

## Opinion – A State of Emergency at the Polish-Belarusian Border

Written by Monika Kabata

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MONIKA KABATA, OCT 12 2021

A small Polish village on the border with Belarus, Usnierz Górny, has become a symbol of the Polish stand on refugees' protection as 32 asylum seekers became trapped between Polish and Belarusian border guards. Polish authorities not only refuse to accept their asylum applications and are building a barbed wire fence but also, on September 2, 2021, declared a state of emergency in 183 towns in a 3-kilometer strip of land along the Polish-Belarusian border. In their opinion, the current situation is a hybrid attack orchestrated by Lukashenko who tries to destabilize the political situation in Poland by bringing migrants from Iraq to the Polish border. However, the situation in Usnierz Górny is only the tip of the iceberg as migration from the Eastern border has been increasing already for some time as well as the number of push back operations.

A similar stand on the matter was taken by the EU, as the European Commissioner for Home Affairs, Ylva Johansson, claimed:

"This area between the Poland and #Belarus borders is not a migration issue, but part of the aggression of Lukashenko toward Poland, Lithuania and Latvia, with the aim to destabilize the E.U".

My interview with @StevenErlanger Bxl correspondent @nytimes <https://t.co/nl90B9nchK>

— Ylva Johansson (@YlvaJohansson) August 27, 2021

The actions on Polish side, the state of emergency and the lack of access to the border zone, already led to death of six people who tried to cross the border – causing concern in the European Commission. But why has this situation has not met yet with a harsh criticism and actions from the EU institutions? This article looks at some reasons of why Poland and the EU behave in this way. It starts however with the question why Poland must help asylum seekers.

First and foremost, push-back operations are illegal and the refusal to accept and examine asylum applications is against the Geneva Convention, the European Convention on Human Rights and the Dublin Convention. If an individual expresses a claim for asylum, the border guard has a legal obligation to examine it. However, according to the work of The Rule of Law Institute, border guards take advantage of terminological differences. Asylum seekers often use the word 'azyl' which is very similar to English ('asylum') and should be understood, in accordance with the EU terminology, as a request for international protection. Nevertheless, Polish border guards use Polish terminology according to which 'azyl' is a national form of protection (not international protection) granted to foreigners in need of protection but when it is supported by the interests of Poland. In the case of lack of such interest, protection is not granted.

Another example of unlawful actions towards asylum seekers is included in a draft act amending the act on foreigners and the act on granting protection to foreigners within the territory of the Republic of Poland – adopted on August 17, 2021. According to the act, foreigners may be immediately removed and banned from re-entering Poland in case of illegal border crossing. Additionally, their applications for international protection may be left without examination, which has been claimed to be against not only the provisions of international law but also the Polish Constitution.

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Jaroslav Kaczynski, current vice-president and leader of the Law and Justice Party, made a speech in the Parliament on September 16, 2015, arguing that Poland does not have a moral obligation to accept refugees as it neither took part in colonialization nor in the recent destabilising actions taken by the US and some European countries in the Middle East. Whereas indeed Poland did not have colonies, it does take advantage of being part of a system build by previous colonizers. Moreover, Poland sent troops to Afghanistan and Iraq which are two countries from which many asylum seekers come. Further, from the historical point of view, Poland should express a special empathy and solidarity with foreigners who not only flee from wars and persecution but also seek to find a better life as Polish history includes several waves of emigration.

Poland needs foreigners for at least two reasons: cultural and economic. Although the number of foreigners in Poland has significantly increased, it still contrasts with the data from other European countries: on January 1, 2020, Poland had the second lowest (after Romania) share of non-nationals in the resident population in the EU. In a survey from the same year, only 40% of Poles declared that they personally knew a foreigner living in Poland. This lack of familiarity with foreigners can significantly contribute to a hostile attitude towards foreigners, especially to those from the Middle East and Africa, and lead to tensions in the society when the flow of immigrants increases. And this will likely happen due to the demographical situation: Polish society is lately eldering faster than the average in the EU and it is calculated that “in 2030 employers will have problems with filling every fifth job position”.

During the ‘migration crisis’ the Polish Government took a firm stand on migration which still has repercussions. The refusal to relocate a relatively small number of refugees impacted both the internal and external image of Poland. On one hand, the Polish Government adopted securitising discourse on migration, presenting especially people from the Middle East and Africa, as a serious threat to national, societal and health security. Accepting refugees now would contradict this discourse as well as the above-mentioned discourse on lack of moral obligation to help. Thus, the actions that are currently under way are in line with the representation of Poland as a country that prioritises its security and defence – in this case, from Belarusian attack.

While the Polish government’s actions met with strong opposition from legal experts, activists and some politicians, the supporting response that came from the EU can be seen as unexpected at the first sight. Nevertheless, the EU still very much remembers the lack of solidarity among the Member States in 2015 and it faces unsolved problems at other migration routes and fears for future blackmail with migrants as a bargaining chip as in the case of Turkey. If one assumes that the increase of the number of migrants at the Polish Eastern border is indeed just Lukashenko’s doing, then taking the refugees opens the door for future blackmail not only from Belarus but also other countries – and this says nothing for the humanitarian cost.

Finally, there are also technical problems to consider. First, as it has been suspected by the Rule of Law Institute, Polish border guards may have problems with access Eurodac devices which makes it impossible to effectively scan fingerprints with the submission of the asylum application as required by the Dublin Convention. Second, there is a lack of places in the centres for foreigners. Since migration to Poland has generally increased and the admission of applications at legal crossings has been limited, the number of irregular crossings rose significantly: in the first half of this year, there were 4006 persons, whereas in the same period of the previous year – 1453. If someone crosses the border irregularly then they are automatically sent to one of only six centres in Poland. There is also an issue with translators whose presence is essential. Lack of translators slows down the process and causes asylum seekers to spend months waiting for decisions in the guarded centres without knowing what is happening with their cases.

Whereas the technical issues with accepting asylum seekers in Poland as well as the difficult situation across the EU in migration matters can to some extent explain the impasse at the border, can politics and technicalities be above the right to international protection, and especially, humanitarian treatment? Poland has been disobeying its obligations towards asylum seekers for a long time and this should be condemned at the international stage. The problem is that neither the EU nor the world has a long-term plan for how to manage migration which can only be expected to increase due to political destabilisation and climate crisis.

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