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The Migration Crisis on the Polish–Belarusian Border

Abstract: The crisis on the Polish–Belarusian border resulting in the unregulated migration of foreigners into the territory of Poland was inspired and supported by the Belarusian regime and was aimed at destabilizing the situation in the region. Poland was therefore forced to take action to protect the national border, which is also the external border of the European Union. However, some of the legal solutions that were adopted raise questions about their legality.

Keywords: migration crisis, migrant, Polish–Belarusian border, push-back, restriction of freedom of movement

Introduction

The migration of populations is a phenomenon known on all continents and taking place in all periods of history. Migration is triggered by economic and political crises, armed conflicts, and natural or other disasters. Migration can take place in a smooth manner, with a country welcoming migrants by creating conditions for residence or even assimilation and admitting foreigners to the labour market. However, there are situations where there are attempts to illegally cross a border, often on a mass scale. Such phenomena lead to migration crises. In modern Europe, the largest such crisis occurred in 2015, when more than 2 million third-country nationals were reported to have entered EU Member States illegally.¹ The people who came to

1 420,540 in 2011, 394,060 in 2012, 394,855 in 2013, 606,850 in 2014, 2,085,465 in 2015, 924,033 in 2016, 563,825 in 2017, 572,195 in 2018, 627,900 in 2019, and 557,455 in 2020. Data according to Eurostat, https://appsso.eurostat.ec.europa.eu/nui/show.do?dataset=migr_eipre&lang=en

Europe were mainly from Syria, Afghanistan, Iran, and other Middle Eastern and African countries. The reasons for the increased migration were unstable political and economic situations and warfare. The migration crisis of 2015 also had its consequences in Poland and contributed to Poland's violation of the principles of the Common European Asylum Policy by not fulfilling the country's relocation obligations.² The migration crisis that hit Poland in 2021 took a slightly different form.

The purpose of this paper is to present selected aspects of the migration crisis on the Polish–Belarusian border. The paper indicates the actions taken by Poland to address the problem and presents an assessment of the legal measures taken, mainly in the context of the *push-back* practice and the restrictions on freedom of movement that were imposed. The author will focus on the issue of assessing the legality of the adopted solutions. The study mainly uses the dogmatic and legal method and the descriptive method, in particular the sources of law existing in this area and the scholarly publications on this problem, which are few due to it having occurred recently.

1. The actions taken by Poland to solve the migration crisis on the Polish–Belarusian border

In 2015, Jaroszewicz and Kindler indicated that unregulated migration from Ukraine and Belarus could pose a serious challenge for EU Member States that share national borders with those countries.³ This is what happened on the Polish border with Belarus, as well as on the borders of Lithuania and Latvia with that country. Until April 2021, the number of people trying to enter the European Union via the so-called Eastern Borders Route, which includes Lithuania, Latvia, and Poland, was about 100 per month. In July 2021, the number exceeded 3,000.⁴ This event was surprising because the main migration routes existing at the time did not run from Belarus to Poland.⁵ Lukashenko's regime artificially created migratory pressure on the Polish–Belarusian border, which is also the external border of the EU, in response

(02.03.2022). For more on migration, see E. Karska, *Kilka uwag o uchodźstwie jako zagadnieniu prawnym*, (in:) E. Karska (ed.), *Uchodźstwo XXI wieku z perspektywy prawa międzynarodowego, unijnego i krajowego*, Warsaw 2020, pp. 9–21; E. Karska, *Słowo wstępne*, (in:) E. Karska (ed.), *Uchodźcy. Aktualne zagadnienia prawa i praktyki*, Warsaw 2017, pp. 7–10.

2 M. Zdanowicz, *Poland's Stance on the Refugee and Migration Crisis in the European Union*, 'Białostockie Studia Prawnicze' 2021, vol. 26, no. 1, p. 85ff.

3 M. Jaroszewicz, M. Kindler, *Irregular Migration from Ukraine and Belarus to the EU: A Risk Analysis Study*, CMR Working Paper 80/138, April 2015, p. 30.

4 Grupa Granica, *Kryzys humanitarny na pograniczu polsko-białoruskim*, p. 5, <https://www.grupagranica.pl/files/Raport-GG-Kryzys-humanitarny-napograniczu-polsko-bialoruskim.pdf> (02.03.2022).

5 For more, see https://pl.wikipedia.org/wiki/Kryzys_migracyjny_w_Europie (accessed 22 August 2022).

to the sanctions imposed on Belarus in connection with the rigged presidential elections and mass persecution of the opposition.⁶ At the same time, this crisis part of a hybrid operation conducted by the Belarusian secret services, was to be a test of the condition and defense readiness of NATO's eastern flank and was intended to weaken the EU's international authority. Lukashenko brought migrants, for a fee, via the so-called 'tourist offices'. The economic gains from this precedent were important, albeit secondary to the political intention.⁷ As early as 5 July 2020, the European Council president, Charles Michel, condemned the Belarusian authorities for all attempts to instrumentalize illegal migration in order to put pressure on EU Member States.⁸ According to the Ministry of the Interior and Administration, 2,100 people attempted to illegally cross the Polish–Belarusian border in August. Out of this number, the Border Guard prevented 1,342 attempted border crossings, and 758 foreigners were detained and placed in closed refugee centres run by the Border Guard. From the start of July until 17 August 2021, 380 foreigners were transferred from the territory of Poland (including to their countries of origin).⁹ In that period, the NGO Grupa Granica reported that on 8 August a group of Afghans was trapped on the Polish–Belarusian border in Usnierz Górny and then, on 20 August, was pushed by Polish Border Guard officers to the Belarusian side of the border.¹⁰ There were many more such incidents during this crisis.

On 20 August, the Minister of the Interior and Administration issued a regulation, on the basis of which persons not authorized to enter the territory of the Republic of Poland would be instructed to immediately leave the territory of the Republic of Poland and would be returned to the national border (§ 1 of the regulation).¹¹ Then on 2 September, the president of Poland issued a regulation on the basis of which a state of emergency was introduced in parts of the Podlaskie and Lubelskie prov-

6 Rozporządzenie wykonawcze Rady (UE) 2021/997 z dnia 21 czerwca 2021 r. w sprawie wykonania art. 8a ust. 1 rozporządzenia (WE) nr 765/2006 dotyczącego środków ograniczających wobec Białorusi, OJ L 219I, 21.06.2021, pp. 3–44.

7 B. Fraszka: Sytuacja na granicy polsko-białoruskiej: przyczyny, aspekt geopolityczny, narracje, <https://warsawinstitute.org/pl/sytuacja-na-granicy-polsko-bialoruskiej-przyczyny-aspekt-geopolityczny-narracje/> (22.08.2022).

8 Remarks by President Charles Michel on his arrival in Vilnius, <https://www.consilium.europa.eu/pl/press/press-releases/2021/07/05/remarks-by-president-charles-michel-upon-his-arrival-to-vilnius/> (02.03.2022).

9 <https://www.gov.pl/web/mswia/dzialania-polskich-sluzb-na-granicy-polsko-bialoruskiej> (03.03.2022).

10 Grupa Granica, Kryzys humanitarny... *op. cit.*, p. 5. Grupa Granica is a social movement formed in connection with the events that took place in the Polish–Belarusian borderland.

11 Regulation of the Minister of the Interior and Administration of 20 August 2021 amending the regulation on temporary suspension or limitation of the border traffic at certain border crossings (Journal of Laws of 2021, item 1536).

inces for 30 days (§ 1 of the regulation).¹² The regulation introduced restrictions on human and civil liberties and rights, including suspension of the freedom of assembly and the freedom of mass events, prohibition from staying in the area covered by the state of emergency for a specified period of time, and restriction of access to public information concerning activities carried out in the area covered by the state of emergency (§ 2 of the regulation). On 2 October, the state of emergency was extended for another 60 days.¹³

On 17 November 2021, the Parliament adopted a law on the basis of which a temporary ban on staying in a certain area in the border zone adjacent to the state border could be imposed (Article 1(1)).¹⁴ Based on the amended law, the Minister of the Interior and Administration issued a regulation on 30 November 2021 on the imposition of a temporary ban on staying in a specific area in the border zone adjacent to the national border with the Republic of Belarus.¹⁵ A temporary ban on staying in a specified area in this border zone was imposed for the period from 1 December 2021 to 1 March 2022 (§ 1(1) of the regulation). The area referred to in the regulation included the precincts specified in the list set out in an annex to the regulation, which included 115 localities in the Podlaskie province and 68 in the Lubelskie province. The restrictions in this area were extended pursuant to the Regulation of the Minister of Interior and Administration of 28 February 2022 on the imposition of a temporary ban on staying in a specified area in the border zone adjacent to the national border with the Republic of Belarus for the period from 2 March 2022 to 30 June 2022 (§ 1(1) of the regulation).¹⁶

It was obvious from the beginning that the Belarusian government was using migrants to destabilize the situation in the region. The European Council, at its meeting on 16 October 2021, strongly condemned the instrumental treatment of migrants and refugees by the Belarusian regime and the resulting humanitarian crisis. The European Council called in particular for effective protection of the EU's external

12 Regulation of the President of the Republic of Poland of 2 September 2021 on the imposition of a state of emergency in the area of a part of the Podlaskie province and a part of the Lubelskie province (Journal of Laws of 2021, item 1612).

13 Regulation of the President of the Republic of Poland of 1 October 2021 on the extension of a state of emergency imposed in the area of a part of the Podlaskie province and a part of the Lubelskie province (Journal of Laws of 2021, item 1788).

14 Act of 17 November 2021, Amending the Act on the Protection of the National Border and Certain Other Acts (Journal of Laws of 2021, item 2191).

15 Regulation of the Minister of the Interior and Administration of 30 November 2021 on the imposition of a temporary ban on staying in a specific area in the border zone adjacent to the national border with the Republic of Belarus (Journal of Laws of 2021, item 2193).

16 Regulation of the Minister of Interior and Administration of 28 February 2022 on the imposition of a temporary ban on staying in a specific area in the border zone adjacent to the national border with the Republic of Belarus (Journal of Laws of 2022, item 488).

borders, combating smuggling and trafficking in human beings, and supporting the return of migrants from Belarus (item 21 of the conclusions).¹⁷

Also, in its resolution of 7 October 2021, the European Parliament expressed strong solidarity with Lithuania, Poland, and Latvia, as well as other EU Member States targeted by the Belarusian regime, and strongly condemned the Lukashenko regime for using people instrumentally for political purposes. In addition, the Parliament stressed that the Belarusian state's support for illegal crossing of the EU's external border, combined with a disinformation campaign, was a form of hybrid war to intimidate and destabilize the EU.¹⁸

2. An attempt to legalize the push-back practice

The first adopted act that provided the basis for the implementation of the push-back practice in Poland was the Regulation of the Minister of the Interior and Administration.¹⁹ It provided the possibility to return persons not authorized to enter the territory of the Republic of Poland to the national border (§ 1 of the Regulation). In addition, the Act of 14 October 2021, commonly referred to as the 'Deportation Act', gave the commanding officer of the Border Guard the power to issue a decision on the departure from the territory of the Republic of Poland of an alien who has illegally crossed the border (Article 1(3)).²⁰ This in turn results in returning foreigners to the territory of Belarus.

The adoption of these acts and the actions taken by the Border Guard to turn back aliens raise questions about the legality of the push-back practice. According to Baranowska, 'the term *push-back* is used to describe the unlawful international practice of actually sending people back to the country from the territory of which they crossed the border (usually illegally) without giving them an opportunity to apply for refugee status and without initiating other administrative procedures against them, including return procedures'.²¹

In their published report, the Helsinki Foundation for Human Rights emphasizes that the regulation should be considered inconsistent with both international and EU law. The Schengen Borders Code states that in the event of the disclosure

17 European Council Meeting (16 December 2021) – Conclusions, Brussels, 16 December 2021, EUCO 22/21, item 21.

18 European Parliament resolution of 7 October 2021 on the situation in Belarus after one year of protests and their violent repression (2021/2881(RSP)), item 16.

19 Regulation of the Minister of the Interior, 20 August 2021, *op. cit.*

20 Act of 14 October 2021, Amending the Act on Aliens and Certain Other Laws (Journal of Laws of 2021, item 1918).

21 K. Baranowska, Legalność i dopuszczalność procedury push-back (wywózek) i ocena prób ich legalizowania w Polsce, (in:) W. Klaus (ed.), *Poza prawem. Prawna ocena działań państwa polskiego w reakcji na kryzys humanitarny na granicy polsko-białoruskiej*, Warsaw 2021, p. 10.

of an illegal crossing of the border by a foreigner outside the border crossing point, appropriate administrative proceedings should be implemented against him or her, aimed at obliging him or her to return in accordance with the guarantees provided for in Directive 2008/115/EC. In this case, the foreigner has the option of submitting an application for international protection, which should result in suspension, discontinuation or withdrawal from the proceedings initiated, or acceptance of the application from the foreigner and allowing them to enter Poland to participate in the refugee procedure.²²

The Convention Relating to the Status of Refugees, in Article 33, contains the principle of non-refoulement, according to which a country may not expel or return refugees to territories where their lives or freedoms would be threatened.²³ Individuals were usually turned around at night, at low temperatures, in difficult terrain conditions, often in forests. This procedure was followed despite the fact that Belarusian officials did not allow foreigners to move back into the country from the border, so that they could seek a safe return to their country of origin; foreigners were forced to make further attempts to cross the border. Violence or threats of death have been used on many occasions. The Border Guard returns persons without an analysis of the individual situations of the aliens, which violates the aforementioned principle. In addition, the aliens do not have the option to apply for international protection.

Hungary followed a similar practice during the 2015 migration crisis. The Court of Justice ruled that Hungary had failed in its obligation to ensure effective access to the international protection procedure because third-country nationals seeking to use the international protection procedure at the Serbian–Hungarian border were faced with an almost total impossibility to apply.²⁴

The European Court of Human Rights, in similar situations, also found Poland to have violated the European Convention on Human Rights when people arriving from Belarus were not allowed to apply for international protection.²⁵ The Polish Commissioner for Human Rights also emphasized that any person who, while staying at the border of the Republic of Poland, notifies a Border Guard officer carrying out any official activities against him or her of his or her intention to cross the border in order to apply for international protection in Poland should be admitted to Poland,

22 K. Czarnota, M. Górczyńska, Gdzie prawo nie sięga. Raport Helsińskiej Fundacji Praw Człowieka z monitoringu sytuacji na polsko-białoruskiej granicy, https://www.hfhr.pl/wp-content/uploads/2022/06/Raport_Gdzie_Prawo_Nie_Siega-HFPC-30062022.pdf, str. 33 (22.08.2022).

23 Convention relating to the status of refugees, made at Geneva on 28 July 1951 (Journal of Laws of 1991, no. 119, item 515).

24 Judgment of the Court (Grand Chamber) of 17 December 2020 on the case of European Commission v. Hungary, C 808/18.

25 Judgment of ECtHR of 23 July 2020, on the case of M.K. and others v. Poland, application nos. 40503/17, 42902/17, and 43643/17; Also Case of D.A. and others v. Poland, application no. 51246/17 Judgment of 8 July 2021.

and the Border Guard officer is obliged to accept an appropriate application from that person.²⁶

A group of foreigners who were returned to the Polish–Belarusian border in the summer of 2021 submitted a complaint to the European Court of Human Rights, which decided to apply interim measures in the cases of *Amiri and others v. Poland* (application no. 42120/21) and *Ahmed and others v. Latvia* (application no. 42165/21). The Court called on the Polish and Latvian authorities to provide all the applicants with food, water, clothing, adequate medical care, and, if possible, temporary shelter.²⁷

Baranowska points out that the push-back practice is also a violation of EU law, in particular the so-called Procedural Directive (2013/32/EU). According to its provisions, applicants for international protection must be allowed to remain in an EU Member State for the entire duration of the proceedings in their case. This directive provides for a simplified and expedited procedure but does not allow the application to be left unprocessed in any situation.²⁸ Półtorak also stresses that according to international law, EU law, and national law that is binding to Poland, an application for international protection cannot be refused. This means that any person who, while staying at the border of the Republic of Poland, notifies a Border Guard officer carrying out any official activities against him or her of his or her intention to cross the border in order to apply for international protection in Poland, should be admitted to Poland, and the Border Guard officer is obliged to accept an appropriate application from that person.²⁹

3. Restrictions on freedom of movement

Actions taken by the Polish government, which are reasonable from the point of view of protection of its national border and the country's security, may raise questions about the legality of certain restrictions, including those concerning the freedom of movement. The president of the Republic of Poland, in § 2(4) of the Regulation of 2 September 2021, introduces “a prohibition on staying at specified times in designated places, structures, and areas located in the area covered by the state of emergency”. This restriction was extended by legislation adopted later. In imposing a state of emergency, the president of the Republic of Poland invoked Ar-

26 <https://bip.brpo.gov.pl/pl/content/rpo-nieprzyjmowanie-wnioskow-o-ochrone-miedzynarodowa-w-strefie-przygranicznej-naruszenie> (12.30. 2022). See also Amnesty International, *Sytuacja w Usnarzu Górnym. Raport z wizyty w dniu 24.08.2021*.

27 ECHR 244 (2021), 25.08.2021; Court indicates interim measures in respect of Iraqi and Afghan nationals at Belarusian border with Latvia and Poland.

28 K. Baranowska, *Legalność...*, *op. cit.*, p. 10.

29 M. Półtorak, *Czy można odmówić przyjęcia wniosku o ochronę międzynarodową i kiedy uznaje się go za złożony?* (in: W. Klaus, ed., *Poza prawem...*, *op. cit.*, p. 5.

title 230(1) of the Constitution and Article 3 of the Act of 21 June 2002 on the State of Emergency.³⁰

According to Article 230(1) of the Constitution, the imposition of a state of emergency is allowed only in the event of a threat to the constitutional system of the state, the security of its citizens or to law and order. In addition, the imposition of a state of emergency is only permissible in situations of special danger if ordinary constitutional measures are insufficient (Article 228(1)). Both of these circumstances must occur together. According to Article 230(1 and 2) of the Constitution, a state of emergency may be imposed once for a period not exceeding 90 days and then extended only once for a period of 60 days. On the other hand, the Minister of the Interior and Administration, when introducing a temporary ban on staying in a specified area in the border zone adjacent to the national border with the Republic of Belarus, invoked Article 12a(2) of the Act of 12 October 1990 on the Protection of the National Border.

The introduction of restrictions on rights and freedoms has raised far-reaching concerns about the legality of such laws. In a cassation procedure to the Supreme Court, the Ombudsman has appealed against the lower court's verdict convicting journalists for violating the ban on staying in the area covered by the state of emergency. In the grounds of the judgment, the Supreme Court emphasized that the president, in the Regulation of 2 September 2021 which introduced the state of emergency, also introduced restrictions on rights and freedoms, including "the prohibition against staying at specified times in designated places, structures, and areas located in the area covered by the state of emergency". Therefore, there was an authorization to identify the specific circumstances in which the restriction of the freedom to stay in specific places was to occur.³¹

According to Article 92 of the Polish Constitution, regulations are issued by the authorities indicated in the Constitution on the basis of a specific authorization contained in the law and for the purpose of its implementation. The authorization should specify the authority competent to issue the regulation, as well as the scope of the matters delegated to be regulated and the guidelines for the content of the regulation, and the authority authorized to issue the regulation may not delegate its powers to another authority. A regulation is therefore required to 1) be based on a clear, detailed, and not presumptive authorization; 2) be within the scope of the authorization and within the limits of the authorization granted by the legislator and intended to implement the law as to the object and content of the normalized relations; and 3) have content that is not contradictory to the norms of the Constitution and to the

30 Constitution of the Republic of Poland of 2 April 1997 (Journal of Laws of 1997, no. 78, item 483, as amended); Act of 21 June 2002 on the State of Emergency (Journal of Laws of 2002, no. 117, item 985).

31 Judgment of the Supreme Court of 18 January 2022, Ref. I KK 171/21, p. 10.

law on the basis of which it was issued, as well as of all applicable laws that directly or indirectly regulate the matter subject to the regulation. Violation of even one of these conditions renders the regulation inconsistent with the Act and thus cannot be the source of obligation to the citizens, and consequently cannot constitute the basis for punishment for failure to comply with that obligation.³²

The Council of Ministers, in the Regulation of 2 September 2021, defined the scope of the restrictions by, among other things, prohibiting people from staying in the area covered by a state of emergency, effective 24 hours a day, in the area where the state of emergency has been imposed (§ 1(1)(4) and § 1(2) of the Regulation of the Council of Ministers).³³ In the grounds of its judgment, the Supreme Court emphasized that the restrictions imposed by the Regulation of the Council of Ministers are of a general nature (with some exceptions) and are applicable at all times and in the entire area where the state of emergency is in force. The Court agreed with the opinion of the Commissioner for Human Rights that there is no justification for imposing a ban that is blanket and complete in terms of time on the exercise of the freedom of movement in the area covered by, and during, the state of emergency. Accordingly, in the opinion of the Supreme Court, the Regulation of the Council of Ministers of 2 September 2021, to the extent that it imposes a prohibition, unlimited as to area and time, on staying in the area covered by the state of emergency, as well as to the extent that it does not allow journalists to stay in the area in connection with their professional activities, clearly exceeds the scope of the statutory delegation on which the Regulation was based and fails to pass the proportionality test set out in Article 228(5) of the Polish Constitution, Article 15(1) of the European Convention on Human Rights, and Article 4 of the International Covenant on Civil and Political Rights.³⁴

Górski points out that the Regulation of the President of 2 September 2021 did not specify in its § 2(4) either the ‘designated places, structures, and areas’ to which the ‘prohibition to stay’ would apply or the ‘specified times’ to which the ban would apply. Thus, in the author’s opinion, the Regulation of the President is contrary to Article 18(2)(1) of the Act on the State of Emergency in connection with Article 228(3) of the Polish Constitution. At the same time, Górski explains that it is not about the duration of the state of emergency, because this is determined on the basis of Article 230 of the Constitution and Article 3(2) of the Act on the State of Emergency and not on the basis of Article 18 of the Act on the State of Emergency. It is also not about the area in which the state of emergency is in force, because this too is determined by Ar-

32 *Ibidem*, p. 9.

33 Regulation of the Council of Ministers of 2 September 2021 on restrictions on freedoms and rights in connection with the imposition of a state of emergency (Journal of Laws of 2021, item 1613).

34 Judgment of the Supreme Court of 18 January 2022, *op. cit.*, p. 22.

title 3 of the Act on the State of Emergency, not by its Article 18. According to Górski, 'the state's political authorities deliberately chose such an imprecise (thus unconstitutional) definition of the territorial and temporal scope of the prohibition to stay in order to achieve a chilling side effect'.³⁵

What is also problematic is the extension of the restrictions, including those on the freedom of movement, beyond the periods provided for in Article 230(1 and 2) of the Constitution.³⁶ The rapidly adopted legislation that imposed restrictions on areas near the Polish–Belarusian border also raised a number of concerns regarding the possibility of providing humanitarian assistance to migrants crossing the border. In the opinion of Grzebyk, humanitarian organizations (including the Polish Red Cross), in accordance with international law, could offer humanitarian assistance in areas covered by the state of emergency, but they could only provide this assistance with the consent of the country affected by the humanitarian crisis. However, the Polish authorities could not arbitrarily deny humanitarian organizations access to people affected by the crisis. According to Grzebyk, with respect to the Polish Red Cross, it can be presumed that its employees had the right to provide humanitarian assistance in the area covered by the state of emergency, and only an explicit exemption in the state of emergency law could rebut such a presumption. However, she points out the contradiction between the provisions of the Act on the Polish Red Cross that grant the organization a special status and the provisions of the Act on the State of Emergency, which in Article 15 provides, among other things, that restrictions on human rights apply to any legal entity in its registered office or carrying out activities in an area covered by a state of emergency.³⁷ Also, Klaus is of the opinion that the actions of individuals providing free humanitarian aid to forced migrants present at the border do not constitute crimes such as assistance, an undocumented stay, or the organization of illegal border crossing. Activities such as providing food, clothing, medicine, or other products to facilitate survival in the forest are, in Klaus's opinion, perfectly legal.³⁸

35 M. Górski, Legalność wprowadzenia stanu wyjątkowego i ograniczeń praw obywatelskich nim nałożonych, w tym dotyczących przemieszczania się, (in:) W. Klaus (ed.), *Poza prawem...*, *op. cit.*, p. 20.

36 More information can be found in M. Górski, *Legalność...*, *op. cit.*, p. 21.

37 P. Grzebyk, Czy organizacje humanitarne, np. Polski Czerwony Krzyż, mają prawo działać w strefie stanu wyjątkowego?, (in:) W. Klaus (ed.), *Poza prawem...*, *op. cit.*, p. 24.

38 W. Klaus, Karanie za pomoc, czyli czy można pociągnąć do odpowiedzialności karnej osoby pomagające przymusowym migrantom i migrantkom na pograniczu, (in:) W. Klaus (ed.), *Poza prawem...*, *op. cit.*, pp. 31–32.

Conclusion

It is indisputable that the crisis on the Polish–Belarusian border resulting in the unregulated migration of foreigners into the territory of Poland was inspired and supported by the Belarusian regime and was aimed at destabilizing the situation in the region. Poland was therefore forced to take action to protect the national border, which is also the external border of the European Union. Poland imposed a state of emergency in parts of the Podlaskie and Lubelskie provinces, and after the end of the state of emergency, the restrictions were extended by the Regulation of the Minister of the Interior and Administration. However, some of the adopted solutions raise questions about their legality. The procedure of the Border Guard turning back persons, referred to as push-back, violates the fundamental principle of non-refoulement specified in the Convention Relating to the Status of Refugees. It is carried out without analysing the alien's individual situation. As a result of this practice, the aliens do not have the option to apply for international protection. Also, the imposition of restrictions on the freedom to stay in the area covered by the state of emergency fails to pass the proportionality test set out in Article 228(5) of the Polish Constitution, Article 15(1) of the European Convention on Human Rights, and Article 4 of the International Covenant on Civil and Political Rights. Moreover, it clearly exceeds the scope of the statutory delegation under which the regulation implementing the restriction was issued. In conclusion, Poland was forced by the actions of Belarus and the illegal influx of migrants to take steps to secure and protect its national border, which is the external border of the EU. However, not all instruments adopted are legal.

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