to the border crossing station. We were unable to observe what happened to her but other foreign nationals told us later that she received medical assistance. We also learnt that the woman suffered from a serious and chronic medical condition, lived at the Brest railway station and already had many fainting episodes at the border crossing station.

V. CONCLUSIONS

According to accounts given by foreign nationals and reports of employees of various organisations providing aid to the foreign nationals staying in Brest on a daily basis, **Border Guard officers seem to ignore the intention to submit an application for international protection expressed by foreign nationals at the border crossing station in Terespol and refuse them entry to Poland**. Border Guard officers tend to substantiate such refusals by invoking the absence of a foreign national's valid entry visa or another title of their legal stay in Poland. This is also a conclusion we have arrived at based on our own observations. The clear majority of the foreign nationals who underwent the border clearance procedure on 4 October, told us during our train ride that they intended to submit an application for international protection at the Polish border crossing station and yet were later sent on a return train back to Brest. All the persons we have spoken to, both during interviews conducted at

the railway station in Brest and on the train, claimed that they wanted to submit such an application because of the persecution they had suffered in their countries of origin. The accounts of their personal history and circumstances relating to their persecution are consistent with the information on the situation in the Republic of Chechnya presented in reports of non-governmental organisations (such as the Russian Memorial Human Rights Centre[3]) and international organisations (among others, Human Rights Watch[4] and Amnesty International[5]) which confirm the deteriorating human rights situation in the region and prove that collective punishment is frequently used, in particular against members of the families of persons suspected of being involved in armed underground resistance. None of interviewees referred to any reasons of their departure that would suggest the economic nature of their migration.

Moreover, all interviewees said that each time they arrived at the border crossing station in Terespol they explicitly expressed their intention to seek international protection in Poland, which, in accordance with Article 28(2)(2)(b) of the Foreigners Act, excludes the possibility of issuing them a decision on the refusal of entry based on the absence of a valid visa. Foreign nationals claim that during the initial interview at the border, **Border Guard officers ask them questions that are not necessarily related to the fear of persecution declared by foreign nationals**. Unfortunately, since the administration of the Border Guards station in Terespol denied us access to the location where the interviews are conducted, we were unable to verify the above claims. Foreign nationals are asked about things such as their 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 seems to be an attempt of showing that foreign nationals' motives behind seeking entry to Poland are mainly economic and have nothing to do with persecution.

In consequence of the above, it should be assessed that the conduct of the Border Guard officers from the Terespol Station, which involves preventing the initiation of the procedure for granting international protection by all foreign nationals who express the intent to seek such protection, **violates Polish law, EU law and international law**. Denying access to the procedure on granting international protection to persons who declare fear of persecution in the country of origin constitutes a violation of Article 6(2) of the Procedural Directive and Article 33(1) of the Convention relating to the Status of Refugees, which introduces the principle of non-refoulement, namely the prohibition of returning refugees to the frontiers of territories where their life or freedom would be threatened. A refusal of entry into Poland issued to a person seeking protection on the basis of this person having no valid entry document also violates Article 28(2)(2)(a) of the Polish Foreigners Act.

Since we were prevented from undergoing the passport check procedure together with the foreign nationals who arrived at the Terespol border crossing station on 4 October, we were unable to observe the course of Border Guard officers' interviews with foreign nationals. However, the very fact that representatives of a non-governmental organisation and legal representatives representing foreign nationals in the procedure for international protection

3 Memorial Human Rights Centre, *Counter-terrorism in the North Caucasus: a human rights perspective 2014 – first half of 2016*, 2016, http://goo.gl/22qvjk.

4 Human Rights Watch, *Like Walking a Minefield, 2016*, http://goo.gl/vWwoQW.

5 Amnesty International, *Report on Russian Federation 2015/2016*, http://goo.gl/XybCfa.

are denied access to the first interview with a foreign national conducted by a Border Guard officer, during which it is decided whether the foreign national is or is not admitted to participate in the refugee procedure, may signal that Polish border services act in contravention of the relevant applicable laws.

What is more, there are serious legal concerns relating to the Border Guard's application of the "first questioning" procedure described by interviewees, which occurs at the stage of passport control and involves introduction of the first "filter" designed to assess a given foreign national's eligibility for admission to the procedure of submitting an application for international protection. During this "questioning" Border Guard officers perform an initial assessment of the personal history presented by a foreign national who expresses an intent to seek international protection in Poland and, based on unclear criteria, decide whether to allow them to submit an application for international protection or refuse entry to Poland. However, apart from the fact that such a procedure has no basis in domestic law, its quality may be put into question considering the EU standards of international protection procedure. **The Border Guard station in Terespol facilities do not ensure foreign nationals appropriate confidentiality** at the moment when they disclose their reasons for seeking international protection. This is because initial interviews are conducted with foreign nationals not in a private room but in the area in which a group of foreign nationals attempt to submit their applications on a given day. Because of the above, foreign nationals are afraid of disclosing sensitive information and sometimes describe their reasons for leaving the country in very general terms, purposively omitting the key reasons so to avoid them being overheard by unauthorised persons. However, under Article 30(2) of the International Protection Act, a submission of an application for international protection should be made without the presence of third parties unauthorised by an applicant, in conditions that ensure an appropriate degree of confidentiality and enable an applicant to exhaustively present reasons for applying for international protection. Moreover, according to accounts given by interviewees and our monitoring observations made during the process of admitting an application from a foreign national who was given access to international protection procedure, **some Border Guard officers speak only rudimentary Russian**. Given the above, a proper conduct of an interview with a foreign national may be difficult, and sometimes outright impossible.

Another matter of concern is the behaviour of Border Guard officers towards the foreign nationals who arrive at the border crossing station in Terespol and declare an intention to obtain international protection in Poland. According to independent accounts of many of our interviewees, apart from ignoring foreign nationals' applications for international protection **Border Guard officers often act purposively to humiliate foreign nationals**. Sometimes the officers use offensive and derogatory comparisons while referring to foreign nationals (e.g. they compare foreign nationals to dogs), ridicule their problems or even demonstratively tear documents. In our opinion, such behaviour of public officials insults the dignity of a public institution and must not be accepted. Furthermore, in such a situation foreign nationals are deprived of the opportunity to submit a complaint against the behaviour of individual officers because their ID badges do not show personal data (they are either obscured or replaced with a handwritten number).

Many violations were noted also during the observation of the receipt of the application for international protection from a foreign national. Conclusions of the observation have been drawn regarding the case of this particular foreign

national and do not constitute a general assessment of the manner in which Border Guard officers from the Terespol station accept applications. However, it may be assumed that **some of the observed irregularities may recur in cases of other foreign nationals submitting their applications**. Above all, a foreign national was asked to present a concise summary of his reasons for leaving the country of origin, and an officer wanted to record the circumstances he described only in an abbreviated form. However, such a manner of completing an application may pose many problems for the foreign national at subsequent stages of the international protection procedure: according to the HFHR's practical experience, the first instance body often invokes the content of the statements given by foreign nationals at the border as a basis for challenging applicants' credibility, alleging that foreign nationals "escalate" their testimonies in the later phase of the proceedings. Furthermore, a language barrier between an officer and a foreign national clearly existed during the application admission process. Due to this barrier, the officer was unable to fully comprehend the facts described by the foreign national, especially those related to the types of torture used against him. At several occasions, the officer incorrectly interpreted the foreign national's words, which affected the quality of the transcript of his testimony recorded by the officer. The most striking misconduct on the officer's part was an attempt to undermine the foreign national's credibility and the officer's willingness to disregard certain circumstances reported by the foreign national on the ground of the alleged "lack of evidence". It should be noted that such an assessment of credibility may be performed only by a competent body tasked with issuing a decision to either grant or deny international protection, namely the Head of the Office for Foreigners. Conversely, the above assessment should not be performed by the Border Guard whereas the officer receiving the application seemed at times to have been doing just that. Another outright violation of the Code of Administrative Procedure was the Manager of Foreign Nationals Unit's decision to deny access to case files for an applicant's legal representative.

Actions taken by the Border Guard, which are likely politically motivated and approved by superiors[6], led to the situation in which **foreign nationals who make repeated and unsuccessful attempts to submit applications for international protection at the Polish border crossing station were forced to live in Brest, Belarus, sometimes for months**. Many foreign nationals have already spent their money necessary for family subsistence and purchases of tickets for Brest-Terespol-Brest trains; many others were struggling with not much more money left. Several families without money were forced to camp at the railway station in Brest. This group includes ca. 30 children who are deprived of warm shelter, which results in them being exposed to many different diseases and the risk of deterioration of health condition. The situation of these children deserves special concern and attention. Furthermore, **all children staying in Brest are deprived of the right to education** because their personal situation prevents them from attending school classes. Because of the circumstances, they stay for the most of the day in the railway station's waiting area, on the train or at the Border Guard station in Terespol.

The results of the HFHR's monitoring generally correspond to those presented in other recent reports on the situation at the Brest-Terespol border

6 Statement of Polish Minister of the Interior and Administration about the reasons of denying Chechen refugees entry to Poland: http://www.tvn24.pl/wiadomosci-z-kraju,3/szef-mswia-mariusz-blaszczak-o-czeczenach-na-polskiej-granicy,672450.html

crossing between Belarus and Poland, for example, the reports prepared by such institutions as the Polish Ombudsman[7], Association for Legal Intervention[8] or the Belarusian human rights initiative Human Constanta[9]. Our report confirms that foreign nationals' right of access to the procedure for granting international protection is systemically violated at the border crossing station in Terespol. Unlike during the monitoring actions carried out by the above organisations, lawyers of the HFHR, acting as foreign nationals' legal representatives, had also an opportunity to take part in procedural acts related to the issuance of a refusal of entry decision to a family and could participate in the procedure that involved the receipt of an application for international protection from another family. Thanks to our participation, especially in the case of the latter family, we have been able to reveal a number of irregularities connected with the receipt of an application from a foreign national who could submit such an application on the day of our monitoring.

7 Polish Ombudsman, *Communication on the visitation of railway border crossing point in Terespol*, 21 September 2016, http://goo.gl/7iZqb3

8 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, http://goo.gl/OsVpxe

9 Human Constanta, *Invisible Refugees on Belarus Poland border*, September 2016, http://goo.gl/4rMGLp

Facebook: @hfhrpl
Twitter: @hfhrpl
Instagram: @hfhrpl
You Tube: @TheHFHR
www.hfhr.pl/en