

REFUGEE PROTECTION IN POLAND AFTER 2022: BETWEEN HUMANITARIAN RESPONSE AND LEGAL OBLIGATION

Anna Głogowska-Balcerzak¹ – Magdalena Nazimek²

ABSTRACT

The Russian full-scale invasion of Ukraine in 2022 triggered a humanitarian crisis, leading to significant changes in the refugee protection system in Poland and Ukraine's other neighbouring countries. This study investigates the emergence of alternative refugee protection mechanisms in Poland, focusing on the differential treatment of various groups seeking protection. By analysing legal frameworks, policies and the socio-political context, this study highlights the complexities and challenges faced by different groups of refugees and Polish authorities.

These findings reveal a sharp contrast to Poland's approach. Ukrainian refugees have received substantial support, including legalised residency and access to public services, reflecting a positive and supportive attitude. In contrast, asylum seekers at the Belarusian border have encountered restrictive measures such as pushback and limited access to asylum procedures, raising concerns about consistency in humanitarian responses. Poland's actions also aligned with broader European trends. The EU Migration Pact and related policies emphasise border security, risking the erosion of international protection such as the Geneva Convention. Poland's recent legislative changes, including the suspension of asylum rights, further challenge these norms.

This study concludes that while Poland has shown flexibility and responsiveness in humanitarian support, particularly for Ukrainians, adhering to impartial humanitarian principles and international standards remains a significant challenge amid ongoing crises and geopolitical tensions. These contrasting responses emphasise the need for equitable and principled approaches for all displaced individuals, regardless of their country of origin.

KEYWORDS

*refugees
temporary protection
human rights
Ukrainian asylum seekers
humanitarian crisis
Polish-Belarusian border*

1 | Assistant Professor, Faculty of Law and Administration, University of Łódź, Poland; aglogowska@wpia.uni.lodz.pl; ORCID: 0000-0001-5591-5433.

2 | NOMADA Association for Multicultural Society Integration, Poland; magdalena.m.nazimek@gmail.com.



1. Introduction

The ongoing war in Ukraine has not only led to a humanitarian crisis but has also prompted significant changes in how refugee protection is administered in neighbour countries, including Poland. This study explores the emergence of alternative refugee protection systems in Poland in response to the influx of people fleeing from Ukraine. It examines the differences in the treatment of various groups seeking protection, highlighting the complexities and challenges faced by both refugees and Polish authorities. By analysing laws, policies and the socio-political context, this study aims to provide a comprehensive understanding of the evolving landscape of Poland's refugee protection system in light of international human rights standards.

Since 1991, Poland has been a party to the Convention relating to the Status of Refugees of 28 July 1953. As an EU member State, Poland is also bound by EU legislation, which has shaped national migration laws over the last 20 years.

State Parties to the Geneva Convention must guarantee the protection of basic human rights, as well as social and economic rights, including access to medical care and education, at least to the extent that it is enjoyed by foreigners legally residing in the territory of that state. The Convention also contains the fundamental principles governing refugee law. These include the principles of non-discrimination, prohibition of punishment for illegal entry or stay in a territory (incompatible with the internal immigration laws of the states), and *non-refoulement*. The latter is found in art. 33 of the Refugee Convention, which states that it is prohibited 'to expel or return ('refouler') 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'. Direct reference to this and other provisions of the Convention can also be found in the EU Charter of Fundamental Rights. The principle of *non-refoulement* is also present in the case law of the European Court of Human Rights in Strasbourg. Cases under art. 3 of the European Convention on Human Rights (hereafter: ECHR) on the absolute prohibition of torture and inhuman or degrading treatment sometimes involves third-country nationals at risk of such practices if they are forcibly expelled to a country. Furthermore, art. 3 is a frequent reason for a court to apply a so-called 'interim measure' ordering that a person's deportation from a country be withheld pending the conclusion of proceedings before the Court if there is a risk of a violation of the prohibition of torture by the target country⁴. In addition, the ECHR jurisprudence has influenced the shaping of the EU's subsidiary protection, particularly by highlighting the need to provide additional protection to those who do not qualify for refugee status but nevertheless require protection⁵.

3 | UNTS vol. 189, p. 137; hereinafter: Refugee Convention/Geneva Convention.

4 | See: *Khemais v. Italy, Addolkhani and Karminia v. Turkey, M.K and others v. Poland, D.A. and others v. Poland*.

5 | McAdam, 2005.

2. Forms of Protection in Poland

| 2.1. *International Protection*

2.1.1. *Refugee Status*

The main form of international protection is mentioned in art. 56 par. 2 of the Polish Constitution as refugee status. The Constitution does not define that notion, but according to the Geneva Convention, a refugee is a person who,

owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or unwilling because of such fear to avail himself of the protection of that country.

The same conditions were introduced in art. 13 of the Act on Granting Protection to Aliens within the Territory of the Republic of Poland of 13 June 2003⁶. This implies that the institution of refugee status applies to people seeking refuge outside the country as a result of persecution or being in fear of it. The Polish Supreme Administrative Court stated that the right to seek refugee status, insofar as it is granted by the Geneva Convention, acquires the character of constitutional entitlement, which may be subject to restriction only by law and only for the reasons stated in art. 31, paragraph 3 of the Polish Constitution⁷. The jurisprudence of the Supreme Administrative Court has served as a source of legal guidance on issues such as the prerequisites for applying for refugee status and the collection of evidence⁸.

2.1.2. *Subsidiary Protection*

Subsidiary protection is another type of international protection. It was introduced to Polish law in 2008 in the course of the implementation of Council Directive 2004/83/EC of 29 April 2004 on minimum standards for the qualification and status of third-country nationals or stateless persons as refugees or as persons who otherwise need international protection and the content of the protection granted, along with Council Directive 2005/85/EC of 1 December 2005 on minimum standards on procedures in Member States for granting and withdrawing refugee status. Subsidiary protection may be granted to foreigners who do not meet the prerequisites for refugee status, whose return to the country of origin would involve a real risk of suffering serious harm through the imposition of the death penalty or execution; torture, inhuman or degrading treatment or punishment; or a serious and individualised threat to health or life resulting from the widespread use of violence against civilians, in a situation of international or internal armed conflict⁹.

6 | Journal of Laws of 2003, No. 128, item 1176, as amended; hereinafter: Protection Act.

7 | Judgement of 26 August 1999, V SA 708/99.

8 | Braniewicz, 2024.

9 | Protection Act, art. 15.

2.1.3. *Applying for International Protection*

Proceedings for granting subsidiary protection are the same as for refugee status—foreigners submit a single application for international protection; based on this application, the Head of the Office for Foreigners first assesses whether the person can obtain refugee status, and if not, automatically assesses whether he or she can obtain subsidiary protection in one procedure. It should be noted that subsidiary protection differs from refugee status, although in practical terms, these two statuses are very similar. The main difference is that refugees receive a residence card for three years rather than two, as in the case of subsidiary protection. In addition, refugees receive a so-called Geneva Travel Document that is valid for a period of two years, whereas a person who was granted subsidiary protection is entitled to apply for a Polish travel document when his or her travel document has been lost, destroyed, become invalid or when he or she has not had a travel document before and it is not possible for the foreigner to obtain a new travel document¹⁰. Foreigners who have received a residence card based on international protection have free access to the labour market in Poland; therefore, the employer has the opportunity to employ this foreigner without having to obtain additional documents (e.g. work permit, statement on entrusting work). After the expiration of the residence card, the foreigner is issued another card for the same period.

Submission of an application for international protection is possible while entering Poland's territory during border control; it is necessary to inform the Border Guard officer about the willingness to apply for international protection. It is also possible to do so while already present in the territory of the Republic of Poland by reporting to any Border Guard office. Foreigners who are in a detention centre for foreigners or a penitentiary institution can apply through the relevant Border Guard office¹¹. Acceptance of an application is a technical act. There are no provisions allowing a Border Guard officer to refuse to accept an application for international protection nor make any substantive assessment thereof. If the application includes other persons (e.g. minor children or the applicant's spouse), they must also be present when the application is submitted. In cases of unaccompanied minors, an application for refugee status shall be submitted on their behalf by a guardian or representative of an international or non-governmental organisation providing assistance to foreigners, including legal assistance, if, based on an individual assessment of the unaccompanied minor's situation, the organisation determines that the child may be in need of such protection¹².

The application is filled out by the Border Guard officer on a special form based on the information obtained during a conversation between the foreigner and an officer. The submission of the application should take place under conditions that ensure an appropriate degree of confidentiality for the foreigner and allow him or her to present all the reasons for applying for international protection¹³. Acceptance of the application initiates the procedure. During the application submission, a person must hand over his or her travel documents to a deposit¹⁴. Therefore, each adult applicant receives a docu-

10 | Act on Foreigners of 12 December 2013, Journal of Laws of 2013, item 1650, as amended, art. 252; hereinafter: Foreigners Act.

11 | Protection Act, art. 24.

12 | *Ibid.*, art. 26.2.

13 | *Ibid.*, art. 30.2.

14 | *Ibid.*, art. 31.1.

ment of confirmation (a temporary certificate of identity of the foreigner), which, during the period of its validity, confirms the identity and entitles the person and minor children included therein to stay in the territory of Poland¹⁵. During the submission, the applicant should also be informed in writing, in a language that he or she understands, about the rules and procedures of the international protection procedure and his or her rights and obligations, as well as about social and medical assistance and free legal aid.

The most important phase in the proceedings of applying for international protection is the interview¹⁶. During the interview, it is possible to clarify the facts relevant to the determination of the case, as well as to provide additional explanations regarding inconsistencies or contradictions in the applicant's statements. The interview is held without the presence of the persons on whose behalf the applicant is applying, unless their presence is necessary for the clarification of the case¹⁷. If necessary, the interview is conducted in the presence of an interpreter who speaks a language understood by the applicant, giving him or her a chance to freely and accurately express all arguments that may affect the decision. After the interview, the foreigner receives a copy of the interview protocol. The applicant shall be informed in writing and in a language he or she understands of the outcome of the proceedings and the appeal procedure.

The statutory period for the proceedings is up to six months and in principle, this term should not be exceeded by the authorities. In some instances, however, six months is insufficient time; complicated cases, such as those concerning security issues or situations of foreigners without documents, require more careful scrutiny. In such instances, an extension of the processing period may be necessary and justified, as it will allow for a thorough consideration of the situation in question. If proceedings concerning international protection are not settled within six months (without the applicant's fault), the Head of the Office for Foreigners, at the request of the applicant, shall issue a certificate that entitles that person to seek employment¹⁸. Decisions by the Head of the Office for Foreigners may be appealed against to the Council for Refugees¹⁹. Appeals must be brought within 14 days from the date of the delivery of the decision or its announcement. The Council for Refugees issues decisions in a three-member panel and, in the case of manifestly unfounded applications, in a single-member panel²⁰. Within 30 days, the negative decision issued by the Council may be subject to appeal to the Administrative Court; nevertheless, lodging the appeal does not prevent a negative decision from being enforced – suspension of the decision requires a separate motion to this effect²¹.

Foreigners who applied for international protection in Poland are entitled to accommodation in designated reception centres. These facilities satisfy basic needs, providing food, health care and small sums of money for personal hygiene products and clothing²².

15 | *Ibid.*, art. 55.

16 | Braniewicz, 2024, p. 101.

17 | Protection Act, art. 44.3.

18 | *Ibid.*, art. 35.

19 | *Ibid.*, art. 89p.

20 | *Ibid.*, art. 89z.

21 | Act on Proceedings Before Administrative Courts from 30 August 2002, Journal of Laws of 2002, No. 152, item 1270, as amended, art. 61 § 1 and § 3.

22 | Ordinance of the Minister of Internal Affairs and Administration of 6 October 2023 on the amount of assistance to foreigners applying for international protection, Journal of Laws of 2023, item 2154, § 2–4.

A person may be accommodated outside the reception centre, but only in cases justified by medical conditions (serious health problems that require specialised medical care), family reasons (having family members living in Poland) or other well-founded reasons (such as pregnancy or other exceptional circumstances). In such cases, a person is entitled to financial assistance, which is intended to cover the cost of housing and living outside the centre²³. The rates of such benefits are extremely low and have not been increased for almost 20 years (!). Placing foreigners who are seeking international protection in centres often results in their exclusion and isolation. This problem is exacerbated by the location of these facilities, most of which are located in or on the outskirts of small towns, with limited access to public transportation²⁴.

A person who has applied for international protection may also be detained in a guarded centre or custody for foreigners for up to six months²⁵ and then up to 18 months in the return procedure in the event of a negative protection decision²⁶. The court issues a decision in this case at the request of the Border Guards. Detention is most often used to establish or verify the identity of foreigners or to collect with their participation information on which the application for international protection is based, which would be impossible to obtain without detention, in cases where there is a significant probability of escape²⁷. Unfortunately, for years, Poland has witnessed abuse of the detention measure, unjustified prolongation of stay in guarded centres, and placement of persons from vulnerable groups who are prohibited by the law from being placed in detention; for example, this occurs when their psychophysical condition may justify the presumption that they have been subjected to violence²⁸ and when use of alternatives to detention are too infrequent²⁹.

2.1.4. Statistics

In 2021, 7.7 thousand foreigners applied for international protection in Poland. The largest number of applications were submitted by the citizens of Belarus (almost 2.3 thousand people), followed by Afghanistan (1.8 thousand people), Iraq (1.4 thousand people), Russia (1 thousand people) and Ukraine (260 people). These numbers were influenced by the internal situation in Belarus, evacuation of associates of the Polish military, and diplomacy from Afghanistan. In the same year, the Office for Foreigners issued decisions regarding 4,700 people. The conditions for granting international protection were met by 2155 foreigners, mainly citizens of Belarus (1,150 individuals) and Afghanistan (750 individuals). In total, 1,460 individuals received negative decisions, predominantly citizens of Russia (645 individuals) and Iraq (270 individuals). Nearly 1.1 thousand proceedings were discontinued, in most cases because the applicant left Poland territory before the decision was issued³⁰. In 2022 9.9 thousand foreigners applied for international protection in Poland. The largest number of applications were submitted by the citizens of Belarus (3.1 thousand individuals), Russia (2.2 thousand individuals), Ukraine (1.8

23 | Nazimek, 2018, pp. 152–153.

24 | *Ibid.*, pp. 141, 152.

25 | Protection Act, art. 89.

26 | Foreigners Act, art. 403.

27 | Protection Act, art. 87.

28 | *Ibid.*, art. 88a. 3.

29 | Klaus et al., 2024.

30 | Statistics of the Office for Foreigners, 2021.

thousand individuals), Iraq and Afghanistan (together 1 thousand individuals). The Office for Foreigners issued decisions regarding 10,700 individuals. The conditions for granting international protection were met by almost 5 thousand foreigners, including citizens of Belarus (3.6 thousand individuals) and Ukraine (1 thousand individuals). Furthermore, 1.6 thousand individuals received negative decisions – mostly citizens of Russia and Iraq. Nearly 4.1 thousand proceedings were discontinued. In 2022, there was a noticeable increase in the number of decisions issued and a further reduction in the length of proceedings³¹. In 2023, 9.5 thousand foreigners applied for international protection in Poland; as in the previous year, the largest number of applications came from citizens of Belarus (3.7 thousand individuals), followed by Ukraine and Russia (1.8 thousand individuals each). The conditions for granting international protection were met by almost 4,6 thousand foreigners, including citizens of Belarus (2.9 thousand individuals) and Ukraine (1,1 thousand individuals). Furthermore, 1,9 thousand individuals received negative decisions – mostly Russian citizens. Nearly 2.3 thousand proceedings were discontinued³².

| **2.2. Political Asylum**

In addition to the previously described forms of protection, art. 90 of the Protection Act stipulates that a foreign person may, at his request, be granted asylum in the Republic of Poland when it is necessary to provide him with protection and when the important interests of the Republic of Poland warrant. An asylum application may be filed in the territory of the Republic of Poland or from abroad. The application is directly submitted to the Head of the Office for Foreigners. Applications may also include other people, particularly the applicant's spouse or minor children. In such a case, written consent of the spouse is required to submit the application on his or her behalf and the behalf of children. There is no special form, but the application for political asylum must include details of the applicant, identification of his or her country of origin, and identification of the relevant events that gave rise to a request for political asylum. A foreigner who submits an asylum application while in the territory of Poland is obliged to submit to fingerprinting and photography.

The strict distinction between asylum and refugee status and the introduction of a separate institution of asylum into domestic law is a peculiarity of Polish law, the legitimacy of which may raise some doubts³³. In recent years, there have been very few applications for this form of protection in Poland. In 2022, there were 50 applications and only eight people were granted asylum; in 2023, there were 64 applications and eight people received this kind of protection. In the first half of 2024, 62 foreigners applied for asylum, but none succeeded³⁴.

| **2.3. Temporary Protection**

The final form of protection described in this study is temporary protection. It was created to address the mass influx of foreigners who have left their country of origin or a specific geographical area due to foreign invasion, war, civil war, ethnic conflicts or gross violations of human rights. Such people may be granted temporary protection in

31 | Statistics of the Office for Foreigners, 2022.

32 | Statistics of the Office for Foreigners, 2023.

33 | Kowalski, 2006.

34 | Statistics of the Office for Foreigners, 2022-2024.

the territory of the Republic of Poland regardless of whether their arrival was spontaneous or resulted from assistance provided by the Republic of Poland or the international community³⁵. Temporary protection is granted either by a decision of the EU Council or by a regulation of the Council of Ministers³⁶. Such an act should specify, among other things, detailed rules for the financing of temporary protection, the number of foreigners to whom temporary protection may be granted, duration of protection and conditions for its termination. Its purpose is to provide temporary residence and grant certain rights, such as the right to work, education and healthcare, in a simplified administrative procedure. In Poland, this type of protection proved relevant for people who arrived from Ukraine after 24 February 2022, but did not have Ukrainian citizenship, nor were they spouses of a Ukrainian citizen (as the protection of Ukrainian citizens and their spouses is covered by a special act described in part 2.3 of this art.). In accordance with the decision of the Council of the EU³⁷, those who lived in Ukraine legally on the basis of a permanent residence permit and are unable to safely return to their country or region of origin or have lived in Ukraine based on refugee status or a similar form of protection (or are family members of a person entitled to such protection in Ukraine) may be granted temporary protection in Poland or the territory of another EU country. Here, the Head of the Office for Foreigners in Poland issues an appropriate certificate that confirms the holder's right to reside in the Polish territory. Such persons may also take up employment and carry out economic activities in Poland in the same manner as Polish citizens. At their request, they are also provided with medical care, accommodation and meals or assistance in the form of monetary benefits.

3. The Varied Treatment of Asylum Seekers in Poland in 2020 to 2024

| 3.1. *After the Brutal Repression of Peaceful Protests in Belarus*³⁸

After the rigged elections in 2020, many Belarusians had to leave their country because of government repression only after participating in peaceful protests. Given this situation, Polish consulates in Belarus have started to issue numerous so-called 'humanitarian visas', the purpose of which is to arrive for humanitarian reasons, due to the interests of the State or international obligations³⁹. In 2020, 3356 such visas were issued to Belarusian citizens, constituting 98.6% of all the visas issued for this purpose. In 2021, 19,411 'humanitarian' visas were granted to Belarusians, accounting for 98.3% of the visas issued for this purpose. Polish regulations have long provided issuing visas for

35 | Protection Act, art. 106.

36 | *Ibid.*, art. 107.

37 | Council Implementing Decision 2022/382 of 4 March 2022 establishing the existence of a mass influx of displaced persons from Ukraine within the meaning of art. 5 of Directive 2001/55/EC and having the effect of introducing temporary protection.

38 | Parts of this chapter were based on a doctoral thesis, which is not published [M.N].

39 | Foreigners Act, art. 60.1. [23].

this purpose. However, in reality, they have been used sporadically. In 2019, only 84 such visas were issued, of which only one was a long-term type D visa⁴⁰.

Belarusian citizens, like the representatives of any other country, in connection with leaving their country of origin due to a threat from State authorities, can declare their willingness to apply for international protection to the Polish Border Guard authorities, which should result in access to the territory of the Republic of Poland so they can then apply for protection. However, the Polish side has decided to use the 'humanitarian' visa solution on a larger scale, so that Belarusian citizens do not have a problem with access to Polish territory and with leaving the territory of their country.

The use of this tool led to several legal changes. Until 30 November 2020, the Employment Promotion and Labour Market Institutions Act clearly indicated that persons residing in Poland based on a 'humanitarian' visa could not take up employment in the territory of the Republic. When an increasing number of Belarusians started to come to Poland based on this particular visa, the amendment of 1 December 2020 removed it from the list of residential grounds blocking employment. On the same day, the regulation of the Minister of Development, Labour and Technology came into force, which extended the list of cases in which entrusting work to a foreigner on the territory of the Republic of Poland is permissible without the need to obtain a work permit to include persons staying on a visa issued for humanitarian purposes⁴¹.

This huge convenience was introduced rather quickly in response to the difficulties experienced by Belarusian nationals who arrived in Poland because of the situation in their country of origin and who did not necessarily want to apply for international protection or already wanted to work from the start of this procedure, as the refugee procedure in Poland prohibits undertaking work for the first six months⁴².

Belarusian citizens were also the first to benefit from the Poland Business Harbour Program⁴³, which was suspended in 2024. The program supported entrepreneurs in the relocation process to Poland, whose beneficiaries may work in Poland without obtaining a work permit during the validity of their visa and set up a business on conditions analogous to those of persons with Polish citizenship. In addition, Belarusian students do not have to deduct the funds allocated to housing costs when determining the amount of monthly living expenses that a foreigner must demonstrate in the procedure for a temporary residence permit due to studies⁴⁴.

Some Belarusian citizens came to Poland due to the threat of repression in their country of origin and applied for international protection. In 2021, almost 2.3 thousand persons originating from Belarus submitted such applications and the Office for Foreigners issued decisions to 1,150 citizens of Belarus, of which 95.3% were positive decisions, 0.2% were negative decisions and 4.5% of the decisions were related to the discontinuation

40 | Data for 2019 to 2021 obtained from the Ministry of Foreign Affairs through access to public information.

41 | Ordinance of the Minister of Development, Labour and Technology of 20 November 2020, Journal of Laws of 2020, item 2081, § 1.

42 | Protection Act, art. 35.

43 | Poland Business Harbour, 2025.

44 | Ordinance of the Council of Ministers of 24 September 2020, Journal of Laws of 2020, item 1688; Foreigners Act, art. 144.

of proceedings⁴⁵, which gave Poland one of the highest rates of granting international protection to citizens of a country where there is no armed conflict over its entire territory.

The solutions applied to Belarusians illustrate how quickly specific legal changes can be introduced to facilitate the entry and stay in Poland for those who must leave their country. These solutions aligned with Polish migration policy, which targets migrants from countries that the authorities consider to be culturally close. Belarusians were already in the group of migrants with easier access to the labour market in Poland, but after the brutally suppressed protests related to the falsification of the presidential elections, they could count on many facilitations, especially in terms of entering the Polish labour market. These facilitations are most often motivated by the need to support repressed individuals; however, prompt entry into the labour market or relocation to Poland is also undeniably associated with benefits for the Polish economy.

| 3.2. Humanitarian Crisis on the Polish-Belarusian Border

An important background to the crisis, which has given it a political character, is the long-standing cooperation of the European Union with Belarus to counter illegal migration through, *inter alia*, joint EU projects, cooperation of Belarus with Frontex and signed partnership agreements⁴⁶. Such cooperation of the Union is not a novelty, as Marta Górczyńska points out in her text, *Pact with the Devil, or border cooperation between the Union and Belarus*⁴⁷ and is related to the process of externalisation of EU borders, which is based on transferring the responsibility for protecting these borders, including the fight against illegal migration and the reception of persons seeking international protection who reach the borders, to third countries. According to Beata Przybylska-Maszner, the following is noted:

Since 2004 we can observe a process of integration of migration and asylum issues into the external policy of the Union, which resulted from the EU shifting some of the border management issues and responsibilities to these countries⁴⁸.

Belarus' cooperation with the European Union ran parallel to the sanctions imposed by the Union related to the violently repressed protests of Belarusians against the rigged presidential elections of 2020⁴⁹. Such a practice is also nothing new and, as Górczyńska points out, 'History has already shown several times how much the Union can swallow to maintain cooperation in the area of migration with its key partners and how many concessions it is prepared to make in order to keep refugees out of its borders'⁵⁰. However, at the end of June 2021, Belarus suspended its participation in the partnership in response to sanctions and an increase in illegal border crossings was observed in the territory of Poland and Lithuania⁵¹. This was related to the Belarusian side facilitating the process of obtaining tourist visas to Belarus by citizens of *inter alia* Afghanistan or Iraq for onward

45 | International Protection in 2021 r., 2022.

46 | IOM, 2018.

47 | Górczyńska, 2021.

48 | Przybylska-Maszner, 2021, p. 437.

49 | Council of the EU and the European Council, 2024.

50 | Górczyńska, 2021.

51 | Border Guards, 2021.

travel to European countries. Such practices were considered exploitation by the Belarusian authorities of the pathology of the European visa system, 'which makes it impossible for the majority of people seeking safe refuge or family reunification to obtain a visa to EU countries'⁵², because (as indicated earlier) visas for humanitarian purposes are issued by the Polish authorities mainly to Belarusian citizens.

The obstruction of foreigners' access to the asylum procedure at the Polish-Belarusian section of the border had been ongoing for many years, as confirmed by the judgments of the European Court of Human Rights; however, in August 2021, the situation escalated significantly. The relevant documents were not accepted from persons declaring their willingness to apply for international protection⁵³, and increasingly, these persons were returned to the border line with Belarus⁵⁴ without providing them with legally guaranteed protection against expulsion to a country where they were in danger. Subsequently, on 20 August 2021, a decree by the Minister of Internal Affairs and Administration introduced the possibility of the expulsion of foreigners from the territory without the need to initiate administrative proceedings for an obligation to return⁵⁵. On 2 September 2021, the President of the Republic of Poland introduced a state of emergency due to a 'particular threat to the security of citizens and public order'⁵⁶. The imposition of the state of emergency restricted the right to public information and freedom of movement of local residents and other citizens, but most importantly, it prevented the provision of humanitarian, medical and legal assistance to foreigners within the zone under the state of emergency. Subsequently, on 26 October 2021, the so-called 'Expulsion Law' was enacted⁵⁷, which *inter alia* introduced art. 303b of the Act on Foreigners, stipulating that a decision to leave the territory of the Republic of Poland is to be issued to a person who has been detained in connection with an illegal border crossing. This order is subject to the complaint that, in practice, foreigners without adequate legal assistance cannot apply on their own. In this way, the practice of so-called pushbacks has been legalised, contrary to applicable EU regulations⁵⁸. In addition, the Act introduced paragraph 1a to art. 33 of the Act on Granting Protection to Aliens on the Territory of the Republic of Poland, according to which the following apply:

The Head of the Office may leave unprocessed an application for granting international protection which has been submitted by a foreigner apprehended immediately after crossing, in violation of the law, a border constituting an external border within the meaning of Article 2(2) of Regulation No. 2016/399 of the European Parliament and of the Council of 9 March 2016 on the Union Code on the rules governing the movement of persons across borders (Schengen Borders Code) (OJ EU L 77, 23.03.2016, p. 1, as amended), unless the foreigner has come directly from a territory where his or her life or freedom was threatened by a danger of persecution

52 | Klaus et al., 2020, p. 3.

53 | Commissioner for Human Rights, 2021b.

54 | Amnesty International, 2022, p. 4.

55 | Ordinance of the Minister of Internal Affairs and Administration of 20 August 2021, Journal of Laws 2021, item 1536.

56 | Regulation of the President of the Republic of Poland of 2 September 2021, Journal of Laws 2021, item 1612.

57 | Act amending the Act on Foreigners and certain other acts of 14 October 2021, Journal of Laws 2021, item 1918, art. 1[3].

58 | Klaus et al., 2020, p. 14.

or a risk of serious harm, and has presented credible reasons for entering the territory of the Republic of Poland illegally and has applied for international protection immediately after crossing the border⁵⁹.

This provision conditions access to the asylum procedure depending on the manner in which the person arrived on the territory of Poland and, in addition, by using the term 'immediately', it vaguely defines when the provision will apply.

An additional safeguard to protect the state border against illegal border crossings is the construction of a wall on its Polish-Belarusian section. The barrier is planned to be 186 kilometres long and the cost of construction is 1.6 billion PLN⁶⁰. The Polish Commissioner for Human Rights, in his comments on the Act on the Construction of the State Border Security⁶¹, pointed out *inter alia* that, according to art. 6, the provisions of the Construction Law, Water Law, Environmental Law, Law on Making Environmental Information Available, Geodetic and Cartographic Law, Law on Spatial Planning and Development, Protection of Agricultural and Forest Land and the Environmental Law, Law on Railway Transport, and Law on Special Principles for the Preparation and Implementation of Investments in the Field of Public Roads do not apply to this investment. Many provisions of the Act are irreconcilable with the Constitution and European law⁶². However, to ensure the safety of citizens and secure the proceedings on the obligation to return, most of the foreigners who managed to stay on the territory of the Republic of Poland were transferred to detention centres. In August 2021, due to an increase in the number of foreigners detained due to irregularly crossing the state border and lacking a residential permit in the territory of Poland, a Temporary Guarded Centre for Foreigners was established in Wędrzyn, which was located in the territory of an active military training ground. Representatives of the National Torture Prevention Mechanism found residential buildings in very poor conditions surrounded by concertina-type entanglements resembling prisons. They found that the sounds of gunfire and explosions heard every day caused tremendous stress to foreigners. Some individuals had left their country because of armed conflicts and such conditions could lead to deepening trauma⁶³. In the Spring of 2022, the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) visited Poland. The report shows that the Polish authorities do not effectively prevent torture and inhuman or degrading treatments.

In addition, the regulation of the Minister of the Interior and Administration reduced the minimum surface area per foreigner placed in a guarded centre to 2 m²⁶⁴, which *de facto* led to huge overcrowding in the centres. Incidentally, it is worth noting that the

59 | Protection Act, art. 33, par. 1a.

60 | Szczepańska, 2022.

61 | Law on the Construction of the State Border Security of 29 October 2021, Journal of Laws 2021, item 1992.

62 | Commissioner for Human Rights, 2021a.

63 | Commissioner for Human Rights, 2021c; Commissioner for Human Rights, 2022b; Commissioner for Human Rights, 2021d.

64 | Regulation of the Minister of the Interior and Administration of 13 August 2021, amending the Ordinance on Guarded Centers and Detention Centers for Foreigners, Journal of Laws of 2021, item 1482.

minimum area established by the regulation is smaller than the area per inmate in penitentiary units. In Poland, it is 3 m², whereas the European standard is 4 m²⁶⁵.

| 3.3. Russian Federation's Invasion of Ukrainian Territory

The full-scale Russian aggression on 24 February 2022 led to a war that forced people living in Ukraine to flee their homes and leave their country. In the first week of this armed conflict, more than one million refugees from Ukraine crossed the borders of their country, finding refuge in neighbouring countries. As of October 2024, more than six million Ukrainian refugees were registered in Europe⁶⁶. A significant number arrived in Poland⁶⁷. We observed opposite reactions of Polish state authorities to those taking place in response to the Polish-Belarusian border crisis. The Polish-Ukrainian border was practically completely opened to people leaving Ukraine, and the controls operated by the Border Guard were carried out in a way that streamlined the entire procedure wherever possible, with a massive application of art. 32 of the Foreigners Act. This provision allows the commanding officer of a Border Guard office to issue a permit to enter the territory of the Republic of Poland for a period of stay not exceeding 15 days for a foreigner who does not meet such requirements as having a valid travel document entitling the holder to cross the border, having a visa or the possibility of entering visa-free traffic or sufficient means of subsistence⁶⁸. The Office for Foreigners reported the following on 27 February 2022:

All people fleeing Ukraine from the armed conflict do not need to register at reception points or worry about formalities. All persons fleeing Ukraine seeking refuge in Poland need not worry about the legality of their stay. There is also no need to submit any applications to the Office for Foreigners, provincial offices, or Border Guard posts in the coming days. The same applies to Ukrainian citizens who are in Poland and whose residence permits have expired⁶⁹.

At that time, provincial governors and city authorities opened reception sites for those arriving to provide shelter and food.

On 4 March, the EU adopted the Council Implementing Decision 2022/382, establishing the existence of a massive influx of displaced persons from Ukraine within the meaning of art. 5 of Directive 2001/55/EC. Shortly thereafter, on 12 March 2022 the Polish Parliament adopted the Act on Assistance to Citizens of Ukraine in connection with the Armed Conflict on the Territory of that Country (hereinafter: Act on Assistance to Citizens of Ukraine). It entered into force on the very same day, with most of the provisions being effective from 24 February⁷⁰.

For citizens of Ukraine (and their spouses) who have arrived legally in the territory of the Republic of Poland in the period from 24 February 2022 and who have declared their intention to stay in the territory of Poland, this law *inter alia* legalises their stay for an initial 18 months (beginning at 24 February 2022), grants social benefits, provides

65 | Commissioner for Human Rights, 2022b.

66 | UNHCR Statistics, 2024.

67 | Bil, 2023, p. 128.

68 | EU Regulation 2016/399, art. 6.

69 | Office for Foreigners, 2022.

70 | Act on Assistance to Citizens of Ukraine, art. 116.

accommodation and food, and allows the possibility to apply for a special temporary residence permit for three years⁷¹. In addition, the period of stay of Ukrainian citizens in the territory of the Republic of Poland based on national and Schengen visas issued by Polish authorities, visas issued by another state of the Schengen area in visa-free traffic, and the validity of issued residence cards have been extended⁷². In principle, the law does not apply to persons who have filed applications for international protection in Poland unless such a person withdraws the application. Leaving Poland's territory for more than 30 days results in depriving benefits resulting from the Act.

One group that was completely disregarded by the Polish legislature was persons without Ukrainian citizenship who were ineligible for temporary protection by the Executive Decision of the Council of the European Union⁷³. This group mostly included students and workers in Ukraine during their temporary stays. Despite the attention drawn to this problem already at the legislative stage by NGOs, the Centre for Studies and Legislation of the National Council of Legal Advisers⁷⁴, and the Commissioner for Human Rights⁷⁵, these persons were formally excluded from any support. Only in the governmental project on the amendment of the Act on Assistance to Citizens of Ukraine was it proposed that the stay of foreigners who were not citizens of Ukraine – and whom the commanding officer of the Border Guard office located in the specific section of the border between the Republic of Poland and Ukraine in the period from 24 February 2022 allowed to enter the territory of the Republic of Poland under art. 32.1. of the Foreigners Act – were extended by law for a further 90 days. Such a retroactive extension could have positive consequences for persons who applied for a temporary residence permit 15 days after entry into the territory of the Republic of Poland and thus de facto during an already undocumented stay. However, such a solution should be considered insufficient, as the people who were also fleeing the war in Ukraine had only 15 days to decide what to do next upon arrival in Poland. Given that this was a period of great information chaos and that the government website of the Office for Foreigners had the aforementioned information that all persons fleeing Ukraine from the armed conflict did not need to worry about formalities, the non-extension of the legal stay of persons who did not have Ukrainian citizenship was a clear signal that their longer stay in Polish territory was undesirable. Unfortunately, the amendment in question was not included in the final version of the amendment of 8 June 2022⁷⁶. At the same time, Germany informed that third-country nationals who were in Ukraine on 24 February 2022 could enter and stay in Germany without a visa or resident permit.

These solutions, which were applied in response to the mass exodus of civilians from Ukrainian territories, should be considered adequate from the perspective of international obligations. The implementation of available tools to enable those fleeing war to quickly find safe refuge and the introduction of further forms of support and facilitation for Ukrainian citizens indicate openness to this community, which was clearly expressed

71 | Act on Assistance to Citizens of Ukraine, art. 2, 12, 26 and 38.

72 | Act on Assistance to Citizens of Ukraine, art. 42.

73 | Council Implementing Decision (EU) 2022/382.

74 | National Council of Legal Advisers, 2022.

75 | Commissioner for Human Rights, 2022.

76 | Amendment of the Act on Assistance to Citizens of Ukraine of 8 June 2022, Journal of Laws 2022, item 1383.

and fits with the assumptions of migration policy regarding the targeting of Polish policy toward immigrants from culturally close countries and those who can quickly enter the labour market; this in turn shows more objectifying rather than subject-centered treatment. At this point, it is worth emphasising the tremendous amount of work done by Polish society and NGOs during this time, without which the reception of so many people would not have been possible⁷⁷.

Unfortunately, a limitation should also be pointed out here, namely a removal from the Protection Act art. 110.2.⁷⁸, which was the right of foreigners to enjoy temporary protection to obtain a temporary residence permit for one year and a residence card. It is unclear what dictated such a change, which posed a real difficulty for many people, especially in the context of the need to fulfil business trips or travel for health reasons. It was not until July 2022 that Poland notified the European Commission of a new electronic document on the *diia.pl* mobile application that confirmed their legal stay in Poland and allowed them to cross its borders. However, the stark difference in how Poland treated people with and without Ukrainian citizenship during the Russian aggression – an aggression that forced many people in Ukraine, regardless of their nationality, to escape the country – reveals a deeply unequal approach to different groups of migrants. Some of these people may return to their safe country of origin, while for others, this may not be possible.

In the sphere of labour law, the Act on Assistance to Citizens of Ukraine regulates issues such as access to the labour market, as well as unemployment and job-seeker status for Ukrainian citizens. When employing such a person, the employer must notify the Employment Office about that fact within 14 days and a separate work permit is not required. Moreover, it allows Ukrainian citizens to undertake and carry out economic activities in the same manner as Polish citizens. The Act on Assistance to Citizens of Ukraine also regulates the conditions under which Polish and Ukrainian citizens who studied in Ukraine or were employed as academic teachers/researchers there, were able to continue their education or scientific activities at Polish universities. Ukrainian children and students were provided with education. The Ministry adopted laws that allowed an increase in the number of children in classrooms and preschool groups⁷⁹. If a child who arrived from Ukraine does not have parents or other legal guardians in Poland, it is necessary to apply to the court for the appointment of a temporary guardian. Such a person holds custody of the child and the child's property. A temporary guardian does not have as broad powers as a parent; nevertheless, important decisions (e.g. subjecting the child to surgery or leaving the country) require the permission of the court. When appointing a guardian, the court must consider the best interests of the child. The guardian may be a child's relative or another person who guarantees proper performance of the guardian's duties. Citizens of Poland and Ukraine could become temporary guardians. Whenever possible, one temporary guardian should be appointed for siblings and one person can also be appointed for several unrelated children, provided that there is no conflict between their interests⁸⁰.

77 | See, inter alia Jarosz and Klaus, 2023.

78 | Act on Assistance to Citizens of Ukraine, art. 80[4)a].

79 | Ordinance of the Minister of Education and Science of 21 March 2022, Journal of Laws of 2023, item 2094.

80 | Act on Assistance to Citizens of Ukraine, art. 25.

To gain access to public benefits and services, it was necessary to obtain a personal ID number (PESEL UKR); however, the procedure has been simplified⁸¹. Material support included family and child-rearing benefits, support in the form of cash and non-cash social assistance benefits, access to free psychological assistance, access to medical care under the same conditions as those covered by health insurance in Poland, and food aid under the Fund for European Aid to the Most Deprived (FEAD). People with disabilities could access programs financed by the State Fund for the Rehabilitation of the Disabled⁸². In addition, any entity that decided to provide accommodation and meals to Ukrainian citizens was entitled to monetary benefits. The benefit was to be paid by the municipal authorities for a maximum period of 60 days and then up to 120 days, which could still be extended in justified cases. The Polish government also created a special website (pomagamukrainie.gov.pl) containing information about issues such as reception and information points, obtaining personal ID numbers, NGO activities, and points where free legal advice is provided. It is available in Polish, English, Russian and Ukrainian. The website is still a good source of knowledge about many aspects relevant to Ukrainian citizens' daily lives in Poland.

It is important to stress that Ukrainian refugees in Poland, like those in other parts of Europe, face several stereotypes. One stereotype perceives Ukrainian refugees as suitable only for low-skilled jobs. This overlooks the diverse skills and qualifications that many Ukrainians possess. Another stereotype is that Ukrainian refugees depend heavily on social aid and do not contribute to economic growth. In reality, many Ukrainians actively seek employment and contribute to the local economy. As of mid-2023, more than three million Ukrainian citizens were living in Poland. This number includes around 1.3 million economic migrants who were already in Poland before the full-scale invasion and 1.8 million refugees who arrived after 24 February 2022⁸³. Ukrainians have had a significant impact on both Polish society and the economy. According to a study conducted by the UNHCR in 2023, refugees from Ukraine will contribute between 0.7 and 1.1 percent of Poland's GDP and the size of their contribution is likely to grow further⁸⁴. Ukrainian migrants have helped fill labour shortages in various sectors, including construction, agriculture, healthcare and services, which have been crucial in maintaining economic stability and growth. Moreover, in 2023 alone, Ukrainians founded approximately 10% of the over 300,000 new companies registered in Poland⁸⁵. Overall, while there have been challenges, the presence of Ukrainian refugees in Poland has brought numerous benefits, contributing to economic growth and enriching the country's social fabric.

81 | *Ibid.*, arts. 4, 23.2, 29.

82 | *Ibid.*, art 34.

83 | Korzeniowski et al., 2024.

84 | UNHCR, 2024.

85 | Kujawski, 2024.

4. Changing Perspectives on Protection in 2024

| 4.1. *After Two Years of War in Ukraine*

Some major amendments to the Act on Assistance to Citizens of Ukraine came into force on 1 July 2024⁸⁶. First, the amendment extended the possibility of a legal stay in Poland to 30 September 2025. The amendment also changed the rules concerning the accommodation of Ukrainian refugees. The Act ended the period during which a monetary benefit could be paid for housing and catering provided by private entities. As explained by the government, this benefit was of an extraordinary nature and has lost its original meaning over time, while the number of vacant places in collective accommodation facilities increased. In addition, the amendment made it mandatory for municipal authorities to confirm the identity of a person based on a valid travel document⁸⁷. This requirement has resulted in the impossibility of granting the relevant rights to persons who do not have a valid travel document and cannot obtain one at a Ukrainian consulate in Polish territory. This mainly affects people from the occupied territories, especially men of conscription age, who can only obtain passports within Ukraine. The rules concerning the legal requirements for the employment of Ukrainian citizens remain the same. However, the deadline for sending notices to the Employment Office has been shortened. As of 1 July 2024, the employer has only seven days to fulfil this obligation. The amendment also linked the payment of parental benefits with the obligation to realise mandatory education in Polish schooling institutions, while many children were included in the Ukrainian online school system⁸⁸.

The attitude of the Polish people toward Ukrainian refugees has changed since 2022. Compassion fatigue is one of the many factors that contributes to a decline in solidarity. It is defined as a state of emotional and physical exhaustion that affects individuals who are intensely involved in helping others. It is particularly common among caring professionals such as social workers, nurses and therapists, but has also become a significant problem among NGO workers, who often deal with high levels of stress and emotional exhaustion due to their work with vulnerable groups. This condition, also known as secondary traumatic stress, occurs when caregivers become emotionally drained from constant exposure to the suffering of others. Compassion fatigue has become a noticeable phenomenon in the context of helping refugees from Ukraine in Poland⁸⁹. After a significant initial willingness to help, the intensity of the assistance quickly decreased. According to a report by the Polish Economic Institute, the percentage of Poles who believed that Ukrainian refugees needed help decreased from 84% at the beginning of the invasion to 50% in the autumn of 2022⁹⁰. Although the social acceptance of Ukrainian refugees remains high, there has been a noticeable decline in their determination to help.

86 | Act amending the Act on Assistance to Citizens of Ukraine of 14 May 2024, Journal of Laws 2024, item 854.

87 | *Ibid.*, art 4.11.

88 | *Ibid.*, art. 26.1.2.

89 | Jarosz, 2024, p. 9; Hargrave et al., 2024, pp. 9, 21.

90 | Baszczak et al., 2023, p. 26.

| 4.2. *Double Standards?*

After the successful reception of refugees from Ukraine and the response of international NGOs that began large-scale operations in Poland for the first time, along with the unimaginable work of national and local NGOs and Polish society as a whole, a stark contrast became evident in the governmental response to the crisis at the Polish-Belarusian border compared to that triggered by the war in Ukraine. Numerous NGOs, particularly those engaged in both contexts, have observed disparities in the treatment of various groups seeking protection in Poland. These differences not only shaped the official stance but have also had a significant impact on the scope and character of the humanitarian response. Based on the annual report, 'Pepper Spray in a Bottle of Water'⁹¹ of the We Are Monitoring Association, which has been collecting data on the crisis on the Polish-Belarusian border from the beginning of the crisis, double humanitarian standards occurred in Poland on many levels. These are mainly noticeable in terms of access to information and the territory, scale, rate of launching support, legal changes and implementation of international provisions, financing, attitude toward those providing assistance, humanitarian narrative and the rhetoric of Polish authorities, and perspective on who deserves or does not deserve help and support in the further journey or integration in Poland⁹².

The markedly different treatment of individuals seeking protection simultaneously on the two Polish borders, which are external borders of the European Union, is also part of a broader discussion of the narratives created around the Ukrainian response and humanitarian principles. Next to the frequently used term of 'solidarity', we could also notice debates around the narrative of 'exceptionalism'⁹³ to describe the response to the war in Ukraine and its specificity, justified for example by the fact that it is an invasion of one UN member state by another or the largest war in Europe since the end of World War II. This 'exceptionalism' was visible in the scale of the response, political support or even media coverage. It is crucial to emphasise the following:

A narrative of exceptionalism around Russia's war in Ukraine – the notion that this is 'a different kind of crisis' – has posed challenges for impartiality: driving disproportionate funding to the humanitarian response and uniquely generous policies towards Ukrainian refugees. While the principle of impartiality dictates that humanitarian action must be delivered on the basis of need alone, in Poland and the UK, civil society have been among those accusing their governments of double standards, highlighting the different approaches between arrivals from Ukraine and the rest of the world. In Poland, this charge has also been put to international humanitarian organisations which, in the midst of a large-scale response to Ukrainian refugees, were seen as reluctant to support Polish civil society to respond to a longer-running humanitarian crisis on the Poland–Belarus border⁹⁴.

| 4.3. *Restriction of the Right to Seek International Protection*

In October 2024, the Polish Government adopted the document 'Take Back Control. Ensure Security. Poland's Comprehensive and Responsible Migration Strategy for

91 | We Are Monitoring, 2024.

92 | *Ibid.*, pp. 124–136.

93 | Hargrave, 2024, pp. 22–32.

94 | *Ibid.*, pp. 7–8.

2025-2030⁹⁵, which introduced the announcement of legal changes that will allow temporary and territorial suspension of the right to accept asylum applications. Despite widespread criticism of many provisions of the strategy (particularly the possibility of suspending the right to asylum) from numerous sectors, including academics and NGOs⁹⁶, the process of legalising the draft amendment to the Protection Act has been accelerated.

It is difficult to disagree that the proposed legislation violates the international (Refugee Convention), EU⁹⁷ and national laws⁹⁸. UNHCR highlights that the principle of non-refoulement is binding, universal and non-derogable in all situations of people on the move, including in the context of 'instrumentalization'⁹⁹.

Nevertheless, in December 2024, the European Commission, in its communication with the European Parliament and Council on countering hybrid threats from the weaponization of migration and strengthening security at the EU's external borders¹⁰⁰, took the following position:

In view of the serious nature and persistence of the threat to the security of the EU and the territorial integrity of Member States at the EU external borders with Russia and Belarus, Member States may invoke Treaty provisions to exceptionally and under stringent conditions go further than what is provided for by EU secondary legislation under the control of the Court of Justice. This could include measures that may entail serious interferences with fundamental rights such as the right to asylum and related guarantees subject to the requirements under the Charter. Today's Communication outlines the conditions for such measures which have to be proportionate, limited to what is strictly necessary in clearly defined cases, and temporary¹⁰¹.

As shown, all changes proposed in Poland are part of a broader EU context. Adopted in May 2024, the Pact on Migration and Asylum was also widely criticised by experts due to its restrictions on access to asylum procedures¹⁰². Polish social organisations offering legal, integration and humanitarian support to migrants in Poland prepared recommendations for the Polish National Implementation Plan of the EU Pact, in which they drew the Polish government's attention to how questionable provisions of the Pact can still be implemented in Poland in a way that best ensures the realisation of the rights of those seeking protection, especially concerning the protection of people from vulnerable groups, providing legal aid or establishing independent monitoring of fundamental rights¹⁰³. In parallel, the Polish government publicly stated that the EU Pact would not be implemented in Poland because it did not reflect the specific situation of Poland and did not respond to its security challenges.

95 | Chancellery of the Prime Minister, 2024.

96 | See, inter alia Statement of I/NGOs, 2024.

97 | Charter of Fundamental Rights of the European Union, art. 18.

98 | The Constitution of the Republic of Poland, art. 56; see, inter alia Association for Legal Intervention, 2024.

99 | UNHCR, 2024.

100 | European Commission, 2024a.

101 | European Commission, 2024b.

102 | PICUM, 2024.

103 | Migration Consortium, 2024.

On 27 March 2025, Poland introduced a temporary restriction on the right to apply for international protection at the State border with Belarus¹⁰⁴, justifying this position on security grounds.

The position of the Commission and the steps taken by the Polish government raised concerns about the potential erosion of the rights provided by the Geneva Convention, which was established in connection with the terrible consequences of World War II and originally intended to address the problem of population displacement in Europe. Today, we observe practices that may undermine the fundamental principles of international protection, including the right to seek asylum. Owing to ongoing wars, conflicts, persecution and forced displacement due to climate change, there is a pressing need to reinforce rather than weaken the international protection framework. However, recent developments suggest a troubling departure from the core values upon which Europe's commitment to human rights and solidarity was built.

5. Conclusion

Poland's approach to refugee protection demonstrates significant contrasts. Ukrainian refugees have received extensive support, including legalised residency, access to public services and integration into the labour market, reflecting solidarity and a positive attitude toward them, especially in the first year of Russia's full-scale invasion. In contrast, asylum seekers at the Belarusian border faced restrictive measures, such as pushback and limited access to asylum procedures, highlighting the double standards in humanitarian responses. These differences reflect both national priorities and broader EU trends in which security concerns increasingly overshadow commitments to international refugee protection. The experiences in recent years have shown how quickly Polish authorities and society are able to respond to the need for humanitarian support (in the case of Ukrainians) and how flexibly they can adapt legal regulations to political decisions (in all cases indicated). By contrast, impartial adherence to humanitarian principles and international standards of refugee protection appears to be a much greater challenge, especially in the face of ongoing crises and Russia's hostile policies involving the instrumental exploitation of desperate people seeking protection.

104 | Protection Act, art. 33a-c, Regulation of the Council of Ministers of 27 March 2025, Journal of Laws 2025, item 390.

Bibliography

Amnesty International (2022) 'Poland: Cruelty Not Compassion, at Europe's Other Borders' *Amnesty International*, 11 April. [Online]. Available at: <https://www.amnesty.org/en/documents/eur37/5460/2022/en/> (Accessed: 30 July 2025).

Association for Legal Intervention (2024) 'Statement of the Association for Legal Intervention Regarding the draft Act on amending the Act on granting protection to foreigners on the territory of the Republic of Poland (UD173)' *Association for Legal Intervention*, 13 December. [Online]. Available at: https://interwencjaprawna.pl/wp-content/uploads/2021/01/SIP-commentary_-Polish-governments-plans-to-suspend-the-right-to-asylum.pdf (Accessed: 30 July 2025).

Baszczak, Ł., Wincewicz, A., Zyzik, R. (2023) *Polacy i Ukraińcy – wyzwania integracji uchodźców*. Warszawa: Polski Instytut Ekonomiczny [Online]. Available at: <https://pie.net.pl/wp-content/uploads/2023/05/Wyzwania-integracji-.pdf> (Accessed: 30 July 2025).

Bil, I. (2023) 'More than a neighbour in need: Polish and EU support to Ukraine' in Andor, L., Optenhögel, U. (eds.) *Europe and the war in Ukraine*. London: London Publishing Partnership, pp. 124–134.

Braniewicz, O. (2024) *Ośrodki dla cudzoziemców na terytorium RP w kontekście prawnomiędzynarodowych standardów ochrony praw człowieka*. PhD Dissertation defended at the University of Lodz, 28 October 2024, not published.

Chancellor of the Prime Minister (2024) 'Take back control. Ensure Security. Poland's Comprehensive and Responsible Migration Strategy for 2025 – 2030' *Chancellor of the Prime Minister*, 17 October. [Online]. Available at: <https://www.gov.pl/web/premier/odzyskac-kontrolę-zapewnić-bezpieczeństwo---strategia-migracyjna-na-lata-2025---2030> (Accessed: 30 July 2025).

Commissioner for Human Rights (2021a) 'Border wall law partially unconstitutional. Ombudsman's comments to the Senate' *Commissioner for Human Rights*, 21 October. [Online]. Available at: <https://bip.brpo.gov.pl/pl/content/rpo-granica-budowa-muru-senat> (Accessed: 30 July 2025).

Commissioner for Human Rights (2021b) 'Commissioner for Human Rights: non-acceptance of applications for international protection in the border zone is a violation of the law. Reply of the Ministry of Interior and Administration' *Commissioner for Human Rights*, 19 October. [Online]. Available at: <https://bip.brpo.gov.pl/pl/content/rpo-nieprzyjmowanie-wnioskow-o-ochronę-międzynarodową-w-strefie-przygranicznej-naruszenie> (Accessed: 30 July 2025).

Commissioner for Human Rights (2021c) 'Poor conditions can exacerbate trauma. Ad hoc visits to centres for foreigners' *Commissioner for Human Rights*, 26 October. [Online]. Available at: <https://bip.brpo.gov.pl/pl/content/rpo-osrodki-cudzoziemcy-wizytacje-zle-warunki> (Accessed: 30 July 2025).

Commissioner for Human Rights (2021d) 'Report of the Commissioner for Human Rights on the activities of the National Mechanism for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment in Poland in 2021' *Commissioner for Human Rights*. [Online]. Available at: <https://www.ohchr.org/sites/default/files/documents/hrbodies/spt-opcat/npm/2022-08-23/NMPTReport2021-poland.pdf> (Accessed: 30 July 2025).

Commissioner for Human Rights (2022a) 'Commissioner for Human Rights's comments on the law on assistance to Ukrainian citizens. Marcin Wiącek writes to Tomasz Grodzki, Senate' *Commissioner for Human Rights*, 10 March. [Online]. Available at: <https://bip.brpo.gov.pl/pl/content/rpo-uwagi-doustawy-o-pomocy-obywatelom-ukrainy-marcin-wiacek-senat> (Accessed: 30 July 2025).

Commissioner for Human Rights (2022b) 'NMPT visitation to the Guarded Centre for Foreigners in Wędrzyn' *Commissioner for Human Rights*, 20 January. [Online]. Available at: <https://bip.brpo.gov.pl/pl/kmpt/wizytacja-kmpt-w-strzezonym-osrodku-dla-cudzoziemcow-w-wedrzyne> (Accessed: 30 July 2025).

European Commission (2024b) 'Commission steps up support for Member States to strengthen EU security and counter the weaponisation of migration' *European Commission*, 11 December. [Online]. Available at: https://ec.europa.eu/commission/presscorner/detail/en/ip_24_6251 (Accessed: 13 July 2025).

European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) (2024) 'Report to the Polish Government on the visit to Poland carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 21 March to 1 April 2022' *European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT)*, 22 February. [Online]. Available at: <https://hfhr.pl/upload/2024/02/raport-cpt-2022.pdf> (Accessed: 30 July 2025).

Górczyńska, M. (2021) 'Pact with the Devil, or border cooperation between the Union and Belarus, Migration Laboratory', *Stowarzyszenie Interwencji Prawnej*, 09 August. [Online]. Available at: <https://interwencjaprawna.pl/pakt-z-diablem-czyli-wspolpraca-graniczna-unii-z-bialorusia/> (Accessed: 30 July 2025).

Hargrave, K., Bryant, J., Jarosz, S., Tselishcheva, S., Zaviyska, M. (2024) *Narratives and the Ukraine response: implications for humanitarian action and principles*. London: ODI Global [Online]. Available at: https://media.odi.org/documents/Ukraine_narratives_final_report_final_8pcSXet.pdf (Accessed: 30 July 2025).

Illegally across the green border (2021) *Border Guards*, 15 July [Online]. Available at: <https://www.strazgraniczna.pl/pl/aktualnosci/9296,Nielegalnie-przez-zielona-granice.html> (Accessed: 30 July 2025).

IOM Helps Belarus Develop Irregular Migration Management Policy (2018) *IOM*, 30 October [Online]. Available at: <https://www.iom.int/news/iom-helps-belarus-develop-irregular-migration-management-policy> (Accessed: 30 July 2025).

Jarosz, S, Klaus, W. (eds.) (2023) *The Polish School of Assistance. Reception of refugees from Ukraine in Poland in 2022*. Warsaw: Migration Consortium; Centre of Migration Research; University of Warsaw; Centre for Migration Studies; Adam Mickiewicz University [Online]. Available at: <https://konsorcjum.org.pl/wp-content/uploads/2023/05/The-Polish-School-of-Assistance-Report.pdf> (Accessed: 30 July 2025).

Klaus, W. (eds.) (2021) *Humanitarian crisis in the Polish-Belarusian border region. Report of the Border Group*. Warsaw: Grupa Granica [Online]. Available at: <https://konsorcjum.org.pl/en/humanitarian-crisis-at-the-polish-belarusian-border> (Accessed: 30 July 2025).

Klaus, W., Szulecka, M., Wzorek, D. (2024) *Detencja i jej alternatywy. Analiza orzecznictwa sądowego w sprawie umieszczania cudzoziemców w ośrodkach strzeżonych*. Wasaw: Instytut Wymiaru Sprawiedliwości.

Korzeniewski, K., Shkilna, M., Huk, M., Shevchuk, O., Marchelek-Myśliwiec, M. (2024) 'Ukrainian war refugees and migrants in Poland: implications for public health', *Journal of Travel Medicine*, 31(1), pp. 1–4 [Online]. Available at: <https://doi.org/10.1093/jtm/taad119> (Accessed: 30 July 2025).

McAdam, J. (2005) 'The European Union Qualification Directive: The Creation of a Subsidiary Protection Regime', *International Journal of Refugee Law*, 17(3), pp. 461–516 [Online]. Available at: <https://doi.org/10.1093/ijrl/eei018> (Accessed: 30 July 2025).

Migration Consortium (2024) 'Recommendations for the Polish National Implementation Plan of the EU Pact on Migration and Asylum Prepared by social organizations offering legal, integration, and humanitarian support to migrants in Poland' *Migration Consortium*, 19 November. [Online]. Available at <https://konsorcjum.org.pl/en/recommendations-for-the-polish-national-plan-for-implementing-the-eu-pact-on-migration-and-asylum/> (Accessed: 30 July 2025).

More than 160 Civil Society Organisations call on MEPs to vote down harmful EU Migration Pact (2024) PICUM, 13 February [Online]. Available at: <https://picum.org/blog/81-civil-society-organisations-call-on-meps-to-vote-down-harmful-eu-migration-pact/> (Accessed: 30 July 2025).

National Council of Legal Advisers (2022) 'Comments and proposed amendments to the Act on assistance to Ukrainian citizens in connection with the armed conflict on the territory of Ukraine passed by the Sejm, presented jointly by: Helsinki Foundation for Human Rights, Centre for Studies and Legislation of the National Council of Legal Advisers, Association for Legal Intervention' *National Council of Legal Advisers*, 10 March. [Online]. Available at: https://www.senat.gov.pl/gfx/senat/userfiles/_public/k10/dokumenty/konsultacje/2022/ukr/obsilkrrp.pdf (Accessed: 30 July 2025).

Nazimek, M. (2018) 'Przestrzenny wymiar procedury uchodźczej – problem ośrodków dla cudzoziemców w Polsce' in Dudek, M., Eckhardt, P., Wróbel, M. (eds.) *Przestrzenny wymiar prawa*. Kraków: Nomos, pp. 143–160.

NMPT visitation to the Guarded Centre for Foreigners in Wędrzyn and Krosno Odrzańskie (2021) *Rzecznik Praw Obywatelskich*. 14 December [Online]. Available at <https://bip.brpo.gov.pl/pl/kmpt/wizytacja-kmpt-w-strzezonym-osrodku-dla-cudzoziemcow-w-wedrzyne-i-krosnie-odrzańskim> (Accessed: 30 July 2025).

Office for Foreigners (2022) 'Information on the stay in Poland of persons fleeing from Ukraine' *Office for Foreigners*, 27 February. [Online]. Available at: <https://www.gov.pl/web/udsc/informacja-w-sprawie-pobytu-w-polsce-osob-uciekajacych-z-ukrainy> (Accessed: 30 July 2025).

Office for Foreigners, Migration statistics (2022) 'International protection in 2021' *Office for Foreigners*, 01 December. [Online]. Available at: <https://www.gov.pl/web/udsc/ochrona-miedzynarodowa-w-2021-r> (Accessed: 30 July 2025).

Office for Foreigners, Migration statistics (2022) 'International protection in 2021' *Office for Foreigners*, 12 January. [Online]. Available at: <https://www.gov.pl/web/udsc/ochrona-miedzynarodowa-w-2021-r> (Accessed: 30 July 2025).

Office for Foreigners, Migration statistics (2023) 'International protection in 2022' *Office for Foreigners*, 24 January. [Online]. Available at: <https://www.gov.pl/web/udsc/ochrona-miedzynarodowa-w-2022-r> (Accessed: 30 July 2025).

Office for Foreigners, Migration statistics (2024) 'International protection in 2023' *Office for Foreigners*, 16 January. [Online]. Available at: <https://www.gov.pl/web/udsc/ochrona-miedzynarodowa-w-2023-r> (Accessed: 30 July 2025).

Poland Business Harbour (2025) gov.pl [Online]. Available at: <https://www.gov.pl/web/poland-businessharbour-en> (Accessed: 30 July 2025).

Przybylska-Maszner, B. (2012) 'Polityka eksternalizacji granic Unii Europejskiej w Afryce' in Żukowski, A. (eds.) *Stare i nowe mocarstwa w Afryce. Stygmaty kulturowe, religijne, polityczne*, Olsztyn. Kraków: Instytut Nauk Politycznych, pp. 423–451.

Szczepańska, E. (2021) 'Two groups of illegal migrants apprehended', *Border Guards*, 18 June. [Online]. Available at: <https://www.strazgraniczna.pl/pl/aktualnosci/9234,Zatrzymano-dwie-grupy-nielegalnych-migrantow.html> (Accessed: 30 July 2025).

Szczepańska, E. (2022) 'Construction of the barrier on the Polish-Belarusian border has started', *Border Guards*, 26 January. [Online]. Available at: <https://www.strazgraniczna.pl/pl/aktualnosci/9752,Ruszyla-budowa-bariery-na-granicy-polsko-białoruskiej.html> (Accessed: 30 July 2025).

Timeline – EU sanctions against Belarus (2024) *Council of the EU and the European Council* [Online]. Available at: <https://www.consilium.europa.eu/pl/policies/sanctions/restrictive-measures-against-belarus/belarus-timeline/> (Accessed: 30 July 2025).

UNHCR (2024) 'Analysis of the impact of refugees from Ukraine on the economy of Poland', *UNHCR Report conducted for UNHCR*, 04 March. [Online]. Available at: <https://data.unhcr.org/en/documents/details/106993> (Accessed: 30 July 2025).

Legal Sources

Act amending the Act on Assistance to Citizens of Ukraine in connection with the Armed Conflict on the Territory of that Country and Certain Other Acts of 8 June 2022, Journal of Laws 2022, item 1383.

Act amending the Act on foreigners and certain other acts of 14 October 2021, Journal of Laws 2021, item 1918.

Act on Assistance to Citizens of Ukraine in Connection with the Armed Conflict on the Territory of Ukraine of 12 March 2022, Journal of Laws of 2022, item 583, as amended.

Act on Foreigners of 12 December 2013, Journal of Laws. 2013 item 1650 as amended.

Act on Granting Protection to Aliens within the Territory of the Republic of Poland of 13 June 2003, Journal of Laws of 2003 No. 128 item 1176, as amended.

Act on Proceedings Before Administrative Courts from 30 August 2002, Journal of Laws of 2002, No 152, item 1270, as amended.

Council Implementing Decision (EU) 2022/382 of 4 March 2022 establishing the existence of a mass influx of displaced persons from Ukraine within the meaning of Article 5 of Directive 2001/55/EC, and having the effect of introducing temporary protection.

European Commission (2024a) Communication from the Commission to the European Parliament and the Council on countering hybrid threats from the weaponisation of migration and strengthening security at the EU's external borders. Available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=COM%3A2024%3A570%3AFIN> (Accessed: 30 July 2025).

Judgement of ECHR of 22 September 2009, Addolkhani and Karminia vs. Turkey, application no. 30471/08.

Judgement of ECHR of 23 July 2020, M.K and others v. Poland, applications nos. 40503/17, 42902/17 and 43643/17.

Judgement of ECHR of 24 February 2009, Khemais vs. Italy, application no. 246/07.

Judgement of ECHR of 8 July 2021, D.A. and others v. Poland, application no. 51246/17.

Judgement of the Polish Supreme Administrative Court of 26 August 1999, V SA 708/99.

Ordinance of the Council of Ministers on the determination of countries whose citizens applying for a temporary residence permit are not deducted in the determination of their monthly financial resources to cover the costs of residence of 24 September 2020, Journal of Laws of 2020, item 1688.

Ordinance of the Minister of Development, Labour and Technology amending the Ordinance on cases in which entrusting work to a foreigner on the territory of the Republic of Poland is permissible without the need to obtain a work permit of 20 November 2020, Journal of Laws of 2020, item 2081.

Ordinance of the Minister of Education and Science of 21 March 2022, Journal of Laws of 2023, item 2094.

Ordinance of the Minister of Internal Affairs and Administration of 20 August 2021 amending the Ordinance on temporary suspension or restriction of border traffic at certain border crossing points, Journal of Laws 2021, item 1536.

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

Regulation of the Council Of Ministers of 27 March 2025, on the temporary restriction of the right to apply for international protection, Journal of Laws 2025, item 390.