

Lt Col BG Marek Łapiński
Commander in Chief of the Border Guard
The National Border Guard Headquarters
Al. Niepodległości 100
00-514 Warsaw
Poland

23 August 2016

Dear Sir,

CONCERNS REGARDING ACCESS OF FOREIGNERS TO ASYLUM PROCEDURE AT THE TERESPOL-BREST BORDER

With this letter, I hope to receive some clarifications regarding reports received by Amnesty International on lack of access to the asylum procedure for asylum seekers at the Terespol-Brest border crossing between Poland and Belarus.

In July 2016 Amnesty Poland received seven reports from individuals directly, by telephone and email, as well as via other organisations working in Poland. We have received particular concerns regarding reported refusals of the right to seek asylum to persons from Tajikistan, who, due to bilateral agreements between Belarus and Tajikistan, are at risk of *refoulement* from Belarus.

On 9th August 2016, the Legal Intervention Association (*Stowarzyszenie Interwencji Prawnej*) published a report in which outlined difficulties in accessing the asylum procedure at the Terespol-Brest border crossing as well.¹ The report provides accounts of some Border Guards appropriating the competence of the Head of the Office for Foreigners and conducting preliminary assessments of applicants' eligibility for international protection in Poland.

Push-backs are unlawful return operations which take place at borders between countries, where border authorities push people back to the country they have most recently left. This can result in refugees being denied the opportunity to ask for asylum, and being returned to a country where they may face serious harm. Under the 1951 UN Convention and Protocol relating to the Status of Refugees (Refugee Convention), and Protocol 4 to the European Convention on Human Rights (ECHR), all countries are obliged to examine the separate individual situation of each person arriving on their territory, and grant the right to challenge any decision to deport them, before any deportation or expulsion can be lawfully carried out. Push-backs are therefore prohibited under international law. The Asylum Procedure Directive,

¹ Chrzanowska A., Mickiewicz P., Słubik K., Subko J. and Trylińska A., Na Granicy. Raport z monitoringu dostępu do postępowania o udzielenie ochrony międzynarodowej na przejściach granicznych w Terespolu, Medyce i na lotnisku Warszawa Okęcie, Stowarzyszenie Interwencji Prawnej, 2016, <http://interwencjaprawna.pl/granicy-raport-monitoringu-dostepu-postepowania-o-udzielenie-ochrony-miedzynarodowej-przejsciach-granicznych-terespolu-medyce-lotnisku-warszawa-okecie/>.

in its Preamble, at point 27, specifies that an expression of the wish to apply for international protection is sufficient for a third-country national or a stateless person to be considered an applicant for international protection. Under Article 6, Polish authorities are obliged to give persons who make such applications an effective opportunity to lodge them as soon as possible.

Amnesty International's research confirms that citizens of Tajikistan may be at risk of persecution if returned to their country. On 2 June 2016, the Supreme Court of Tajikistan convicted 14 high-ranking members of the Islamic Renaissance Party of Tajikistan (IRPT) for their alleged involvement in attempts by a former Tajikistani defence minister to seize power in September 2015.² The trial fell far short of fair trial rules which Tajikistan is legally bound to uphold. According to media reports, a further 170 people have since been convicted of involvement in the attempted coup, and in total 25 members of the IRPT have been sentenced.³

The criminal prosecution of the 14 members of the IRPT appears to be in connection with their political activism and is reflective of an increasingly repressive climate where critics of the authorities are harassed and silenced, including by means of criminal prosecution. Allegations of the use of harassment and threats against political opponents, including members of the IRPT, have multiplied in the last few years, particularly in the run-up to the parliamentary elections held in March 2015, with little room left for political or other dissent. The Tajikistani authorities have sought extradition of a number of exiled members of opposition groups under criminal allegations that appear unfounded and politically motivated. Prominent opposition activist Umarali Kuvvatov was assassinated in Istanbul on 5 March 2015.⁴ He and his family had previously told Amnesty International that he had received threats that there were "orders" to harm him, allegedly coming from the highest levels of Tajikistan's authorities. His killers have not been identified.

Poland should ensure that Tajiks and other third country nationals seeking international protection at its borders have their claims examined on the merits. Amnesty International calls for an investigation of the reports outlined above and urges you to ensure that the right to seek asylum and international protection in Poland is respected, in line with its obligations under international and European law.

I have also written to the Minister of the Interior regarding this matter.

Yours sincerely,

Gauri van Gulik
Deputy Europe Director

² Amnesty International, *Tajikistan: 14 high-ranking members of political opposition party sentenced to long prison terms in unfair trial*, EUR 60/4214/2016, 7 June 2016, <https://www.amnesty.org/en/documents/eur60/4214/2016/en/>.

³ Radio Free Europe Radio Liberty, "Tajikistan Jails 170 Over Failed Coup In 2015", 4 August 2016, <http://www.rferl.org/content/tajikistan-170-jailed-failed-coup/27900101.html>; Radio Free Europe Radio Liberty, "Генпрокуратура: в мятеже Ходжи Халима были все признаки госпереворота" ["Prosecutor General: Hoxa Halima's mutiny had all the signs of a coup"], 4 August 2016, <http://rus.ozodi.org/a/27899441.html>.

⁴ Amnesty International, *Tajikistani dissenters at grave risk after an opposition leader shot dead in Turkey*, 6 March 2015, available at <https://www.amnesty.org/en/latest/news/2015/03/tajikistan-opposition-leader-shot-dead-in-turkey/>.