

Magdalena Póltorak

Can an application for international protection be refused and when is it considered to be submitted?

According to the international law that is binding for Poland, EU law and domestic law, an application for international protection cannot be refused. Pursuant to Art. 56 (2) of [the Polish Constitution](#), a foreigner who seeks protection in the Republic of Poland from persecution may be granted refugee status in accordance with international agreements binding the Republic of Poland. Art. 24 of [the Act on granting protection to foreigners](#) within the territory of the Republic of Poland of 13 June 2003 (hereinafter: the Protection Act) states that an application for international protection shall be submitted to the Head of the Office through the commanding officer of the Border Guard division or the commanding officer of the Border Guard post.

This means that any person who, while being at the border of the Republic of Poland, notifies a Border Guard officer performing any official actions towards him or her of the intention to cross the border in order to apply for international protection in Poland should be granted entry into the territory of Poland, and the Border Guard officers are obliged to accept a relevant application from that person.

A contrario, i.e. departing from the obligation to receive an asylum request in a situation in which a person, who is de facto under the Border Guard jurisdiction, declares his or her intention to submit such request [constitutes a violation of the law](#). When a foreigner is placed in a guarded facility, a detention centre for foreigners, a custodial facility or a penitentiary institution, the application for international protection is submitted through the commanding officer of the Border Guard division or the commanding officer of the Border Guard post with territorial jurisdiction over the seat of the guarded facility, detention centre for foreigners, custodial facility or penitentiary institution. However, usually the applications are submitted by foreigners while crossing the border.

Therefore, the key step in commencing the proceedings (and thus in the actions of the Border Guard officer) is establishing the intention to cross the border in order to grant international protection.¹ This intention may be expressed in any form and, as soon as it is expressed, a foreigner should be treated as an applicant within the meaning of the EU regulations. This means that the Border Guard officer's failure to identify the reasons for crossing the border has a direct effect in limiting access to the refugee procedure.²

Any person who has lodged an application for international protection (expressed his or her will to do so) should be guaranteed a real opportunity to submit an application as soon as possible. This should be understood as e.g. access to information on the possibility of filing an application in a language which the person understands, use of an interpreter or contact with social organisations for this purpose. The Border Guard officers are under the duty to accept the application and then forward it to the Head of the Office for Foreigners so that it can be examined. It must be stressed that the Border Guard do not have any decision-making powers with regard to assessing the legitimacy of an application for granting international protection while expressing such powers, e.g. in their notes, exceeds their statutory competence.³

1 J. Chlebny (ed.) (2020). *Prawo o cudzoziemcach. Komentarz* [Law on Foreigners: Commentary]. Warsaw: C.H. Beck.

2 See also W. Chróścielewski, R. Hauser, J. Chlebny (2019). 'Realizacja prawa do wszczęcia postępowania w sprawie o udzielenie ochrony międzynarodowej podczas przekraczania granicy' [Exercise of the right to initiate an international protection procedure when crossing a border]. In: J. Korczak, K. Sobieralski (eds.). *Jednostka wobec władczej ingerencji organów administracji publicznej. Księga Jubileuszowa dedykowana Profesor Barbarze Adamiak* [An individual in the face of interference from public administration bodies: Jubilee Book dedicated to Professor Barbara Adamiak]. Wrocław: Presscom, pp. 65–79.

3 P. Dąbrowski (2019). 'Niedopuszczalność odmowy wjazdu cudzoziemca na terytorium RP bez wyjaśnienia, czy cudzoziemiec deklaruje wolę ubiegania się o ochronę międzynarodową. Glosa do wyroku Naczelnego Sądu Administracyjnego

If, for reasons attributable to the Border Guard, it is not possible to accept the application on the day on which the person seeking international protection appears in person at the Border Guard post or division, he or she should be informed (in a language which he or she understands) when and where the application will be accepted, and that fact should be recorded in the report. The reasons for non-acceptance of an asylum request may be technical such as lack of an interpreter. The report should contain at least basic information about the Border Guard officer ('who, when, where and what activities were undertaken'), the foreigner ('who and in what capacity was present'), information that the foreigner declared his or her intention to submit an application for international protection ('what was agreed as a result of the activities and how') and additional information on the date and place of accepting the application for international protection. The report should be read out to the foreigner, who should then sign it. The acceptance of the application itself and its registration in the IT system should take place no later than within three working days from the date of receiving the declaration of intention to submit the application. By way of exception, in the situation of a mass influx of foreigners into the territory of Poland, this deadline may be extended to 10 working days. In this context, however, it is essential to mention applications aimed at legalising the stay of Ukrainian citizens under temporary protection. Art. 3 of the [Act on Assistance to Citizens of Ukraine](#) stipulates that the application should be submitted no later than 90 days from the date of entry into the territory of the Republic of Poland in any executive body of a municipality on the territory of the Republic of Poland. However, the application registration in the IT system is performed by the Commander-in-Chief of the Border Guard within 30 days from the date on which the municipality authority informs him or her about the application having been submitted.

Importantly, if the applicant is a disabled person, an elderly person, a pregnant woman, a single parent or a person in foster care, a hospital, a detention centre or a penitentiary institution and cannot appear in person at the seat of the Border Guard authority, a written declaration of intention to file an asylum request may be made by mail or by e-mail.

It should also be stressed that foreigners who declared their intention to apply for international protection during border control or who submit such an application (Art. 28 (2) § 2 of the [Act on Foreigners](#)) cannot be refused entry, even if they do not meet the entry conditions (i.e. do not have a visa or even a passport). The so-called '[Pushback Act](#)' passed in October 2021, however, attempts to legitimise issuing an order to leave the territory of the Republic of Poland in a situation where a foreigner has 'crossed or attempted to cross the border in violation of the law' or 'has been apprehended immediately after illegally crossing the border that constitutes an external border.' However, these provisions are incompatible with international regulations (see [text by "Grażyna Baranowska"](#)).

An application for international protection is considered to have been lodged when it is recorded in the register (known as the 'Register on Foreigners') and then forwarded to the Head of the Office for Foreigners.

Pursuant to Art. 30 of the Protection Act, the Border Guard body which is competent to accept the application, i.e. the Border Guard, is obliged to:

- establish the identity of the person to whom the application relates;
- obtain sufficient data and information to fill in the application form, photograph the applicant and take his or her fingerprints;
- determine whether the applicant holds documents entitling him or her to cross the border or is legally present on the territory of the Republic of Poland;
- inform the applicant in writing in a language he or she understands about:
 - » the rules and procedure of granting international protection;
 - » his or her rights and obligations and the consequences of failure to comply with them, as

z dnia 20 września 2018 r., II OSK 1025/18' [Commentary to the judgment of the Supreme Administrative Court of 20 September 2018, II OSK 1025/18]. *Orzecznictwo Sądów Polskich* 3, p. 150.

well as the consequences of explicit and implicit withdrawal of the application for international protection;

- » the possibility of consenting to a representative of the Office of the United Nations High Commissioner for Refugees being informed about the course of the proceedings on the application for international protection, reviewing the case file and taking notes and extracts from it;
- » organizations that provide assistance to foreigners;
- » the scope of social assistance and medical care, and their period of eligibility;
- » the possibility to apply for financial assistance and the rules of admission to the centre for foreigners, hereinafter referred to as ‘the centre’;
- » the procedure and principles for providing free legal assistance and the entities providing such assistance;
- » the address of the reception centre where he or she is to report within two days from the date of filing the application.

When the application is submitted, the Border Guard is also obliged to provide the assistance of an interpreter and conduct medical examination and necessary sanitary treatment of the body and clothing of the person who is the subject of the application. Importantly, in the case of disabled persons, elderly persons, single parents and pregnant women to whom the application pertains, the Border Guard is also obliged to provide transport to the reception centre, and, in justified cases, food during transport.

Once the above steps have been taken, the application should be immediately entered into the register (the Register on Foreigners). At the same time, the Border Guard authority should conduct an individual interview with the applicant to determine the Member State responsible and send the fingerprints of the person concerned to the EURODAC system. This stage of the procedure ends with forwarding the application to the Head of the Office for Foreigners, which should take place within 48 hours from its submission.