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Situation of Illegal Migrants at Polish Border: Legal Standards and Practice

- **ABSTRACT:** *The problem of migration in Europe has become increasingly pressing. The primary causes of this problem were the recent migration crises and Russian aggression in Ukraine in 2022. All these events had an impact on most European Union (EU) members, including Central and Eastern European states. This region also witnessed the Belarus–EU border crisis, which, in particular, involved Poland as the EU Member State, sharing the longest border with Belarus. Several months later, Poland encountered a wave of migrants fleeing Ukraine following Russian aggression.*

This study aims to examine the existing legal standards in this regard. The focus of this analysis is twofold. On the one hand, it is crucial to analyze international legal standards, including the 1951 Convention Relating to the Status of Refugees, the EU legal framework, and the international human rights protection system, in particular the case law of the European Court on Human Rights (ECtHR) and provisions of the International Covenant on Civil and Political Rights (ICCPR). However, the analysis would not have been complete without focusing on the Polish legal system and domestic practices regarding illegal migrants. This study also attempts to consider recent events on the Polish border, including the 2021–2022 Polish-Belarusian border crisis and the massive influx of migrants from Ukraine fleeing from armed conflict following Russian aggression in 2022.

- **KEYWORDS:** illegal migrants, European Convention on Human Rights, Polish-Belarusian border crisis, refugees, Polish border

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1. Introduction

In recent years, the problem of migration in Europe has become increasingly pressing. The primary factors that triggered this problem were the 2015 migration crisis, the COVID-19 pandemic, and Russian aggression against Ukraine in 2022. All these events had an impact on most EU members, including Central and Eastern European states. This region also witnessed the Belarus–EU border crisis, which, in particular, involved Poland as the EU Member State, sharing the longest border with Belarus. Several months later, Poland encountered a wave of migrants fleeing Ukraine following Russian aggression.

This study aims to analyze the existing legal standards in this regard. The focus is on the existing legal framework regarding both the international law of human rights, notably the relevant case law of the ECtHR and domestic law. This study also considers the existing practices in dealing with illegal migration at the Polish border.

According to the 1997 Polish Constitution, the Republic of Poland shall respect international law binding upon it.¹ This includes international provisions guaranteeing the protection of refugees' rights, such as the 1951 Convention Relating to the Status of Refugees,² and international treaties on human rights protection, such as the International Covenant on Civil and Political Rights ICCPR³ and the European Convention on Human Rights (ECHR).⁴ Poland is also a Member State of the EU and the Council of Europe (CoE), which implies adherence to legal standards on migrant protection. Owing to the limited scope of this contribution, the analysis focuses mostly on ECtHR case law. Naturally, the situation of illegal migrants at the Polish border is primarily regulated by Polish legal standards. Both regimes are analyzed separately.

2. International legal standards

International standards on the protection of the rights of migrants in Europe have evolved in recent years into a system based on the mutual cooperation of various systems, including the CoE, EU, and United Nations (UN). Therefore, these standards should be perceived from a slightly broader perspective, as constituting

1 Art. 9 of the Constitution of the Republic of Poland, 2 April 1997, (Dz. U. 1997, No. 78, item 483).

2 Convention Relating to the Status of Refugees, 28 July 1951.

3 International Covenant on Civil and Political Rights, 16 December 1966, GA resolution 2200A (XXI).

4 Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights), 4 November 1950.

the European paradigm of protection of aliens.⁵ As this analysis focuses on the situation of illegal migrants at the Polish border, attention should be drawn to the international legal standards that are binding on Poland.

In general, the protection of illegal migrants focuses primarily on guaranteeing their safety. This includes preventing deportation to a state in which the individual might be subjected to the death penalty or any other risk of deprivation of life due to his return, or in which the individual might be susceptible to the risk of torture, cruel, inhuman, or degrading treatment or punishment.

Within the framework of international law, these standards were derived from the 1951 Convention Relating to the Status of Refugees. This convention prohibits a lawful expulsion of a refugee 'save on grounds of national security or public order.'⁶ States are also prohibited from expelling or returning 'a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion.'⁷

It should be stressed that within the framework of international human rights law the necessity to protect refugees was mentioned in the Universal Declaration on Human Rights (UDHR). In addition, the 1951 Convention referred its preamble to the UDHR.⁸ The Declaration provides the right to seek and enjoy asylum from persecution in other countries.⁹ Under Article 14(2), this right may not be invoked in case of prosecutions genuinely arising from non-political crimes or acts contrary to the purposes and principles of the UN.¹⁰

The UDHR standards have been transferred to the ICCPR. The Covenant stipulates that an alien may be expelled from the territory of a state only in pursuance of a decision reached in accordance with the law. Naturally, the alien is entitled to special procedural safeguards, including the right to representation or effective remedy.¹¹ The Human Rights Committee (HRC), in its General Comment No. 15, clearly stated the scope of rights enshrined in the ICCPR that are guaranteed to aliens.¹² The Committee also stated that collective mass expulsions would amount to a violation of Article 13¹³ of the ICCPR and provided for certain procedural protection for an alien facing expulsion.¹⁴ The committee also

5 Karska et al., 2023, pp. 23, 69–70.

6 Art. 32(1) of the Convention relating to the Status of Refugees.

7 Art. 33 of the Convention relating to the Status of Refugees.

8 Preamble of the Convention relating to the Status of Refugees.

9 Universal Declaration of Human Rights, proclaimed by the United Nations General Assembly in Paris, 10 December 1948, GA resolution 217 A, Art. 14(1).

10 *Ibid.*, para. 2.

11 Art. 13 of the ICCPR.

12 HRC, General Comment No. 15, 1986, The position of aliens under the Covenant, para. 7.

13 *Ibid.*, para. 10.

14 *Ibid.*, paras. 9–10.

raised the issue of deportation or expulsion to a state where an individual could be subjected to a death penalty.¹⁵

The HRC, in its General Comment No. 36, focused on particular obligations derived from the right to life¹⁶ with respect to aliens. Under GC No. 36, the duty to protect the right to life requires state parties to take special measures to protect persons in vulnerable situations, including refugees and stateless persons.¹⁷ The obligation to respect and ensure the right to life requires state parties to refrain from deporting, extraditing, or otherwise transferring individuals to countries in which there are substantial grounds for believing that a real risk exists in that their right to life under Article 6 of the ICCPR would be violated. Such a risk must be personal and cannot be derived merely from the general conditions of the receiving state, except in the most extreme cases.¹⁸ The HRC also stressed that the obligation not to extradite, deport, or otherwise transfer, pursuant to Article 6 of the ICCPR, may be broader than the scope of the principle of non-refoulement under international refugee law, as it may also require the protection of aliens not entitled to refugee status. In such cases, state parties should also provide access to refugees or other individualised or group status determination procedures for protection against refoulement.¹⁹

Guarantees for the protection of aliens have also been enshrined in the ECHR, but the text of the Convention is modest in this regard. The only provisions directly applicable to aliens are Article 16 of the ECHR (prohibition of restricting the public activity of aliens),²⁰ Article 4 of Protocol No. 4 to the ECHR (prohibition of collective expulsion of aliens),²¹ and Article 1 of Protocol No. 7 to the ECHR (procedural guarantees regarding the expulsion of aliens).²² Despite the low number of particular guarantees enshrined in the ECHR, the jurisprudence of the ECtHR in this regard is extensive and may be described as incomparable to other international mechanisms for the protection of individual rights and freedoms.²³ The above provisions, especially Article 3(2) of Protocol No. 4, have been the subject of recent ECtHR analysis.²⁴

15 HRC, *Kindler v. Canada* (Communication No. 470/1991), 11 November 1993; HRC, *Judge v. Canada* (Communication No. 829/1998), 13 August 2003; Nowak, 2005, pp. 151–153; Gliszczyńska-Grabias, 2012, pp. 155–156.

16 Art. 6 of the ICCPR.

17 HRC, General Comment No. 36, 3 September 2019, Art. 6 right to life, CCPR/C/GC/36, para. 23.

18 *Ibid.*, para. 30.

19 *Ibid.*, para. 31.

20 Art. 16 of the ECHR.

21 Art. 4 of the Protocol No. 4 to the ECHR.

22 Art. 7 of the Protocol No. 7 to the ECHR.

23 Karska et al., 2023, p. 24.

24 ECtHR, *H.F. and Others v. France* (Application Nos. 24384/19 and 44234/20), Judgment, 14 September 2022, paras. 243–284.

The cornerstone of protecting the rights of aliens, such as illegal migrants and asylum seekers under the ECHR, is the protection of the right to life (Article 2) and freedom from torture, inhuman, or degrading treatment or punishment (Article 3). These two provisions formed the basis for a wide collection of ECtHR case law regarding the protection of aliens. Apart from these two provisions, Article 13 (right to an effective remedy) also plays a significant role in cases concerning illegal migration.

The ECHR does not guarantee the right to political asylum and the ECtHR does not itself examine the actual asylum application.²⁵ However, the expulsion of an alien by a contracting state may give rise to an issue under Articles 2 and 3 of the Convention, and hence engage the responsibility of that state under the ECHR, where substantial grounds have been shown for believing that the person in question, if deported, would face a real risk of being subjected to treatment contrary to Articles 2 or 3 in the destination country. In such circumstances, both provisions imply an obligation not to deport the person in question to that country.²⁶

The guarantees deriving from the right to life under the ECHR mostly focus on the transfer of an individual to a third state, in which that individual faces the risk of being subjected to the death penalty. The ECtHR stated that such a prohibition is derived from Article 1 of Protocol No. 13.²⁷ The ECtHR also stressed that Protocols No. 6 and 13 to the ECHR, which have been ratified by almost all Member States of the Council of Europe, contributed to the interpretation of Article 2 of the ECHR as prohibiting the death penalty in all circumstances.²⁸

According to the ECtHR, the principles deriving from Articles 2 and 3 of the ECHR regarding the assessment of removal cases are the same. The ECtHR stated that where there are substantial grounds to believe that the person in question, if expelled, would face a real risk of capital punishment, torture, or inhuman or degrading treatment or punishment in the destination country, Articles 2 and 3 of the ECHR imply that the state must not expel that person. The ECtHR may examine the two articles together²⁹ or analyze Article 2 of the ECHR in the context of its examination of the complaint under Article 3 of the ECHR.³⁰

25 ECtHR, *F.G. v. Sweden* (Application No. 43611/11), Judgment, 23 March 2016, para. 117.

26 *Ibid.*, paras. 110–111; ECtHR, *Saadi v. Italy* (Application No. 37201/06), Judgment, 28 February 2008, paras. 124–125.

27 ECtHR, *Al-Saadoon and Mufdhi v. the United Kingdom* (Application No. 61498/08), Judgment, 2 March 2010, para. 118.

28 *Ibid.*, paras. 115–128.

29 ECtHR, *F.G. v. Sweden* (Application No. 43611/11), Judgment, 23 March 2016, para. 110.

30 ECtHR, *J.H. v. the United Kingdom* (Application No. 48839/09), Judgment, 20 December 2011, para. 37.

Article 3 of the ECHR had been used as the basis to challenge the refusal to admit an individual to the state party's territory.³¹ However, the far wider scope of this provision regarding issues concerning deportation and extradition should be noted. The ECtHR formulated the basis for such protection in its well-known judgment *Soering v. UK*.³² Over time, the ECtHR clarified its jurisprudence in this regard.³³

On numerous occasions, the ECtHR stressed in its case law that state parties have the right, as a matter of well-established international law and subject to their treaty obligations, including the ECHR, to control the entry, residence, and expulsion of aliens.³⁴

Recently, in *Ilias and Ahmed v. Hungary* the ECtHR stressed that the right to political asylum is contained in neither the ECHR nor its Protocols. However, deportation, extradition, or any other measure to remove an alien may give rise to an issue under Article 3 of the ECHR and hence engage the responsibility of the contracting state under the ECHR, where substantial grounds have been shown for believing that the person in question, if removed, would face a real risk of being subjected to treatment, contrary to Article 3 of the ECHR in the receiving country. Under such circumstances, Article 3 of the ECHR entails the obligation not to remove the individual from that country.³⁵

The Court also stressed that the assessment of whether there are substantial grounds for believing that the applicant faces a real risk of being subjected to treatment in breach of Article 3 of the ECHR must necessarily be rigorous and inevitably involve an examination by competent national authorities and later by the ECtHR of the conditions in the receiving country against the standards of Article 3 of the ECHR. These standards imply that the ill-treatment that the applicant alleges he or she will face if returned must attain a minimum level of severity if it falls within the scope of Article 3 of the ECHR. The assessment of the required severity is relative, depending on the circumstances of the case.³⁶

31 EComHR, *East African Asians v. the United Kingdom* (Application Nos. 4715/70, 4783/71 and 4827/71), 6 March 1978, paras. 20–21; ECtHR, *Abdulaziz, Cabales and Balkandali v. the United Kingdom* (Application Nos. 9214/80, 9473/81 and 9474/81), Judgment, 28 May 1985, paras. 90–91; Ovey and White, 2002, pp. 80–81.

32 ECtHR, *Soering v. the United Kingdom* (Application No. 14038/88), Judgment, 7 July 1989, paras. 81–111.

33 ECtHR, *Vilvarajah and Others v. the United Kingdom* (Application Nos. 13163/87, 13164/87, 13165/87, 13447/87 and 13448/87), Judgment, 30 October 1991, paras. 107–116; ECtHR, *Chahal v. the United Kingdom* (Application No. 22414/93), Judgment, 15 November 1996, paras. 83–107; Ovey and White, 2002, pp. 82–85.

34 E.g. ECtHR, *Khasanov and Rakhmanov v. Russia* (Application Nos. 28492/15 and 49975/15), Judgment, 29 April 2022, para. 93.

35 ECtHR, *Ilias and Ahmed v. Hungary* (Application No. 47287/15), Judgment, 21 November 2019, paras. 125–126.

36 ECtHR, *Ilias and Ahmed v. Hungary* (Application No. 47287/15), Judgment, 21 November 2019, para. 127.

In its case law, the ECtHR referred to the issue of pushbacks. It examined cases where border guards prevented individuals from entering the territory of a state party through land borders³⁷ or by from the sea.³⁸ A lack of access to the territory may be connected to preventing illegal migrants from lodging asylum applications or refusing to initiate asylum proceedings. The ECtHR cases pertaining to pushbacks concerned allegations of violations of Article 3,³⁹ Article 3 taken together with Article 13⁴⁰ of the ECHR, Article 4 of Protocol No. 4,⁴¹ or Article 4 of Protocol No. 4, in conjunction with Article 13 of the ECHR.⁴²

In this regard, international legal standards are complemented by applicable EU acts.⁴³ Poland is an EU Member State, and the Polish border is also an EU Border. It should be stressed that the main scope of this study is not the exhaustive analysis of the EU legal system concerning illegal migration. This would be impossible due to the limited scope of the analysis. The Court of Justice of the European Union clearly states that an alien can apply for international protection in the territory of a Member State, including at its borders or in transit zones, even if he or she is staying illegally in that Member State and irrespective of the prospects of success of such a claim.⁴⁴

The Schengen Borders Code provides requirements for the legal entry of foreigners. According to this, third-country nationals should possess a valid travel document entitling the holder to cross the border (the document must extend at least three months after the intended date of departure from the territory of the Member States and it should be issued within the previous 10 years); possess a valid visa (or valid residence permit or a valid long-stay visa); justify the purpose and conditions of the intended stay; and have sufficient means of subsistence (for

37 ECtHR, *M.A. and Others v. Lithuania* (Application No. 59793/17), Judgment, 11 December 2018; ECtHR, *M.K. and Others v. Poland* (Application Nos. 40503/17, 42902/17 and 43643/17), Judgment, 23 July 2020.

38 ECtHR, *Hirsi Jamaa and Others v. Italy* (Application No. 27765/09), Judgment, 23 February 2012.

39 ECtHR, *M.A. and Others v. Lithuania* (Application No. 59793/17), Judgment, 11 December 2018, paras. 105–115; ECtHR, *M.K. and Others v. Poland* (Application Nos. 40503/17, 42902/17 and 43643/17), Judgment, 23 July 2020, paras. 174–186.

40 ECtHR, *D. v. Bulgaria* (Application No. 29447/17), Judgment, 20 July 2021, paras. 117–137.

41 ECtHR, *Shahzad v. Hungary* (Application No. 12625/17), Judgment, 8 July 2021, paras. 60–68; ECtHR, *M.H. and Others v. Croatia* (Application Nos. 15670/18 and 43115/18), Judgment, 18 November 2021, paras. 295–304; ECtHR, *A.A. and Others v. North Macedonia* (Application Nos. 55798/16, 55808/16, 55817/16 et al.), Judgment, 5 April 2022, paras. 113–123.

42 ECtHR, *N.D. and N.T. v. Spain* (Application Nos. 8675/15 and 8697/15), Judgment, 13 February 2020; ECtHR, *Shahzad v. Hungary* (Application No. 12625/17), Judgment, 8 July 2021, paras. 75–79; *A.A. and Others v. North Macedonia* (Application Nos. 55798/16, 55808/16, 55817/16 et al.), Judgment, 5 April 2022, paras. 128–132.

43 European Parliament and the Council regulation 2016/399 on a Union Code on the rules governing the movement of persons across borders (Schengen Borders Code), 9 March 2016.

44 CJEU, C-821/19 *European Commission v. Hungary*, 16 November 2021, para. 136; CJEU, C-72/22 *PPU M.A. v. Valstybės sienos apsaugos tarnyba (State Border Guard Service)*, 30 June 2022, para 58; see also Chlebny, 2023, p. 9 et seq.; Kuźelewska and Piekutowska, 2023, pp. 39–52.

the duration of the intended stay and for the return to their country of origin or transit to a third country into which they are certain to be admitted). Third country nationals may not be persons for whom an alert has been issued in the SIS for the purpose of refusing entry and are not considered a threat to public policy, internal security, public health, or the international relations of any of the Member States, in particular, where no alert has been issued in Member States' national databases for the purpose of refusing entry on the same grounds.⁴⁵

Under the Schengen Borders Code, a third-country national who does not fulfil all the above conditions shall be refused entry into the territories of the Member States. This is without prejudice to the application of special provisions concerning the right to asylum and international protection, or the issue of long-stay visas.⁴⁶ Refusal of an entry must be based on a substantiated decision stating the precise reasons for refusal,⁴⁷ and individuals who are refused entry have the right to appeal under national law.⁴⁸

The EU legal system also addresses the issue of pushbacks. The Common European Asylum System is based on the principles enshrined in the 1951 Geneva Convention Relating to the Status of Refugees. The Treaty on the Functioning of the EU clearly states that the EU common policy on asylum, subsidiary protection, and temporary protection should offer appropriate status to any third-country national requiring international protection and be compliant with the non-refoulement principle enshrined in the Convention Relating to the Status of Refugees.⁴⁹ This guarantee had also been reaffirmed by the EU Charter on Fundamental Rights⁵⁰ and Directive 2013/32/EU.⁵¹

3. Polish legal standards

This study would not be complete without a specific emphasis on Polish legal provisions concerning migration and asylum proceedings. The Constitution of Poland – in line with international standards – guarantees the foreigners' 'right of asylum in the Republic of Poland in accordance with principles specified by statute.'⁵² The same provision states that aliens who seek protection from persecution in

45 Art. 6(1) of the Schengen Borders Code.

46 Art. 14(1) of the Schengen Borders Code.

47 Art. 14(2) of the Schengen Borders Code.

48 Art. 14(3) of the Schengen Borders Code.

49 Treaty on the Functioning of the European Union, 26 October 2012, C326/47, Art. 78.

50 Art. 18 of the Charter of Fundamental Rights of the European Union, 18 December 2000, 2000/C, 364/01.

51 European Parliament and the Council directive 2013/32/EU on common procedures for granting and withdrawing international protection, 26 June 2013, Art. 9; also Sadowski, 2023, p. 108; Florczak, 2003, p. 106.

52 Art. 56 of the Constitution of the Republic of Poland.

Poland, 'may be granted the status of a refugee following international agreements to which the Republic of Poland is a party.'⁵³

Main legal framework in this regard derives from two acts: Act on aliens (*Ustawa o cudzoziemcach*)⁵⁴ and Act on granting protection to foreigners on the territory of the Republic of Poland (*Ustawa o udzielaniu cudzoziemcom ochrony na terytorium Rzeczypospolitej Polskiej*).⁵⁵

The Act on Aliens outlines certain requirements for the alien crossing the border. Apart from the obligation to have a valid travel document, valid visa, or other valid document or permit to enter another country,⁵⁶ an alien entering Polish territory should justify the purpose and conditions of the intended stay and be in possession of proof of health insurance and sufficient financial means to cover the costs of the planned stay.⁵⁷

Apart from that, the Act on Aliens also recognizes stay for humanitarian reasons and tolerated stay. A permit for the stay of a foreigner is issued on humanitarian grounds in the territory of the Republic of Poland if the individual is repatriated to the state in which his rights protected under the ECHR would be infringed (this concerns rights enshrined in Articles 2, 3, 4, 5, 6, 7, and 8). Consent for such a stay is also issued if the individual's return to the state infringes upon the rights of the Child protected under the Convention on the Rights of the Child.⁵⁸ A permit for the tolerated stay of a foreigner is issued if the obligation to return: may only take place in a country in which his rights protected under the ECHR would be infringed (rights enshrined in Articles 2, 3, 4, 5, 6, and 7); if there are circumstances for refusing a residence permit on humanitarian grounds; it is unenforceable for reasons beyond the control of the authority competent for the forced execution of the decision on the obligation of the foreigner to return and the foreigner; can only be made in a country to which expulsion is inadmissible under a court decision or due to a decision of the Minister of Justice on refusal to expel the foreigner.⁵⁹

The Act on granting protection to foreigners lays down conditions for granting refugee status:

a foreigner shall be granted refugee status if, as a result of a well-founded fear of persecution in his country of origin on account of

53 Ibid.

54 Act on aliens (*Ustawa o cudzoziemcach*), 12 December 2013 (with further changes), Dz.U. 2013, item 1650.

55 Act on granting protection to foreigners on the territory of the Republic of Poland (*Ustawa o udzielaniu cudzoziemcom ochrony na terytorium Rzeczypospolitej Polskiej*), 13 June 2003 (with further changes), Dz. U. 2003, No 128, item 1176.

56 Art. 23 of the Act on Aliens.

57 Art. 25(1) of the Act on Aliens.

58 Art. 348 of the Convention on the Rights of the Child.

59 Art. 351 of the Convention on the Rights of the Child.

race, religion, nationality, political opinion or membership of a particular social group, he is unable or unwilling to avail himself of the protection of that country.⁶⁰

Persecution must, by nature or repetition, constitute a serious violation of human rights, or an accumulation of various acts or omissions.⁶¹ The reasons for this persecution should be properly assessed.⁶²

Granting protection to foreigners also entails the possibility of subsidiary protection. This type of protection is available to individuals who do not meet the refugee status conditions. An alien may be granted subsidiary protection if returning to his country of origin may expose him to a real risk of suffering serious harm by the imposition of the death penalty or execution, torture, inhuman or degrading treatment or punishment, or a serious and individualised risk to life or health resulting from the widespread use of violence against civilians in a situation of international or internal armed conflict.⁶³

The aforementioned law also provides conditions for the refusal to grant refugee status or subsidiary protection. A foreigner will thus be denied refugee status if there is no well-founded fear of persecution in the country of origin; he enjoys the protection or assistance of UN bodies and has the practical and legal possibility of returning to the territory where such protection or assistance is available without jeopardizing his life, personal safety, or freedom; there are serious grounds to believe that he has committed a crime under international law or a crime of a non-political nature; and he has rights and obligations related to the possession of Polish citizenship.

The granting of refugee status shall also be denied to a foreigner with respect to whom there are serious grounds for believing that he has instigated or otherwise participated in the commission of crimes under international law.⁶⁴

A foreigner will be denied subsidiary protection if there is no real risk of suffering serious harm; there are serious grounds to believe that he has committed a crime under international law (or has instigated or otherwise participated in the commission of such crimes) or has committed a crime on the territory of Poland or has committed an act outside this territory which is a crime under Polish law, or

60 Art. 13(1) of the Act on granting protection to foreigners on the territory of the Republic of Poland.

61 Art. 13(3) of the Act on granting protection to foreigners on the territory of the Republic of Poland.

62 Art. 14 of the Act on granting protection to foreigners on the territory of the Republic of Poland.

63 Art. 15 of the Act on granting protection to foreigners on the territory of the Republic of Poland.

64 Art. 19 of the Act on granting protection to foreigners on the territory of the Republic of Poland.

the foreigner constitutes a threat to state security or society.⁶⁵ Subsidiary protection will also be denied if a foreigner, prior to arrival in Poland, has committed a crime punishable by imprisonment under Polish law and has left his country of origin only to avoid punishment.⁶⁶

The Act on granting protection to foreigners does not directly refer to the issue of pushbacks; however, it indirectly mentions this issue⁶⁷ by referring to the standards of the 1951 Convention Relating to the Status of Refugees.⁶⁸ This should be understood as compliant with the relevant international standards in this area. The illegal character of the practice of pushbacks has also been stressed by domestic courts⁶⁹ and the ECtHR.⁷⁰ In the next section, this issue is subjected to further analysis in terms of the practice of the authorities.

4. Domestic practice concerning illegal migrants at Polish border

The issue of pushbacks has been raised by the ECtHR. The ECtHR in *M.K. v. Poland* analyzed applications concerning the existence of a systemic practice of misrepresenting the statements given by asylum-seekers in the official notes drafted by the officers of the Border Guard serving at the border checkpoints between Poland and Belarus. The irregularities in the procedure concerned the questioning of foreigners arriving at the Polish-Belarusian border at the relevant time, including the lack of proper investigation into the reasons for which they sought entry into Poland,⁷¹ which was also confirmed by the judgments of the Supreme Administrative Court.⁷² The applicants possessed the necessary documents and made numerous attempts to cross the border and sought representation by Polish and Belarusian lawyers but were not allowed to meet with them.⁷³

With respect to Article 3 of the ECHR, the ECtHR stated that the impugned measure taken by the Polish authorities fell outside the scope of Poland's strict

65 Art. 20(1) and (2) of the Act on granting protection to foreigners on the territory of the Republic of Poland.

66 Art. 20(3) of the Act on granting protection to foreigners on the territory of the Republic of Poland.

67 Art. 38(3) 2) of the Act on granting protection to foreigners on the territory of the Republic of Poland.

68 Art. 33 of the Convention Relating to the Status of Refugees.

69 Supreme Administrative Court (*Naczelny Sąd Administracyjny*), 26 July 2018. II OSK 1752/18, LEX nr 2529020P; Dobrowolski, 2018, LEX.

70 ECtHR, *N.D. and N.T. v. Spain* (Application Nos. 8675/15 and 8697/15), Judgment, 13 February 2020, paras. 206–232; Rogala, 2021, pp. 11–22.

71 ECtHR, *M.K. and Others v. Poland* (Application Nos. 40503/17, 42902/17 and 43643/17), Judgment, 23 July 2020, para. 174.

72 Supreme Administrative Court, 26 July 2018; Supreme Administrative Court, 17 May 2018. II OSK 2766/17.

73 ECtHR, *M.K. and Others v. Poland* (Application Nos. 40503/17, 42902/17 and 43643/17), Judgment, 23 July 2020, para. 175.

international legal obligations⁷⁴ and that there was a very real risk of ill-treatment following the return of the first applicant to Belarus and subsequently to Russia, which led to a violation of Article 3.⁷⁵

Regarding Article 4 of Protocol No. 4, the ECtHR noted that even though individual decisions were issued with respect to each applicant, they did not properly reflect the reasons given by the applicants to justify their fear of persecution. The applicants were not allowed to consult lawyers and were denied access to them even when their lawyers turned up at the border checkpoint and demanded that they be allowed to meet their clients. The ECtHR also stressed that the applicants attempted to cross the border legally and tried to make use of the procedure for lodging applications for international protection that should have been available to them under domestic law,⁷⁶ which was different from the situation in *N.D. and N.T. v. Spain*.⁷⁷

The Court found that the decisions to refuse entry into Poland were not taken with proper regard to the individual circumstance of each of the applicants. Rather, they were part of a wider policy of not receiving applications for international protection from persons presenting themselves at the Polish-Belarusian border and of returning those persons to Belarus in violation of domestic and international law. These decisions constituted the collective expulsion of aliens within the context of Article 4 of Protocol No. 4⁷⁸ to the ECHR.

The ECtHR also analyzed this issue from the perspective of Article 13 of the ECHR, taken in conjunction with Articles 3 and 4 of Protocol No. 4 to the ECHR. The ECtHR reaffirmed that the return of applicants to Belarus amounted to a violation of Articles 3 and 4 of Protocol No. 4 to the ECHR. In this context, the ECtHR stated that applicants were to be treated as asylum-seekers and established that their claims concerning the risk that they would be subjected to ill-treatment if returned to Belarus were disregarded by the authorities responsible for border control, and their personal situation was not taken into account. According to the ECtHR, an appeal against the refusal of entry and a further appeal to the administrative courts were not effective remedies within the meaning of the ECHR because they did not have automatic suspensive effect. The Government did not indicate any other remedies which might satisfy the criteria under Article 13 of the ECHR. Accordingly, the Court finds that there has been a violation of Article 13

74 ECtHR, *M.S.S. v. Belgium and Greece* (Application No. 30696/09), 21 January 2011, para. 340; ECtHR, *Ilias and Ahmed v. Hungary* (Application No. 47287/15), Judgment, 21 November 2019, para. 97.

75 ECtHR, *M.K. and Others v. Poland* (Application Nos. 40503/17, 42902/17 and 43643/17), Judgment, 23 July 2020, paras. 182–186.

76 *Ibid.*, paras. 206–208.

77 ECtHR, *N.D. and N.T. v. Spain* (Application Nos. 8675/15 and 8697/15), Judgment, 13 February 2020, para. 231.

78 ECtHR, *M.K. and Others v. Poland* (Application Nos. 40503/17, 42902/17 and 43643/17), Judgment, 23 July 2020, para. 210.

of the Convention taken in conjunction with Articles 3 and 4 of Protocol No. 4⁷⁹ to the ECHR.

The judgment in *M.K. and others v. Poland* concerned a severe issue relating to the systemic practice of not receiving applications for international protection from persons presenting themselves at the Polish-Belarusian border and of returning them to Belarus. It was also stressed that Belarus was not a safe country for refugees from Russia.⁸⁰

The 2021–2022 Polish-Belarusian border crisis also concerned other EU Member States, such as Lithuania and Latvia. It was triggered by an incident concerning the forced landing of a Ryanair passenger plane⁸¹ in 2021 and following sanctions imposed by EU. At that time Belarusian President Alexander Lukashenko threatened EU that he would allow ‘migrants and drugs’ to flood into western Europe if sanctions were imposed on his country.⁸² In August 2021 and subsequent months, thousands of illegal migrants attempted to cross Belarusian borders and get to Poland, Lithuania, and Latvia. Belarusian authorities aided illegal migrants in getting to their territory by air and then accompanied them to the border. A. Lukashenko admitted that the involvement of Belarusian border troops in the process is ‘absolutely possible.’⁸³

Poland, Lithuania, and Latvia described the crisis as hybrid warfare.⁸⁴ All three states declared a state of emergency and announced their decisions to build border walls on their borders with Belarus.⁸⁵ All three states implemented practices allowing migrant pushbacks to Belarus by the Lithuanian, Latvian, and Polish border guards.⁸⁶ In case of Poland this involved the Regulation of the Minister of Internal Affairs and Administration (*Rozporządzenie Ministra Spraw Wewnętrznych i Administracji*).⁸⁷ This regulation allowed to turn back the ‘persons at border crossings, where border traffic has been suspended or restricted and outside the territorial scope of the border crossing’⁸⁸ to the state border line.

This issue was raised by human rights organizations⁸⁹ and the Polish Commissioner for Human Rights (Ombudsman). The Commissioner for Human Rights

79 Ibid., paras. 219–220.

80 Ibid., para. 155.

81 E.g. United Nations, 2021.

82 Evans, 2021.

83 Rosenberg, 2021; Kuźelewska and Piekutowska, 2023, pp. 39–52.

84 Henley, Roth and Rankin, 2021.

85 Gera and Grieshaber, 2022.

86 ECRE, 2023.

87 Minister of Internal Affairs and Administration, Regulation amending the regulation on temporary suspension or restriction of border traffic at certain border crossing points (*Rozporządzenie Ministra Spraw Wewnętrznych i Administracji zmieniające rozporządzenie w sprawie czasowego zawieszenia lub ograniczenia ruchu granicznego na określonych przejściach granicznych*), 20 August 2021, Dz.U. 2021, item 1536.

88 Ibid., § 1; See also Zdanowicz, 2023, pp. 107–109.

89 E.g. Violence and Pushbacks at Poland-Belarus Border, 2022.

stated *inter alia* that the aforementioned regulation makes the right of foreigners to apply for international protection in Poland under the 1951 Geneva Convention and the Act on Granting Protection to Foreigners on the Territory of the Republic of Poland a fiction.⁹⁰

The Commissioner also expressed an opinion for the ECtHR and stressed that the practice of pushbacks to the border line impairs the right of foreigners to apply for international protection in Poland. He also noted that the violations found by the ECtHR in earlier judgments⁹¹ have not been eliminated.⁹² The Commissioner moreover found that the catalogue of persons authorized to cross the border, as defined in § 3(2) of the Regulation, is too narrow. For example, it does not include persons signaling their intention to apply for international protection.⁹³

The Polish Ombudsman also took part in domestic proceedings concerning the Iraqi-born family of seven, which was turned back to the state border line. The Voivodship Administrative Court in Białystok (*Wojewódzki Sąd Administracyjny w Białymstoku*) took note of the Ombudsman complaint and found the pushback of foreigners to be contrary to the provisions of domestic law, including the Constitution of the Republic of Poland, and international agreements binding on Poland. The Court further noted that the obligations of the Border Guard under the norms of statutory and international rank cannot be reconciled with the application of the pushback procedure on the basis of the Regulation.⁹⁴

This issue was raised in number of judgments of Polish courts. The Voivodship Administrative Court in Warsaw (*Wojewódzki Sąd Administracyjny w Warszawie – WSA*) examined several cases of foreigners apprehended on Polish territory shortly after illegally crossing the border with Belarus. The WSA annulled the decisions on leaving the Republic of Poland issued by the Commander of the Border Guard and stressed that it was not possible to determine, on the basis of incorrectly collected evidence, whether the aliens had expressed a desire to apply for international protection on the territory of Poland. The Court also referred to the non-refoulement principle under 1951 Convention, EU *acquis* concerning asylum, and ECHR.⁹⁵

90 Sobczak, 2021b.

91 ECtHR, *M.K. and Others v. Poland* (Application Nos. 40503/17, 42902/17 and 43643/17), Judgment, 23 July 2020; ECtHR, *D.A. and Others v. Poland* (Application No. 51246/17), 8 July 2021.

92 Rzecznik Praw Obywatelskich, 2022a.

93 Ibid.

94 Rzecznik Praw Obywatelskich, 2022b; Voivodship Administrative Court in Białystok (*Wojewódzki Sąd Administracyjny w Białymstoku*), 15 September 2022, II SA/Bk 492/22, p. 30 et seq.

95 Voivodship Administrative Court in Warsaw (*Wojewódzki Sąd Administracyjny w Warszawie – WSA*), 26 April 2022, IV SA/Wa 420/22; WSA in Warsaw, 27 April 2022, IV SA/Wa 471/22; WSA in Warsaw, 20 May 2022, IV SA/Wa 615/22; WSA in Warsaw, 27 May 2022, IV SA/Wa 772/22; see also Helsińskiej Fundacji Praw Człowieka, 2022; Perkowska, 2023, p. 37.

In another judgment, the Voivodship Administrative Court in Białystok (*Wojewódzki Sąd Administracyjny w Białymstoku*) annulled the decision on leaving, which had the effect of returning an unaccompanied Syrian minor from Poland to Belarus. According to the Court, it was not clear whether the minor and accompanying adult were informed about the possibility of applying for international protection, which would be required in respect for the principle of non-refoulement. It was not clear where exactly they were apprehended and which procedure should be applicable. The case file did not clearly explain whether the aliens had been heard before being returned to Belarus. The Court noted that appropriate procedures related to the appointment of a guardian and guarantees for unaccompanied minors were not applied to the alien minor, and the case was not properly explained. The Court also stated that this constituted a collective expulsion, contrary to Article 4 of AP No. 4 to the ECHR.⁹⁶

The Voivodship Administrative Court in Białystok (*Wojewódzki Sąd Administracyjny w Białymstoku*) also examined the Regulation of the Minister of Internal Affairs and Administration, which allowed to turn back to the state border line.⁹⁷ The Court decided that the competent authority should have, depending on the situation, either initiated proceedings to oblige the applicant to return or allowed the applicant to formally lodge an application for international protection as soon as possible. In several judgments, the WSA in Białystok stressed that the Minister's Regulation was issued in excess of his statutory competence and should not be applied. The Minister can only restrict or suspend traffic at border-crossing points, but does not have the power to regulate the situation of persons who have crossed borders outside the territorial scope of the border-crossing point.⁹⁸

The ECtHR also referred to the Polish-Belarussian border situation. It decided to indicate interim measures in *R.A. and Others v. Poland*⁹⁹ and *H.M.M. and Others v. Latvia*¹⁰⁰ concerning recent events at the borders of Poland and Latvia with Belarus. The measures were applied for a period of three weeks, from 25 August to 15 September 2021 inclusive.¹⁰¹ The applicants in both cases wanted to enter Latvia or Poland, allegedly to seek international protection. However, they were unable to enter these states or return to Belarus. The applications concerned

96 WSA in Białystok, 27 October 2022, II SA/Bk 558/22 [Online]. Available at: <https://bit.ly/3hlekF7> (Accessed: 17 November 2023); see also Helsińskiej Fundacji Praw Człowieka, 2022, p. 3.

97 Minister of Internal Affairs and Administration, Regulation amending the regulation on temporary suspension or restriction of border traffic at certain border crossing points.

98 WSA in Białystok, 15 September 2022, II SA/Bk 492/22; WSA in Białystok, 15 September 2022, II SA/Bk 493/22; WSA in Białystok, 15 September 2022, II SA/Bk 494/22; see also Helsińskiej Fundacji Praw Człowieka, 2022, p. 2.

99 ECtHR, *R.A. and Others v. Poland* (Application No. 42120/21).

100 ECtHR, *H.M.M. and Others v. Latvia* (Application No. 42165/21).

101 ECtHR, Interim measures concerning cases: *R.A. and Others v. Poland* (Application No. 42120/21) and *H.M.M. and Others v. Latvia* (Application No. 42165/21244); ECtHR, 2021a.

73 individuals who relied on Articles 2, 3, and 4 of Protocols No. 4, 5, 6, 8 and 13¹⁰² to the ECtHR. The ECtHR requested that Polish and Latvian authorities provide all applicants with food, water, clothing, adequate medical care and, if possible, temporary shelter. It clarified, at the same time, that this measure should not be understood as requiring that Poland or Latvia let the applicants enter their territories.¹⁰³

The crisis at the Polish-Belarussian border and the blanket procedure for returning aliens, who on many occasions might have been entitled to international protection, resulted in numerous applications to the ECtHR in this regard. By the end of 2022, the ECtHR had issued approximately 100 decisions¹⁰⁴ on interim measures according to Rule 39 of the Rules of Court.¹⁰⁵ The ECtHR requested that Polish authorities refrain from transferring applicants to Belarus, as it might constitute a violation of Article 3 of the ECHR.¹⁰⁶

Several months after these events, the Russian Federation attacked Ukraine and commenced an armed conflict. The aggression of 24 February 2022 triggered a massive influx of refugees to European countries, with Poland being the main destination for Ukrainians fleeing the armed conflict. UNHCR described this crisis as ‘fastest growing refugee crisis in Europe since WWII.’¹⁰⁷ In 2022 more than 7.2 million refugees left Ukraine. According to the UNHCR, in June 2023, there were six million refugees from Ukraine recorded in Europe, of which approximately 2.5 million stayed in Poland.¹⁰⁸

In light of the crisis caused by Russian aggression, the UN Special Rapporteur on the Human Rights of Migrants stated that Polish authorities and hundreds of ordinary Polish citizens have taken immediate action to protect, assist, and integrate Ukrainian refugees. The Polish Parliament adopted a special law granting Ukrainian citizens and their spouses equal access to the Polish labour market, health care, the right to education and other social benefits.¹⁰⁹ It was also stressed that over 2 million refugees currently stay in Poland, and most of them are hosted as guests in private homes by the Polish people.¹¹⁰

In connection with the situation at the Polish-Belarussian border, the Special Rapporteur noticed that some migrants remain stranded between the two

102 Ibid.

103 Ibid., also Sobczak, 2021a.

104 Helsińskiej Fundacji Praw Człowieka, 2022, p. 3.

105 ECtHR, Rules of Court, 30 October 23, Rule 39.

106 E.g. ECtHR, *R.A. and Others v. Poland* (Application No. 42120/21); ECtHR, *I.A. and Others v. Poland* (Application No. 53181/21); ECtHR, *A.H.A. and N.A.A.H. v. Poland* (Application No. 53566/21); ECtHR, *A.R. and O.S. v. Poland* (Application No. 53808/21); ECtHR, *J.D. and D.M. v. Poland* (Application No. 54016/21); ECtHR, *D.A.M. and Others v. Poland* (Application No. 54275/21); ECtHR, *A.A. v. Poland* (Application No. 54849/21).

107 UNHCR, 2022.

108 UNHCR, 2023.

109 United Nations, 2022.

110 Ibid.

borders and are subject to violence and pushback from both sides. The Special Rapporteur urged Belarus, Poland, and the EU to establish communication and engage in dialogue regarding the situation at their common borders.¹¹¹

5. Conclusion

Europe has experienced numerous crises related to illegal migration. These issues have involved illegal migrants attempting to enter European states; various EU attempts to remedy the situation; the issue of illegal migrants attempting to enter Poland, Lithuania, and Latvia from Belarus; and Russian military aggression against Ukraine. The last two crises directly affected Poland, causing numerous migrants to cross the Polish border.

As stressed above, Poland is a state party to international law treaties, creating obligations aimed at protecting refugees, such as the 1951 Geneva Convention, ICCPR, and ECHR. These standards are also important for the EU legal system. The most important obligations include non-refoulement; protection of the right to life; prohibition of torture; inhuman or degrading treatment or punishment; and prohibition of the collective expulsion of aliens. It is also crucial to implement the necessary procedures aimed at providing legal safeguards and guaranteeing effective remedies in all cases concerning migrants, especially asylum seekers.

In 2020, the judgment *M.K. and Others v. Poland* revealed a systemic practice of not receiving applications for international protection from persons presenting themselves at the Polish-Belarusian border and of returning them to Belarus. The ECtHR ruled that such a practice led to violations of several articles of the ECHR, including Articles 3 and 4 of Protocol No. 4 and Article 13 of the ECHR, taken in conjunction with Articles 3 and 4 of Protocol No. 4 to the ECHR.

The 2021–2022 Polish-Belarusian border crisis also led to the practice of returning individuals to Belarusian territory (pushbacks). This practice was introduced by the Regulation of the Minister of Internal Affairs and Administration on 20 August 2021. Such a procedure violates the fundamental principle of non-refoulement specified in the Convention Relating to the Status of Refugees. Especially, that it is carried out without analyzing the alien's individual situation.¹¹²

Numerous allegations of pushbacks resulted in a number of applications to the ECtHR.¹¹³ In most cases, the ECtHR issued interim measures. In December 2021, interim measures were enforced for 28 applications, mostly concerning

111 Ibid.

112 Zdanowicz, 2023, p. 113.

113 ECtHR, *R.A. and Others v. Poland* (Application No. 42120/21); ECtHR, *I.A. and Others v. Poland* (Application No. 53181/21); ECtHR, *A.H.A. and N.A.A.H. v. Poland* (Application No. 53566/21); ECtHR, *A.R. and O.S. v. Poland* (Application No. 53808/21).

the citizens of Afghanistan, Iraq and Syria.¹¹⁴ It should be emphasised that this problem also concerns minor migrants.¹¹⁵

The ECtHR judgments concerning the 2021–2022 Polish-Belarusian border crisis are yet to be delivered, and due to the severe caseload of the ECtHR, this may not happen shortly. On one hand, the ECtHR will most likely be mindful of the context of the situation, the abuse of illegal migrants by the Lukashenko regime, and the situation in Belarus. On the other hand, it is clear that the ECHR imposes certain obligations on state parties, which were stressed in the ECtHR's decisions on interim measures.¹¹⁶ The state parties also obliged to protect the rights enshrined in Articles 2, 3 and 13 of the ECHR and Article 4 of Protocol No. 4 to the ECHR.

In this regard, it should be noted that, despite the necessity of protecting the state's border, which is also an EU border, the state should comply with its obligations derived from international human rights protection, such as the ECHR, ICCPR, and the principle of non-refoulement derived from the Convention Relating to the Status of Refugees.

114 ECtHR, 2021b.

115 E.g. WSA in Białystok, 27 October 2022, II SA/Bk 558/22.

116 ECtHR, Interim measures concerning cases: *R.A. and Others v. Poland* (Application No. 42120/21) and *H.M.M. and Others v. Latvia* (Application No. 42165/21).

Bibliography

- Chlebny, J. (2023) 'Zawrócenie cudzoziemca na granicy', *Zeszyty Naukowe Sądownictwa Administracyjnego*, 2023/5, pp. 9–30.
- Dobrowolski, P. (2018) *Niedopuszczalność odmowy wjazdu cudzoziemca na terytorium RP bez wyjaśnienia, czy cudzoziemiec deklaruje wolę ubiegania się o ochronę międzynarodową. Glosa do wyroku NSA (Gloss on the NSA Judgement) z dnia 20 września 2018 r., II OSK 1025/18, LEX (legal database)* [Online]. Available at: <https://sip.lex.pl/komentarze-i-publicacje/glosy/niedopuszczalnosc-odmowy-wjazdu-cudzoziemca-na-terytorium-rp-bez-386228344> (Accessed: 1 February 2024).
- ECtHR (2021a) *Press Release: Court indicates interim measures in respect of Iraqi and Afghan nationals at Belarusian border with Latvia and Poland* [Online]. Available at: https://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=&cad=rja&uact=8&ved=2ahUKEwiPosC09OX_AhVWv4sKHSTABBCQFnoECBQQAQ&url=https%3A%2F%2Fhudoc.echr.coe.int%2Fapp%2Fconversion%2Fpdf%2F%3Flibrary%3DECHR%26id%3D003-7100942-9612632%26filename%3DInterim%2520measures%2520Poland-Latvia-Belarus%2520border.pdf&usg=AOvVaw0UIU6EfQ_VPMXzO_ICOhft&opi=89978449 (Accessed: 28 June 2023).
- ECtHR (2021b) *Press release: Requests for interim measures concerning the situation at the borders with Belarus* [Online]. Available at: <https://hudoc.echr.coe.int/eng-press?i=003-7202976-9785391> (Accessed: 28 June 2023).
- European Council on Refugees and Exiles (ECRE) (2023) *Lithuania: Parliament Vote to Legalise Pushbacks – Leading NGOs and Academics Denounce 'Hungarian Border Hunter Model'* [Online]. Available at: <https://ecre.org/lithuania-parliament-vote-to-legalise-pushbacks-leading-ngos-and-academics-denounce-hungarian-border-hunter-model/> (Accessed: 28 June 2023).
- Evans, J. (2021) 'Belarus dictator threatens to 'flood EU with drugs and migrants'', *The Week*, 28 May 2021. [Online]. Available at: <https://www.theweek.co.uk/news/world-news/europe/952979/belarus-dictator-threatens-flood-eu-with-drugs-migrants-avoid-sanctions> (Accessed: 28 June 2023).
- Florczak, A. (2003) *Uchodźcy w Polsce. Między humanitaryzmem a pragmatyzmem*. Toruń: Wydawnictwo Adam Marszałek.
- Gera, V., Grieshaber, K. (2022) 'Poland completes Belarus border wall to keep migrants out', *AP News*, 22 June 2022. [Online]. Available at: <https://apnews.com/article/russia-ukraine-africa-poland-forests-middle-east-443c8068ea7b5d1d8f6980da6e3879af> (Accessed: 28 June 2023).
- Gliszczyńska-Grabias, A. (2012) 'Art. 6. Prawo do życia' in Wieruszewski, R., Gliszczyńska-Grabias, A., Sękowska-Kozłowska, K., Sobczak, W., Wieruszewski, R., Wiśniewski, L. (ed.) *Międzynarodowy Pakt Praw Obywatelskich (Osobistych) i Politycznych. Komentarz*. 1st edn. Warszawa: C.H. Beck, pp. 99–167.
- Helsińska Fundacja Praw Człowieka (2022) *Informacja Helsińskiej Fundacji Praw Człowieka na temat wyroków w sprawach dotyczących zawracania migrantów do Białorusi* [Online]. Available at: <https://hfhr.pl/upload/2022/12/informacja-wyroki-ws-push-back-grudzien-2022.pdf> (Accessed: 17 November 2023).
- Henley, J., Roth, A., Rankin, J. (2021) 'Latvia and Lithuania act to counter migrants crossing Belarus border', *The Guardian*, 10 August 2021. [Online]. Available at:

<https://www.theguardian.com/world/2021/aug/10/latvia-and-lithuania-act-to-counter-migrants-crossing-belarus-border> (Accessed: 28 June 2023).

- Karska, E., Morawska, E.H., Czeppek, J., Dąbrowski, Ł.D., Oręziak, B., Gałka, K. (2023) 'Human Rights in the European Paradigm of the Protection of Aliens' in Karska, E. (ed.) *Human Rights and International Law (No. 15), Prawa Człowieka i Prawo Międzynarodowe (Nr 15)*. Warszawa: Cardinal Stefan Wyszyński University in Warsaw; <https://doi.org/10.13166/hr/QHLC7301>.
- Kuźelewska, E., Piekutowska, A. (2023) 'Belarus' Violation of International Obligations in Connection with Artificial Migration Pressure on the Belarus–European Union Border', *Białostockie Studia Prawnicze*, 28(1), pp. 39–52; <https://doi.org/10.15290/bsp.2023.28.01.03>.
- Nowak, M. (2005) *U.N. Covenant on Civil and Political Rights. CCPR Commentary*. 2nd edn. Kehl-Starburg-Arlington: Engel.
- Ovey, C., White, R.C.A. (2002) *Jacobs and White, the European Convention on Human Rights*. 3rd edn. New York: Oxford University Press.
- Perkowska, M. (2023) 'Kryminalizacja organizowania nielegalnego przekroczenia granicy – analiza wdrożenia prawa Unii Europejskiej przez Polskę', *Europejski Przegląd Sądowy*, 2023/8, pp. 31–38.
- Rogala, R. (2021) 'Prawo cudzoziemca do ubiegania się na granicy o udzielenie ochrony międzynarodowej', *Europejski Przegląd Sądowy*, 2021/11, pp. 11–23.
- Rosenberg, S. (2021) 'Belarus's Lukashenko tells BBC: We may have helped migrants into EU', *BBC News*, 19 November 2021. [Online]. Available at: <https://www.bbc.com/news/world-europe-59343815> (Accessed: 28 June 2023).
- Rzecznik Praw Obywatelskich (2022a) *Skarga migrantów zawróconych do linii granicy. Opinia Rzecznika dla Trybunału w Strasburgu* [Online]. Available at: <https://bip.brpo.gov.pl/pl/content/rpo-migranci-pushbacki-etpc-opinia> (Accessed: 28 June 2023).
- Rzecznik Praw Obywatelskich (2022b) *WSA: pushbacki sprzeczne z prawem polskim i międzynarodowym. Skargę złożył m.in. RPO. Uzasadnienie wyroku* [Online]. Available at: <https://bip.brpo.gov.pl/pl/content/wsa-rpo-pushbacki-sprzecznoscprawo-polskie-miedzynarodowe-uzasadnienie> (Accessed: 28 June 2023).
- Sadowski, P. (2023) 'Sytuacja prawna na granicy polsko-białoruskiej po wybuchu wojny rosyjsko-ukraińskiej – wyzwanie dla procedur udzielania ochrony międzynarodowej', *Studia Politologiczne*, 2023/68, pp. 105–118; <https://doi.org/10.33896/SPolit.2023.68.6>.
- Sobczak, K. (2021a) 'ETPC nakazuje pomóc migrantom, ale nie wymaga ich wpuszczenia', *Prawo.pl*, 26 August 2021. [Online]. Available at: <https://www.prawo.pl/prawo/migranci-koczujacy-na-granicy-etpc-nakazuje-pomoc,510239.html> (Accessed: 28 June 2023).
- Sobczak, K. (2021b) 'RPO: Minister ograniczył ustawowy dostęp do procedury uchodźczej', *Prawo.pl*, 26 August 2021. [Online]. Available at: <https://www.prawo.pl/prawo/prawo-cudzoziemcow-do-ochrony-miedzynarodowej-rozporzadzenie,510260.html> (Accessed: 28 June 2023).
- UNHCR (2023) *Ukraine refugee situation* [Online]. Available at: <https://data2.unhcr.org/en/situations/ukraine> (Accessed: 28 June 2023).

- UNHCR (2022) *Ukraine-Fastest Growing Refugee Crisis in Europe Since WWII* [Online]. Available at: <https://www.unhcr.org/hk/en/73141-ukraine-fastest-growing-refugee-crisis-in-europe-since-wwii.html> (Accessed: 28 June 2023).
- United Nations (2022) *UN expert praises generosity towards Ukrainian refugees by Poland and urges Belarus and Poland to end pushbacks* [Online]. Available at: <https://www.ohchr.org/en/press-releases/2022/07/un-expert-praises-generosity-towards-ukrainian-refugees-poland-and-urges> (Accessed: 28 June 2023).
- United Nations (2021) 'Guterres deeply concerned over 'forced landing' and arrest of Belarus opposition journalist, as condemnation grows', *UN News*, 24 May 2021 [Online]. Available at: <https://news.un.org/en/story/2021/05/1092642> (Accessed 28 June 2023).
- Zdanowicz, M. (2023) 'The Migration Crisis on the Polish–Belarusian Border', *Białostockie Studia Prawnicze*, 28(1), pp. 103–115; <https://doi.org/10.15290/bsp.2023.28.01.06>.
- *Violence and Pushbacks at Poland-Belarus Border* (2022) *Human Rights Watch*, 7 June 2022. [Online]. Available at: <https://www.hrw.org/news/2022/06/07/violence-and-pushbacks-poland-belarus-border> (Accessed: 28 June 2023).