
Internal Security of the Republic of Poland and International Migration

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Abstract:

Purpose: The case study looks at actions intended to stop the crisis triggered by an uncontrolled influx of illegal migration across Poland-Belarus border. Legal measures act as examples of poorly successful mechanisms that are the basis of crisis management. The aim is to demonstrate the role of the state which carries out its responsibilities towards citizens but disregards and marginalises the importance of international commitments. Additionally, an analysis of political attitudes of decision-makers that determine the effectiveness of their participation.

Design/Methodology/Approach: The state's actions to counteract threats and outcomes of an uncontrolled influx of illegal migration are investigated by means of an analysis of the state's legal measures and regime.

Findings: An analysis of the actions of the authorities and the state in counteracting threats caused by an uncontrolled influx of illegal migration demonstrates that all measures at the state's disposal should be taken to mitigate its negative effects. Owing to its potential, the state should create mechanisms that would serve to strengthen it in ensuring internal order and to reinforce its position in the international arena as an advocate of transnational values. The research shows that the scope of the state's operation must be adjusted to the changing requirements and emerging threats.

Practical implications: The concept of counteracting threats and consequences of deterring the crisis caused by an uncontrolled influx of illegal migration across the Belarus border is as follows: security is a key challenge. Security-oriented actions involve multilevel and heterogeneous acts intended to reach the goal—ensuring security. Poland must comply with international law it is bound by. Persons that expressly communicate the need of international protection must be subject to asylum procedures, not be pushed back to Poland's borders.

Originality/value: The paper's conceptual framework is determined by the application of the concept of compliance used in the analysis of the state's actions by means of various approaches to the security policy, security management and praxeology.

Keywords: Crisis management, international migration, security policy.

Paper Type: Research study.

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1. Introduction

Citizens' security is one of the fundamental rights and values guaranteed in the highest ranking legislative act, that is the Constitution of the Republic of Poland (Constitution of the Republic of Poland of 2 April 1997, Dz. U. (Journal of Laws). No. 78 item 483, Article 5). Safeguarding this value, one of the most revered ones, is peremptory, which means that should security be compromised, all available tools and measures may be used. This inexorability reinforces, but may at the same time hinder the state's respect for human and citizens' rights and freedoms. It seems that the root of the law's powerlessness when it comes to modern threats lies in this very conflict between values, i.e. between freedom and respect for the law in the context of security. Some believe that if the state gives up even only one percent of its rights, it will mean a crisis for Poland (Talaga: *Dyplomacja: Z kolan do wielkiej piątki*, 2021).

2. Migration as a Threat to the Substance and Subject of Security

The evolution and review of the concept of security that now also takes into account threats unnoticed before are a premise to a new approach to the migration problem, also in the context of relations between migrants and security issues. As a result of modern development of civilisation and technology, the term "security" now covers two sectors: countries, continents and the entire world in the macro scale and security of local communities in the micro scale. Ensuring security, especially at the national level, has become a dominant need. Has many underlying reasons, but the most important need follows from the fact that this is the space where we seek security in the most natural way. We have always been afraid of a war catastrophe there (understood almost unanimously as a war with foreigners) and we are prone to underestimate other threats (we will manage). This is why the sphere of the direct national environment is becoming key to the issues of security of certain societies (Castells, 2008; Giddens, Lash, and Beck, 2009).

The approach to a territory changes as a consequence of these processes, where it may refer to global, national, local or personal matters, thus creating or limiting chances of each of these dimensions (Urban, 2009). Waever, (1995) was first to analyse to what extent and how migrant communities integrate and the impact this integration has on security. He investigated Muslim communities in the United Kingdom, France and Denmark in the context of "war against terrorism". Despite there being no proof for such a relationship in Poland, the migration problem has still easily become a clear challenge for traditional concepts of nationality and citizenship as well as the rights and obligations of citizens towards the state and the state's rights and responsibilities towards citizens (Orłowska, 2013).

For many Poles, migrants are a threat to social cohesion and stability, including them being an economic burden. The belief that migrants live off benefits and that the housing, educational, health and transport infrastructures bend under the weight

of their numbers and needs might even cause hostility (Reaguj na przestępstwa z nienawiści, 2021; Bilewicz, Marchlewska, Soral, and Winiewski, 2014). Migrants are often assumed to be criminals, which limits humanitarianism to the minimum. Thus, migration easily grows to the rank of one of the major political themes. It is not exclusively a Polish speciality (Zuchowicz, To przez nich chcemy Brexitu. Brytyjczycy pokazują Boston – największe skupisko Polaków i innych imigrantów, 2017, cf. Rząd odcina imigrantów od zasiłków, 2017).

The great influx of foreigners naturally has a noticeable impact on state security—both in the traditional sense of the state’s freedom from a threat of violence or conflict, and in an extended sense of the state’s internal cohesion, social stability and economic welfare—and also in relations between countries in which these minorities emerge and countries from which they originate.

It is worth noting that many understand security as any manifestation of an absence of any danger in life. This accommodates security understood in a deeply existential sense, as broad as this existence is perceived by the individual concerned. Therefore, it is not surprising that security is associated with an absence of threats caused by human criminal actions directed against the life or health of a person (Misiuk, 2011). Where we do not have skills of our own, we easily delegate security-related tasks to authorities.

There is an interesting relationship between the scope and content of the terms “security” and “public order”. It seems that they cannot be treated as equivalent or synonymous, even though their content overlaps in many cases. It needs to be concluded that their substance crosses. There are certain behaviours that, while violating public order, at the same time pose a threat to public security.

For instance, non-compliance with road traffic rules is a violation of public order and poses a threat to security. A. Misiuk believes that public order will mean the actually existing system of social relations, governed by a set of legal norms and other socially acceptable standards, that guarantees undisturbed and conflict-free operation of individuals in a society. J. Gierszewski quotes the concept of public order as an external state that involves observance of certain rules, forms and orders, where failure to comply with them in community life would expose people to dangers or strain (Gierszewski, 2013).

Therefore, public order is one of many normative systems that function in any community. This will also include other forms universally accepted in a given society, such as moral, religious or customary norms and principles of community life. What they have in common is that like legal norms, they enable harmony in community life. The purpose of public order is to ensure public governance and peace, to ensure regular—harmonious and rhythmic—community of people in a society and thus, indirectly, to safeguard the security of persons and public security.

Therefore, special goals will be to protect life, health, personal goods and property, to ensure normal conditions for the operation of state authorities and social and private organizations, and to create suitable conditions for a harmonious life between people on different planes.

Regardless of the adjectives we use to go before security (national, international or other), it is the state that guarantees undisturbed human functioning. Security is a total of determinants that protect the life, health and property of members of a given community, but also communal property and values, including the state. Security in a narrower sense is a state in which community members may freely and suitably enjoy civil rights and freedoms.

3. Refugees in Poland: Politically-Created Fear

A migration policy, the acceptance of migrants and the issue of being open to the influx of foreigners into Poland had in fact not existed in the Polish politics before 2015. Convergence of incidents in the international and national arena caused the Law and Justice government to face these issues seriously. Had it not been for the so-called migration crisis, that is the peak of problems on the European Union's external border, this topic would not have surfaced politically. The beginnings of the so-called migration crisis date back to April 2015 and the mass scale sinking of boats carrying people who tried to reach Europe by sea.

From August 2015 onwards, the situation becomes even more difficult due to mass movements on the Balkan route. Communities in Europe, including Poles, were "bombarded" with images of migrants that were pushing on the territories closer and closer to Poland. This is a particularly heated period in Poland. Presidential elections in May and parliamentary elections in October. Politicians and their campaign specialists "smell blood" and begin to tag at social heartstrings. The subject gets picked up by the media and in the anti-refugee and anti-migration covers of right-wing weeklies, in contrast to appeals and letters from intellectuals published in the liberal media. Migration becomes a political theme and another factor that polarizes the Polish society and also one of many pebbles that tilt the scale of victory towards today's ruling party—Law and Justice.

Its leader, Mr Kaczyński, still as an opposition MP, talks to the growing arrays of his followers about churches being turned into toilets in Italy. He does not soften his stance by saying that "all sorts of parasites and protozoa, which, while not dangerous in the organisms of these people, could be dangerous here" (Kaczyński: Pasożyty i pierwotniaki w organizmach uchodźców groźne dla Polaków, 2015). He is backed by activists and politicians of national movements who gained and retained majority allowing them to run a policy unrestricted by the opposition.

The "us-them" conflict becomes a polarizing factor for political power with which part of the society agrees. The government does not send positive information about

refugees. It uses any situation to promote its policy. There are no refugees from Ukraine in Poland, there are economic migrants. Information about attacks in Europe does not create an atmosphere of solidarity, but serves to remind the people that the government protects the Poles against the “Herzlich Willkommen” and “multi-kulti” policy.

4. Push-Back Tactics

An amendment to the Regulation of the Minister of the Interior and Administration promulgated in the Journal of Laws triggered numerous comments (Regulation of the Minister of the Interior and Administration of 20 August 2021 amending the regulation on the temporary suspension or restriction of border traffic at certain border crossing points).

The amendment pertains to the relevant regulation of March 2020 (Regulation of the Minister of the Interior and Administration of 13 March 2020 on the temporary suspension or restriction of border traffic at certain border crossing points). This regulation stipulates that border traffic at border crossing points between Poland and the Federal Republic of Germany, the Czech Republic, the Republic of Latvia and the Slovak Republic and at air and sea border crossing points shall be restricted.

However, it was reserved, that this involves limitation of incoming passenger traffic at border crossing points of the Republic of Poland to the following categories of persons crossing the state border at air and sea border crossing points and persons crossing state border by passenger cars at road border crossing points: citizens of the Republic of Poland; foreigners who are spouses or children of citizens of the Republic of Poland or who remain under permanent care of citizens of the Republic of Poland; holders of the Pole’s Card; heads of diplomatic missions and members of diplomatic and consular staff of missions, i.e., persons with a diplomatic rank and their family members; foreigners who have permanent or temporary residence permits in the territory of the Republic of Poland; foreigners who have the right to work in the territory of the Republic of Poland, i.e., foreigners who have the right to perform work based on the same rules as Polish citizens, who hold a work permit, a seasonal work permit or a declaration on entrusting work to a foreigner in the territory of the Republic of Poland; and foreigners operating vehicles that transport goods.

It was also reserved that in particularly justified cases, the commanding officer of a Border Guard outpost, upon authorisation of the Commander-in-Chief of the Polish Border Guard, may allow a foreigner to enter the territory of the Republic of Poland. The amendment of 20 August 2021 adds that persons other than those referred to “are instructed about the obligation to leave the territory of the Republic of Poland immediately” (Regulation of the Minister of the Interior and Administration of 20 August 2021 amending the regulation on the temporary suspension or restriction of border traffic at certain border crossing points, Article 1(2a)). Later in this document

it is highlighted that “should persons referred to appear at a border crossing point at which border traffic has been suspended or restricted or outside the territorial reach of the border crossing point, they shall be returned to the national borderline (Regulation of the Minister of the Interior and Administration of 20 August 2021 amending the regulation on the temporary suspension or restriction of border traffic at certain border crossing points, Article 1(2b)).

What does the 21 August 2021 amendment mean in practice? Many experts believe that the regulation allows the introduction of push-back practices forbidden by international law (K. Nowakowska, MSWiA zmienia rozporządzenie. Osoby, które nie są w nim wymienione, mają opuścić Polskę, 2021). In their opinion, this regulation hands over push-back practices forbidden under international law to be applied by services responsible for the protection of the borders. As explained by the Association for Legal Intervention, no regulation is allowed to change international treaties. These treaties clearly stipulate that if a foreigner applies for a refugee status at the Border Guard, state authorities are obliged to receive and process such an application. No regulation may change this (Projekt ustawy ograniczający prawa uchodźców- komentujemy!, 2021).

In the opinion of the Association for Legal Intervention, an ordinance on crossing the border contrary to the law, as an authority-imposing act towards an individual which establishes their rights and obligations, is an administrative decision, irrespective of the name it adopts. Such a decision—as an act that obliges a foreigner to leave the territory of Poland—is in fact an obligation to return, as understood in Directive 2008/115/EC, and, therefore, should at least minimally comply with European standards. Adoption of the regulation in the form suggested by the government violates in particular: the non-refoulement principle (Article 5 of the Directive); the right to voluntary departure (Article 7 of the Directive); the right to a postponement of removal (Article 9 of the Directive); procedural safeguards, such as decisions given in writing and providing reasons in fact and in law, obligation to provide a written or oral translation of the main elements of decisions (Article 12 of the Directive); the right to a remedy (Article 13 of the Directive); procedural rules and safeguards set forth in the Code of Administrative Procedure, the possibility of leaving applications for international protection filed by a foreigner detained immediately after he has crossed the external border in violation of the law unexamined by the Head of the Office for Foreigners (*ibidem*).

The regulation in this form violates obligations that Poland took upon itself on its accession to the Geneva Convention Relating to the Status of Refugees and is contrary to EU laws, especially provisions of Directive 2013/32/EU (Directive 2013/32/EU of the European Parliament and of the Council of 26 June 2013 on common procedures for granting and withdrawing international protection, 2021).

State authorities’ disregard for these rights is quite significant. Complaints from foreigners have been filed at the Office of the Commissioner for Human Rights

since 2015. The Commissioner has repeatedly and unsuccessfully pointed to problems on the foreigner—state institutions line. As we can read in his October 2018 communication, “(...) each person who, while being at the border, reports they wish to seek international protection, shall be allowed into Poland and officers of the Border Guard shall be obliged to receive a relevant request from them.

Otherwise, we cannot implement provisions of the Convention Relating to the Status of Refugees of 28 July 1951. It places an obligation on states-parties to ensure that persons who seek protection against persecution in the country of origin are given the possibility to exercise fundamental rights and freedoms in a safe country” (Zapewnić realną możliwość ubiegania się o status uchodźcy. RPO pisze do MSWiA, 2021; cf., Zmiany w rozporządzeniu w sprawie czasowego zawieszenia lub ograniczenia ruchu granicznego są sprzeczne z Konwencją Genewską i Konstytucją RP. Wystąpienie generalne RPO do MSWiA, 2021). As a consequence, in order to guarantee this right, countries must have mechanisms in place for receiving applications for international protection at the border. Even an extraordinary situation, such as a global pandemic, cannot result in violations of peremptory norms of international law (Przestrzeganie praw człowieka w dobie pandemii COVID-19. Stanowisko Rady Europy, 2020).

Based on the Regulation of the Minister of the Interior and Administration of 20 August 2021 amending the regulation on the temporary suspension or restriction of border traffic at certain border crossing points, the Border Guard pushes the migrants back to the borderline. According to organizations that protect human rights, the Guard does so despite correctly submitted applications for international protection. Such behaviours of officers have no grounds—either in domestic or in international law.

5. Stalemate at the Poland-Belarus Border: State of Emergency and What Next?

The influx of migrants is an effect of actions of Belarus’ authorities, who thereby conduct a “hybrid war” in response to EU sanctions and EU support to the Belarusian opposition. In the face of the growing influx of migrants, Poland announced a state of emergency on 2 September 2021. The resulting restrictions applied to 115 locations in the Podlaskie province and 68 locations in the Lubelskie province. This means an approximately 3-kilometre long stretch along the Poland-Belarus border. These activities enjoyed understanding and support from local authorities.

As a rule, they intend to ensure security, including mainly the security of residents of border towns. As part of the implementation of the state of emergency, Poland reinforced patrols at the border by, i.a., involving the army. At the same time, while stressing the efficiency of its own policy, it refused the support from Member States, the European Commission or EU agencies (Wiceszef MSWiA: nie potrzebujemy

Frontexu, aby zabezpieczyć granicę polsko-białoruską, 2021). On 30 September, the Polish parliament decided to extend the state of emergency in force in parts of the Podlaskie and Lubelskie voivodships for another 60 days. The motion was put forward by president Andrzej Duda.

A very heated debate took place (*Jest decyzja Sejmu ws. przedłużenia stanu wyjątkowego*, 2021). In order to carry out the plan, the rules of procedure of the Parliament were amended. Provisions on acting while extraordinary measures are in force were added (*Miemiec*, 2016). After the amendments, the Parliament decided about the presidential motion for permission to extend the state of emergency by a majority of votes in the presence of at least half of the statutory number of MPs, and no motions to defer or close the proceedings may be filed. Looking at how the government acts, its intentions for many may seem as lacking respect for the right to implement its own policy.

The President of the Supreme Bar Council pointed out that the State of Emergency Law and the Regulation of the Council of Ministers of 2 September 2021 on the restriction of rights and freedoms due to the introduction of the state of emergency, do not allow a limitation of the right to defence and the right to a trial, guaranteed also in the Polish Constitution (Constitution of the Republic of Poland of 2 April 1997, No. 78 item 483, Article 233(1). At the same time—as he signalled—these rights are denied in the territories covered with the state of emergency to foreigners requesting initiation of international protection procedures. They are also denied contact with a representative or a defence attorney (*Stan wyjątkowy nie może ograniczać prawa do obrony*, 2021).

An additional problem for the government is the tightness of the border itself. Existing safeguards on the Belarus border turn out insufficient. Concertina wire and a fence, relatively easy to tackle, are to be replaced by a more permanent installation. The 5-meter fence between Greece and Turkey is quoted by the government as an example of an effective barrier.

6. Conclusion

The policy of igniting aversion towards migrants brings a short-term political advantage to the government camp in Poland. It is not only about gains in the polls, but also about directing voters' attention away from problems such as inflation, nepotism or growing costs of the conflict with the EU. The adoption of legally dubious and non-humanitarian solutions towards some migrants did not stop the push on the Poland-Belarus border.

Despite this, the government's policy is enjoying support. However, the fear of xenophobic sentiments, that the government itself has caused in the Polish society, prevails. The ruling party has created a diabolic image of foreigners, Muslims in particular, and then appointed itself as protector of Poland against the flood of

foreigners (Sondaż IBRiS dla Onetu. Polacy dobrze oceniają rząd w związku z sytuacją na granicy z Białorusią, 2021). The Poland-Belarus border is not as tight as the government propaganda claims, as is proven by the fact that in September alone the federal police of Germany's Brandenburg that neighbours with Poland detained more than 1,500 foreigners who had illegally crossed the border..

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