



COMMISSIONER FOR HUMAN RIGHTS

Adam Bodnar

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Warsaw, 24 September 2018

Mr Joachim Brudziński

Minister of the Interior and Administration

Dear Mr Minister,

For a long time already, I have been observing with attention and concern the situation on the railway border crossing in Terespol, between Poland and Belarus. At that border crossing, foreigners coming mainly from Chechnya and Tajikistan, who have no documents that give them the right to cross the border, try to enter Poland. Those foreigners, when trying to cross the border, declare to inform Border Guard officers (hereinafter also “BG”) that they intend to file their applications for international protection. Every person who declares his/her intention to seek such protection should be allowed to enter the territory of Poland, and officers of the relevant Border Guard unit should accept his/her application for the protection. Such approach is intended to ensure actual implementation of the provisions of the Convention relating to the Status of Refugees, signed in Geneva on 28 July 1951 (Dz. U. [Journal of Laws] of 1991, no. 119, item 515) requires States Parties to endeavour to assure to persons seeking protection against persecution the widest possible exercise of their fundamental rights and freedoms in another state in which they are safe.

The BG officers’ responsibilities in this area, laid down, inter alia, in Article 30 of the Act of 13 June 2003 on granting protection to foreigners within the territory of the Republic of Poland (Journal of Laws of 2018, item 1109) are intended to serve the purpose of implementing the right of foreigners to seek the refugee status in Poland. The right to apply for this status in Poland in accordance with the provisions of the aforementioned Convention relating to the refugee status, is a constitutional right guaranteed under Article 56(2) of the

Constitution of the Republic of Poland. This right is mentioned therein among other constitutionally guaranteed human rights and freedoms. The right to seek asylum, i.e. the refugee status as named according to the terminology used in the Polish legislation, is also mentioned in Article 18 of the Charter of Fundamental Rights of the European Union (2007/C303/01, as amended). Directive 2013/32/EU of the European Parliament and of the Council of 26 June 2013 on common procedures for granting and withdrawing international protection (recast, OJ L.2013.180.60), in recital 25 of the preamble, provides that every applicant should have an effective access to procedures concerning the examination of their application for international protection. This general principle is made more specific in Article 6(2) of the directive, which requires Member States to ensure that a person who has made an application for international protection has an effective opportunity to lodge it as soon as possible.

However, since at least 2015, the Office of the Commissioner for Human Rights has been regularly receiving complaints from persons to whom the Commander of the Border Guard unit in Terespol has refused entry to Poland regardless of the declarations of intent they made during the border control. The complaining persons, mostly families with children, arrive every day by train from the Belarusian city of Brest, undergo a border control and, according to them, they inform BG officers about their intention to seek international protection in Poland. According to the complainants' reports, the Border Guard officers, however, do not accept such information and do not make it possible for those persons to file applications for such protection.

A large number of complaints, describing such situations that took place already in 2016, has prompted me to look more closely at the conditions in which travellers cross the border at the railway crossing in Terespol. I also concluded that only direct participation of my representatives, as observers, in the border check activities there, would make it possible to assess the situation at the border crossing. My Office employees arrived to the border crossing in Terespol, for the first time, on 11 August 2016. The visiting employees examined the border crossing's infrastructure and the organization of the border control process, and took part in the activities carried out by BG officers within the framework of the so-called second-line border check. At that stage of the border control, the officers interview the foreigners in order to determine the circumstances and purpose of their arrival to Poland. It is during such interviews that the foreigners may inform the officers about their intention to seek

international protection, or provide explanations that suggest, at least indirectly, such aim of their arrival to our country.

The inspection visit carried out on 11 August 2016 confirmed that at the said border crossing, there indeed happen cases where foreigners who, during the border control, have declared their intention to file an application for international protection, are not allowed to enter Poland. On the day of the inspection visit, 436 foreigners who did not have any visas or other documents authorizing them to enter and stay within the territory of the Republic of Poland arrived to the border crossing, and intended to undergo border control. To a vast majority of them, i.e. to over 400 persons, the Border Guard refused entry to Poland. On that day, the BG officers accepted 7 applications for international protection, relating in total to 31 persons. The representatives of the Commissioner took part, as observers, in 79 interviews during which BG officers inquired the foreigners about the purpose of their trip and about the reason for which they had left their country of origin. During 17 of the interviews, the foreigners either directly declared their intention to seek international protection, or provided explanations which indirectly suggested that they had come to Poland with that intention. Of the group in question, only two families were allowed to enter Poland and filed applications for the said protection. Fifteen families, despite their mentioned intention to file such applications, were refused entry to Poland. As the visiting team established, not all pieces of information, provided by the foreigners during their interviews with BG officers, were recorded in the official notes drawn up on those interviews. In some cases, the documents did not reflect significant information provided by the foreigners and suggesting, explicitly or implicitly, that they intended to apply for international protection in Poland. The lack of any formal confirmation that such information had been provided resulted in the fact that the commander of the Border Guard unit issued decisions which refused entry to Poland to those persons, which made them stay in the territory of Belarus¹

I informed the then Minister of the Interior and Administration about the findings of the inspection visit, by sending to him my letter ref. no. XI.543.10.2017.MS dated 13 February 2017. In the letter, I referred to the bill amending the Act on granting protection to

¹ The formal note on the inspection visit to the railway border crossing in Terespol, held on 11 August 2016, is available, in the electronic form, on the website of the Office of the Commissioner for Human Rights at: <https://www.rpo.gov.pl/pl/content/komunikat-o-wizytacji-koleiowego-przejscia-granicznego-w-terespolu>

foreigners in the territory of the Republic of Poland, and amending certain other acts, that was drafted at that time by the ministry. **I postulated, in view of the ongoing legislative works, to introduce into the relevant legislation a provision that would require the taking of minutes of the aforementioned interviews, as well as to adopt a single-type document form and to ensure that the form contains the obligatory question about the intention to seek international protection in Poland.** In my opinion, only such method of documenting the interviews which are of key significance for foreigners, and the introduction of the obligation to read out the minutes to the foreigner and to have them signed by him/her, can provide a real guarantee that the foreigner's every statement suggesting that he/she intends to seek international protection will be recorded in the official documentation and will lead to the acceptance of his/her formal application for international protection. **Only introducing such a guarantee into the generally applicable legislation will mean the fulfilment of the obligation to ensure to foreigners an effective access to procedures concerning the examination of their application for international protection,** in line with recital 25 of the preamble, referred to above, and with Article 6(2) of Directive 2013/32/EU.

The postulated solution, regretfully, was not taken into account at that time. In the letter replying to my postulate, sent to me on 8 June 2017 (ref. no. DP- WLM-0231-11 2017/MM), there was only one comment official notes in which they describe the circumstances determined by them during the border control procedures, also as regards the foreigner's declared purpose of his/her intended entry to Poland".

The continuous monitoring of the situation at the border crossing in Terespol and the regularly received complaints in which foreigners described their unsuccessful attempts to file, at the border crossing, their applications for international protection, prompted me to take a decision on conducting another inspection visit there. The **inspection visit** was carried out **on 15 May 2018** by Ms. Sylwia Spurek, Deputy Commissioner for Human Rights for Equal Treatment, and employees of the Equal Treatment Team of the CHR Office: Mr Marcin Sośniak, Head of the Migrants and National Minorities Rights Department and Ms. Joanna Subko, senior specialist. Below I kindly present detailed information on the findings of the inspection visit, including a description of the border crossing infrastructure and the border control organization system. I hope the information will be of interest of to you and that you will reconsider the postulates described above. Allow me to mention that the report on the inspection visit was sent, in the first instance, to the Commander of the Border Guard unit in

Terespol. The Commander presented his comments on the observations contained in the report in his letter dated 18 June 2018 (ref. no.: NA-TR / 2456/18), supplemented thereafter, at my request, by further correspondence dated 27 July 2018 (reference: NA-TR / 2944/18).

1. Conditions at the railway border crossing in Terespol, and the organization system of border controls

Border control and customs clearance of travellers arriving to the Terespol border crossing between Poland and Belarus are conducted in a multi-storey building located in the immediate vicinity of the railway platforms and the railway station. Between the platform at which the train from Brześć to Terespol stops, and the border control hall located in the building, there is a pedestrian subway which can be accessed by stairs or a lift. The passengers of the train are requested to go to the check-in hall, according to the adopted system. First, passengers who have documents that authorize them to cross the border (i.e. a visa or residence permit) go to the hall. Then, the remaining foreigners leave the train and go to the hall. At this stage, the passengers follow the instructions given by the Belarusian train service staff. The officers of the Polish Border Guard, as a rule, ensure security in the platform area, although they may also enter the train.

On the day of the visit i.e. 15 May 2018, the train from Brześć to Terespol, which had three passenger cars, arrived at 6:55. On the train, there were 31 people who did not have any visas or other titles to enter and stay within the territory of Poland. The exact number of travellers who did have such documents was not determined by the visiting team members, as that was not the aim of the inspection. In line with the above-described system, those travellers left the train first and underwent the border control and customs clearance. They were all controlled within about 20 minutes. Only then, the remaining foreigners left the train and went to the check-in building.

In the check-in hall, border control and customs clearance are carried out separately for people entering Poland, and separately for those leaving Poland. Passport control of persons arriving to Poland takes place at three check-in desks. Just behind them there are customs clearance desks where, in line with the customs regulations, the travellers' luggage is checked.

After the passport control and the customs clearance, the foreigners who have no visas or other documents that authorize them to enter and stay within the territory of Poland walk to another room where BG officers interview them for several minutes, in order to determine or verify the purpose of their arrival to Poland. In the further part of this document, such interviews will also be referred to as "questionings" or "hearings" in the colloquial, not procedural, meaning of the words. If the whole family undergoes a border control, the interviews are held with the participation of all its members. The interviews are held at three desks, placed quite close to each other and separated by screens, which in the intention of the Border Guard should ensure the minimum standards of privacy. Despite the screens, the room does not meet such standards in full. The interviews held at the desks can easily be heard by other people in the room, e.g. other foreigners whose questioning takes place at the same time. This is important because of the fact that during the questioning the foreigners may provide to BG officers also sensitive data, relating e.g. to personal life, family life, health status or persecution in the country of origin, or data whose disclosure may pose a risk to their safety. For example, one of the foreigners during his questioning, observed by the employees of the CHR Office, showed the BG officer scars on his body, which, as he claimed, were left as a result of torture he suffered in his country of origin. However, it should be noted that given the existing border crossing infrastructure, the only possibility of improving the conditions of holding the interviews would be to reduce the number of desks to two. This, of course, would increase the waiting time for the border control.

At each of the interview desks, there is one Border Guard officer who interviews foreigners. Neither during the last inspection visit, nor during the observation visit in August 2016, the visiting team did not see any other officers monitoring or supervising the questioning process in a way making it possible to hear the foreigners' answers. Such supervision was not mentioned either by the Border Guard officers when speaking to my Office employees who visited the border crossing. The information on supervising persons directly participating in activities conducted as part of the second-line border check was mentioned only within the additional explanations provided to me in writing by the Commander of the Border Guard unit in Terespol, in his letter dated 27 July 2018.

After speaking to a Border Guard officer, foreigners leave the room and go to the waiting room located next to the check-in hall. The waiting room is quite large; it has glass walls and several rows of chairs. Foreigners who have already undergone the control and the

questioning stay there until the procedure is carried out for all the persons who arrived on a given day on the train from Brest to Terespol. Only when the controls are finished, and the Border Guard officers complete the formalities, i.e. when relevant decisions refusing entry to Poland are printed and signed by the authorized officers, the waiting persons are informed whether they may enter Poland or have to return to the territory of Belarus.

Persons to whom entry has been refused are called by their names and requested to approach the tables placed in the hallway between the waiting room and the check-in hall. There, the BG officers hand over decisions concerning the respective persons to them. On the day of the inspection visit, copies of the decisions were handed over to respective foreigners, and their receipt was confirmed by each person's signature. During the inspection visit, however, doubts occurred as to whether it was a standard practice to hand over copies of the decisions refusing entry to Poland. In the presence of the visiting persons, one of the foreigners, to whom entry was refused yet another time, expressed his surprise with the fact that this time he received a copy of the decision. In the provided explanations, however, the Commander of the Border Guard unit assured that every time foreigners receive copies of the respective decisions.

After reading the decisions and, possibly, after collecting their copies thereof, the foreigners cross the pedestrian subway and walk to the platform where the return train from Terespol to Brest is waiting. According to the train schedule valid on the day of the inspection visit, the train departed from the Terespol station at 10:55.

Persons who, after being interviewed by a Border Guard officer, were identified as seeking international protection in Poland, are directed to the first floor of the building, where in the waiting rooms that have access to toilets, they are waiting for the approval of their formal applications for granting protection to them. The application forms are accepted in the office rooms in the building at the railway border crossing.

2. Conditions in isolation rooms for persons who pose a threat to security and order at the border crossing

In the official note on the inspection visit carried out by the CHR representatives on 11 August 2016, special attention was paid to the isolation rooms for persons who, in the opinion of the Border Guard officers, may pose a threat to security and order at the border crossing. The rooms are located on the first floor of the building, in its office part. According to the information provided during the previous inspection visit, the rooms are used for placing both

persons who have actually behaved in a way posing a threat, and foreigners whom the Border Guard officers only suspect of being capable of posing a threat. As a rule, according to the BG officers' explanations provided at that time, all men who travelled by themselves on the train from Brest and had no visas or other documents authorizing them to enter the territory of the Republic of Poland, were placed in those rooms. They stayed there until they either were handed over a decision refusing entry to Poland, or their application for international protection was accepted. At that time, I considered that practice to be unacceptable and to constitute restriction of the freedom of foreigners, without legal grounds.

According to the explanations provided during the inspection visit on 15 May 2018, the rooms are now used sporadically, only in cases of real threat to security and order threat at the border crossing. This year, they have not been used at all. However, the stay of foreigners in the rooms is still not documented in any way.

3. Situation at the border crossing as of the date of the inspection visit: statistical data

On the day of the inspection visit i.e. 15 May 2018, **31 foreigners** traveling without visas or other documents authorizing them to enter the territory of Poland underwent the border control. Fifteen persons were refused entry by the Border Guard. 7 applications for international protection were accepted, relating in total to 16 persons (7 adults and 9 children).

Already after the inspection visit, the Commander of the Border Guard unit provided statistical data for the period from 1 to 31 May 2018 on: the number of people who travelled without visas or documents authorizing them to enter the country and underwent border control at the border crossing in question; the number of accepted applications for international protection; and the number of issued decisions refusing entry to Poland. According to that information, the number of persons undergoing border control varied in the above-mentioned period from 28 (on 13 May) to 82 (on 2 May 2018). On each day between 1 May and 14 May, no more than two applications for international protection were accepted (the number of persons from whom such applications were accepted was from 1 to 6 per day). On the days following the inspection visit, i.e. between 16 to 31 May, according to the information provided by the Commander of the unit, on each day, from 1 to 4 applications for international protection were accepted, and the number of persons covered by such applications i.e. persons allowed to enter the territory of Poland ranged from 2 to 9 per day. On 15 May i.e. on the day of the inspection visit, about 31 persons without visas or other documents authorizing them to enter the territory of Poland underwent border control, and the

Border Guard accepted 7 applications for international protection, which related in total to 16 persons.

4. Interviews conducted by BG officers with foreigners: general comments

Similarly as during the inspection visit conducted in 2016, also during this visit, the employees of my Office took part, as observers, in interviews conducted by Border Guard officers with foreigners undergoing border control, who travelled without visas or other documents authorizing them to enter and stay within the territory of Poland. The interviews are conducted in order to determine the purpose of each foreigner's arrival to Poland. During such interviews, based on the information provided by the foreigners the Border Guard officers can determine whether the interviewed person seeks international protection and whether, despite the lack of documents authorizing him/her to enter the country, he/she should be allowed to enter the territory of Poland and then to file an application for the said protection. If during the interview the officer gets no information indicating the foreigner's intention to apply for international protection, or if the officer misunderstands the provided information and does not consider it a declaration of intent to apply for the protection, or omits information on the purpose of the arrival to Poland, the foreigner receives a decision refusing entry to Poland, and is required to return to the territory of Belarus.

If as a result of the interview the officer finds that there are no grounds for allowing the foreigner to enter the territory of Poland, he draws up an official note on the interview. The note is an internal document and, as seen during the inspection visit, it is rather brief. Usually it consists of no more than three sentences. According to the followed practice, the officer's note does not describe the entire course of the interview and does not record all statements made by the foreigner, but only the information which, in the officer's opinion, is crucial for establishing the purpose of the foreigner's arrival to Poland. The content of the official note, including the decision on which information to contain therein, is fully dependent on the officer conducting the interview with the foreigner. **The interviews are not recorded in any other way, and the official notes are not read out to the foreigners. Therefore, they have no possibility to verify or correct the information contained in the notes. For the same reasons, the content of the notes cannot be verified in any way by other BG officers who did not take part in the interview, including the superiors of the interviewing officers.** It is worth noting that a foreigner who leaves the desk at which he/she was questioned is not aware that such a formal note is required to be drawn up. At that stage,

the foreigners are not informed either whether they will be allowed into the territory of Poland, or will be refused entry by the Border Guard.

The official notes are not drawn up when a foreigner, after his/her questioning, is allowed to file an application for international protection.

5. Observed interviews conducted by BG officers with foreigners: case study

The observation covered two out of three control desks open on the inspection day. At the first desk and at the second desk, the CHR representatives listened to the questioning procedure conducted by the Border Guard officers. At the third desk, according to the information from the visiting team, only the BG officer and the interviewed person participated in the process. The visiting team participated in **8 interviews**, which in total covered 18 foreigners (4 men, 3 women traveling only with minor children, and one family of five persons). The remaining 13 foreigners from the group of 31 persons who on that day underwent border control without visas or other documents authorizing them to enter Poland, were interviewed by a female Border Guard officer at the third desk, without the participation of the Commissioner's representative.

During 6 out of 8 monitored interviews, the foreigners either informed the BG officers of their intention to seek international protection, or described the situations that took place in their country of origin and that could be reasons forcing them to leave the country (i.e. to leave as refugees). Out of this group, all the foreigners, i.e. 16 persons in total (7 adults and 9 children) were allowed to enter the territory of Poland and to file applications for international protection. It should be noted that one of the women interviewed by a Border Guard officer together with her husband finally filed a separate application for international protection. **As a result of the 6 above mentioned interviews, 7 applications for international protection were therefore accepted.** It is worth emphasizing that one of the female foreigners who travelled with two minor children was allowed to submit her application only after the CHR representatives raised doubts as to the interpretation of her statements made during the interview. As a result of those doubts, the **Border Guard decided to repeat the questioning procedure**, after which the female foreigner was considered a person seeking protection and was allowed to submit the related application.

The foreigners who were allowed to enter the territory of Poland on the day of the inspection visit, and those whose applications for international protection were accepted, were those questioned at the desks monitored by the CHR representatives. Entry was refused, however, to all persons who were interviewed at the third desk, where there was no representative of the Commissioner. Entry was also refused to two men questioned at one of the two desks monitored by the visiting team. Therefore, the Commissioner's representatives could verify the content of the official notes on the interviews carried out with the two men at one of the monitored desks.

In the opinion of the visiting team members, the statements made by both men indeed did not contain any information suggesting, even implicitly, their intention to submit an application for international protection in Poland. Nevertheless, the official notes drawn up after the interviews did not reflect the actual statements made by the foreigners. In both notes, the information was included that the purpose of the foreigners' arrival to Poland was to join their family members (staying in Poland, in the case of one of the men; and staying in France, in the case of the other man). However, neither of the foreigners exactly provided such information. In response to the question, asked by the BG officer, whether any of their family members live in Poland or in Europe, both men confirmed, and indicated the places of residence of their relatives. Based on that, the BG officer concluded that the purpose of their arrival to Poland was to unite with their families, although she did not precisely ask the question about the purpose of their arrival. In the case of the second man, the officer asked another question about a possible attempt to contact the man's family in France. The foreigner replied that he maintained such contact through the WhatsApp application. However, he did not say anything that would indicate his intention to leave Poland to go to France.

Most of the persons who filed their applications for international protection on the day of the inspection visit, had made attempts to cross the border at the visited border crossing already before. All the previous interviews conducted by the BG officers with those foreigners were documented in the form of official notes on them. Because, as I already mentioned, there are no other documents or audio-visual recordings used to document such interviews, there is no way to verify whether the official notes made by BG officers in the past actually reflect all relevant information provided by foreigners at that time. It is not possible either to verify, for certain, whether the persons who were interviewed on 15 May 2018 by BG officers and who declared their intention to apply for international protection in Poland had expressed that intention already during the previous interviews, or that before they

indeed did not provide any information suggesting that they arrived to Poland for this purpose.

The Commander of the Border Guard unit expressed his opinion on the CHR's report on the inspection visit, on its part relating to the issue. He drew my attention to the fact that most of the foreigners who entered the territory of Poland on the date of the site visit i.e. on 15 May 2018, and applied for international protection in Poland, soon afterwards left the territory of our country. In the Commander's opinion, such action clearly demonstrated that the foreigners used the asylum seeking procedure in the instrumental way. I cannot share this opinion, however. The circumstances based on which the foreigners decided to leave Poland are not known and can only be suspected. The very fact that they left Poland cannot be a proof that the foreigners' fear of persecution in their country of origin were groundless. Nor does it justify the conclusion that on the day of crossing the border, the foreigners did not intend to apply for protection against such persecution.

6. Assessment of the interview method used by the Border Guard officers

The interviews' monitoring, carried out by representatives of the Commissioner at two border control desks demonstrated that even within a single border crossing point, the methods of asking questions by the BG officers, the questions' content and the manner of interpreting the answers, may differ.

In the opinion of the visiting team, at one of the two monitored desks, the female officer correctly identified those statements made by the foreigners, which even indirectly reflected the intention to file an application for international protection in Poland. In each case when the foreigners referred to threats facing them in their country of origin, the officer asked a few additional questions, asking them to explain the specific nature of the threats. However, the questions were general and did not require a fully detailed description of the foreigner's story. However, what is significant, the foreigners' information suggesting that they were leaving the country as refugees was always given priority. If, during the interview, other subject were mentioned, for example the foreigner's previous stays in Europe, his/her family staying here, or his/her economic status in the country of origin, the subjects were not considered dominant and were not used to emphasize that the foreigner's arrival to Poland was caused by economic reasons.

The interviews at the said desk lasted from several minutes to over ten minutes. All the foreigners had the opportunity to express themselves freely. None of the interviews was conducted or finished in a way making it impossible for the foreigners to fully explain the reason for their arrival to Poland.

During the interviews held at the second monitored desk, also questions were asked about the source of the foreigners' income in the country of origin, about their family members resident in Poland or other European countries, and about whether the foreigner's decision to leave the country of origin was taken independently or was encouraged by other people. When the foreigners explained that they had their family members or other people close to them in the European Union, the BG officer verified, probably in the "POBYT" system, the status of the legality of stay of the persons indicated. The foreigners' statements about their relatives living in Poland or other European countries, were, however, over-interpreted by the officer: solely based on them, the officer concluded that the purpose of the foreigners' arrival to Poland was to join their family members here or in other European countries. When the foreigners mentioned they were afraid to return to their country of origin, the officer asked a few additional questions e.g. whether they sought assistance in their own country. Then the officer asked further questions. They did not refer any more to the fears mentioned by the foreigner but to the intention to find employment in Poland, or the methods of contacting the family members. In the opinion of the visiting team, the foreigners' information that they were afraid to return to their country of origin was not treated by the officer with sufficient attention. The further questions tried to demonstrate that the actual aim of their arrival to Poland was to improve their economic situation, or to join their family members.

However, regardless of the manner of asking the questions, all the foreigners interviewed at the second desk also had the possibility to freely express themselves and to fully present the reasons for their arrival in Poland. The interviews lasted from 7 to 10 minutes.

7. Summary

The inspection visit carried out at the Terespol railway border crossing confirmed the need to establish legal guarantees of foreigners' effective access to procedures concerning the examination of their applications for international protection. Neither the applicable law, nor the Border Guard work practice provide such guarantees. Allow me to

remind that the questioning process constitutes the main point of border control. The type of information the foreigner provides at that stage, and the way it is treated by the BG officer, has a significant impact on the possibility for the foreigner to seek international protection in Poland. Currently, this important element of border control is documented only in the form of an internal official note whose content is fully dependent on the officer conducting the interview. Thus, the content cannot be verified in any way by the foreigners themselves, or even by other BG officers who supervise the work of the border crossing.

In my opinion, the current method of documenting the questioning process is insufficient, which results in low effectiveness of foreigners' appeals against decisions refusing entry to Poland, which decisions are issued by the BG unit Commander. A foreigner who files such an appeal has no evidence of what specific information he actually provided to the officer during the border control. He/she has no possibility to undermine the content of the official note drawn up by the BG officer. On the other hand, in the case of a possible appeal proceeding, the BG officer is also unable to prove that the note accurately reflects the information provided by the foreigner and that it contains all relevant information. As a consequence, the document has low value as a piece of evidence, although it has key impact on the possibility to file an application for international protection by the concerned foreigner. Not without significance is the fact that both the inspection visit to the railway border crossing, held in 2016, and the visit in May this year revealed cases in which the content of the official note did not reflect the actual course of the interview. This negatively influenced the legal situation of the foreigners as they were refused entry to Poland despite the fact that they were seeking international protection.

8. Judgment of the Supreme Administrative Court of 17 May 2018

The issue of official notes drawn up by BG officers during second-line border check at the railway border crossing in Terespol was also referred to by the Supreme Administrative Court in its judgment of 17 May 2018 (case no. II OSK 2766/17) dismissing the cassation appeal brought by the BG Commander in Chief against the judgment of the Regional Administrative Court in Warsaw of 2 June 2017 (case no. IV SA/Wa3021/16) which annulled the decision of the BG Commander in Chief and the preceding decision of the Commander of the Border Guard unit Terespol, refusing entry to Poland. In its judgment, the Supreme Administrative Court concluded that in the situation in question, which was similar to the one described in the first paragraph of this document, the Border Guard authorities should not

have limited themselves solely to drawing up the official note. Aspects such as the purpose of arrival to Poland or the intention to file an application for international protection, according to the Court, may not be decided upon solely based on brief official notes. Such a note may be an additional supporting document but not the only and main document. In the absence of other evidence, the Border Guard authorities, in order to conclude that a given foreigner does not meet the requirements for entering Poland, should interview (question) the foreigner to determine the purpose for which he/she wants to cross the border, and then **should draw up a report on the interview. Otherwise**, according to the court, **the principle of trust to the state authorities**, referred to in Article 8(1) of the Act of 14 June 1960: the Code of Administrative Procedure (Journal of Laws of 2017, item 1257, as amended) **is undermined**.

Bearing in mind the findings of the inspection visit to the railway border crossing in Terespol, as well as the above-mentioned judgment of the Supreme Administrative Court, I hereby state that my earlier postulates: to introduce the obligation to take minutes of the aforementioned interviews; to adopt a single-type document form for the minutes; to ensure that the form contains the obligatory question about the intention to seek international protection in Poland, as well as to introduce the obligation to read out the minutes to the foreigners in a language they understand, are still valid. According to Article 16(2)(1) of the Act of 15 July 1987 on the Commissioner for Human Rights (Journal of Laws of 2017, item 958, as amended), **I am therefore requesting you to take a legislative initiative necessary to include, in the binding legislation, the principle according to which it is necessary to take minutes of interviews conducted with foreigners as part of the second-line border check**. At the same time, pursuant to Article 13(1)(2) in conjunction with Article 17 (1)(2) and (4) of the said Act, I am requesting you to present your **detailed** position on my postulates, comments and opinions presented herein.

Yours sincerely,

Adam Bodnar