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**Crisis-Induced Changes in
Migration Laws and Policies:
Investigating the Impact of
Crises on Migrant Workers and
Forced Migrants in Poland**

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Crisis-Induced Changes in Migration Laws and Policies: Investigating the Impact of Crises on Migrant Workers and Forced Migrants in Poland

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Abstract

Crises are often considered to induce restrictive changes in migration laws and policies, and Poland was forced to respond to the plethora of crises in the recent years: from economic through health and socio-political to migration crises. Thus, this working paper seeks to identify a nexus between different crises and Polish migration laws and policies and aims at determining directions and target groups of the identified legal and policy changes prompted by those crises. For those purposes, Polish extensive legislation in the field of migration adopted in the period of 2008-2024 was scrutinized. The legal analysis was supplemented by the examination of the respective domestic policies. This investigation has shown that crises indeed altered migration laws and policies in Poland, albeit not all of them had such an impact. Majority of the analysed crises led to changes restrictive for third-country nationals; however, beneficial modifications were also identified. Interestingly, irrespective of the type of the crisis, the restrictions were implemented rather with regard to forced migrants than migrant workers.

Keywords

Crisis, Poland, Migrant Workers, Asylum Seekers, Migration Law, Labour Migration, Forced Migration

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1 Introduction

Common wisdom holds that crises bring about restrictive changes in migration laws and policies. The relation between crises and these restrictions is, however, both supported and questioned in the literature (Roos and Zaun 2018, 1-3, 8). Some recent crises, like the COVID-19 pandemic or the Russian invasion of Ukraine, indeed led to legal and policy changes that were beneficial for third-country nationals, while others – like the refugee crisis of 2015/2016 – prompted restrictions in this regard. Hence, it is justified to ask whether crises induce modifications in migration laws and policies, whether these changes are mostly restrictive in their character, and whether the restrictions concern all third-country nationals or only some of them. Accordingly, taking the example of Poland, this working paper seeks to identify a nexus between crises and migration laws and policies and aims at determining directions (restrictive or beneficial) and target groups of the legal and policy changes prompted by crises.

This working paper focuses on Poland for three main reasons. First, Poland was forced to respond to the plethora of crises in the recent years. It was affected by the worldwide crises like the global economic crisis and COVID-19 pandemic. Moreover, it had to bear the detrimental consequences of the Russian and Belarusian policies, including of the Russian invasions of Ukraine and the ‘instrumentalization of migrants’¹ employed at the Belarusian border. Thus, the Polish example allows for an analysis of the state reactions to diverse crises: from economic through health and socio-political to migration crises.

Second, the situation of migrant workers and forced migrants is scrutinized separately in this paper to mirror dissimilar approaches to those groups, on the one hand, shown by Polish law- and policymakers and, on the other hand, arising from the international and EU legal frameworks. For many years, migrant workers – especially from the neighbouring countries like Ukraine and Belarus – have been welcomed in Poland, while forced migrants have been considered unwanted and deterred from crossing the Polish borders (Szulecka 2022, 179). Meanwhile, forced migrants are generally more protected by international and EU law than migrant workers. The international legal framework concerning refugees is widely accepted (at least in terms of the number of ratifications) and well-established, so it should effectively constrain the state’s intentions to introduce crisis-related restrictions (Roos and Zaun 2018, 2, 4). Meanwhile, international instruments aimed at the protection of the migrant workers’ rights are ratified by merely a few states and are often criticized for their insufficiencies and weaknesses (Fudge 2011, 35-45; Zou 2015, 152-157). Legal protection of asylum seekers and beneficiaries of international protection arising from the EU law is also much more developed than that of migrant workers. Hence, the case of Poland – with its hospitable approach towards migrant workers and hostile treatment of asylum seekers – offers an interesting factual setting for the analysis of the crisis-induced changes in laws and policies considering that migrant workers may be seen as more susceptible to crisis-related restrictions than forced migrants due to their generally weaker legal protection under international and EU law.

Lastly, this paper is aimed at complementing the abundant literature on crisis-related legal and policy changes in different countries. Currently, a comprehensive, cross-cutting and up-to-date legal

¹ For the definition, see Article 1(4)(b) of the Regulation (EU) 2024/1359 of the European Parliament and of the Council of 14 May 2024 addressing situations of crisis and force majeure in the field of migration and asylum and amending Regulation (EU) 2021/1147. For more see Ganty, Ancite-Jepifánova and Kochenov 2024.

analysis of the developments in the Polish migration laws and policies intertwined with different crises is lacking despite the growing relevance of Poland as a country of immigration and protection (Kaczmarczyk 2024, 1245-1246).

Accordingly, this working paper seeks to answer a question of whether and how Polish laws and policies concerning migrant workers and forced migrants were changed in response to different crises occurring in the period of 2008-2024. The article proceeds as follows. Section 2 specifies the scope of the working paper by determining Polish laws and policies as well as crises relevant for this study. In Section 3, the crisis-induced changes in the Polish migration laws and policies are analysed: first, as regards migrant workers (3.1) and, second, concerning forced migrants (3.2). Section 4 offers an insight into the results of the conducted analysis by determining the nexus between crises and Polish laws and policies as well as by stipulating the directions and target groups of the identified crises-induced legal and policy changes.

2 Scope of Analysis

At the very heart of this working paper are migration laws and policies adopted and applied in Poland from 2008 to 2024. Throughout this paper, “migration laws and policies” are understood broadly, i.e. as all legal acts and policies (written and unwritten) concerning third-country nationals. Accordingly, this term includes asylum law and policy.

Polish legislation on migration consists of numerous and extensive laws (*ustawy*) and regulations (*rozporządzenia*). General rules concerning entry, stay and return of third-country nationals in Poland are regulated by the Aliens Law. In the examined period, two versions of this act were in force: of 2003² and 2013³. The rules arising from the Aliens Law are supplemented by the 2003 International Protection Law,⁴ which applies to asylum seekers as well as temporary and international protection beneficiaries, and the 2004 Labour Promotion Law⁵, that concerns work permits. Based on those laws, governmental regulations are issued that regulate migration issues in even greater detail.

In addition to these laws, specific pieces of legislation were adopted in 2008-2024 that were directly aimed at preventing or mitigating the effects of the different crises. For example, in response to the global economic crisis the 2009 Economic Crisis Law was adopted,⁶ to react to the COVID-19 pandemic the 2020 COVID Law⁷ and the 2020 Border Traffic Regulation⁸ were introduced, and to deal with mass influx of persons displaced from Ukraine the 2022 War in Ukraine Law⁹ was proposed. These legal acts often concerned more than just migration issues; thus, their analysis for the purposes of this study was limited to the provisions pertinent to third-country nationals.

² Ustawa z dnia 13 czerwca 2003 r. o cudzoziemcach.

³ Ustawa z dnia 12 grudnia 2013 r. o cudzoziemcach.

⁴ Ustawa z dnia 13 czerwca 2003 r. o udzielaniu cudzoziemcom ochrony na terytorium Rzeczypospolitej Polskiej.

⁵ Ustawa z dnia 20 kwietnia 2004 r. o promocii zatrudnienia i instytucjach rynku pracy.

⁶ Ustawa z dnia 1 lipca 2009 r. o łagodzeniu skutków kryzysu ekonomicznego dla pracowników i przedsiębiorców.

⁷ Ustawa z dnia 2 marca 2020 r. o szczególnych rozwiązaniach związanych z zapobieganiem, przeciwdziałaniem i zwalczaniem COVID-19, innych chorób zakaźnych oraz wywołanych nimi sytuacji kryzysowych.

⁸ Rozporządzenie Ministra Spraw Wewnętrznych i Administracji z dnia 13 marca 2020 r. w sprawie czasowego zawieszenia lub ograniczenia ruchu granicznego na określonych przejściach granicznych.

⁹ Ustawa z dnia 12 marca 2022 r. o pomocy obywatelom Ukrainy w związku z konfliktem zbrojnym na terytorium tego państwa.

Polish migration law not only is extensive but also frequently changed. Until the end of 2024, both versions of the Aliens Law were amended in total by 66 acts, the text of the 2003 International Protection Law was modified 38 times, and the 2004 Labour Promotion Law – 154 times (however, in case of this act, not all these amendments concerned third-country nationals). Some of the acts constituting a direct crisis response were also frequently changed. While the 2009 Economic Crisis Law was modified only once, the 2020 COVID Law was changed 72 times (again not all changes directly or specifically concerned third-country nationals) and the 2022 War in Ukraine Law was amended by 29 acts. All these amendments – with their justifications provided for in the draft laws – were scrutinized for the purposes of this paper.

Additionally, domestic policies were investigated. Accordingly, a governmental document titled “Polish Migration Policy” (*Rada Ministrów* 2012) was analysed. However, it was in force merely for four years (2012-2016). Only in October 2024, a new migration strategy was adopted (*Rada Ministrów* 2024). Regarding the scarcity of official documents concerning migration policy in Poland, unwritten policies must have been also identified and considered for the purposes of this study. Thus, the examination of the legal acts was supplemented by the analysis of other available documents that identified domestic policies, including official statements of governmental representatives, information from media outlets and reports of international and national organizations and bodies.

The abovementioned laws and policies were examined for their nexus with the pertinent crises identified in Poland in the period of 2008-2024. The word “crisis” is diversely understood both in academia (Hategekimana et al. 2024, 7-9) and in everyday life. It is also nowadays overused, especially by politicians, including lawmakers. While the word “crisis” appears in the legal texts, it is most often not legally defined. Concerning the lack of a comprehensive, general definition of a crisis in the Polish, EU and international law,¹⁰ this working paper derives from the etymological origins of the word “crisis”. Thus, a crisis is understood as a “vitally important or decisive state of things, defined as a point at which change must come, for better or worse” (Bergman-Rosamond et al. 2022, 3). Considering the focus of this paper on legal and policy changes, a perception of a crisis by domestic authorities, in particular law- and policymakers, was found especially relevant.

Accordingly, this working paper focuses on the Polish response to six crises: the global economic crisis, the refugee crisis of 2015-2016, the COVID-19 pandemic, the political crisis in Belarus following the rigged elections of 2020, the humanitarian crisis at the Belarusian border ongoing since 2021 and Russian invasions of Ukraine resulting in much-increased immigration to Poland and EU. They represent a variety of crises: economic, health, migration and socio-political, that affected Poland – and Polish migration laws and policies – in a diverse manner.

3 Crisis-Induced Legal and Policy Changes

Changes in the Polish migration laws and policies prompted by the crises are considered in this working paper separately as regards migrant workers and forced migrants. A “migrant worker” is understood as a third-country national “who is to be engaged, is engaged or has been engaged in a

¹⁰ Cf. Article 1(4) of the Regulation (EU) 2024/1359 of the European Parliament and of the Council of 14 May 2024 addressing situations of crisis and force majeure in the field of migration and asylum and amending Regulation (EU) 2021/1147 – applicable only from 1 July 2026.

remunerated activity” in Poland.¹¹ The term “forced migrants” encompasses, for the purposes of this working paper, asylum seekers and temporary protection beneficiaries (and other persons displaced from Ukraine since 24th February 2022). Asylum seekers are persons seeking international protection (refugee status and subsidiary protection). Temporary protection beneficiaries are persons displaced from Ukraine specified in the Council Implementing Decision.¹²

The two groups are not exclusive. In practice, migrant workers may decide to seek asylum or benefit from temporary protection. Asylum seekers and temporary protection beneficiaries also – sooner or later – access the labour market, so become migrant workers. Moreover, some third-country nationals can be perceived as (potential) migrant workers even though they are primarily forced migrants.

Acknowledging these overlaps, as well as the criticism of the categorization of migrants (see e.g. Bakewell 2021), this paper relies on the differentiation between migrant workers and forced migrants provided for in the Polish migration laws and policies. The rights of migrant workers are regulated mostly by the 2013 Aliens Law (and its previous version) and 2004 Labour Promotion Law, while the rights of forced migrants are predominately arising from the 2003 International Protection Law. This categorization has been reflected also in the domestic policies: while migrant workers have been more and more welcomed in Poland, asylum seekers have been increasingly considered unwanted and deterred from coming to Poland (Szulecka 2022, 179). The differentiation is, thus, well-grounded in the national law and policy that are at the very centre of this study.

3.1 Migrant Workers

Labour migration has been continuously prioritized by the Polish authorities due to the labour shortages persisting in Poland that have been induced by the demographic ageing and rising depopulation (Jaroszewicz, Krępa and Pachocka 2024, 6; Klaus 2020, 83-84). To meet the needs of the Polish labour market, numerous legal changes were adopted since the mid-noughties that were aimed at opening the labour market to foreign workers, especially those originating from the neighbouring states like Ukraine and Belarus (Florczak 2023, 340-344; Górny et al. 2018, 88; Homel, Jaroszewicz and Lesińska 2023; Kaczmarczyk 2024, 1233; Kicingier and Koryś 2011, 352-353, 366-367; Okólski and Wach 2020, 151-154; Sadowski 2022, 152-154; Wysieńska and Karpiński 2011, 20-21). In consequence, the number of migrant workers in Poland has been constantly rising since 2005 (Wysieńska and Karpiński 2011, 15; Górny et al. 2018, 87) and, more recently, Poland become a leader in admitting migrant workers in the EU (Perkowska 2020, 11; Sadowski 2022, 155; Szulecka 2022, 179). This section explains whether and how these welcoming laws and policies changed in response to the relevant crises: the global economic crisis (sec. 3.1.1), COVID-19 pandemic (sec. 3.1.2), political crisis in Belarus (sec. 3.1.3) and Russian invasions of Ukraine (sec. 3.1.4).

¹¹ This definition relies on the one provided for in Article 2(1) of the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, adopted in New York on 18 December 1990.

¹² Article 2 of the 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.

3.1.1 Global Economic Crisis

The global economic crisis of the late noughties grossly impacted worldwide economy. In Poland, it caused a temporal rise of an unemployment rate (*Rada Ministrów* 2012). However, overall, Poland was not as greatly affected by this crisis as some other countries (Górny et al. 2018, 6, 156; Janicka and Kaczmarczyk 2018, 116, 121).

Polish authorities responded to the this crisis by adopting the 2009 Economic Crisis Law. It was aimed at preventing or mitigating the effects of the economic crisis, especially an insolvency of the employers and an unemployment of the employees.¹³ While this law introduced some solutions that could have been applied to third-country nationals, none of these measures was directly and specifically intended for this group. The anti-crisis law applied to all workers irrespective of their nationality or citizenship. Thus, migrant workers were not treated differently than Polish employees.

Only one legal provision concerning third-country nationals was changed in response to the global economic crisis. Article 12 of the 2009 Economic Crisis Law allowed for the temporary reduction of the employee's working hours and remuneration due to the employer's financial problems resulting from the crisis. However, in accordance with the 2004 Labour Promotion Law,¹⁴ applying this solution to a migrant worker required changing his work permit; otherwise, the work permit would be invalidated. Thus, in 2010, the latter act was changed. Since February 2011, a reduction of the working hours and remuneration based on the 2009 Economic Crisis Law did not result in the invalidation of the work permit if the employer immediately informed – in writing – authorities about this change of the working conditions.¹⁵

Thus, the impact of the global economic crisis on the Polish migration law must be considered negligible. In particular, Poland did not limit access to the labour market for migrants during this crisis. As noticed in the 2012 Polish Migration Policy, economic crises may entail restrictions for migrants but not in times of labour shortages:

The global economic crisis, which is also accompanied by rising unemployment in Poland, limits the discussion on the recruitment of foreign workers. However, due to the existing shortages of workers in some industries, the Polish economy remains open to the influx of migrant workers (Rada Ministrów 2012, 125).¹⁶

Hence, due to the labour shortages resulting from, *inter alia*, the demographic ageing and rising depopulation in Poland (Jaroszewicz, Krępa and Pachocka 2024, 6), Poland needed to remain open to migrant workers despite the increase in the unemployment rate caused by the global economic crisis. Accordingly, this crisis did not prompt restrictive law and policy changes as regards migrant workers in Poland.

¹³ See the justification of the draft law no. 2044, proposed on 5 June 2009, <https://orka.sejm.gov.pl/proc6.nsf/opisy/2044.htm> (last accessed on 12 December 2024), 1-3.

¹⁴ Article 88k of the 2004 Labour Promotion Law.

¹⁵ Article 88i of the 2004 Labour Promotion Law changed by *Ustawa z dnia 16 grudnia 2010 r. o zmianie ustawy o promocji zatrudnienia i instytucjach rynku pracy oraz niektórych innych ustaw*.

¹⁶ Translated from Polish to English by the author.

3.1.2 COVID-19 Pandemic

The COVID-19 pandemic was a global health crisis that started at the end of 2019 and led to millions of deaths worldwide. In Poland, over 6.764.000 cases of illness and almost 121.000 deaths were confirmed until November 2024 (WHO 2024). The pandemic affected not only people's lives, but also national economies and labour markets. Due to pandemic, numerous companies in Poland were closed (temporarily or permanently) and many migrant workers left the country, or could not access it, which exacerbated the labour shortages in Poland (Fiałkowska and Matuszczyk 2020, 2, 5; Jaroszewicz, Krępa and Pachocka 2024, 8-9).¹⁷

The outbreak of the pandemic was followed by the adoption of the 2020 COVID Law designed to minimize the risk to public health brought in by coronavirus.¹⁸ This new law enabled a continuous legal stay and work during the pandemic for third-country nationals already living in Poland. Validity of their visas, residence permits and work permits was automatically extended several times, in the end until July 2023 (Kaczmarczyk 2024, 1234-1235; Princ 2020, 103-104).¹⁹ It was an apt response to a harsh reality of pandemic during which freedom of movement was gravely restricted, migration offices were closed or limited their operation, and access to postal services was hampered. In these circumstances, it would have been very difficult for third-country nationals to follow the regular rules concerning residence and work permits and, accordingly, to remain legally in Poland and work there in accordance with the law during the pandemic.²⁰ Thus, while the abovementioned changes were predominantly aimed at easing the immigration offices' workload during the pandemic (Klaus 2021, 8-9; see also Florczak 2023, 343), they offered some benefits to third-country nationals too (Łodziński and Szonert 2023, 20; Princ 2020, 107).

Some measures introduced by the 2020 COVID Law were applicable both to Polish and foreign workers. For example, the new law allowed employers to change the employees' working conditions due to the ongoing pandemic. However, under the 2013 Aliens Law and the 2004 Labour Promotion Law, in case of a migrant worker, these adaptations required changing his/her work permit. Considering the limited operation of the migration offices during the pandemic, these rules needed to be amended. Thus, since May 2020, a change of working conditions based on the 2020 COVID Law did not require modifying a work permit.²¹ Moreover, under the 2020 COVID Law, both Polish and migrant workers and entrepreneurs could benefit from a special allowance for the periods of an economic inactivity caused by the COVID-19 pandemic.²²

¹⁷ See also the justification of the draft law no. 299, proposed on 26 March 2020, <https://www.sejm.gov.pl/Sejm9.nsf/druk.xsp?nr=299> (last accessed on 12 December 2024), 1.

¹⁸ See the justification of the draft law no. 265, proposed on 1 March 2020, <https://www.sejm.gov.pl/Sejm9.nsf/druk.xsp?nr=265> (last accessed on 12 December 2024), 1.

¹⁹ Articles 15z-15z², 15³-15⁷, 15zd, 15zzq, 15zzza, 15zzzb of the 2020 COVID Law.

²⁰ See justification of the Draft law no. 299, proposed on 26 March 2020, <https://www.sejm.gov.pl/Sejm9.nsf/druk.xsp?nr=299> (last accessed on 12 December 2024), 30.

²¹ See the justification of the draft law no. 344, proposed on 28 April 2020, <https://www.sejm.gov.pl/Sejm9.nsf/druk.xsp?nr=344> (last accessed on 12 December 2024), 53-55, adding Article 15z⁵ of the 2020 COVID Law, see also Article 88f(1c) of the 2004 Labour Promotion Law, changed by *Ustawa z dnia 17 grudnia 2021 r. o zmianie ustawy o cudzoziemcach oraz niektórych innych ustaw*.

²² Article 15zq of the 2020 COVID Law.

Further favourable solutions for migrant workers were adopted in December 2021 when the 2013 Aliens Law and the 2004 Labour Promotion Law were changed.²³ The amendment was aimed at simplifying and accelerating all work-related procedures, including those concerning visas, work permits and residence permits (Florczak 2023, 340-342).²⁴ These changes were far-reaching and effective: the number of migrant workers in Poland steadily increased during the pandemic (Jaroszewicz, Krępa and Pachocka 2024, 9-10; Kaczmarczyk 2024, 1245).

As specified in its official justification, the amendment of December 2021 aimed at responding to the general and long-lasting trends in Poland, so the continued increase of migrant workers and constant labour shortages.²⁵ However, these changes must be also seen as directly linked to the difficulties observed at the Polish labour market during the pandemic. In 2020, many workers unexpectedly returned to their countries of origin (in particular to Ukraine) or could not return to Poland due to the closed borders and consulates (Fiałkowska and Matuszczyk 2020, 2, 5; Jaroszewicz, Krępa and Pachocka 2024, 8-9). The labour shortages were exacerbated, pushing employers to lobby even more for the further opening of the labour market to migrants (Jaroszewicz, Krępa and Pachocka 2024, 10). While these pandemic-specific problems were not directly mentioned in the draft law of the amendment adopted in December 2021, they surely affected the preceding legislative processes.

The beneficial changes introduced at the end of 2021 were also connected with the expected, pandemic-induced, increase in the arrivals of essential workers.²⁶ Their entry to and work in Poland were eased during the pandemic. In 2020, an access to the Polish labour market for doctors, dentists, nurses, midwives and paramedics from non-EU states was facilitated.²⁷ Moreover, the Ministry of Agriculture and Rural Development published special guidelines for farmers employing seasonal workers (*Ministerstwo Rolnictwa i Rozwoju Wsi* 2020; see also Klaus 2021, 8) and consulates in Ukraine prioritized their visa applications (Kaczmarczyk 2024, 1235). In practice, these workers faced less pandemic-related restrictions than other third-country nationals (Jaroszewicz, Krępa and Pachocka 2024, 11-12).

The general rules concerning entry to Poland introduced in response to the pandemic were, however, not so favourable for third-country nationals. In March 2020, the Ministry of Internal Affairs and Administration adopted the 2020 Border Traffic Regulation that suspended or limited traffic on some border crossings with Belarus, Russian Federation (still in force at the end of 2024), Ukraine (until 19 February 2022) and on the EU internal borders (until 13 June 2020) (Guild 2021, 398). The limitation of the border traffic meant that, as a rule, only persons mentioned in the Border

²³ *Ustawa z dnia 17 grudnia 2021 r. o zmianie ustawy o cudzoziemcach oraz niektórych innych ustaw.*

²⁴ See the justification of the draft law no. 1681, proposed on 22 October 2021, <https://www.sejm.gov.pl/Sejm9.nsf/druk.xsp?nr=1681> (last accessed on 12 December 2024), 1-6.

²⁵ See the justification of the draft law no. 1681, proposed on 22 October 2021, <https://www.sejm.gov.pl/Sejm9.nsf/druk.xsp?nr=1681> (last accessed on 12 December 2024), 1.

²⁶ See the justification of the draft law no. 1681, proposed on 22 October 2021, <https://www.sejm.gov.pl/Sejm9.nsf/druk.xsp?nr=1681> (last accessed on 12 December 2024), 48.

²⁷ *Ustawa z dnia 27 listopada 2020 r. o zmianie niektórych ustaw w celu zapewnienia w okresie ogłoszenia stanu zagrożenia epidemicznego lub stanu epidemii kadr medycznych; Rozporządzenie Ministra Rozwoju, Pracy i Technologii z dnia 20 listopada 2020 r. zmieniające rozporządzenie w sprawie przypadków, w których powierzenie wykonywania pracy cudzoziemcowi na terytorium Rzeczypospolitej Polskiej jest dopuszczalne bez konieczności uzyskania zezwolenia na pracę.*

Traffic Regulation could enter Poland. That list was changed many times, but migrant workers (not only the essential ones) have been continuously included therein from the very beginning.

Thus, the strongly market-oriented approach to migration persisted – and flourished – in Poland during the pandemic (Klaus 2021, 10; Jaroszewicz 2023; Jaroszewicz, Krępa and Pachocka 2024, 3, 14). It consistently induced legal changes that were benevolent for migrant workers (all, not only essential ones) and their employers.

3.1.3 Political Crisis in Belarus

During the pandemic, in 2020, the presidential elections in Belarus were won – according to the official announcements – by Alexander Lukashenko. The results were claimed to be falsified which prompted protests and riots around the country that were brutally suppressed by the Belarusian forces. Numerous protesters were arrested; use of violence, including torture, was reported. Reacting to the fraudulent elections and the following persecution of the political opponents, the EU imposed sanctions against Belarus (European Council 2024) and many Belarusians decided to emigrate, mostly to the neighbouring countries (Galles 2023; Homel, Jaroszewicz and Lesińska 2023, 3-4).

Poland offered support to the protesters and persons willing to leave Belarus (*Ministerstwo Spraw Zagranicznych* 2021). Accordingly, the political situation in Belarus since 2020 prompted numerous legislative and policy changes in Poland. They successfully enabled many Belarusians to come to and work in Poland (Homel, Jaroszewicz and Lesińska 2023; Klaus 2021, 5-6, 10). According to the Office for Foreigners, as of June 2022, the overall number of residence permits given to Belarusian nationals has risen by 90% since the beginning of 2021 (*Urząd do Spraw Cudzoziemców* 2022). The number of temporary residence permits, mostly granted in relation to work in Poland, has been also systematically increasing, reaching over 63.000 in December 2023 (*Urząd do Spraw Cudzoziemców* 2023). This data does not include visas that have been generously given to Belarusian nationals since August 2020 (Galles (2023)).

The outburst of riots and protests in Belarus prompted Polish authorities to offer, under Article 60(1) point 23 of the 2013 Aliens Law, humanitarian visas to Belarusian nationals. From August to December 2020, as many as 47.000 humanitarian visas were issued for Belarusians (Homel, Jaroszewicz and Lesińska 2023, 3). Since December 2020, the holders of such visas have been allowed to work in Poland without a work permit.²⁸ Since July 2022, they can also apply – under preferential conditions – for a three-year temporary residence permit that entails a right to work in Poland.²⁹ Upon being granted with this permit, since January 2023, they can also receive a Polish travel document for third-country nationals.³⁰

²⁸ *Rozporządzenie Ministra Rozwoju, Pracy i Technologii z dnia 20 listopada 2020 r. zmieniające rozporządzenie w sprawie przypadków, w których powierzenie wykonywania pracy cudzoziemcowi na terytorium Rzeczypospolitej Polskiej jest dopuszczalne bez konieczności uzyskania zezwolenia na pracę.*

²⁹ *Ustawa z dnia 8 kwietnia 2022 r. o zmianie ustawy o pomocy obywatelom Ukrainy w związku z konfliktem zbrojnym na terytorium tego państwa oraz niektórych innych ustaw changing Article 186(1) of the 2013 Aliens Law by adding point 9; Rozporządzenie Ministra Spraw Wewnętrznych i Administracji z dnia 14 czerwca 2022 r. w sprawie obywatelstw, których posiadanie uprawnia cudzoziemców do ubiegania się o udzielenie zezwolenia na pobyt czasowy, o którym mowa w art. 186 ust. 1 pkt 9 ustawy z dnia 12 grudnia 2013 r. o cudzoziemcach.*

³⁰ *Article 252(2a) of the 2013 Aliens Law added by Ustawa z dnia 8 kwietnia 2022 r. o zmianie ustawy o pomocy obywatelom Ukrainy w związku z konfliktem zbrojnym na terytorium tego państwa oraz niektórych innych ustaw.*

Moreover, the “Poland. Business Harbour” program was introduced in September 2020, initially only for Belarusians. It offered relocation assistance for IT businesses. Accordingly, dedicated visas were granted to Belarusian IT specialists which – since December 2020 – gave them full access to the Polish labour market. Only until the end of 2020, almost 70.000 visas with the “Poland. Business Harbour” annotation were issued (Homel, Jaroszewicz and Lesińska 2023, 3). According to Galles (2023), “(m)ore than 80 % of Belarus companies in exile are based in Poland thanks to the Poland Business Harbour.” The program was considered by PACE as “a promising practice to be emulated by other member States” (PACE 2023). However, it was suspended in January 2024 (Ministerstwo Spraw Zagranicznych 2024).

More facilitations for Belarusian nationals were introduced in 2021. Since mid June 2021, they can apply for a visa not only to the Consul but also to the Ministry of Foreign Affairs.³¹ Additionally, in 2022, an exception from the rule that visas can be obtained only abroad was introduced. From August 2022 to March 2023, Belarusians could prolong their humanitarian or “Poland. Business Harbour” visas during their stay in Poland. A humanitarian visa could be also granted by the Ministry of Foreign Affairs if a Belarusian national had flown from Ukraine after 24th February 2022 and lived legally in Ukraine before the Russian invasion.³²

Thus, the political crisis in Belarus prompted extensive and very beneficial changes for the specific group of migrant workers: Belarusian nationals. Their entry to Poland was facilitated – irrespective of the ongoing pandemic (Galles 2023; Klaus 2021, 10-11) – and they gained a wide access to the Polish labour market.

3.1.4 Russian Invasions of Ukraine

Russian invasions of Ukraine started in 2014 with the occupation of Crimea. Already at that time, greater migratory movements to Poland were observed that were intertwined with the economic recession in Ukraine following the invasion (Jaroszewicz and Grzymiski 2021, 260, 265-266; Kaczmarczyk 2024, 1227, 1238; Klaus 2020, 76; Rada Ministrów 2024, 6). As noticed in the 2017 Amendment of the 2013 Aliens Law:³³

*The rapid increase in the number of cases concerning the legalization of the foreigners' stay in Poland in the recent years is primarily related to the unstable situation in Ukraine which affects the choices of Ukrainian nationals regarding the transfer of their centre of life to the territory of our country.*³⁴

While the government considered this increased influx of Ukrainian nationals as a migration crisis (Skiba 2016), this narrative was mostly aimed at justifying the government's passivity and lack of

³¹ Rozporządzenie Ministra Spraw Zagranicznych z dnia 28 maja 2021 r. w sprawie państw, w których cudzoziemcy mogą składać wnioski o wydanie wizy przez ministra właściwego do spraw zagranicznych.

³² Article 79a of the 2013 Aliens Law added by Ustawa z dnia 8 kwietnia 2022 r. o zmianie ustawy o pomocy obywatelom Ukrainy w związku z konfliktem zbrojnym na terytorium tego państwa oraz niektórych innych ustaw; Rozporządzenie Ministra Spraw Zagranicznych z dnia 18 sierpnia 2022 r. w sprawie wydawania wiz krajowych cudzoziemcom przebywającym na terytorium Rzeczypospolitej Polskiej.

³³ Ustawa z dnia 24 listopada 2017 r. o zmianie ustawy o cudzoziemcach oraz niektórych innych ustaw.

³⁴ See Ocena Skutków Regulacji in the draft law no. 1780 proposed on 21 August 2017, <https://www.sejm.gov.pl/Sejm8.nsf/druk.xsp?nr=1780> (last accessed on 12 December 2024), 11. Translated from Polish to English by the author.

solidarity in response the refugee crisis in Europe (see sec. 3.2.1). The government's approach to the increased post-2014 influx of Ukrainian nationals was not shared in the literature (Filipek and Polkowska 2020, 209-210; Jaroszewicz and Grzymski 2021, 266; Klaus 2017, 19; Markiewicz-Stanny 2021, 112; Perkowska 2020, 28; cf. Kowalski 2016, 97).

At this time, despite the ongoing invasion, Ukrainian nationals came to Poland mostly to work, not to seek protection (Kaczmarczyk 2024, 1238; Klaus 2020, 76, 78; Kowalski 2016, 97-98; Szczepanik and Tylec 2016, 71). Ukrainian workers were welcomed: they were needed to counteract the persisting labour shortages, and their increased influx since 2014 boosted the economic growth in Poland (Strzelecki, Growiec and Wyszyński 2022, 390). National authorities, however, have been overwhelmed by the rapidly rising numbers of applications for residence and work permits (*Najwyższa Izba Kontroli* 2024). Accordingly, several legal changes have been introduced since 2015 with the aim of facilitating the rules concerning third-country nationals' work in Poland and consequently unburdening domestic authorities (Florczak 2023, 340-342; Górski 2023, 27-29; cf. Klaus 2020, 84-85).

The character and scope of migratory movements from Ukraine to Poland changed in February 2022 when the full-scale invasion of Ukraine started. Almost 9.3 million third-country nationals crossed the Ukrainian border with Poland in 2022, which constituted a 133% increase compared to 2021 (*Straż Graniczna*). That scope of forced migration was extraordinary for Poland and entailed unprecedented challenges both for Poland and EU (Guild and Groenendijk 2023; Łodziński and Szonert 2023, 22, 24; Klaus 2022, 17, 21). The EU Member States quickly responded to the influx of persons displaced from Ukraine. In March 2022, they adopted the Council Implementing Decision that activated – for the first time in 20 years – the Temporary Protection Directive.³⁵ Third-country nationals fleeing Ukraine were given generous rights (Franssen 2023, 11-12; Guild and Groenendijk 2023; Prantl and Kysel 2022), including a right to stay and work in the Member States.

Access to the labour market was willingly given to persons displaced from Ukraine, both in the EU (Łysienia and Kurt 2025) and Poland. Under the newly adopted 2022 War in Ukraine Law, Ukrainian nationals and some of their family members who left Ukraine on or after 24th February 2022 gained a right to work in Poland without a work permit, however, their employment must have been duly notified by the employer to the respective national authorities.³⁶ Other non-Ukrainian temporary protection beneficiaries – international and national protection beneficiaries and permanent residence holders in Ukraine – enjoy temporary protection as guaranteed in the 2003 International Protection Law (Adamski and Florczak 2024, 304).³⁷ They also have access to the Polish labour market, however they are not burdened with a notification obligation (Łysienia 2024, 45).

Benevolent solutions were offered not only to temporary protection beneficiaries. Ukrainian nationals who legally stayed in Poland before 24th February 2022 had the validity of their residence

³⁵ Council Directive 2001/55/EC of 20 July 2001 on minimum standards for giving temporary protection in the event of a mass influx of displaced persons and on measures promoting a balance of efforts between Member States in receiving such persons and bearing the consequences thereof.

³⁶ Article 22(1) point 2 of the 2022 War in Ukraine Law. However, it was seen as conflicting with Article 12 of the Temporary Protection Directive (Adamski and Florczak 2024, 313-314; Górski 2023, 34-35).

³⁷ Under Article 107(1) of the 2003 International Protection Law, until 4 March 2026.

permits automatically extended and they were given access to the labour market during their continued legal stay in Poland (Adamski and Florczak 2024, 305-306, 313; Klaus 2022, 154).³⁸ Moreover, taking into account labour shortages in Poland and the increased needs of Ukrainian community in Poland, access to the labour market was facilitated for Ukrainian doctors, dentists, nurses, midwives, psychologists, academic teachers and researchers, school assistants and miners (Łysienia 2024b, 42-43).

Meanwhile, Russian nationals faced less beneficial treatment since the beginning of the war. In 2022, the practice of the Polish consular offices changed, and Russian nationals increasingly struggled to receive a visa to Poland (Hyndle-Hussein and Chmielewski 2022; SIP 2022b). On 19 September 2022, the Border Traffic Regulation – initially adopted in response to the COVID-19 pandemic (see sec. 3.1.2 and 3.2.2) – was amended in order to restrict access to Poland for Russian nationals via the EU external border.³⁹ Moreover, in October 2022, Russian nationals lost a facilitated access to the Polish labour market (Florczak 2023, 345).⁴⁰ Furthermore, in June 2023, a traffic of heavy goods vehicles registered in Belarus and the Russian Federation via the Belarusian border was disabled.⁴¹ The government argued that the Russian invasion of Ukraine increased concerns regarding a possible Russian hybrid attack on Poland (*Ministerstwo Rodziny i Polityki Społecznej* 2023b, 98-99); thus, the abovementioned changes were seemingly needed for security-related reasons. However, they also aligned with the decisions of the Baltic states and EU concerning Russian nationals and assets that were more political than security-driven (European Council 2022; Hyndle-Hussein and Chmielewski 2022; Rosina 2024, 539-540).

The Russian invasions of Ukraine – ongoing since 2014 – led to the beneficial changes for migrant workers coming from Ukraine to Poland. Ukrainian nationals were granted extensive access to the Polish labour market even before February 2022. The latest Russian invasion of Ukraine and the activation of the generous rights provided for in the Temporary Protection Directive only exacerbated this welcoming approach (Kaczmarczyk 2024, 1246). At the same time, the Russian nationals' access to Poland, and to the Polish labour market, has been consistently hampered since 2022.

3.2 Forced Migrants

While Poland increasingly opened its doors to migrant workers (see sec. 3.1), it more and more closed them for asylum seekers (Szulecka 2022, 179). Meanwhile, Poland has never been a prime destination for refugees. Throughout the years, the annual numbers of asylum applications remained

³⁸ Article 22(1) point 2 and Article 42 of the 2022 War in Ukraine Law.

³⁹ *Rozporządzenie Ministra Spraw Wewnętrznych i Administracji z dnia 19 września 2022 r. zmieniające rozporządzenie w sprawie czasowego zawieszenia lub ograniczenia ruchu granicznego na określonych przejściach granicznych*, adding §3a to the Border Traffic Regulation.

⁴⁰ *Rozporządzenia Ministra Rodziny i Polityki Społecznej z dnia 25 października 2022 r. zmieniające rozporządzenie w sprawie państw, do których obywateli stosuje się niektóre przepisy dotyczące zezwolenia na pracę sezonową oraz przepisy dotyczące oświadczenia o powierzeniu wykonywania pracy cudzoziemcowi; Rozporządzenia Ministra Rodziny i Polityki Społecznej z dnia 25 października 2022 r. zmieniające rozporządzenie w sprawie określenia przypadków, w których zezwolenie na pracę cudzoziemca jest wydawane bez względu na szczegółowe warunki wydawania zezwoleń na pracę cudzoziemców.*

⁴¹ *Rozporządzenie Ministra Spraw Wewnętrznych i Administracji z dnia 29 maja 2023 r. zmieniające rozporządzenie w sprawie czasowego zawieszenia lub ograniczenia ruchu granicznego na określonych przejściach granicznych*, adding §1a to the Border Traffic Regulation.

low compared to other EU Member States (from approx. 2.800 to 15.000 per year in the period of 2008-2023) (*Urząd do Spraw Cudzoziemców*; see also Kicingier and Koryś 2011, 352). Moreover, those who registered their asylum applications in Poland often left it afterwards (Bodnar and Grzelak 2023, 58; Klaus 2020, 77; Okólski and Wach 2020, 150, 152). Despite the low presence of asylum seekers in Poland, since the parliamentary elections of 2015, they have been considered by politicians, including law- and policymakers, to constitute a serious threat (Klaus 2017, 19-20). This approach was exacerbated during the COVID-19 pandemic and again in 2021 when the increased numbers of third-country nationals – supported or forced by the Belarusian authorities – irregularly crossed the Polish border (Ganty, Ancite-Jepifánova and Kochenov 2024, 745-746; Forti 2022). In contrast to the deterring approach towards asylum seekers shown by the Polish authorities since 2015, in 2022, Poland willingly welcomed persons displaced from Ukraine (Łysienia 2024b, 10; Łodziński and Szonert 2023, 23). Accordingly, in this section, it is examined whether and how Polish laws and policies concerning forced migrants changed in response to five relevant crises: the refugee crisis of 2015-2016 (sec. 3.2.1), COVID-19 pandemic (sec. 3.2.2), political crisis in Belarus (sec. 3.2.3), crisis at the Belarusian border (sec. 3.2.4) and Russian invasions of Ukraine (sec. 3.2.5).

3.2.1 Refugee Crisis

In 2015 and 2016, much-increased arrivals of third-country nationals via the Mediterranean Sea prompted a widespread narrative of a ‘refugee crisis’ under way in Europe (Almustafa 2022, 1065). However, no mass influx of third-country nationals was identified at the Polish borders back then (Klaus, Lévy, Rzeplińska and Scheinost 2018, 481; Perkowska 2020, 20). The number of asylum applications registered in Poland in 2015 and 2016 was not unusually high or extraordinary (Klaus 2017, 19; Kubicki, Pawlak, Mica and Horolets 2017, 25-26; Szulecka 2022, 179, 181). Moreover, the number of asylum seekers in Poland continued to be meagre compared to other countries, especially to Greece and Italy that were mostly affected by the refugee crisis (Pachocka 2016, 103-107; Szczepanik 2018, 76). Yet, the crisis at the south of Europe coincided with the parliamentary elections in Poland. Asylum seekers and refugees (especially Muslims) were presented by the most prominent politicians as a threat: for national security, public health, and Polish culture and identity (Adamczyk 2017, 314; Klaus 2017, 19-20; Stolarczyk 2017, 30-33; Vaagland and Chmiel 2024, 1337-1340). Accordingly, during and after the elections, an anti-refugee shift in laws and policies could have been expected.

Meanwhile, the 2003 International Protection Law was not changed in a restrictive manner neither in 2015 nor in 2016. Some attempts to tighten the asylum laws were made at that time but were unsuccessful: the draft law was proposed that introduced an accelerated border procedure, increased the scope of detention of asylum seekers and limited the effectiveness of the respective remedies (Klaus 2017, 27-28; Klaus, Lévy, Rzeplińska and Scheinost 2018, 483-484; Perkowska 2020, 25-26). Only small restrictive changes were eventually adopted, i.e. the time limits for security checks preceding the relocation were prolonged (Klaus 2020, 81; Kubicki, Pawlak, Mica and Horolets

2017, 26).⁴² Besides that, the amendments of the 2003 International Protection Law approved in 2015-2016 were mostly intended at harmonizing Polish law with the EU asylum *acqui*.⁴³

However, in June 2016, the Anti-Terrorism Law was adopted.⁴⁴ This act introduced far-reaching changes aimed at strengthening the state's ability to recognize, counteract and combat terrorist threats. While the act is generally not focused on third-country nationals (cf. Jaroszewicz and Grzymski 2021, 268; Perkowska 2020, 22), some of its provisions concern only non-nationals who are generally seen as “particularly suspicious” (Klaus 2020, 80).⁴⁵ Article 9 of the 2016 Anti-Terrorism Law allowed for several secret surveillance measures to be used – without a court's approval – against suspected foreign terrorists. Accordingly, the use of surveillance against third-country nationals has been facilitated: taking similar actions against Polish nationals has been made much more burdensome for the respective authorities (Gabriel-Węglowski 2018, Article 9; Jaroszewicz and Grzymski 2021, 268). Article 10 of this new act enabled gathering even more data concerning third-country nationals, i.e. their fingerprints, images of their faces and their biological material for the purposes of the DNA examination. Suspicion of a terrorist activity, that does not even have to be particularly justified, has been seen as enough to use these measures (Perkowska 2020, 23). Moreover, the 2016 Anti-Terrorism Law amended the 2013 Aliens Law by adding Article 329a therein. Under this controversial provision,⁴⁶ the Minister of Interior can issue a return decision in case of a third-country national who is suspected of terrorist or spy activities. This decision entails an entry ban for 5 to 10 years⁴⁷ and it is immediately enforced, irrespective of the submitted appeals.

In the literature, these new rules were seen as the government's response to the refugee crisis ongoing in Europe at that time (Adamczyk 2017, 317). However, the relation between this crisis and the 2016 Anti-Terrorism Law is not straightforward. On the one hand, the refugee crisis is not referred to in the respective draft law. The drafters mentioned terrorist attacks in Belgium and France in 2015 and 2016⁴⁸ and referred to several domestic and international instruments aimed at combating terrorism that had been adopted on the domestic and European level.⁴⁹ Hence, the 2016 Anti-Terrorism Law – on the surface – seems to respond to the terrorist threat in general and to follow legislative trends in Europe (Gabriel-Węglowski 2018, Article 1) rather than to constitute a state's response to the refugee crisis. On the other hand, in Poland, the government's narration concerning the refugee crisis in Europe was centred on the security threats related to migration. Moreover, the terrorist attacks in Brussels in 2016 influenced the government's decision on a withdrawal from the relocation mechanism that was proposed by the European Commission in

⁴² Article 86f of the Act on International Protection changed by *Ustawa z dnia 20 maja 2016 r. o zmianie ustawy o udzielaniu cudzoziemcom ochrony na terytorium Rzeczypospolitej Polskiej*.

⁴³ See, e.g. *Ustawa z dnia 10 września 2015 r. o zmianie ustawy o udzielaniu cudzoziemcom ochrony na terytorium Rzeczypospolitej Polskiej oraz niektórych innych ustaw*.

⁴⁴ *Ustawa z dnia 10 czerwca 2016 r. o działaniach antyterrorystycznych*.

⁴⁵ This differentiation between nationals and non-nationals is considered to conflict with the Polish Constitution (Buczowski 2016, 26-27; Perkowska 2020, 24-25).

⁴⁶ It is considered to violate EU and international law (Buczowski 2016, 22-26).

⁴⁷ Article 319(1) point 4 of the 2013 Aliens Law. Up to 5 years according to the legislation in force until April 2023.

⁴⁸ See justification of the draft law no. 516, proposed on 16 May 2016,

<https://www.sejm.gov.pl/Sejm8.nsf/druk.xsp?nr=516> (last accessed on 12 December 2024), 1.

⁴⁹ See *Ocena skutków regulacji* (Regulatory Impact Assessment) in the draft law no. 516, proposed on 16 May 2016, <https://www.sejm.gov.pl/Sejm8.nsf/druk.xsp?nr=516> (last accessed on 12 December 2024), 2-3.

reaction to the refugee crisis. Accordingly, the Polish anti-terrorism legislation of 2016 and the refugee crisis in Europe cannot be fully separated.

The revocation of the 2012 Polish Migration Policy, in October 2016, was directly linked to the refugee crisis ongoing in Europe since 2015 (Kubicki, Pawlak, Mica and Horolets 2017, 26; Okólski and Wach 2020, 158-159). The Secretary of State in the Ministry of Interior and Administration responsible for migration issues, asked about the reasons for this invalidation, explained that:

*(...) the situation in Poland and around the world regarding migration has changed radically, primarily due to the refugee crisis that has been ongoing since 2015, i.e. the mass influx of immigrants from the Middle East, North Africa and Central Asia. These are focal points of conflicts, but, currently, immigration from these areas is mostly of economic nature. There is also an increased influx from Ukraine to Poland. All this has changed the perspective on migration and was the reason for the government to invalidate this document.*⁵⁰ (Skiba 2016)

The refugee crisis also affected the general tone and directions provided for in the new migration policy drafted in 2019 (*Ministerstwo Spraw Wewnętrznych i Administracji* 2019, 35, 51). The document was much criticized for being focused solely on security threats and incoherent with international and domestic law (Łodziński and Szonert 2023, 16; *Komitet Badań nad Migracjami PAN* 2019), and eventually it was not adopted.

Moreover, the refugee crisis ongoing in 2015-2016 in Europe gravely and permanently affected the border management in Poland. In particular, the pre-existing policies at the Polish-Belarusian border were exacerbated due to this crisis. For decades, the border crossing in Terespol had been the main entry point for asylum seekers (Szczepanik 2018, 77; Szulecka 2022, 181). For decades too, some problems with access to the territory and access to asylum had been reported there (Rusiłowicz 2014, 16-19). However, with the increased political pressure to protect Poland from refugees following the parliamentary elections, the Border Guard's attitude to asylum seekers changed (Klaus 2020, 83) and the situation at the Polish-Belarusian border aggravated. Many asylum seekers tried – for several or several dozen times – to seek asylum at the Polish official border checkpoints, but their pleadings were intentionally not heard. Instead of having their asylum applications registered, they were denied entry to Poland and immediately returned to Belarus (Chrzanowska et al. 2016, 35-48; Górczyńska 2017, 16-19; Klaus 2017, 24-26; Perkowska 2020, 16; Szczepanik 2018, 70, 78-79; Szulecka 2022, 173-174).

This practice was incompatible with the Polish law that obliged the Border Guard officers to register all asylum applications and allow entry of all asylum seekers.⁵¹ It violated the Schengen Borders Code too as it excludes issuing a decision on a refusal of entry to an asylum seeker.⁵² It was also clearly incoherent with the principle of non-refoulement. The latter was confirmed by the

⁵⁰ Translated from Polish to English by the author.

⁵¹ Article 28(2) of the 2013 Aliens Law, Article 24 and 28 of the 2003 International Protection Law, and Article 56 of the Polish Constitution.

⁵² Article 14(1) of the 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) (codification).

European Court on Human Rights (ECtHR) in six judgments delivered between 2020 and 2024.⁵³ The ECtHR recognized that there had been a systemic practice of misrepresenting asylum seekers' statements at the Polish borders, in particular in Terespol, that led to denying access to asylum to the applicants and subjecting them to collective expulsion with no respect for their right to an effective remedy (Bosch March 2024; Gatta 2020). According to the court, Poland violated Articles 3, 13 and 34 ECHR⁵⁴ and Article 4 of the Protocol no. 4 to the ECHR. Moreover, the UN Human Rights Committee (HRC) considered⁵⁵ this border practice to be in breach of Articles 7 and 13 read alone and in conjunction with Article 2(3) ICCPR.⁵⁶ In spite of this firm standing of both the ECtHR and HRC, the situation in Terespol has not changed: in 2024 asylum seekers were still denied entry there (SIP and FIPP 2023, 2-3; HFPC 2024a).

Not only Polish border policies were exacerbated due to the refugee crisis in Europe but also the state's approach to relocation changed. In the 2012 Polish Migration Policy, the relocation was viewed as a viable response to migration crises, and the participation of Poland in such mechanisms was considered "worth taking into account" (*Rada Ministrów* 2012, 67-68). In 2012, the rules concerning relocation and resettlement to Poland were indeed added to the 2003 International Protection Law.⁵⁷ When, in response to the refugee crisis of 2015, two decisions on relocation of asylum seekers from Greece and Italy were adopted by the EU Member States,⁵⁸ Poland declared its participation in this mechanism. However, after the elections, the government's approach to relocations became more security-driven (Klaus 2020, 81), especially after the terrorist attacks in Brussels (Adamczyk 2017, 312-313; Klaus, Lévy, Rzeplińska and Scheinost 2018, 483; Okólski and Wach 2020, 158; Stolarczyk 2017, 34). The Polish Parliament opposed against the relocation mechanism too (Vaagland and Chmiel 2024, 1338).⁵⁹ Eventually, no asylum seeker was relocated from Greece or Italy to Poland (Pachocka 2016, 118-119). That led to the infringement proceedings before the Court of Justice of the EU (CJEU) which concluded that Poland – similarly to Hungary and Czech Republic – failed to fulfil its obligations arising from the abovementioned decisions.⁶⁰ The CJEU rejected the security-driven arguments of the Member States and stated that it is not allowed to assume, *in abstracto*, that all asylum seekers constitute a security threat (Frasca and Gatta 2020). The Polish government considered the judgment of no practical significance (*Kancelaria Prezesa Rady Ministrów* 2020; Szulecka 2022, 184) and, undeterred, continued its anti-relocation policy (*Kancelaria Prezesa Rady Ministrów* 2023; *Rada Ministrów* 2024, 21).

⁵³ ECtHR, *M.K. and Others v. Poland*, nos. 40503/17, 42902/17 and 43643/17, 23 July 2020; *D.A. and Others v. Poland*, no. 51246/17, 8 July 2021; *A.B. and Others v. Poland*, no. 42907/17, 30 June 2022; *A.I. and Others v. Poland*, no. 39028/17, 30 June 2022; *T.Z. and Others v. Poland*, no. 41764/17, 13 October 2022; ECtHR, *Sherov and Others v. Poland*, nos. 54029/17, 54117/17, 54128/17 and 54255/17, 4 April 2024. For more, see Bosch March 2024.

⁵⁴ Convention for the Protection of Human Rights and Fundamental Freedoms, adopted in Rome on 4 November 1950.

⁵⁵ HRC, Views adopted by the Committee under article 5 (4) of the Optional Protocol, concerning communication No. 3017/2017, 21 July 2022. See also Delval 2023.

⁵⁶ International Covenant on Civil and Political Rights, adopted in New York on 16 December 1966

⁵⁷ Articles 86a-86j of the 2003 International Protection Law added by *Ustawa z dnia 28 lipca 2011 r. o zalegalizowaniu pobytu niektórych cudzoziemców na terytorium Rzeczypospolitej Polskiej oraz o zmianie ustawy o udzielaniu cudzoziemcom ochrony na terytorium Rzeczypospolitej Polskiej i ustawy o cudzoziemcach*.

⁵⁸ Council Decision (EU) 2015/1523 of 14 September 2015 establishing provisional measures in the area of international protection for the benefit of Italy and of Greece; Council Decision (EU) 2015/1601 of 22 September 2015 establishing provisional measures in the area of international protection for the benefit of Italy and Greece.

⁵⁹ See e.g. *Uchwała Sejmu Rzeczypospolitej Polskiej z dnia 1 kwietnia 2016 r. w sprawie polityki imigracyjnej Polski*.

⁶⁰ CJEU, joined cases C-715/17, C-718/17 and C-719/17 *Commission v Republic of Poland and Others*, 2 April 2020.

Thus, the refugee crisis of 2015/2016 – happening elsewhere, but at the centre of political discourses in Poland – fuelled anti-asylum policies in this country (Perkowska 2020, 27-28). Against the domestic, EU and international law, access to Poland for asylum seekers was intentionally hampered by the domestic authorities and no asylum seeker was relocated to Poland. Moreover, the strategic document shaping Polish migration policy was repealed in response to this crisis. While the national asylum legislation was not significantly amended at that time, some legal changes were adopted in respect of non-nationals suspected of terrorism who were, since 2015, equalized in the political discourses with asylum seekers.

3.2.2 COVID-19 Pandemic

The 2020 COVID Law applied not only to migrant workers (see sec. 3.1.2) but also to asylum seekers. Their residence permits were extended, and they gained access to material reception conditions and medical assistance beyond the duration of the asylum proceedings.⁶¹ However, this exceptionally prolonged access to material reception conditions and medical assistance was already withdrawn in April 2022, while other beneficial solutions provided for in the 2020 COVID Law lasted until July 2023.

The rules concerning entry to Poland introduced in response to the pandemic were particularly unfavourable for asylum seekers. The 2020 Border Traffic Regulation suspended or limited traffic at some border crossings, including at the border with Belarus. The border crossing in Terespol was no longer accessible for individuals arriving by train from Brest while it had been the main pathway of entry for asylum seekers before the pandemic (SIP and FIPP 2023, 3-5). Moreover, asylum seekers were never mentioned in the 2020 Border Traffic Regulation as persons having a right to enter Poland during the pandemic (Baranowska 2022, 199; *Rzecznik Praw Obywatelskich* 2020; SIP 2021, 35-37). Despite these impediments, the Border Guard argued that seeking asylum at the Polish borders was still possible during the pandemic, because asylum seekers could have asked the Chief Commander of the Border Guard for a special permission to enter Poland (*Komenda Główna Straży Granicznej* 2020). However, that was not confirmed in the literature (Klaus 2021, 5), by the civil society organizations (Rusiłowicz, Ostaszewska-Żuk and Łysienia 2021, 18-19; SIP and FIPP 2023, 3-5) nor by statistical information (Jaroszewicz, Krępa and Pachocka 2024, 8; Szulecka 2022, 181).⁶² Thus, access to the Polish territory for asylum seekers is rightly seen as hampered upon the introduction of the above-mentioned pandemic-related restrictions at the borders (Baranowska 2022, 199-200; Szulecka 2022, 204).

The COVID-19 pandemic led to both benevolent and restrictive legal changes that directly affected asylum seekers in Poland. Compared to migrant workers (see sec. 3.1.2), a clearly less favourable approach was taken towards asylum seekers. Hence, as aptly assessed by Jaroszewicz, in Poland, “(t)he COVID-19 pandemic has exacerbated some of the existing patterns of governance, rather than leading to the appearance of novel approaches” (Jaroszewicz 2023). Polish outlook on migration has been for years strongly market-oriented; thus, its focus has been on migrant workers (“desired” third-country nationals, mostly from Ukraine and Belarus) rather than asylum seekers

⁶¹ Article 15z⁸ of the 2020 COVID Law.

⁶² The number of asylum applications significantly dropped in 2020 compared to 2019, by 30% in general and by 72% at the Terespol border crossing. In 2021, even fewer asylum seekers managed to ask for asylum in Terespol (despite the overall increase of the number of asylum applications in Poland that year) (*Straż Graniczna*).

(“unwanted” ones, especially those originating from the non-neighbouring states). The pandemic clearly did not change this approach (Jaroszewicz 2023; Klaus 2021, 10; Jaroszewicz, Krępa and Pachocka 2024, 3, 14).

3.2.3 Political Crisis in Belarus

Many Belarusian nationals left Belarus due to the political unrest in this country following the rigged elections of 2020 (see sec. 3.1.3). Most of them received humanitarian visas (that were very infrequently issued before, Klaus 2021, 10) and temporary residence permits that allowed them to access the Polish labour market. Others were even permitted to enter Poland without any documents and irrespective of the limitations in the border movement introduced in connection with the COVID-19 pandemic (Galles 2023; Klaus 2021, 10-11).

At that time, not many Belarusians decided to seek asylum in Poland (5% according to Galles (2023)). Until December 2023, over 7.100 Belarusian nationals were granted international protection in Poland (*Urząd do Spraw Cudzoziemców* 2023). Additionally, approx. 2.600 Belarusian received this protection in 2024 (*Urząd do Spraw Cudzoziemców* 2025). Only 252 Belarusians were denied protection from 2020 to 2024 (*Urząd do Spraw Cudzoziemców*), mostly for security reasons (Galles 2023).

Hence, not only migrant workers but also forced migrants from Belarus were welcomed in Poland. This welcoming policy towards Belarusians was, however, in stark contrast with the treatment of other asylum seekers crossing the Belarusian border (see sec. 3.2.1 and 3.2.4).

3.2.4 Crisis at the Belarusian Border

In 2021, Belarus facilitated and forced entry of numerous irregular migrants to the EU (Baranowska 2022, 197; Grześkowiak 2023, 2; Perkowska and Gutauskas 2023, 117-118). Polish authorities violently pushed those third-country nationals back to Belarus irrespective of their pleadings for asylum and individual situation. Upon the pushback, Belarusian forces often denied these third-country nationals a possibility to leave the border area or forced them to go back to Poland. In consequence, some third-country nationals were stranded at the border for weeks or months without access to proper food, drinking water, accommodation and medical assistance (Czarnota and Górczyńska 2022; Rusiłowicz, Ostaszewska-Żuk and Łysienia 2024, 19-23). That prompted describing the situation at the border as a ‘humanitarian crisis’ (Bogucewicz 2022, 121; Grupa Granica 2021). Contrary to this narrative, third-country nationals irregularly entering Poland were dehumanized by politicians and presented as threats, elements of a ‘hybrid warfare’, Lukashenko’s weapons and not genuine refugees (Bogucewicz 2022, 124; Ganty, Ancite-Jepifánova and Kochenov 2024, 746; Forti 2022; Vaagland and Chmiel 2024, 1340).

Polish authorities acted quickly to legitimize their pushback policy (Baranowska 2022, 199-201; Bodnar and Grzelak 2023, 61; Szulecka 2022, 184-185). First, in August 2021, the Border Traffic Regulation – adopted initially to prevent the spread of the pandemic (see sec. 3.1.2 and 3.2.2) – was amended. Since then, a third-country national who is not entitled to enter Poland under this act and who crossed the border in an irregular manner can be returned to the border line without any

decision being issued.⁶³ In October 2021, another amendment – of the 2013 Aliens Law – sought to legitimize pushbacks.⁶⁴ The Border Guard gained a competence to issue a removal order if a third-country national is apprehended immediately upon an illegal entry via the EU external border.⁶⁵ This decision contains an entry ban for six months to three years and is immediately enforceable. Moreover, according to the 2003 Protection Law, as amended in October 2021, the Head of the Office for Foreigners may refrain from considering an application for international protection of an irregular entrant, unless a person concerned came directly from the territory where his/her life and freedom was in danger, credibly explained the reasons of his/her illegal entry and applied for asylum immediately upon crossing the Polish border.⁶⁶

In the literature, there is a broad consensus that the abovementioned ‘legitimizing’ measures violated Polish, EU and international law (Adamczyk 2023, 92-94; Baranowska 2022, 203-211; Bodnar and Grzelak 2023, 66-67; Forti 2023, 233-235; Ganty, Ancite-Jepifánova and Kochenov 2024, 747-748; Grześkowiak 2023, 5-9; Perkowska and Gutauskas 2023, 128-129, 131-133; Strąk 2022, 13-15; Zdanowicz 2023, 107-109). They are unanimously considered to breach several fundamental rights, including the principle of non-refoulement, a prohibition of collective expulsions and a right to asylum. Accordingly, the pushbacks at the Polish-Belarusian border were challenged before the ECtHR by (at least) 86 third-country nationals⁶⁷ and one of these cases was relinquished to the Grand Chamber (Łysienia 2024a). Its judgment is expected in 2025. Meanwhile, Polish courts have already considered the pushback practices employed at the Belarusian border to be unlawful (Baranowska 2022, 202; Perkowska, Adamczyk and Jomma 2024, 189-192; SIP and HFPC 2024, 7-10; Sośniak 2024, 174-186). International and national organisations also called on Poland to cease pushbacks and repeal its new legislation (HFPC 2024b; SIP 2022a, 8-9; Special Rapporteur on the human rights of migrants 2023, 17). For example, upon her visit in Poland, the Council of Europe Commissioner for Human Rights clearly indicated that:

Poland’s current legislation on access to territory and international protection, which allows for immediate returns to the border of persons who entered the territory outside of official border crossings, undermines the right to seek asylum and the crucial safeguards associated with it, including the right to effective remedies. It must be amended to enable those found on the territory of Poland to enter the asylum procedure and have their individual situation assessed in all cases (Commissioner for Human Rights CoE 2021).

⁶³ §3 (2a-2b) of the Border Traffic Regulation added by *Rozporządzenie Ministra Spraw Wewnętrznych i Administracji z dnia 20 sierpnia 2021 r. zmieniające rozporządzenie w sprawie czasowego zawieszenia lub ograniczenia ruchu granicznego na określonych przejściach granicznych*.

⁶⁴ While these changes were clearly made in a direct response to the unfolding crisis at the Belarusian border, the justification of the draft law accepted in October 2021 barely mentions this crisis, referring rather to the unspecified ‘migration crisis in Europe’ and repeating security-driven arguments given during the refugee crisis of 2015-2016, see justification of the draft law no. 1507, proposed on 23 August 2021, <https://www.sejm.gov.pl/Sejm9.nsf/druk.xsp?nr=1507>, 1-2.

⁶⁵ Article 303b of the 2013 Aliens Law, added by *Ustawa z dnia 14 października 2021 r. o zmianie ustawy o cudzoziemcach oraz niektórych innych ustaw*, in force since 26 October 2021.

⁶⁶ Article 33(1a) of the 2003 International Protection Law, added by *Ustawa z dnia 14 października 2021 r. o zmianie ustawy o cudzoziemcach oraz niektórych innych ustaw*, in force since 26 October 2021.

⁶⁷ Based only on the cases communicated by the ECtHR until the end of November 2024. See also Łysienia 2023b.

Despite these coherently critical views, pushbacks – and deaths – at the Belarusian border incessantly continued (Fundacja Ocalenie 2024; Grupa Granica and We Are Monitoring 2024) and the law aimed at their legitimization remained in force until the end of 2024.

In addition to the abovementioned measures, in September 2021, the Polish President announced an emergency state in the area neighbouring the Belarusian border.⁶⁸ Since then, the near-border area could be entered only by its residents and Polish authorities. NGOs were not allowed to provide assistance (humanitarian nor legal) and monitor the human rights situation in this closed zone; media could not access it as well to report on the crisis. The emergency state is by law time-limited,⁶⁹ but the restrictions of movement in the border area were in practice prolonged beyond these constitutional limitations. First, the Border Protection Law was changed to confer on the Minister of Interior a new competence in this regard.⁷⁰ The restrictions ordered by the Minister continued until 1 July 2022.⁷¹ Next, they were based on the regional authorities' decisions (*Podlaski Urząd Wojewódzki w Białymstoku* 2022). Despite the wide-spread criticism of these measures (Górski 2022, 20-22; Perkowska and Gutauskas 2023, 124-127; Zdanowicz 2023, 109-112),⁷² the limited access to the border area was reintroduced by the Minister – again in the expanded form – in June 2024.⁷³

The crisis at the Belarusian border entailed also other changes. For example, immigration detention capacity was increased by opening three new, ad-hoc detention centres. The conditions therein – especially in the one in Wędrzyn – were considered inhuman by, *inter alia*, the Polish Ombudsman (*Rzecznik Praw Obywatelskich* 2022, 73; see also Rusiłowicz, Ostaszewska-Żuk and Łysienia 2023, 103, 107-109). Moreover, the law was changed to enable – in case of a mass influx of third-country nationals – limiting a detainee's personal space to 2 m² for up to 12 months, which is clearly incoherent with international human rights standards (Rusiłowicz, Ostaszewska-Żuk and Łysienia 2024, 83-84; *Rzecznik Praw Obywatelskich* 2022, 64-65).⁷⁴ Furthermore, in 2022, an almost 200 meters-long fence was built at the Polish-Belarusian border. In practice, it did not prevent third-country nationals from coming to Poland but increased their suffering (Grupa Granica 2023, 4; PRAB 2023a, 5, 7).

⁶⁸ *Rozporządzenie Prezydenta RP z dnia 2 września 2021 r. w sprawie wprowadzenia stanu wyjątkowego na obszarze części województwa podlaskiego oraz części województwa lubelskiego*. The emergency state was prolonged by: *Rozporządzenie Prezydenta RP z dnia 1 października 2021 r. w sprawie przedłużenia stanu wyjątkowego wprowadzonego na obszarze części województwa podlaskiego oraz części województwa lubelskiego*.

⁶⁹ Article 230 of the Constitution of the Republic of Poland specifies that the emergency state can be ordered for a maximum period of up to 90 days, which can exceptionally be prolonged once for up to 60 days.

⁷⁰ Article 12a-12d of the Border Protection Law (*Ustawa z dnia 12 października 1990 r. o ochronie granicy państwowej*), added by *Ustawa z dnia 17 listopada 2021 r. o zmianie ustawy o ochronie granicy państwowej oraz niektórych innych ustaw*.

⁷¹ *Rozporządzenie Ministra Spraw Wewnętrznych i Administracji z dnia 30 listopada 2021 r. w sprawie wprowadzenia czasowego zakazu przebywania na określonym obszarze w strefie nadgranicznej przyległej do granicy państwowej z Republiką Białorusi*; *Rozporządzenia Ministra Spraw Wewnętrznych i Administracji z 28 lutego 2022 r. w sprawie wprowadzenia czasowego zakazu przebywania na określonym obszarze w strefie nadgranicznej przyległej do granicy państwowej z Republiką Białorusi*.

⁷² See e.g. Sąd Najwyższy (Supreme Court), judgment of 18 January 2022, no. I KK 171/21.

⁷³ *Rozporządzenie Ministra Spraw Wewnętrznych i Administracji z dnia 12 czerwca 2024 r. w sprawie wprowadzenia czasowego zakazu przebywania na określonym obszarze w strefie nadgranicznej przyległej do granicy państwowej z Republiką Białorusi*.

⁷⁴ §11(1a) of the annex to *Rozporządzenie Ministra Spraw Wewnętrznych z dnia 24 kwietnia 2015 r. w sprawie strzeżonych ośrodków i aresztów dla cudzoziemców*, added by *Rozporządzenie Ministra Spraw Wewnętrznych i Administracji z dnia 13 sierpnia 2021 r. zmieniające rozporządzenie w sprawie strzeżonych ośrodków i aresztów dla cudzoziemców*.

Overall, the crisis at the Belarusian border led to very restrictive – and permanent (Adamczyk 2023, 98) – legal and policy changes in Poland. According to the Polish authorities, they were aimed at preventing and deterring irregular entry of third-country nationals, counteracting abuses of the asylum procedure, and protecting the state from intertwined security threats (Adamczyk 2023, 92-93; Forti 2023, 238; Grześkowiak 2023, 4-5).⁷⁵ Instead, these changes only supported, enabled and prompted human rights violations committed at the border and inland (e.g. in the detention centres). The unfavourable approach to asylum seekers – already observed during the refugee crisis (sec. 3.2.1) and COVID-19 pandemic (sec. 3.2.2) – has been exacerbated even more during this crisis.

3.2.5 Russian Invasions of Ukraine

After the 2014 Russian invasion of Ukraine, Ukrainian nationals increasingly came to Poland but mostly to work (Kaczmarczyk 2024, 1238; Klaus 2020, 76, 78; Kowalski 2016, 97-98; Szczepanik and Tylec 2016, 71; see also sec. 3.1.4). Only some decided to seek asylum. However, this coincided with the change of the Polish border policy connected with the refugee crisis in Europe (see sec. 3.2.1). Thus, some applicants struggled to initiate asylum proceedings at the Ukrainian border (Chrzanowska et al. 2016, 49).⁷⁶ In total, 7.500 Ukrainians managed to apply for asylum in Poland in the period of 2014-2019. However, only 87 Ukrainian nationals were granted a refugee status, and 346 – received a subsidiary protection (*Urząd do Spraw Cudzoziemców*). Such a low recognition rate resulted from the restrictive interpretation of the internal flight alternative concept applied by the Polish authorities in case of Ukrainian nationals (Kowalski 2016, 108-114; Szczepanik and Tylec 2016, 71-73).

The recognition rate for Ukrainian nationals in asylum proceedings was much different in response to the most recent – now full-scale – Russian invasion of Ukraine: it reached 93% in 2023 (Łysienia 2024b, 29). In 2022-2023, in total, 3.549 Ukrainian nationals applied for international protection in Poland: 2.086 received subsidiary protection, 18 – were granted refugee status, and only 121 – were refused international protection (*Urząd do Spraw Cudzoziemców*). In 2024, approx. 3.900 Ukrainian nationals received international protection in Poland (*Urząd do Spraw Cudzoziemców* 2025). The favourable decisions relied mostly on the reports about the indiscriminate violence in Ukraine.

Most of the persons displaced from Ukraine, however, sought temporary rather than international protection. At the end of 2022, there were 1.5 million temporary protection beneficiaries in Poland (Łysienia 2023a, 3). In Poland, two temporary protection mechanisms were established: one for Ukrainian nationals with their family members, and second for international and national protection beneficiaries and permanent residence holders in Ukraine. The two mechanisms offered differential treatment to their beneficiaries (as regards access to the labour market, see sec. 3.1.4). For example, Ukrainian nationals and their family members were offered access to accommodation in the collective accommodation centres opened in response to this crisis (Jaroszewicz and Krępa 2023, 168; Klaus and Jarosz 2023, 9; Łysienia 2023c, 190), while other beneficiaries could have been accommodated only in the reception centres for asylum seekers (Łysienia 2024b, 40-41).⁷⁷

⁷⁵ See justification of the draft law no. 1507, proposed on 23 August 2021, <https://www.sejm.gov.pl/Sejm9.nsf/druk.xsp?nr=1507> (last accessed on 12 December 2024), 1-2.

⁷⁶ See also ECtHR, *Sherov and Others v. Poland*, nos. 54029/17, 54117/17, 54128/17 and 54255/17, 4 April 2024, where denying access to asylum at the Ukrainian border by the Polish Border Guard was considered to violate Article 3 and 13 ECHR and Article 4 of Protocol no. 4.

⁷⁷ Article 12 of the 2022 War in Ukraine Law; Article 112 of the 2003 International Protection Law.

Moreover, individuals and companies who hosted (only) Ukrainian nationals and their family members could apply for a financial allowance that partially reimbursed their costs.⁷⁸ Furthermore, Ukrainian nationals and their family members could access a general social welfare system and public healthcare system – similarly to Polish nationals, while other beneficiaries could only benefit from the limited social and medical assistance given to asylum seekers.⁷⁹

Over time, the laws and policies concerning persons displaced from Ukraine became more restrictive (Łysienia and Kurt 2025). In the first months of the Russian invasion their entry to Poland was facilitated and supported by Polish authorities (Jaroszewicz and Krępa 2023, 166; Vaagland and Chmiel 2024, 1342). The restrictions introduced in response to the COVID-19 pandemic were lifted at the Polish-Ukrainian border shortly before the beginning of the war (see sec. 3.1.2). However, since spring 2022, more and more decisions on a refusal of entry have been issued at this border (Łysienia 2024b, 11-12; PRAB 2023b, 12). Registration for temporary protection was also made more difficult by introducing increasingly shorter deadlines and an unconditional obligation to present a travel document.⁸⁰ Moreover, thousands of Ukrainian nationals lost temporary protection in 2022-2024 due to the restrictive interpretation and application of the 2022 War in Ukraine Law. According to this act, temporary protection is withdrawn upon a thirty-day absence in Poland (Klaus 2022, 71-72).⁸¹ To track the movements of Ukrainian nationals a special registry was created.⁸² However, in practice, numerous re-entries of temporary protection beneficiaries to Poland were not registered therein by the Border Guard. In consequence, the thirty-day period was not interrupted. Accordingly, in many cases temporary protection was withdrawn even though a beneficiary was absent from Poland for less than 30 days (ACAPS 2023, 2, 7; Łysienia 2023c, 192-193; *Rzecznik Praw Obywatelskich* 2023).

Moreover, access to accommodation for Ukrainian nationals and their family members was increasingly hampered. Under the amendment of the 2022 War in Ukraine Law of January 2023, the cost-free housing in the collective accommodation centres was limited to 120 days. After this period, with the exception of some vulnerable groups, a temporary protection beneficiary has been obliged to contribute to the accommodation costs (Adamski and Florczak 2024, 308-309).⁸³ These new rules were much criticized (Klaus and Jarosz 2023) and, in practice, led to the worsening of the Ukrainian nationals' housing situation in Poland, and even to some family separations and returns to Ukraine (Bloch and Szmyt 2024, 25-28). Since 1 July 2024, a financial allowance for persons and companies hosting Ukrainian nationals has been no longer available.⁸⁴

⁷⁸ Article 13 of the 2022 War in Ukraine Law.

⁷⁹ Articles 26, 29, 37 of the 2022 War in Ukraine Law; Article 112 of the 2003 International Protection Law.

⁸⁰ Changes of Article 4(2) and (11-13c) of the 2022 War in Ukraine Law introduced by *Ustawa z dnia 13 stycznia 2023 r. o zmianie ustawy o pomocy obywatelom Ukrainy w związku z konfliktem zbrojnym na terytorium tego państwa oraz niektórych innych ustaw* and *Ustawa dnia 15 maja 2024 r. o zmianie ustawy o pomocy obywatelom Ukrainy w związku z konfliktem zbrojnym na terytorium tego państwa oraz niektórych innych ustaw*.

⁸¹ Article 11(2) of the 2022 War in Ukraine Law.

⁸² Article 3 of the 2022 War in Ukraine Law.

⁸³ Article 12 (17-17j) of the 2022 War in Ukraine Law as amended by *Ustawa z dnia 13 stycznia 2023 r. o zmianie ustawy o pomocy obywatelom Ukrainy w związku z konfliktem zbrojnym na terytorium tego państwa oraz niektórych innych ustaw*.

⁸⁴ Article 13 of the 2022 War in Ukraine Law repealed by *Ustawa dnia 15 maja 2024 r. o zmianie ustawy o pomocy obywatelom Ukrainy w związku z konfliktem zbrojnym na terytorium tego państwa oraz niektórych innych ustaw*.

Furthermore, access to social welfare has been gradually hindered, both in law and practice. Since January 2023, social benefits are suspended with every departure of a temporary protection beneficiary from Poland but should be reinstated upon his/her return.⁸⁵ However, as mentioned above, these re-entries are not properly registered by the Border Guard, so social benefits are often not reinstated or are reinstated only upon time-consuming and vague proceedings (ACAPS 2023, 7-9; Łysienia 2024b, 53-55; *Ministerstwo Rodziny i Polityki Społecznej* 2023a; *Rzecznik Praw Obywatelskich* 2023). Moreover, since July 2024, some family benefits have been available to Ukrainian nationals only if their child attends a Polish school or kindergarten.⁸⁶ Meanwhile, many Ukrainian children never entered the Polish education system having the possibility to enjoy the remote education in Ukraine (Care, IRC, Save the Children, Triangle 2024; UNHCR and UNICEF 2023).⁸⁷

The Russian invasion of Ukraine that started on 24th February 2022 led to the beneficial legal and policy changes for Ukrainian nationals seeking protection in Poland. They could choose whether they wanted to apply for asylum or register as temporary protection beneficiaries and were granted both forms of protection. The rights of temporary protection beneficiaries (Ukrainian nationals and their family members) were, however, noticeably restricted over time. These restrictions affected mostly non-working and low-paid beneficiaries that relied on the state support in providing accommodation and means of subsistence. Nonetheless, the legal situation of Ukrainian nationals in Poland continued to be more beneficial than that of other third-country nationals.

4 Findings and Concluding Remarks

Taking the example of Poland, this paper sought to identify a nexus between crises and migration laws and policies. It was also aimed at determining the directions (restrictive or beneficial) and target groups of the legal and policy changes that were prompted by the crises. The analysis of the Polish extensive legislation as well as its written and unwritten policies adopted and employed in the period of 2008-2024 has shown that crises indeed altered migration law and policy in Poland, albeit not all of them had such an impact. Majority of the scrutinized crises led to restrictive changes for third-country nationals; however, beneficial modifications were also identified. Interestingly, the restrictions were implemented mostly with regard to forced migrants. These findings are explained in more detail below (sec. 4.1-4.3). They are followed by some reflections on the adequacy of the crisis response when it is determined mostly by political goals and irrespective of the human rights obligations of a state (sec. 4.4).

4.1 Nexus

Not all crises altered Polish migration laws and policies. The global economic crisis had a negligible impact in this respect. Only one legal provision that directly concerned third-country

⁸⁵ Article 26 (3g-3h) of the 2022 War in Ukraine Law added by *Ustawa z dnia 13 stycznia 2023 r. o zmianie ustawy o pomocy obywatelom Ukrainy w związku z konfliktem zbrojnym na terytorium tego państwa oraz niektórych innych ustaw*.

⁸⁶ Article 26(1) points 2 and 3 of the 2022 War in Ukraine Law amended by *Ustawa dnia 15 maja 2024 r. o zmianie ustawy o pomocy obywatelom Ukrainy w związku z konfliktem zbrojnym na terytorium tego państwa oraz niektórych innych ustaw*.

⁸⁷ Only since September 2024, Ukrainian children staying in Poland – with some minor exceptions – are required to attend Polish schools.

nationals was changed in response to this crisis. While restrictions towards migrant workers seem to be considered at the time, Poland remained open for migrant workers throughout the crisis due to the persisting labour shortages (*Rada Ministrów* 2012, 125).

All the other crises discussed in this paper – the refugee crisis, COVID-19 pandemic, political crisis in Belarus, crisis at the Belarusian border and Russian invasions of Ukraine – impacted Polish migration laws and policies. However, the state responses – their directions and target groups – varied depending on the crisis.

Table 1: Target groups and directions
of the crises-related changes in laws and policies in Poland

	Target groups			
	Migrant workers		Forced migrants	
Direction	Beneficial	Restrictive	Beneficial	Restrictive
Global economic crisis	NO	NO	NO	NO
Refugee crisis	NO	NO	NO	YES
COVID-19 pandemic	YES	NO	YES	YES
Political crisis in Belarus	YES (BL)	NO	YES (BL)	NO
Crisis at the Belarusian border	NO	NO	NO	YES
Russian invasions of Ukraine	YES (UKR)	YES (RU)	YES (UKR)	YES (UKR)

• BL – Belarusian nationals

• RU – Russian nationals

• UKR – Ukrainian nationals and other persons displaced from Ukraine

4.2 Directions

The conducted analysis has clearly shown that a state response to a crisis can be either restrictive or beneficial for third-country nationals. In Poland, some crises had solely negative or positive consequences for migrants, while others prompted legal and policy changes of a mixed character.

The refugee crisis – happening elsewhere, but at the centre of the political debates in Poland – had a direct impact on the domestic policies and indirect one on the national laws. It incited anti-asylum practices at the Polish borders that violated multiple human rights of forced migrants. It also negatively affected the government's approach to relocation. Moreover, the 2012 Polish Migration Policy was repealed in response to this crisis. In 2016, some restrictive, legal changes were also adopted in respect of non-nationals suspected of terrorism. Considering the governmental narrative

persisting since 2015 that has shown asylum seekers and refugees as a threat to national security, this legal change must be considered indirectly intertwined with the refugee crisis ongoing in Europe at that time (Adamczyk 2017, 317).

The COVID-19 pandemic induced both benevolent and restrictive legal changes that directly affected third-country nationals coming to and staying in Poland. On the one hand, their legal stay in Poland was automatically prolonged for over three years. Moreover, asylum seekers enjoyed the extended access to material reception conditions albeit for a shorter period than expected. Favourable changes for migrant workers were introduced too (Florczak 2023, 340-342). On the other hand, the border traffic was much restricted which affected in particular asylum seekers (Baranowska 2022, 199-200; Szulecka 2022, 204).

The political crisis in Belarus that followed the fraudulent elections of 2020 prompted extensive – only beneficial and only for one group of third-country nationals, i.e. Belarusian nationals – changes in the Polish laws and policies. Those fleeing Belarus were offered access to the Polish territory, humanitarian visas, special residence permits and a wide access to the Polish labour market. Additionally, the “Poland. Business Harbour” program was created to facilitate the relocation of the Belarusian IT businesses to Poland. Moreover, some Belarusian nationals applied for asylum in Poland, with the recognition rate reaching 99% (Galles 2023).

The crisis at the Polish-Belarusian border led to very restrictive – as restrictive as violating human rights – legal and policy changes. The unfavourable approach to asylum seekers – already observed during the refugee crisis and COVID-19 pandemic – has been exacerbated during this crisis. Polish forces responded to the increased influx of irregular entrants by violently pushing them back to Belarus irrespective of their pleadings for asylum and vulnerabilities. Several laws were changed to legitimize this pushback policy (Baranowska 2022, 199-201; Bodnar and Grzelak 2023, 61; Szulecka 2022, 184-185). Moreover, access to the border zone has been continuously limited since 2021. New detention centres were opened, and the law was changed to allow for overcrowding therein. All these changes were widely considered to breach domestic, EU and international law (Baranowska 2022, 203-211; Górski 2022, 20-22; Grześkowiak 2023, 5-9; Perkowska and Gutauskas 2023, 124-133; Zdanowicz 2023, 107-112).

The Russian invasions of Ukraine – ongoing since 2014 – led to the beneficial changes for Ukrainian nationals fleeing to Poland (Łysienia 2023c, 195) but negatively affected the situation of Russian nationals (Florczak 2023, 345; Hyndle-Hussein and Chmielewski 2022). Ukrainians were for years welcomed in Poland as migrant workers (Jaroszewicz and Grzymiski 2021, 260, 265-266; Klaus 2020, 76, 78). Upon the activation of the Temporary Protection Directive, they were granted generous rights that, however, have been gradually restricted. Despite this diminution, the legal situation of Ukrainian nationals in Poland continued to be more beneficial than of other third-country nationals. Meanwhile, the legal changes concerning Russian nationals adopted since 2022 consistently and seriously have hindered their access to Poland and the Polish labour market.

Hence, in Poland, almost all crises that altered national migration laws and policies entailed some restrictions for non-nationals. Only the political crisis in Belarus prompted entirely beneficial changes for Belarusian nationals. Even the crises that mostly led to benevolent changes (e.g. the COVID-19 pandemic or Russian invasions of Ukraine) had some restrictive implications too. Thus,

Poland tended to reach for the restrictive measures affecting third-country nationals in response to the examined crises irrespective of their different character. These crisis-related restrictions ranged from those of limited substantive and personal scope (e.g. during the COVID-19 pandemic) to changes so restrictive that they violated international and European human rights standards (as exemplified by the crisis at the Belarusian border). Interestingly, the restrictions concerned much more forced migrants than migrant workers.

4.3 Target Groups

In this paper, the crisis-induced changes in the Polish migration laws and policies were examined in respect to, first, migrant workers and, second, forced migrants. It was aimed at mirroring, on the one hand, the Polish policy of welcoming migrant workers and deterring asylum seekers, and, on the other hand, the assumption that migrant workers are more susceptible to crisis-related restrictions than forced migrants due to the weaker international and EU legal framework protecting their rights.

The conducted analysis has shown that, in Poland, the crisis-induced changes concerned both groups, but the restrictions affected predominantly asylum seekers. Their situation, especially at the Polish borders, worsened in 2015 in response to the refugee crisis in Europe and became even worse during the COVID-19 pandemic. Pushbacks at the Polish-Belarusian border – happening incessantly since August 2021 – continued the policy of deterring asylum seekers, albeit in a more cruel and inhuman manner.

Meanwhile, migrant workers – contrary to what could have been expected – were not negatively affected by the laws adopted during the global economic crisis. Moreover, they faced beneficial treatment during the COVID-19 pandemic: they could seamlessly enter Poland, their legal stay was prolonged for over three years, access to some professions was eased, and the work-related procedures were simplified. Furthermore, in response to crises in Belarus and Ukraine, Belarusian nationals and persons displaced from Ukraine benefitted from the facilitated access to the Polish labour market. Departing from this tendency, as an only exception, Russian workers were negatively affected by the restrictions introduced in response to the war in Ukraine, but it was intertwined with their nationality rather than the “migrant worker” status.

Nonetheless, not only migrant workers were positively affected by the Polish crisis response. Forced migrants from Belarus and Ukraine were eagerly and extensively granted international or temporary protection in Poland. Even though the rights of temporary protection beneficiaries were limited over time, they remained more beneficial than the ones of other third-country nationals. This favourable approach to forced migrants from Ukraine and Belarus must be, however, seen through the lenses of the Polish migration policies that for years favoured Ukrainian and Belarusian nationals, especially in their access to the Polish labour market. In response to the political crisis in Belarus, Poland focused on providing Belarusian nationals with an eased access to the Polish territory and labour market. In response to the Russian invasion of Ukraine, Poland went beyond its obligations arising from the Temporary Protection Directive and Council Implementing Decision by allowing a continued stay and access to the Polish labour market to Ukrainian nationals who came to Poland before the war and by facilitating access to several professions for Ukrainian nationals. Moreover, the aforementioned limitations of the temporary protection beneficiaries’ rights

concerned mostly access to accommodation and social welfare, not access to the labour market. Thus, forced migrants from Belarus and Ukraine seem to be perceived by the Polish law- and policymakers as – at least potential – migrant workers.

Only during the COVID-19 pandemic all asylum seekers – irrespective of their nationality – were beneficially treated: their legal stay was extended, and they could access material reception conditions beyond the duration of the asylum proceedings. However, the latter solution was prematurely withdrawn in April 2022, while other beneficial measures intertwined with the pandemic continued until July 2023. Moreover, not all asylum seekers could benefit from these favourable laws as their access to the Polish territory was much hampered at that time.

The analysis of the target groups of the crisis-induced legal and policy changes in Poland prompts two conclusions. First, Polish crisis response concerning third-country nationals closely followed the long-standing domestic policy that welcomed migrant workers, especially those from the neighbouring states like Ukraine and Belarus, and deterred asylum seekers (Klaus 2021, 1-3; Perkowska and Gutauskas 2023, 133). Crises did not entail withdrawing from these general directions but rather enhanced them (Jaroszewicz 2023; Klaus 2021, 10; Vaagland and Chmiel 2024, 1344-1345). The changes in laws and policies adopted in response to the different crises made migrant workers as well as Ukrainian and Belarusian nationals even more welcome and asylum seekers even more unwelcome in Poland. Irrespective of different crises underway, Poland continued its market-oriented and security-focused approach. Thus, crises were important, but not sole, drivers for the changes in migration laws and policies discussed in this paper.

Second, the domestic policy focused on welcoming migrant workers and deterring asylum seekers clearly outweighed standards arising from the international and EU law. During the refugee crisis and the crisis at the Belarusian border Poland repeatedly breached international, EU and national law. International refugee law and human rights standards – despite being widely ratified and well-established – did not manage to effectively constrain the Polish authorities' intentions to introduce crisis-related restrictions that violated human rights of asylum seekers.

4.4 Crises, Political Goals and Human Rights

The case of Poland shows that not all crises lead to changes in national migration laws and policies. While states tend to reach for the restrictive measures in response to crises, it is not the only possible response. Even the crises that typically are considered to have such restrictive implications (like economic and migration crises) may in practice have no impact on national migration laws and policies or may alter these laws and policies in a way that is beneficial for third-country nationals. Hence, both restrictive and benevolent changes in migration laws and policies may be induced by crises. These directions, however, may be more influenced by the other than crises-related factors, like pre-crisis domestic policies.

When the state's responses to different crises consistently and for years negatively affect mainly one group, it may be questioned whether the adopted measures are an adequate crisis response, or a measure just implemented as a crisis response but really driven by political goals. Moreover, the state's actions in the face of a crisis are not unlimited. They must be coherent with domestic, EU

and international law. In particular, a crisis response cannot be considered adequate when it violates human rights.

In Poland, since 2015, asylum seekers – especially those from the Middle East – have been presented by the most prominent politicians as a threat. This security-driven narrative had secured a win in the 2015 parliamentary elections of a party that subsequently governed for eight years (2015-2023). In this period, most of the crises discussed in this paper occurred. The state response to these crises negatively influenced forced migrants unless they were from Ukraine and Belarus. The employed legal and policy measures, like denying and hampering access to asylum as well as violent pushbacks, violated human rights which was confirmed by the ECtHR, HRC, several CoE and UN bodies and national courts (see sec. 3.2.1 and 3.2.4). Despite this overwhelming disapproval, the Polish unwelcoming and deterring policy towards asylum seekers persisted and even flourished in 2024. In October 2024, the new government published a migration strategy that continued a security-driven approach to border management of its predecessor. It clearly stated that Polish authorities will take measures to suspend a right to asylum in Poland and beyond (*Rada Ministrów* 2024, 19-20). This proposal – understandably – was heavily criticized as incoherent with domestic, UE and international law, in particular with human rights standards (see e.g. Commissioner for Human Rights CoE 2025; *Komitat Badań nad Migracjami PAN* 2024, 7-8; UNHCR 2024). Nonetheless, in December 2024, an amendment of the 2003 International Protection Law was proposed according to which a right to asylum is to be suspended in Poland.⁸⁸

The analysis of the changes in the Polish migration laws and policies has clearly shown that one group – asylum seekers – have been particularly targeted with the crisis-induced restrictions introduced in Poland. Moreover, the Polish response to the situation at the Belarusian border, where the access to asylum has been systematically denied since 2015, was overwhelmingly considered incoherent with the domestic, EU and international law. As such it cannot be considered adequate. Despite that, as proven by the governmental proposals of October and December 2024, Polish authorities are determined to continue with their anti-asylum crisis response regardless of anything else, including human rights.

⁸⁸ Draft law no. UD173, proposed on 11 December 2024, <https://legislacja.rcl.gov.pl/projekt/12392451/katalog/13099787#13099787> (last accessed on 12 December 2024).

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