



## Court gives notice of “*R.A. v. Poland*” case and applies interim measures

The European Court of Human Rights has given notice<sup>1</sup> to the Government of Poland of the application in **R.A. and Others v. Poland** (application no. 42120/21) and has asked them to submit their observations on the admissibility and merits of the application.

The Court has also decided to extend the interim measure previously indicated in this case and to apply two new interim measures under Rule 39 of its Rules of Court.

### Facts

The case of *R.A. and Others v. Poland* concerns 32 Afghan nationals who have been confined for approximately seven weeks in a makeshift camp on the border between Belarus and Poland near the Polish village of Usnarz Górny. They say that they crossed the Belarusian-Polish border in a forest area around 8 August 2021 before being forcibly pushed back to Belarus by Polish border guards; and that since then they have been stranded, in problematic sanitary and humanitarian conditions, between the Belarusian border guards, on the one hand, and the Polish police, on the other. They claim to have arrived in Belarus after fleeing Afghanistan when the Taliban came to power. They allege that, if returned to Afghanistan, they would have reason to fear persecution or treatment contrary to Article 3 (prohibition of torture and of inhuman or degrading treatment) of the Convention.

The application was lodged with the European Court of Human Rights on 20 August 2021. It was accompanied by a request for interim measures (Rule 39 of the Rules of Court).

### Complaints

Relying on Article 3 (prohibition of torture and inhuman or degrading treatment) of the Convention, the applicants complain of having been deprived by the Polish authorities of access to asylum procedures and of being exposed to the risk, if returned to Afghanistan, of treatment in breach of the Convention. They also complain of the risk of chain *refoulement* if sent to Belarus, as they argue that it would not be a safe country for them.

Under Article 3 taken together with Article 2 (right to life), they complain about their material and sanitary conditions and of the continuing failure by Poland to apply the interim measure indicated by the Court on 25 August 2021 (see below).

Relying on Article 4 of Protocol No. 4 (prohibition of collective expulsion of aliens) to the Convention, they complain of a measure of collective expulsion against them. Under Article 13 (right to an effective remedy) taken together with Article 3 of the Convention and Article 4 of Protocol No. 4 to the Convention, they complain that no effective remedy was available to them by which to assert their respective claims under Article 3 and Article 4 of Protocol No. 4.

Lastly, under Article 34 (right of individual application) of the Convention, they complain that the Polish Government have failed to implement the interim measure indicated by the Court on 25 August 2021 (see below).

<sup>1</sup> Under Rule 54 § 2 (b) of the Rules of Court: “the Chamber or the President of the Section may decide to give notice of the application or part of the application to the respondent Contracting Party and invite that Party to submit written observations thereon and, upon receipt thereof, invite the applicant to submit observations in reply.”

## Interim measures

On 25 August 2021 the Court indicated an interim measure, asking the Polish Government to provide the applicants with food, water, clothing, adequate medical care and, if possible, temporary shelter ( [link](#) to press release).

On 27 September 2021 the Court (duty judge) decided to extend this interim measure until further notice. Moreover, the Court decided to request the Polish Government, for the purpose of the proceedings before the Court, to allow the applicants' lawyers to make necessary contact with them by either allowing direct contact between the applicants and their lawyers, provided that the information submitted by the applicants' representative is accurate and the applicants are on the Polish territory, or allowing the applicant's lawyers access to the Polish border next to the applicant's whereabouts. Lastly, the Court decided to indicate to the Polish Government that the applicants should not be sent to Belarus, provided that the information submitted by the applicants' representative is accurate, and the applicants are on Polish territory.

It was pointed out to the parties that any failure by a State to comply with a measure indicated under Rule 39 might entail a violation of Article 34 of the Convention (*Mamatkulov and Askarov v. Turkey* [GC], nos. 46827/99 and 46951/99, §§ 128-129, ECHR 2005-I).

Rule 39 of the Rules of Court allows the Court to indicate interim measures to any State Party to the European Convention on Human Rights. The Court grants such requests only on an exceptional basis, when the applicants would otherwise face a real risk of irreversible harm. For further information, see the [Factsheet on interim measures](#).

## The procedure

On 27 September 2021 the Government of Poland were given notice of the application under Rule 54 § 2 (b) and were asked to submit written observations on the admissibility and merits of the application by 8 November 2021.

The Court also decided to grant the cases priority under Rule 41 and, under Rule 47 § 4, to allow the applicants to remain anonymous.

A statement of facts and the questions put to the parties is available (only in French) on the Court's website (Hudoc).

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**The European Court of Human Rights** was set up in Strasbourg by the Council of Europe Member States in 1959 to deal with alleged violations of the 1950 European Convention on Human Rights.