

NEW CHALLENGES FOR CROSSING THE SCHENGEN BORDER – RIGHT TO ASYLUM DURING POLISH- BELARUS BORDER CRISIS

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Abstract. Artificially created wave of irregular migrants at the Polish-Belarus is considered as one of the greatest challenges for EU member states, in this case Poland, in terms of border management (as part of Integrated Border Management), national and EU security and finally fundamental human rights and safety of migrants that are attempting to cross the border in a illegal manner. The article analyzes the legal issues that have appeared during the practice of returning irregular migrants, who declare the intent to apply for international protection in Poland (practice of so-called pushbacks).

Keywords: pushbacks; irregular migrants; Polish-Belarus border; asylum; international protection.

INTRODUCTION

The process of gradual abolishment of border checks on common borders of Schengen Area states was the main aim of the so-called Schengen Agreement.¹ According to Article 17 of the Schengen Agreement border check are to be transfer to the external borders of the Schengen states. This provision confirms that external borders of the Schengen Area are the only, where full border control and border checks are to be carried out. Therefore those Schengen states who directly respond for the border management and border traffic of the Schengen external border are, to some extent, in charge of the security of all Schengen states, especially in terms organized crime activities and irregular migration.

¹ Agreement between the Governments of the States of the Benelux Economic Union, the Federal Republic of Germany and the French Republic on the gradual abolition of checks at their common borders, OJ L 239, 22.9.2000, p. 13-18.

The Schengen *acquis* includes the Decision of the Executive Committee of 27 October 1998 on the adoption of measures to fight irregular immigration. Its preamble establishes the “necessity to respect human rights and underlining each Contracting State’s obligations arising from the European Convention for the Protection of Human Rights and Fundamental Freedoms and its protocols, the Geneva Convention on the Legal Status of Refugees and the New York Protocol, the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, the Convention on the Elimination of all forms of Discrimination against Women and the Convention on the Rights of the Child.”² As a result, any actions within the border checks or any activities within the integrated border management should take into account the abovementioned international agreements and rights there enshrined, especially the Geneva Convention on the Legal Status of Refugees. The right to apply for asylum³ is also guaranteed by the Article 18 of the Charter of Fundamental Rights of the European Union, providing that “the right to asylum shall be guaranteed with due respect for the rules of the Geneva Convention of 28 July 1951 and the Protocol of 31 January 1967 relating to the status of refugees and in accordance with the Treaty on European Union and the Treaty on the Functioning of the European Union.”⁴ Thus, once the Border Guard official receives a declaration from a third-country nationals about the intent to submit the application on international protection, the particular administrative proceedings have to started.

The crisis on the Poland-Belarus border has started in the summer of 2021 when the number of third-country nationals attempting to cross the Schengen external border in the illegal manner, therefore not through the official border crossing points (so-called BCPs) in order to avoid the border checks, has significantly increased. Rapidly the border crisis turned into the humanitarian one, where at least 37 people have died in the period from September 2021 until February 2023, however this is a number of identified cases of death, but the real number maybe even higher.⁵ Perhaps the num-

² Decision of the Executive Committee of 27 October 1998 on the adoption of measures to fight illegal immigration, OJ L 239, 22.09.2000, p. 203-204.

³ The term “asylum” used in EU’s documents should be understand as right to apply for “international protection” as provided in Article 2(a) of the Directive 2011/95/EU of the European Parliament and of the Council of 13 December 2011 on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection, and for the content of the protection granted (recast), OJ L 337, 20.12.2011, p. 9-26. Therefore the right to asylum means the right to apply for international protection, which has two forms: refugee status and subsidiary protection.

⁴ Charter of Fundamental Rights of the European Union, OJ C 326, 26.10.2012, p. 391-407.

⁵ See Grupa Granica, *Cykliczny raport Grupy Granica z sytuacji na pograniczu polsko-białoruskim*, Warsaw 2023, s. 3-4.

ber may not seem high in comparison to statistics on irregular migration at Mediterranean Sea, yet it has to be taken into account that Poland-Belarus border is a land border. This situation happened to be the greatest border crisis caused by migration flow in recent years on Schengen land external border. It is important to mention that based on considerable evidence this migration flow was artificially provoked by the Lukashenko's regime, who arranged a lot of diplomatic effort of its diplomatic missions in particular host states in Middle East, Africa or Asia. Belarus diplomatic personnel in those countries introduced a propaganda campaign and encouraged people to come to Belarus in order to easily enter European Union. Some experts claim that it is a hybrid warfare, which Lukashenko applies in order to achieve particular political goals [Łubiński 2022, 43-44]. Nonetheless, regardless of its origins, the wave of irregular migration on Polish-Belarus border within time turned into a humanitarian crisis and involved practices that raised particular legal issues and from legal perspective should be identified as a violation of Schengen and EU regulations.

The aim of this chapter is to analyze how effective the right to asylum is in terms of large flow of irregular migration at the Schengen external borders and discuss the most significant legal issues that were identified in the case of Belarus-Polish border crisis. In order to accomplish the aforementioned aim the analysis of legal provisions will be applied, including dogmatic legal method and comparative legal method.

1. CRITERIA TO ENTER SCHENGEN AREA BY THIRD-COUNTRY NATIONALS

As it has been already mentioned in Schengen Area there is no border control on its internal borders. Obviously, temporary reintroduction of border control is legally permissible in particular cases and by 2021 three overlapping regimes of temporarily reintroduction of border controls in the Area may be identified: those reintroduced to counter so-called secondary movements (the movement of people seeking international protection within the Schengen Area), those reintroduced to counter terrorism and those introduced to counter the spread of Covid-19 [Guild 2021, 388-89]. As a result, the main responsibility for border controls is transferred on the external borders of the Schengen Area.

The main regulation that establishes entry conditions for third-country nationals into the Schengen Area is the so-called Schengen Borders Code.⁶

⁶ 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), OJ L 77, 23.3.2016, p. 1-52.

In its Article 6 Schengen Borders Code provides for the following criteria that are to be met by a third-country national, who is to enter the Schengen Area state: “is in possession of a valid travel document entitling the holder to cross the border satisfying the following criteria; is in possession of a valid visa, if required; can justify the purpose and conditions of the intended stay and has sufficient means of subsistence; is not a person for whom an alert has been issued in the SIS for the purposes of refusing entry; is not considered to be a threat to public policy, internal security, public health [...]”

The abovementioned criteria do not apply, if “a third-country nationals who do not fulfil one or more of the conditions laid down in paragraph 1 may be authorized by a Member State to enter its territory on humanitarian grounds, on grounds of national interest or because of international obligations. Where the third-country national concerned is the subject of an alert as referred to in paragraph 1(d), the Member State authorizing him or her to enter its territory shall inform the other Member States accordingly” (Article 6(5)(c) of the Schengen Borders Code). This exact provision enables to derogate the previous conditions and still allow third-country national to enter Schengen Area state, if it is required on humanitarian grounds, on grounds of national interest or because of international obligations. The right to asylum should be identified as a reason that lies within the “international obligations”, including for instance obligations enshrined in the Geneva Convention relating to the status of refugees.⁷ If this provision did not exist, there could be a high risk of refoulement of the possible asylum seeker [Pijnenburg and Rijken 2021, 289] who would be deprived of their right submit the application for international protection. Therefore, Schengen Borders Code itself provides for a possibility for entering the Schengen state by a third-country national without fulfilling all necessary conditions (usually without possessing a valid visa or valid travel document) based on personal declaration about the intent to apply for international protection.⁸

Accordingly to the conditions for entry of third-country nationals established in Article 6 of Schengen Borders Code all Schengen states had the obligation to introduce regulations that were to establish the same criteria by the national laws. In case of Poland the regulation that provides for these conditions is called “Act on Foreigners” and in its Article 28 the Act provides for more elaborated list of conditions for refusing of entry for the third-country nationals, which however do not apply, if a third-country national declares about the intent to apply for international protection in Poland.⁹ Thus, Polish

⁷ Convention relating to the status of refugees, 189 UNTS 137.

⁸ In the EU the application for asylum is called “application for international protection” and a third-country national may be granted the following forms of international protection: refugee status or subsidiary protection.

⁹ Act of 12 December 2013 on Foreigners, Journal of Laws of 2023, item 519.

national law provides for the same exception in case a third-country national who declares the intent to apply for international protection.

2. APPLYING FOR INTERNATIONAL PROTECTION DURING POLISH-BELARUS BORDER CRISIS – LEGAL ISSUES

Unfortunately more experts claim that the Polish-Belarus crisis was the first time, however probably not last, in the recent history when humans were used by regime as a tool of the hybrid warfare against EU [Filipec 2022, 2-3]. The European Commission and EU leaders accused Lukashenko of intentionally assisting the trafficking of migrants from the Middle East to the Poland-Belarus border (to enable them the entry into EU and Schengen Area via Poland), forcing the EU, especially Polish authorities, to abandon its humanitarian responsibility [Editorial 2021, 1]. At the most culminative moment, on 8 November 2021 between 3 000 to 4 000 thousands of third-country nationals gathered at the border on the Belarus side [Bornio 2021, 2]. The fact that at some point third-country nationals gathered at the border means that a vast majority of them later attempted to cross the border not through the official border crossing points. When they did and where detected by the Polish Border Guard officials crossing the Schengen external border in a illegal manner, at the spot they communicated the Border Guard officials the intent to apply for international protection. In such situation, no matter if the third-country national had crossed the border in an illegal manner,¹⁰ Polish Border Guard official has to initiate administrative proceedings that are to enable a third-country national to submit the application for international protection on the territory of Poland. Nevertheless, such situations where in minority.

According to the Schengen Borders Code and Polish Act on Foreigners in case of third-country national, who illegally crossed the Polish-Belarus border, Border Guard authorities have to proceed on the procedure of receipt of the application for international protection as soon as they hear that this is the will of that person. However, the opposite has become increasingly noticeable as the number of attempts to illegally cross the border or to actually cross it in violation of the law (not through the official border crossing points) has increased. The number of third-country nationals attempting to cross the Polish and Schengen external border caused that Border Guard officers have started to increasingly “ignore” declarations of third-country

¹⁰ Article 31 of the Convention relating to the status of refugees, 189 UNTS 137. However, the obligation of State Parties not to penalize the illegal entry or stay of refugee concerns those third-country nationals, who entered the territory of particular country illegally directly from a territory where their life or freedom was threatened.

nationals based on Article 28(2)(2a) of the Act on Foreigners about their intention to apply for international protection in Poland. Denying entry to Poland to a third-country national who has declared his intention to apply for international protection on the territory of Poland is a direct violation not only of Article 28(2)(2a), but also of the right to asylum guaranteed by the Charter of Fundamental Rights of the European Union, not to mention the obligations of Poland as a State Party to the Geneva Convention relating to the status of refugees.

Ignoring the declarations of third-country nationals, who have been detected during their attempt to illegally cross the Polish border or right after, Border Guards initiated the infamous practice of so called “pushbacks”, which Border Guards decides to justify it with provisions of Polish domestic law. The practice of pushbacks means that Border Guard officials forced a third-country national back over the border, without their individual situation being assessed [Baranowska 2021, 195]. In 2022 a Polish regional court in Hajnówkę issued a judgment concerning pushback practice carried out on the basis of the executive order of the Commander of the Border Guards Facility, in which the court declared that pushbacks are illegal, unjustified, unlawful and irregular.¹¹ What is more, the UN Special Rapporteur on the human rights of migrants has defined the term “pushback” as: “various measures taken by States, sometimes involving third countries or non-State actors, which result in migrants, including asylum seekers, being summarily forced back, without an individual assessment of their human rights protection needs, to the country or territory, or to sea, whether it be territorial waters or international waters, from where they attempted to cross or crossed an international border.”¹² Moreover, the European Court on Human Rights in case *D.A. and Others v. Poland* ruled that the Polish authorities were found to have violated the prohibition on torture and inhuman or degrading treatment, the prohibition on collective expulsions, the right to an effective remedy and the right of individuals to make an application to the court.¹³ Some pushbacks of third country nationals were carried out after the one had already spent couple of days in Poland, usually due to important injuries, as a result of which a person had to undergo a medical treatment. The Regional Administrative Court in Białystok found the return of the Ethiopian citizen to the state border line to be ineffective. The court had no doubts as to the factual circumstances, i.e. taking the third country national with a broken leg in a trunk behind the border fence, despite the fact that he

¹¹ Judgment of the Regional Court in Bielsko Podlaskie, VII Penal Branch Division in Hajnówka, 2022, ref. no. VII Kp 203/21.

¹² Special Rapporteur on the Human Rights of Migrants, *Report on means to address the human rights impact of pushbacks of migrants on land and at sea*, 12 May 2021, A/HRC/47/30.

¹³ *D.A. and others v. Poland*, European Court of Human Rights, Application no. 51246/17.

had been discharged from the hospital with a stabilizing splint and referred for surgery. In justifying the ruling, the court referred to established case law in cases concerning return to the border line. The court also emphasized that “in accordance with the guidelines of the Border Guard Headquarters, the foreigner should be recognized as an applicant in refugee (international protection) proceedings even if he did not declare his intention to seek international protection directly, but only expressed a fear of returning to his country of origin in a covert or implied manner. Therefore, the body was obliged to recognize the complainant as an applicant for protection and to enable him to submit an application on the form [...]. [...] the declaration of submitting such an application should be accepted by the Border Guard officer who first comes into contact with the foreigner.”¹⁴ What is important, is that this judgment, despite of referring to the pushback practice, underlines also that it is not necessary for a third country nationals to clearly express the intent to apply for international protection.

The inevitable doubt that appears at this point is how, in such situation, the Polish Border Guards justified the practice of pushback, if both courts – Polish and European Court on Human Rights – ruled that they are illegal?

Polish Border Guards raised couple of legal issues as to justify the refusal of entering Poland. First of all, Border Guards official claimed that there was no legal basis for allowing a third-country national to enter Poland, and therefore Schengen Area, who without meeting the conditions established by Schengen Borders Code and Polish law were trying to cross the border in an illegal manner. The fact that these third-country nationals were requesting asylum at the border seemed to be ignored. Second of all, Border Guards officials raised the issue that the principle of *non-refoulement* has not been violated by their actions. According to that principle no State shall expel, return or extradite a person to another State where there are substantial grounds for believing that he would be in danger of being subjected to torture. For the purpose of determining whether there are such grounds, the competent authorities shall take into account all relevant considerations including, where applicable, the existence in the State concerned of a consistent pattern of gross, flagrant or mass violation of human rights.¹⁵ The principle should be understand as “forbidding to send back” [Molnar 2016, 51]. Evidently, for Polish Border Guards it is clear that there is no risk of any inhumane or degrading treatment by returning a third-country national to Belarus. However, according to the European Court of Human Rights “if a State removes an asylum applicant to a third country without examining the merits of the application itself, it must review whether the applicants

¹⁴ Judgement of the Regional Court in Białystok of 5 March 2024, ref. no. II SA/Bk 71/24.

¹⁵ Article 3 of the Convention against torture and other cruel, inhumane or degrading treatment, 1465 UNTS 85.

would have access to adequate asylum procedures in said third country [...] *inter alia*, that the State's claim that the applicants did not present documents requesting international protection was not credible, and that there was evidence to support the claim that their asylum applications would not be treated seriously by Belarusian authorities in the event of their return. [...] The Court concluded that the Polish authorities had failed to review the applicants' requests for international protection, in compliance with their procedural obligations, contrary to Article 3 ECHR."¹⁶ The Court in the same case noted that "by failing to allow the applicants to remain on Polish territory pending the examination of their applications, the Polish authorities knowingly exposed the applicants to a serious risk of *chain-refoulement* and treatment prohibited by Article 3 ECHR in Belarus."

What is more, Border Guards claimed that Belarus is not a country of origin of these third-country nationals – it is a country, to which those third-country nationals, who attempt to illegally cross the Polish-Belarus border, arrived upon their own will. It is hard not to agree with that fact, nevertheless in the light of existing evidence it is beyond any doubt that Lukashenko's police and border guards officials are using force and abuse towards migrants at the border, persuading them not to return back to Belarus.¹⁷ From this perspective, their situation should be considered on individual basis before returning them back, especially to the territory of the country, whose authorities apply mass human rights violations in order to oppress their own citizens.

Another legal issue raised by the Polish Border Guards in order to justify their action at the Polish-Belarus border is that the border itself does not constitute Polish territory and therefore Polish authorities has no obligation in accepting declarations about the intent to submit the application for international protection. Nonetheless, there were issued a couple of judgments that seem to clarify this issue. According to the Regional Court in Bielsk Podlaski Local Criminal Division in Siemiatycze "the wall on the border does not exactly stand in the line of the border, since it was built on the Polish side, about 1-2 meters from the border. [...] the strip of land behind the wall is Polish territory [...] court's findings in this regard are also important for assessing the situation of people who are right next to the border wall and apply for international protection."¹⁸ In another case concerning 32 Afghan nationals, who have been confined for approx-

¹⁶ *M.K. and Others v. Poland*, European Court of Human Rights, Application nos. 40503/17, 42902/17, 43643/17. The case concerned the repeated refusal of Polish Border Guards to examine applications for international protection.

¹⁷ Council of the EU, Press release no. 925/21, 2 December 2021.

¹⁸ Judgement of the Regional Court in Bielsk Podlaski Local, Criminal Division in Siemiatycze, (2023), ref. no. VIII W 292/23.

imately seven weeks in a makeshift camp on the border between Belarus and Poland, the Court in its *interim measure* notice decided “to indicate to the Polish Government that the applicants should not be sent to Belarus, provided that the information submitted by the applicants’ representative is accurate, and the applicants are on Polish territory.”¹⁹

From the procedural point of view it is important to underline the fact, that a pushback makes it impossible for a third country national to legally challenge violation of his right to asylum before the Polish courts. Apparently, the Ombudsman is an authority that can act on behalf of third country national in such cases. Supreme Administrative Court confirmed the legitimacy of the Commissioner for Human Rights to file a complaint regarding the so-called pushback stating that “The Commissioner for Human Rights has the right to independently assess whether the protection of human and civil rights justifies his participation in the ongoing administrative court proceedings, as well as to file the provided legal remedies. The Commissioner’s participation in the proceedings before administrative courts may consist in a request to initiate proceedings, the external form of which is a complaint filed with the administrative court, or in the Commissioner reporting his participation in the proceedings already underway. Not only the correctness of the decision to participate in these proceedings is not subject to the court’s assessment, but also the choice made by the Commissioner in what capacity he will appear in the proceedings.”²⁰ The most problematic is the issue of possible “return” of the third country national to Poland in case Polish court finds that he was subjected to the practice of pushback in violation of the law.

The abovementioned migration challenges caused EU members states, especially those located along the external border of EU, to increase funds for border management. However, the ratio indicates that states are far more concerned about their own safety and policy, than about the rights of irregular migrants willing to apply for international protection. According to the report *Beyond walls and fences: EU funding used for a complex and digitalized border surveillance system* “35.66% of national programmes funds is dedicated to strengthening infrastructure and equipment. While the European Commission has ruled out the possibility of using BMVI funding for walls and fences, Member States can use it to finance the renovation and establishment of buildings and permanent surveillance infrastructures, including in countries with track records of pushbacks or unlawful detention at borders. The funding is also being used to increase border controls with new technologies and the deployment of artificial intelligence

¹⁹ *R.A. and Others v. Poland*, European Court of Human Rights, Application no. 42120/21.

²⁰ Judgement of the Supreme Administrative Court of 9 January 2024, ref. no. II OSK 2751/22.

measures.”²¹ While in the meantime “only 0.04% of the funding in Member States’ programmes is allocated to initiatives designed to increase support and assistance to people with vulnerabilities and people wishing to apply for international protection.”²² Explanation for such an approach should be presented into two spheres. First of all, EU member states introduce measures and instruments in order to guarantee that third country nationals, who enter their territory to it in a legal manner, where their personal data can be verified. Second of all, EU member states desire to show a clear sign to Belarus and obviously Russian regimes that by provoking and, as a result, using irregular migration as a tool to destabilize EU they will not achieve their goal. Unfortunately, whatever is the reason for any action on the Belarus-Polish border, there will always be people trapped in the middle.

Situation at the Polish-Belarus border brought a couple of legal solutions that were to deal with the migration and safety challenges, however recent governmental initiative seems to cause most doubts about whether this solution does not violated not only Poland’s international obligations, but Polish Constitution as well. One of the elements of the Migration Strategy for Poland for the years 2025-2030 are new legal changes regarding asylum law. The authors of the strategy propose introducing an instrument of “temporary and territorial suspension of the right to submit asylum applications.” Apparently, proposed changes do not cover only asylum, but also international protection. Both the right to asylum and the right to international protection have constitutional status. According to Article 56(1) of the Polish Constitution, foreigners may exercise the right to asylum under the terms specified in the Act. This Act is the Act on granting protection to foreigners on the territory of Poland.²³ According to that Act a foreigner may, at his/her request, be granted asylum in the Republic of Poland, when it is necessary to provide him/her with protection and when it is in the important interest of the Republic of Poland. Granting asylum is discretionary and is left to the discretion of state authorities. It is possible to limit the constitutional right to asylum, but only with respect for the requirements specified in Article 31(3) of the Constitution. It follows from the above that such a limitation would have to meet, above all, the requirement of proportionality. Furthermore, a limitation of the right to asylum could not violate the principle of equality before the law, which requires identical treatment of persons in the same or similar legal situation. In such a case, the principles

²¹ PICUM, ECRE, *Beyond walls and fences: EU funding used for a complex and digitalized border surveillance system*, June 2024, s. 6.

²² Ibid.

²³ Act of 13 June 2003 on granting protection to aliens within the territory of the Republic of Poland, Journal of Laws No. 189, item 1472 [hereinafter: act on granting international protection].

arising from Article 2 of the Constitution of the Republic of Poland would also be of significant importance, such as the protection of acquired rights, the principle of proper legislation, the principle of non-retroactivity of law or the requirement to maintain an appropriate *vacatio legis*. In contrast to the right to asylum, the Constitution of the Republic of Poland, when introducing the right to international protection (refugee status and subsidiary protection), refers to international agreements binding on Poland. It follows from the above that it is international agreements that set the limits of Poland's obligation to provide foreigners with protection from persecution. At the same time, it would be impermissible to limit the right to asylum and international protection in a way that does not result from agreements binding on Poland. Geneva Convention on status of refugees and supplementary New York Protocol²⁴ are considered the most fundamental international agreement concerning that matter. Due to the content of Article 56(2) of the Constitution of the Republic of Poland indicates that the fundamental law gives them the "nature of a constitutional right." The Geneva Convention not only introduces the definition of a refugee, but also applies one of the most important principles of international refugee law, i.e. the principle of non-refoulement, according to which no contracting state shall expel or return in any way a refugee to the border of territories where his life or freedom would be threatened because of his race, religion, nationality, membership in a specific social group or political beliefs. It is generally believed that recognizing a given person as a refugee is of a declarative nature. This means that if he meets the conditions of the definition of the Geneva Convention, he becomes a refugee, even if this status has not yet been officially granted to him by the relevant state authorities. If, according to the Polish Constitution, right to asylum and refugee are of constitutional nature, then they can not be "temporary and territorially suspended."

FINAL REMARKS

Migration crisis at the Poland-Belarus border apparently is not the first border crisis of the Schengen Area states involving irregular migration, however it is the first time when third-country nationals were used as an instrument of hybrid warfare against an EU member state, a Schengen Area state and consequently the whole EU itself.

The current migration crisis at the Poland-Belarus raised important legal issues in terms of crossing the Schengen border and applying for international protection at the border. Firstly, a large number of irregular migrants (third-country nationals) trying to cross the border in an illegal manner

²⁴ Convention relating to the status of refugees, U.N.T.S. vol. 189, p. 137.

caused the practice of “ignoring” by the Border Guards their declarations about the intent to apply for international protection and proceed with actions on return them to the territory of Belarus. Secondly, by “ignoring” declarations on international protection Border Guards had a justification for so-called pushbacks of third-country nationals to the territory of Belarus, therefore returning them without any due consideration of their individual situation. The lack of appropriate proceedings on consideration of the individual situation of third-country nationals before returning them to Belarus raised the claim of violation of the *non-refoulement* principle in those cases. Border Guards officially justified their actions with the fact that Belarus is not the country of origin of third-country nationals that were attempting to cross the border in illegal manner, therefore there is no risk of inhumane or degrading treatment in Belarus. Nevertheless, as evidence has shown, there is a number of identified cases of abuse and violence against migrants on the territory of Belarus. What is more, asylum applications of these third-country nationals submitted to the Belarus authorities will not be treated seriously and with due procedural safeguards. Thirdly, Poland-Belarus migration crisis raised the territorial issue, therefore if the border can be considered as Polish territory? As the case law of European Court of Human Rights and Polish national courts has shown it is the territory of Poland and should be treated as such in terms of Polish obligations under international agreements, which Poland is a State Party to.

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