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**DGI – Directorate General of Human Rights
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**Department for the Execution of Judgments
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I would like to present the comments of the **Helsinki Foundation for Human Rights** on Poland's implementation of the judgment of the European Court of Human Rights in the case *M.K. and Others v. Poland (40503/17)*. The comments refer to the explanations provided by the Polish Government in its communication of 26.01.2023, no DPT.432.236.2020.28. The Helsinki Foundation submits its comments only with regard to Poland's implementation of the general measures resulting from the judgment.

1. General remark on the implementation of the general measures resulting from the *M.K. and Others v. Poland* judgment.

In its position presented in the communication of 26.01.2023 (DPT.432.236.2020.28, hereinafter: communication or communication of the Government), the Polish Government explains the lack of actions aimed at implementing the general measures indicated in the judgment *M.K. and Others v. Poland* by the ongoing negotiations around the draft "New Pact for Migration and Asylum", announced by the European Commission on 23 September 2020. In the Foundation's opinion, however, the **work on the Pact does not justify the government's inaction in establishing legal guarantees in access to international protection proceedings.**

The lack of such guarantees was pointed out by the European Court of Human Rights in the aforementioned judgment. Since the entry into force of that judgment, such guarantees have not been introduced into the Polish legal order. On the other hand, **new regulations appeared in the Polish law, concerning the return of a foreigner to the border line and proceedings for the foreigner to leave the territory of Poland, which additionally limited foreigners' access to international protection procedures.** In theory, these regulations were the Polish government's response to the humanitarian crisis on the Polish-Belarusian border. However, they are not temporary and it can be assumed that they will remain in Polish law permanently.

2. Restrictions on access to the procedure for granting international protection, resulting from the Border Guard's acts of turning back to the border line and issuing and then executing the decision to leave the territory of Poland.

a. Restrictions on access to international protection resulting from activities of returning foreigners to the border line by the Border Guard.

In response to the crisis on the Polish-Belarusian border, in August 2021, new provisions were introduced into the Regulation of the Minister of Internal Affairs and Administration of 13 March 2020 on temporary suspension or restriction of border traffic at certain border crossings (the Border Regulation), allowing the Border Guard to return to the border line a foreigner who entered the territory of Poland illegally. The original purpose of the Border Regulation, which came into force in March 2020, was to limit traffic at border crossings in connection with the SARS-CoV-2 pandemic. Paragraph 3(2) of the Border Regulation included **a catalogue of entities that retained the right to cross the border and enter Poland during the pandemic.** Among these entities, **the Border Regulation did not list either foreigners - victims of human trafficking or persons intending to submit an application for international protection in Poland,** although the right to submit such an application results directly from the art. 56 (2) of the Constitution of the Republic of Poland or Art. 18 of the Charter of Fundamental Rights of the European Union. Persons not on the list may enter the territory of Poland only after obtaining permission from the commanding officer of the Border Guard post, with the consent of the Commander-in-Chief of the Guard.

However, the procedure for granting such consents for entry into the territory of Poland is optional and does not contain any guarantees that would enable non-admitted persons to assert their rights. It should be noted that **persons who are not admitted to the territory of Poland due to the fact that they do not belong to the category of entitled persons listed in the Border Regulation do not receive any decision on refusal of entry.** The non-admitted persons therefore do not have the possibility to file an appeal in which they could, for example, prove that in a conversation with a Border Guard officer they declared their intention to apply for international protection.

Pursuant to paragraph 3(2b) added to the Border Regulation in August 2021, in the event of revealing the entry into the territory of Poland of persons who are not included in the list of entities authorized to enter this territory, these persons are returned to the

state border line, regardless of whether they were caught at or outside the border crossing. The Border Regulation does not contain any other regulations concerning the procedure for returning, it does not indicate the authority competent to carry out this procedure (one can only presume that it should be the Border Guard), it does not specify the duties of this authority, nor does it mark the rights to which the persons being turned back are entitled.

The application of paragraph 3 (2b) of the Border Regulation in each case consists in performing by the Border Guard officers of activities consisting in escorting a foreigner to the border line and persuading or forcing him/her to leave Poland on the basis of the presumption that the foreigner does not belong to the group of persons authorized to cross the border, listed in the border regulation. The Border Guard does not register the identity of a foreigner or his/her country of origin. Even if, in practice, the Border Guard officers obtain such information during a returning operation, e.g. by reviewing an identity document (if the foreigner has one), the information is not processed by the Border Guard in any way and is not included into any documentation or files. The Border Guard also does not examine the individual situation of the foreigner, does not provide the foreigner with the right to present his/her arguments against expulsion or even ensure access to an interpreter during the return procedure.

Persons who are returned to the border line on the basis of the Border Regulation have no legal guarantees that any declarations indicating an intention to apply for international protection in Poland will be noted by the Border Guard officers and that the officers will enable them to make a formal application for such protection.

Foreigners do not even have factual guarantees that it will be possible to make a declaration at all - the return procedure itself does not provide for an obligation to hear the foreigner. Foreigners returned to the border line also have no access to an interpreter and cannot even use the interpreter-app on their phone. According to the testimonies of those turned back to the border line, when they are apprehended, the Border Guard confiscates their phones and gives them back just before they cross the border from Poland to Belarus.

The Border Guard authority, while performing the act of turning back, does not take into consideration the situation in the Polish-Belarusian border area, including the specifics of the operation of the Belarusian services, which consisted in preventing foreigners from moving freely on the territory of Belarus and even detaining them in the border area regardless of weather conditions, time of day, health condition or age. Nor does it take into consideration the violence experienced by migrants in Belarus, including sexual violence. The Border Guard does not investigate whether foreigners from the territory of Belarus will be sent back to their country of origin, where their right to life, freedom or personal security may be at risk.

The way in which the Border Regulation regulates the act of returning to the border line means that its use, in each case, constitutes a violation of Article 4 of Protocol No. 4 to the European Convention of Human Rights, which prohibits the collective expulsion of foreigners.

By "*collective expulsion of foreigners*", the ECHR means "(...) *any measure forcing foreigners as a group to leave the country, except where such a measure is taken on the*

basis of a reasonable and objective examination of the particular case of each person in the group" (ECHR - Grand Chamber judgment of 1 September 2015, Application No. 16483/12) . For an expulsion to be collective, within the meaning of Article 4 of Protocol No. 4, it doesn't matter how many people are expelled from the country at once (N.D. and N.T. v. Spain, §§ 193-199). The only thing that will not have the characteristics of collective expulsion is an action that will provide each foreigner with the opportunity to present his/her arguments against expulsion (ECHR decision in A. and Others v. Spain, application no. 14209/88, Sultani v. France, application no. 45223/05, § 81). However, even then the expulsion may be considered collective if the foreigners' arguments are not taken into account (Conka v. Belgium, judgment, application no. 51564/99, § 59).

The execution of the returning operation potentially exposes the foreigners to the dangers described in Article 33(1) of the Geneva Convention on Refugees and Article 19(2) of the EU Charter of Fundamental Rights, and thus violates the principle of *non-refoulement*. Turning back to the border line without any analysis of the foreigner's individual situation and disregarding the situation in Belarus can also lead to the *chain refoulement*, that is, the expulsion of foreigners to a third country, in this case Belarus, from where they risk being deported to their country of origin, where they will be exposed to torture and inhumane treatment. The fact that the Border Guard ignored the mentioned circumstances and the resulting violations of the law, including the ban on collective expulsion under art. 4 of Protocol No. 4 to the ECHR and the principle of *non-refoulement* from art. 33 (1) of the Geneva Convention on Refugees, was indicated by the Voivodship Administrative Court in Bialystok in non-final judgments of September 15, 2022, no. II SA/Bk 492/22, II SA/Bk 493/22 and II SA/Bk 494/22.

It should be added that the Border Regulation was already criticized by the Polish Ombudsman in 2020, even before the Polish-Belarusian border crisis and before the introduction of regulations on returning foreigners to the borderline. In the Ombudsman's opinion, the Border Regulation not only violated the right of foreigners to apply for international protection in Poland but was also issued in breach of the statutory delegation authorizing the Minister to issue such a regulation - Article 16(3)(2) of the Act on the protection of the State Border. This provision authorized the Minister of the Interior and Administration only to temporarily limit traffic at border crossings. In the opinion of the Ombudsman, the Act on the protection of the State Border could not be the basis for defining by regulation the categories of persons who will be entitled to enter the territory of Poland and, in the same way, deprive those who do not meet the criteria set out in the regulation, even though their right to enter still results from higher-level legal acts¹. Despite the negative opinion of the Ombudsman, the Border Regulation is still in force, and the comments of the Ombudsman regarding the violation by the Minister of the Interior and Administration of the statutory authorization to issue the Regulation remain valid, in particular after adding to the regulation in August 2021 a provision on returning foreigners to the border.

¹ Ombudsman's speech of 12.05.2020 (XI.540.9.2020), <https://bip.brpo.gov.pl/sites/default/files/Wyst%C4%85pienie%20do%20MSWiA%20ws%20sytuacji%20na%20granicach%2C%2012.05.2020.pdf>

A negative opinion on the activity of turning back foreigners to the border line, regulated in the Border Regulation, was also presented by the Council of Europe Commissioner for Human Rights, Dunja Mijatović, who visited the area of the Polish-Belarusian border on 16 - 17.11.2021, in the report "Pushed beyond the limits. Recommendation by the Council of Europe Commissioner for Human Rights"².

b. Restrictions on access to international protection resulting from the procedure of issuing decisions on leaving the territory of Poland.

By the Act of 14 October 2021 amending the Act on foreigners and certain other acts, another procedure was introduced into the Polish legal order, consisting in the issuing of decisions on leaving the territory of the Republic of Poland to foreigners. Pursuant to Article 303b (in connection with Article 303(1)(9a)), added to the Act on foreigners, decisions on leaving the territory of Poland are issued to foreigners who have been detained immediately after illegally crossing the border which is the external border of the EU. **The amendment of the Act on foreigners did not, however, eliminate the provisions of the Border Regulation**, so that currently both procedures, i.e. the procedure related to issuing decisions to leave the territory of Poland and the procedure of returning to the border line, exist in parallel and are applied by the Border Guard **in similar factual situations**, which violates the principle of legal certainty and makes the actions of the Border Guard in individual cases more arbitrary.

The procedure introduced in the Act on foreigners differs from the act of turning back to the border line. In these procedure, individual, personal decisions are issued. Therefore, basic information about the foreigner is collected: his/her personal data, date and approximate place of detention. Usually, before issuing a decision, a foreigner goes to a Border Guard post, where, if necessary, he/she has a better chance to obtain medical assistance in an emergency. A foreigner also has the right to lodge a complaint against the decision to leave Poland. The complaint does not suspend the enforcement of the decision, so it does not meet the requirements of an effective remedy. Also in this procedure, the Border Guard authorities do not sufficiently explain the facts of an individual case, nor do they take into consideration the situation in Belarus and the threats resulting from sending a foreigner to this country. The related violations of national and international law were pointed out by the administrative courts in Warsaw and Białystok (cf. judgments of the Voivodeship Administrative Court in Warsaw no. IV SA/Wa 420/22, IV SA/Wa 471/22, IV SA/Wa 615/22, IV SA/Wa 772/22 and IV SA/Wa 1031/22 or the judgment of the Voivodeship Administrative Court in Białystok no. II SA/Bk 558/22).

Complaints filed with the Helsinki Foundation for Human Rights and other non-governmental organizations or the media show that among persons returned to the border on the basis of decisions on leaving the territory of Poland, there are also persons who, in various ways, informed the Border Guard officers of their intention to apply for

² <https://rm.coe.int/pushed-beyond-the-limits-urgent-action-needed-to-end-human-rights-viol/1680a5a14d>

international protection in Poland. Despite this, they were returned to the territory of Belarus. Such complaints were also received by the Office of the Ombudsman.

In any case, turning back to the border line on the basis of the Border Regulation and the execution of the decision to leave Poland are the same - foreigners are escorted by the Border Guard to the border and forced to cross it, always in a place not intended for this, outside border crossings.

3. Restrictions on access to the procedure of granting international protection resulting from the possibility of leaving applications submitted by foreigners detained immediately after illegally crossing the EU external border without being examined

In October 2021, Article 33 (1a) was added to the Act on granting protection to foreigners within the territory of the Republic of Poland. This provision makes it possible to leave an application for international protection unexamined if the application is submitted by a foreigner detained immediately after crossing the EU external border in violation of the law, unless he came directly from the territory where his life or freedom was in danger of being persecuted or seriously harmed, presented credible reasons for illegal entry into the territory of the Republic of Poland and submitted an application for international protection immediately after crossing the border.

This change is mentioned by the government party in its communication, claiming that the change remains in compliance with European Union law. Meanwhile, Article 33 (1a) the Act on granting protection to foreigners within the territory of the Republic of Poland is in clear conflict with the provisions of Directive 2013/32/EU. In cases where Polish law provides for leaving the application for international protection unexamined, art. 31 (8) (h) of this Directive allows only the use of an accelerated or *so-called* borderline procedure for the examination of such an application. Pursuant to Article 31(8) of the Directive, even in the case of an accelerated or border procedure, the application should be examined in accordance with the fundamental principles and guarantees for the applicant, i.e. after appropriate consideration, with an individual approach to the case. The possibility to leave the application unprocessed, introduced into the Polish legal order, is therefore incompatible with the EU regulations. It is irrelevant that the government's communication emphasized that leaving the application unprocessed, the Head of the Office for Foreigners will act at the discretion of the administration.

In summary, in October 2021, new legal regulations have appeared in the Polish legal order, the application of which significantly limits the possibility to apply for international protection in Poland. In this way, the Polish government has not only failed to implement the general recommendations contained in the *M.K. and Others v. Poland* judgment, but also has taken actions that are completely contrary to the intentions of the European Court of Human Rights as expressed in the aforementioned judgment.

4. Restrictions on providing foreigners on the Polish-Belarusian borderland with humanitarian and legal assistance, resulting from the policy of the Polish government.

In its communication, the government claims that the main humanitarian support for people on the Polish-Belarusian border comes from public institutions (including the Border Guard). However, in fact, the inhabitants of the border region, individual activists and non-governmental organizations defending human rights are most involved in helping those in need at the border.

It is worth mentioning that the uniformed services form the so-called **chilling effect**, trying to discourage activists from helping migrants. There has also been a tendency to accuse activists, punish their actions and criminalize the aid they provide. The activists are accused of helping to facilitate illegal stay in Poland and helping to organize illegal border crossings³.

On September 2, 2021, a state of emergency was introduced in some of the Podlaskie and Lubelskie voivodeships, limiting a number of civil rights and freedoms. It established a general ban on entry and stay under a state of emergency for people who were not resident or employed there. The ban limited the possibility of providing legal, humanitarian and medical assistance to foreigners by aid organizations and activists staying outside the state of emergency zone (exposing activists to legal liability for entering and staying in the zone). **Restrictions related to the state of emergency, in particular, bans on entry and stay in the area covered by the state of emergency, were the subject of a critical opinion of the: UNHCR, IOM and ODIHR (these organisations also did not have the possibility to enter the state of emergency zone).** Office for Democratic Institutions and Human Rights of the Organization for Security and Cooperation in Europe, issued at the request of the Commissioner for Human Rights a legal opinion (opinion NHRI-POL/432/ 2021 of November 15, 2021)⁴. It found a negative impact of normative acts introducing the state of emergency on the Ombudsman's mandate, the activities of the media and NGOs. A similar assessment was presented by the Polish Supreme Court in the judgement of 18.01.2022 (no I KK 171/21) in a case concerning an offence related to staying in a state of emergency zone by three journalists. The Supreme Court ruled that the introduction of an indefinite ban on staying in the area covered by the state of emergency does not meet the proportionality test set out in Art. 228 (2) of the Constitution of the Republic of Poland and Art. 15 (1) of the Convention.

All legal and factual restrictions resulting from the adopted provisions of law and the policy of the Polish government significantly **deprived foreigners of access to legal assistance, including assistance in submitting an application for international protection.**

According to the periodic report of the Granica Group (an informal network of Polish NGOs and activists involved in helping people on the border) on the situation on the Polish-Belarusian border published in February 2023, 37 deaths have been officially

³ <https://hfhr.pl/upload/2023/02/report-eng.pdf>

⁴ <https://www.osce.org/files/f/documents/b/2/504316.pdf>

confirmed in the border area since the beginning of the crisis on the Polish-Belarusian border. The death rate is likely to be much higher, given three factors: the numerous reports of people who have recently crossed the border and seen bodies, the long period of inaccessibility of the border due to the state of emergency, and the constantly increasing number of missing persons (in total over 200 reports involving over 300 missing persons were received by Grupa Granica, only 1/3 of them were found, including 12 fatalities)⁵.

5. Comment on the Polish Government's opinion on cases in which foreigners who crossed the Polish-Belarusian border illegally and were neither returned to the border line nor received an order to leave Poland opted for so-called institutional assistance and the initiation of proceedings to oblige them to return to their country of origin.

In the communication, the Polish government drew attention to cases in which foreigners, having illegally crossed the Polish-Belarusian border, consciously decided not to apply for international protection and chose the so-called institutional assistance. The choice of such assistance and the related social benefits, including placement in an open centre run by the Dialog Foundation, resulted in proceedings against the foreigner for an obligation to return to his/her country of origin. According to the government, such behaviour of foreigners was evidence that they were not interested in applying for international protection in Poland, but only in reaching another European Union Member State.

The government's opinion is completely unfounded. It chooses to ignore an important factor that could have influenced the foreigners' choice. This factor was - and remains - **the widespread deprivation of liberty of foreigners crossing the Polish-Belarusian border, including those declaring a desire to apply for international protection.** Deprivation of freedom consists in placing foreigners in detention centres for foreigners. In many cases known to the Foundation, the choice of foreigners to use institutional assistance was determined precisely by the intent to avoid staying in a detention centre. It should be added that the maximum period of detention, depending on the reason for its application, may be 6 months or 18 months, up to 2 years in total.

According to Polish law, it is possible to detain foreigners - children, adults, as well as single women and women with a new-born baby - in order to secure pending administrative proceedings, including the asylum procedure. The decision on detention is made by the criminal court. As a rule, courts place foreigners in detention centres upon border guards request. There are concerns that the courts automatically detain migrants, including pregnant women and children, rarely making an individual assessment of the person's situation. Courts even decide on detaining foreigners who are not subject to expulsion from Poland - e.g. Afghans, Yemenis or Syrians. Although it is prohibited to detain persons whose psychophysical condition allows one to believe that they are victims of violence or are disabled, or whose deprivation of liberty causes

⁵ <https://hfhr.pl/upload/2023/02/report-of-grupa-granica-december-january.pdf>

a serious threat to their life or health, it happens that these persons are placed in a detention centre or their stay in detention is prolonged .

Whatmore, courts also automatically extent the period of detention – the stay in a guarded centre is sometimes extended even when the authorities do not exercise due diligence in order to carry out all necessary activities with the foreigner and complete the relevant administrative procedures as soon as possible.

In 2022, several reports were demonstrated the critical situation in Polish detention centres for foreigners. The most important were: the report of the National Mechanism for the Prevention of Torture at the Commissioner for Human Rights, report of the Amnesty International and report of Supreme Audit Office. The reports have been consistent when it comes to diagnosed problems. They found the accommodation in the detention facilities for asylum seekers in Poland not compliant with human rights standards and constituting inhuman and degrading treatment within the meaning of Article 3 of the ECHR and Article 4 of the Charter.

6. Statistics and situation at the border crossing under the authority of the Border Guard Post in Terespol.

According to the available data, in 2022⁶, the Border Guard issued decisions on leaving Poland to 2,488 people. In approximately 15,600 cases, the act of turning back to the border line was carried out on the basis of the Border Regulation. As the execution of the act of turning back is not documented by the Border Guard, the country of origin of returned migrants is unknown. Their personal data, age and gender are also not known. For obvious reasons, it is unknown how many of the returned persons reported to the Border Guard their intention to apply for international protection in Poland.

In 2022, a total of 7 374 persons applied for international protection in Poland. 1 861 persons applied directly at border crossings on the external border of the European Union. On the Polish-Belarusian border, applications for protection were also accepted outside border crossing points, which may concern persons who were not returned to the border line or who were not issued a decision to leave the territory of Poland. In the Border Guard posts on the Polish-Belarusian border, outside border crossings, applications for protection were accepted from only 464 persons in 2022. 753 persons submitted such applications at the Headquarters of the Podlaski Border Guard Unit in Bialystok and the Border Guard Post in Biala Podlaska, which is probably due to the fact that detention centers for foreigners are located there. However, these numbers are relatively small, especially when compared to the 15,600 cases of persons turned back to the border line.

In 2022. 26 927 persons were refused entry to Poland by the Border Guard authorities. This number refers to the entire border which is the external border of the European

⁶ Presented data come from the response of the Border Guard to the request of the Helsinki Foundation for Human Rights for access to public information ((letters of the Information Protection Bureau of the Border Guard Headquarters of 17 and 25.01.2023, no. KG-OI.VIII.0180.184.2022.BK)

Union, i.e. the Polish border with the Kaliningrad Oblast, the Polish-Belarusian border and the Polish-Ukrainian border. However, it should be recalled that **entry refusal decisions are not issued to persons who are not admitted to Poland on the grounds that they do not belong to the categories of persons entitled to cross the border according to the Border Regulation**. The figure given above does not include this category of persons. Meanwhile, it can be reasonably assumed that among these people there are those who appeared at the border crossing, declared their intention to apply for international protection, but their declarations were not taken into account and they were not allowed to cross the border.

In its communication, the Polish government reports a small scale of refusals of entry at the Polish-Belarusian border in 2021. According to the information provided, there were 1,608 such refusals. However, this figure does not take into account persons not admitted to Poland for the reason that they did not belong to any of the categories listed in the Border Regulation and returned to the border line without any formal proceedings being launched nor registration being conducted.

The fact that there are still cases in which the Border Guard prevents persons who declare their intention to apply for international protection from crossing the border, through an operating border crossing point, is evidenced by the repeated complaints received by the Helsinki Foundation for Human Rights. It is worth adding that the Foundation is not the only non-governmental organisation which receives such complaints. It is also known that complaints in such cases are received by the Office of the Ombudsman⁷.

In summary, between June and December 2022, the Helsinki Foundation was approached by 46 persons, including families with children, who were not allowed into Poland at least once, despite declaring their intention to apply for international protection. All the cases described above concerned the border crossing point under the Border Guard Post in Terespol. The vast majority of them were persons of Chechen nationality and Russian Federation's citizenship.

The lack of legal guarantees concerning access to the procedure for granting international protection resulted in the fact that declarations of intention to apply for such protection, reported by the above-mentioned persons to the Border Guard officers, were not recorded anywhere and had no effect. The foreigners were not allowed to enter the territory of Poland. It is likely that they were not even issued with a decision to refuse entry into Poland. Thus, they were deprived of the possibility to appeal and assert their rights before any authority or national court.

The problem of the lack of guarantees regarding the possibility of filing an application for international protection was pointed out by administrative courts in each cases

⁷ See also:

Input of the Commissioner for Human Rights of the Republic of Poland for the Special Rapporteur's on the Human Rights of Migrants report on pushback practices and their impact on the human rights of migrants

https://bip.brpo.gov.pl/sites/default/files/Input_of_the_CHR_for_the_Special_Rapporteur_28.01.2021.pdf

concerning a return to the border line or a decision to leave the territory of Poland (see: judgments of the Voivodeship Administrative Court in Warsaw no. IV SA/Wa 420/22, IV SA/Wa 471/22, IV SA/Wa 615/22, IV SA/Wa 772/22 and IV SA/Wa 1031/22 or the judgment of the Voivodeship Administrative Court in Bialystok no. II SA/Bk 558/22, II SA/Bk 492/22, II SA/Bk 493/22 and II SA/Bk 494/22). The reality of this problem is also indirectly indicated by the number of interim measures ordered by the European Court of Human Rights during the period of intensification of the humanitarian crisis - from August 20, 2021 to February 18, 2022. The European Court of Human Rights issued interim orders in 65 cases involving migrants and migrant women who crossed the Polish-Belarusian border.

7. Other changes.

Finally, further negative changes to the law proposed in the government's draft Act on foreigners, which the Polish Parliament is currently working on, should be mentioned. Most of the negative changes concern the procedure for obliging a foreigner to return to his/her country of origin. A particularly unfavourable change is, for example, the proposal to transfer the tasks of the appeal authority in the procedure for the obligation to return from the Head of the Office for Foreigners to the Commander-in-Chief of the Border Guard, so that in the proceedings for the obligation to return, in both instances, the decision will be made by the Border Guard authorities (now in the first instance the decisions are made by the commanding officers of the Border Guard posts).

Some of the proposed changes will affect the situation of persons seeking international protection. According to the draft, the period for voluntary return indicated in the return decision will not be suspended until the final decision in the pending proceedings for granting international protection is delivered to the foreigner. After this change, person seeking protection who receives a return decision will have to execute it before a final decision on international protection is issued.

The provision of the Act on foreigners which provides for the suspensive effect of an application to suspend the enforcement of a decision on the obligation to return, submitted together with a complaint against that decision to the Voivodeship Administrative Court, is also to be removed. Thus, a foreigner who has been refused international protection, and who has already received a return decision, will not be able to lodge an effective appeal which would give him/her a chance to stay on the territory of Poland until the time limit for lodging a complaint against a decision on refusal of international protection expires or until such a complaint is examined by the court of first instance.

In this sense, the legal situation of foreigners has worsened in comparison to 2017 (date of filing complaints in the case of M.K. and others). At that time, all persons not admitted to the territory of Poland received decisions on refusal of entry.

I hope that the above comments will be of interest to the Committee of Ministers and will be taken into account in further work towards the final implementation of the measures ordered by the ECHR in the judgment M.K. and Others v. Poland.

With kind regards,

On behalf of the Board of the Helsinki Foundation for Human Rights

Piotr Kladoczny

Vice-President of the Management Board