



Warsaw, 29 September 2021

Republic of Poland
Ministry
of Foreign Affairs

Plenipotentiary of the Minister
of Foreign Affairs for cases and procedures
before the European Court of Human Rights
Agent for the Polish Government

DPT.432.243.2021 / 59

Mr Klaudiusz Ryngielewicz
Head of the Filtering Section
European Court of Human Rights

BY E-TRANSMISSION ONLY

Application No. 42120/21

R.A. and Others v. Poland

Dear Sir,

With reference to the above application and the Registry's letter dated 27 September 2021 informing the Government about the further extension of the interim measure of 25 August 2021 and indicating two further interim measures and in reply to the Registry's letter of 29 September 2021 I have the honour to submit the following information.

Poland deplores actions of the Belarusian authorities aimed at the instrumental and cynical use of migrants to exert migratory pressure on the EU Member States. Nevertheless, in this situation it is the obligation and a difficult task of the Polish authorities to guard the inviolability of the state border which is at the same time the European Union's external border. The increased migratory pressure can still be observed at the Polish-Belarusian part of the state border.

The statutory tasks of the Border Guard include the protection of the state border and prevention of illegal migration. The compliance with these tasks is vital for ensuring security and public order. Thanks to such actions the Border Guard officers have managed

to prevent an illegal crossing of the state border by the group of foreigners (the applicants) near Usnarz Górny. These persons are staying in the encampment on the Belarusian territory.

It should be also noted that during a meeting with the Polish chargé d'affaires in Minsk, UNHCR expressed an opinion that persons staying on the Belarusian territory near Usnarz Górny did not qualify for international protection as according to the information obtained, these persons had been living on the territory of the Russian Federation in the area of Ural in the recent years.

Against this background the Government submit the following information regarding the two new interim measures.

1) Allowing the applicants' lawyers to contact them either directly or by allowing their access to the Polish border in the vicinity of the applicants' location

The Polish authorities understand the humanitarian aspects on which the Court's decision is based. Nevertheless they cannot violate the legal provisions governing the territorial integrity of the neighbouring State. Undoubtedly, the Convention applies within the jurisdiction of a State Party and the criterion of jurisdiction is a basis for establishing that State's responsibility for ensuring the rights and freedoms proclaimed by the Convention.

In the circumstances of the present case – where Poland does not exercise any control over the applicants – the jurisdiction of the State Party cannot go beyond its borders. The fact that Belarus is not a party to the Convention cannot justify forcing the State Party to take actions contrary to law. Any actions taken from the Polish territory in respect of persons staying on the territory of Belarus (without the latter's consent) would constitute an interference into the Belarusian territory. In consequence, the Border Guard officers cannot allow such contacts by third parties nor can they allow the transfer of goods and merchandise across the border in an unregulated manner.

Moreover, the state of emergency has been declared since 2 September 2021 on the area in question – on the basis of the *Ordinance of the President of the Republic of Poland of 2 September 2021 on the introduction of the state of emergency on parts of the Podlaskie voivodeship and Lubelskie voivodeship*. The decision to introduce the state of emergency was due to the special threat to the citizens' security and public order in view of the current situation on the Polish-Belarusian border.

Based on the implementing *Ordinance of the Council of Ministers of 2 September 2021 on limitations on freedoms and rights in connection with the state of emergency*, some restrictions have been introduced in the area in question, including a 24-hour

prohibition on staying in the area. Some categories of persons (*e.g.* inhabitants) have been exempted from this prohibition in accordance with § 2(1) of the Ordinance.

Nevertheless, bearing in mind the difficult situation of the applicants together with all legal considerations applicable to the border area and wishing to comply with the interim measure indicated by the Court, the Government offer the applicants' lawyers a possibility to go to the nearest border crossing (in Bobrowniki – app. 29 km, or in Kuźnica – app. 35 km from the applicant's place of stay). On their part the Polish authorities would provide the applicants' lawyers with all possible facilitation in crossing the border on the Polish side. It is without prejudice to their compliance with the conditions for entry into the territory of Belarus, such as visa requirements and requirements related to the current situation with regard to the Covid-19 pandemic.

Furthermore, the Polish authorities undertake to use their best endeavours through diplomatic channels to obtain the necessary permits, including visas, for entering the territory of Belarus.

The applicants' lawyers will thus be able to cross the Polish-Belarusian border in a lawful manner and go to the site where the applicants are staying. As far as prospects of gaining access to the applicants on the Belarusian territory are concerned, it is worth recalling that the Belarusian authorities have already allowed such access to third parties, *e.g.* UNHCR's and the Red Cross's representatives.

2) Not returning the applicants to Belarus, provided that they are present on the Polish territory

The applicants have not crossed the line of the Polish state border and are staying on the territory of Belarus, thus the condition envisaged by the Court has not been met. Accordingly the Government consider the interim measure in this part as not applicable under the circumstances.

Yours faithfully,



Jan Sobczak

Government Agent