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Principio di non respingimento, protezione internazionale ed espulsione collettiva di stranieri (CEDU, sez. I, sent. 30 giugno 2022, ric. n. 39028/17)

Nella presente causa i ricorrenti avevano lamentato di essere stati esposti al rischio di tortura e di maltrattamenti in seguito al rifiuto loro opposto dalle autorità polacche della domanda di asilo. Ciò, secondo quanto si legge nel ricorso, avrebbe violato l'art. 3 della Convenzione, in quanto il respingimento nel loro Paese non era stato adeguatamente garantito dalle autorità polacche. In aggiunta a tale doglianza, essi avevano denunciato di essere stati oggetto di un'espulsione collettiva, vietata dall'4 del Protocollo n. 4 della Convenzione.

Nella specie, la Corte ha ritenuto che le domande di protezione internazionale presentate dai ricorrenti fossero circostanziate e suffragate da statistiche ufficiali riguardo l'inefficace sistema di garanzie tale da procurare un serio rischio di maltrattamenti. In questo senso, le autorità polacche non avevano infatti predisposto nessuna tutela e, soprattutto, non avevano consentito ai ricorrenti di restare sul territorio polacco in attesa dell'esame delle loro domande, esponendoli consapevolmente al rischio di respingimento a catena e di trattamenti disumani vietati dall'art. 3 CEDU. In fine, quanto alla lamentata questione dell'espulsione collettiva, la Corte ha ribadito i principi generali già in precedenza espressi e ha ritenuto che le decisioni di rifiuto di ingresso emesse nei posti di frontiera costituiscono un'espulsione ai sensi della summenzionata norma e, nel caso di specie, il rifiuto opposto dalle autorità polacche non aveva avuto debitamente conto della situazione individuale di ciascuno dei richiedenti, ma rientrava in una più generale politica di respingimento tale da costituire un'espulsione collettiva di stranieri in violazione dell'art. 4 del Protocollo n. 4 della CEDU.

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EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIRST SECTION

CASE OF XXX v. POLAND
(Application no. 39028/17)

JUDGMENT
STRASBOURG

30 June 2022

This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of XXX v. Poland,

The European Court of Human Rights (First Section), sitting as a Chamber composed of:
Marko Bošnjak, *President,*
Péter Paczolay,
Krzysztof Wojtyczek,
Alena Poláčková,
Raffaele Sabato,
Lorraine Schembri Orland,
Ioannis Ktistakis, *judges,*
and Liv Tigerstedt, *Deputy Section Registrar,*
Having regard to:
the application (no. 39028/17) against the Republic of Poland lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by seven Russian nationals, Mr A.I. (the first applicant), Ms Z.I. (the second applicant), Ms I. I. (the third applicant) and four minor children of the first and second applicants, on 2 June 2017;
the decision to give notice to the Polish Government ("the Government") of the complaints concerning Article 3 of the Convention, Article 4 of Protocol No. 4, and Article 13 of the Convention in conjunction with Article 3 and Article 4 of Protocol No. 4, and to declare inadmissible the remainder of the application;
the decision not to disclose the applicants' names;
the parties' observations;
Having deliberated in private on 7 June 2022,
Delivers the following judgment, which was adopted on that date:

INTRODUCTION

1. The present case concerns refusal of border guards to receive the applicants' asylum applications and summary removal to a third country, with a risk of refoulement to and ill-treatment in the country origin.

THE FACTS

2. The applicants' details are listed in the appended table. The first and second applicants are married, and the third applicant is the first applicant's mother. The fourth to seventh applicants are the first and second applicants' children.
3. The applicants, who had been granted legal aid, were represented by M. M. Matsiushchankau, a lawyer practising in Vilnius.

4. The Government were represented by their Agent, Mr J. Sobczak of the Ministry of Foreign Affairs.

5. The facts of the case may be summarised as follows.

I. THE APPLICANTS' ARRIVAL IN POLAND

6. In October and November 2016, the applicants travelled to the Polish-Belarusian border crossing at Terespol on thirteen occasions. According to them, on each occasion they expressed a wish to lodge an application for international protection.

7. According to the applicants, when talking to the border guards they expressed fears for their safety. They told the border guards that they were from Chechnya. The first applicant submitted that on at least two occasions in 2016 he had been detained by officers of the special services, tortured and questioned, among other things, about his religious affiliation with Sunni Islam. Subsequently, he had received further summonses to police interrogations. After that he, the second applicant, their children and the third applicant had left their home and had travelled together to Belarus, with the aim of travelling onwards to Poland. They told the border guards that they could not remain in Belarus as their visas had expired, and that in practice it would be impossible for them to obtain international protection there. The border guards then summarily turned them away, sending them back to Belarus.

8. According to the Government, at the time of the applicants' first attempt to enter Poland, on 29 October 2016, they submitted that the first applicant wanted to escape from justice in connection with his participation in a fight. The applicants allegedly did not express any fear of returning to Belarus.

9. On each occasion on which the applicants presented themselves at the border crossing at Terespol, administrative decisions were issued turning them away from the Polish border on the grounds that they did not have any documents authorising their entry into Poland and that they had not stated that they were at risk of persecution in their home country but that they were simply trying to emigrate for economic or personal reasons. The official notes prepared by the officers of the Border Guard (*Straż Graniczna*) observed that the applicants had cited (i) the first applicant's fear of criminal responsibility for committing battery, (ii) the loss of employment and lack of opportunities in Chechnya, (iii) their wish to educate their children in Europe and to provide them with a better future, (iv) obtaining financial aid from the State, and (v) securing a better future for the family. The applicants did not appeal against the administrative decisions issued on those occasions.

10. In February 2017 the first applicant sent a letter to the head of the National Border Guard (*Komendant Główny Straży Granicznej*) in which he questioned the decision refusing him entry issued on 30 November 2016, asked for asylum, presented his account of his persecution in Chechnya and attached some witness statements. As the letter had been written in Russian, on 27 February 2017 the head of the National Border Guard informed the first applicant that in order for it to be examined he had to submit its translation into Polish. The first applicant failed to do so.

11. On 17 March 2017 the applicants again travelled to the border crossing at Terespol. This time they had with them a written application for international protection which – according to their statements – they tried to lodge with the officers of the Border Guard. The official note prepared by an officer of the Border Guard on that occasion stated that the first applicant wanted to enter

Poland with his family because of the problems in Russia caused by their friends. The applicants were again returned to Belarus.

12. On 25 May 2017 the applicants were informed by the Belarusian authorities that they had to leave Belarus by 4 June 2017, otherwise they would face deportation. Their passports were stamped to indicate this time-limit.

13. On 27 May 2017 the applicants travelled again to the border crossing in Terespol. According to their statements they tried to submit applications for international protection, which they had with them in writing, and told the officers of the border guards about the decision obliging them to leave Belarus. They were again denied entry into Poland. The official note prepared on that day stated that the applicants wished to travel to Europe in search of a better life.

II. INTERIM MEASURE INDICATED BY THE COURT

14. On 2 June 2017, when the applicants again presented themselves at the border crossing at Terespol, their representative lodged a request under Rule 39 of the Rules of Court asking the Court to prevent the applicants from being removed to Belarus. He indicated that, as Russian citizens, they had no genuine possibility of applying for international protection in Belarus and were at constant risk of expulsion to Chechnya, where the first applicant would face the threat of torture or other forms of inhuman and degrading treatment.

15. At 10.10 a.m. on 2 June 2017 the Court (the duty judge) decided to apply Rule 39 of the Rules of Court, indicating to the Polish Government that the applicants should not be removed to Belarus until 16 June 2017. The Government were informed of the interim measure before the planned time of expulsion. Nevertheless, the applicants were returned to Belarus at 11.25 a.m. The official note prepared by the border guards on that occasion stated that, when at the border, the applicants had expressed the wish to enter Poland in order to receive social benefits due to the family's difficult financial situation.

III. DEVELOPMENTS FOLLOWING THE APPLICATION OF THE INTERIM MEASURE

16. On the same day (2 June 2017) in the afternoon the applicants returned to the border checkpoint at Terespol, carrying with them an application for international protection and a copy of a letter informing their representative of the Court's decision concerning the interim measure. This time they were allowed to enter Poland and submit applications for international protection.

17. On 16 June 2017 the Court (the duty judge) extended the interim measure previously indicated on 2 June 2017 under Rule 39 of the Rules of Court until 13 July 2017 and requested the parties to provide further information concerning, among other things, the risk of the applicants being expelled pending asylum proceedings.

18. Upon receiving that information, and taking into account the fact that the applicants had been admitted to Poland and – pending proceedings concerning their application for international protection – were not at risk of expulsion, on 12 July 2017 the Court (the duty judge) decided to lift the interim measure indicated to the Government under Rule 39 of the Rules of Court on 2 June 2017.

19. On 14 December 2017 the head of the Aliens Office (*Szef Urzędu do Spraw Cudzoziemców*) refused to grant refugee status and supplementary international protection to the applicants. On 12 June 2018 the Refugee Board (*Rada do Spraw Uchodźców*) upheld the decision. The applicants did not appeal against that decision to the administrative courts.

RELEVANT LEGAL FRAMEWORK AND PRACTICE

20. The relevant legal framework and practice concerning granting international protection to aliens and the refusal-of-entry procedure were set out in the Court's judgment in *M.K. and Others v. Poland* (nos. 40503/17 and 2 others, §§ 67-77, 23 July 2020).

THE LAW

21. The applicants made various complaints under Article 3 of the Convention, Article 4 of Protocol No. 4 to the Convention and Article 13 of the Convention in conjunction with Article 3 of the Convention and Article 4 of Protocol No. 4.

I. ADMISSIBILITY

A. The Government's preliminary objection

22. The Government submitted that the application was inadmissible for non-exhaustion of domestic remedies. They further considered that the application should be declared inadmissible as manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention.

B. The parties' submissions

23. The Government submitted that the applicants had failed to appeal against the decisions refusing them entry into Poland. They submitted that only the first applicant had appealed against the decision of 30 November 2016 refusing him entry into Poland. The remaining applicants had failed to lodge any appeals, thus depriving the Polish administrative authorities and, further, the administrative courts of the possibility to examine their allegations about a violation of the Convention.

24. The applicants submitted that the Court had already examined the remedies relied on by the Government and found that they could not be considered "effective" within the meaning of Article 35 § 1 of the Convention. In this context they referred to the judgment in *M.K. and Others v. Poland*, cited above, §§ 147-49.

C. The Court's assessment

25. The Court observes that all the complaints raised by the applicants in the present case under various Articles of the Convention and its Protocol No. 4 relate to the same circumstances, namely the fact that the applicants were turned away at the Polish border and sent back to Belarus without an asylum procedure being instigated. Therefore, the effectiveness of the remedy available to them has to be examined with regard to the execution of this measure, jointly for all of the complaints.

26. The Court has indeed already examined the effectiveness of the remedy relied on by the Government and found that the sole fact that an appeal against the decision on refusal of entry would not have had suspensive effect (and, consequently, could not have prevented the applicants from being returned to Belarus) is sufficient to establish that this appeal – and any further appeals to the administrative courts that could have been brought subsequently to it – did not constitute an effective remedy within the meaning of the Convention (*M.K. and Others v. Poland*, cited above, § 148). The Court sees no reason to hold otherwise in the instant case.

27. Accordingly, the Court dismisses the Government's objection concerning the non-exhaustion of domestic remedies.

D. Conclusion on admissibility

28. The Court notes that the application is neither manifestly ill-founded nor inadmissible on any other grounds listed in Article 35 of the Convention. It must therefore be declared admissible.

II. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

29. The applicants complained that they had been exposed to a risk of torture or inhuman or degrading treatment in Chechnya as a result of having been returned to Belarus, from where they could have been sent back to Russia, and that their treatment by the Polish authorities had amounted to degrading treatment. They relied on Article 3 of the Convention, which reads as follows:

"No one shall be subjected to torture or to inhuman or degrading treatment or punishment."

A. The parties' submissions

30. The applicants reiterated that each time that they had been interviewed at the second line of border control, they had expressed their wish to apply for international protection and had presented their respective accounts of having undergone persecution in Chechnya. They submitted that the border guards had disregarded their statements and – on some occasions – their written applications for international protection. According to the applicants such a practice had been routine at the Polish-Belarusian border crossing at Terespol.

31. The applicants also argued that the official notes drafted by the officers of the Border Guard did not accurately reflect the content of the statements given by them and should not be regarded as constituting valid evidence of those statements. They alleged that their return to Belarus had put them at risk of being deported to Chechnya owing to the fact that Belarus was not a safe country for refugees from Russia. By failing to initiate proceedings for international protection on sixteen occasions when the applicants had presented themselves at the border, the Polish authorities had knowingly exposed them to the risk of chain *refoulement* and treatment prohibited by Article 3 of the Convention.

32. The Government noted that the Polish-Belarusian border was also the external border of the European Union. In consequence, the authorities that conducted border checks were bound by both domestic legislation and European Union law (*inter alia*, the Schengen Borders Code). The Government also emphasised the main responsibilities of the Border Guard – namely, border protection and border traffic control, as well as the prevention of illegal migration and the entry into State territory of foreigners not fulfilling the conditions required.

33. The Government explained that all foreigners who presented themselves at the Polish-Belarusian border were subjected to the same procedure, regulated by Polish legislation and EU law. At the first line of border control their documents (travel documents and visas) were verified. If they did not fulfil the conditions for entry, they were directed to the second line of border control, at which detailed interviews were carried out by officers of the Border Guard. This interview, during which only an officer of the Border Guard and the foreigner in question were present, was a crucial element of this part of the border check, and the statements given by a foreigner on that occasion would be the only element allowing him or her to be identified as someone seeking international protection. If it was evident from the statements made by the foreigner that he or she was seeking such protection, the application in this regard was accepted and forwarded to the relevant authority for review within forty-eight hours and the foreigner was directed to the relevant centre for aliens. However, if the foreigner in question expressed other reasons for his or her attempt to enter Poland (economic or personal, for example) a decision refusing entry was issued and immediately executed.

34. Referring to the circumstances of the present case, the Government stated that on all the occasions on which the applicants had arrived at the border checkpoints at Terespol they had been subjected to the second line of border control and interviewed by officers of the Border Guard. The Government submitted that at no point had any of the applicants given reasons that would have justified the granting of international protection. As a result, no applications had been forwarded to the head of the Aliens Office. On 2 June 2017 the applicants had tried to cross the border twice. In the morning they had allegedly relied on economic reasons and had therefore been turned back. A few hours later they had expressed fears relating to their religion if returned and at that point their applications had been forward to the Aliens Office.

35. The Government stressed that the applicants had not, in their oral statements given to the border guards, referred to any treatment in breach of Article 3 of the Convention or any risk of being subjected to such treatment while staying in Belarus.

36. Accordingly, the Government submitted that in the present case there was no evidence that the applicants were at risk of being subjected to treatment violating Article 3 of the Convention.

B. The Court's assessment

37. The relevant general principles concerning the principle of *non-refoulement*, return of asylum-seekers in the context of the prohibition of torture and other degrading or inhuman treatment were summarised in the judgment in *M.K. and Others v. Poland*, cited above, §§ 166-73.

38. The Government disputed whether the applicants, when presenting themselves on numerous occasions at the Polish border, expressed a wish to lodge applications for international protection or communicated any fear for their own safety. They submitted that the applicants did not make any claims in that respect and – in consequence – could not be considered asylum-seekers. In this context the Court notes that it has already established in its judgment in *M.K. and Others v. Poland* that, at the relevant time, a systemic practice of misrepresenting statements given by asylum-seekers in the official notes drafted by the officers of the Border Guard existed at the border checkpoints between Poland and Belarus (ibid., § 174). The existence of such a practice is corroborated by a large number of accounts collected from other witnesses by the national human rights institutions (in particular by the Children's Ombudsman – ibid., §§ 109-14) and further substantiated by the submissions presented by the United Nations High Commissioner for Refugees (see *D.A. and Others v. Poland*, no. 51246/17, § 53, 8 July 2021).

39. The applicants' account of the statements that they gave at the border is also corroborated by documents presented by them to the Court, especially by copies of the applications for international protection which the applicants had been carrying when they presented themselves at the border. The Court does not find it credible that the applicants possessed those documents (which they submitted to the Court) but failed to hand them to the officers of the Border Guard who were about to decide whether to admit them into Poland or to return them to Belarus. Moreover, the applicants' version of events in this respect is also supported by the fact that they had made numerous attempts to cross the border.

40. Accordingly, the Court cannot accept the argument of the Polish Government that the applicants presented no evidence whatsoever that they were at risk of being subjected to treatment violating Article 3. The applicants indicated individual circumstances that – in their opinion – substantiated their applications for international protection and produced documents in support of

their claims. They also raised arguments concerning the reasons for not considering Belarus to be a safe third country for them and why, in their opinion, returning them to Belarus would put them at risk of "chain *refoulement*". Those arguments were substantiated by the official statistics, which indicate that the asylum procedure in Belarus is not effective as far as Russian citizens are concerned (*M.K. and Others v. Poland*, cited above, § 177).

41. The Court is therefore satisfied that the applicants could arguably claim that there was no guarantee that their asylum applications would be seriously examined by the Belarusian authorities and that their return to Chechnya could violate Article 3 of the Convention. The assessment of those claims should have been carried out by the Polish authorities acting in compliance with their procedural obligations under Article 3 of the Convention. Moreover, the Polish State was under an obligation to ensure the applicants' safety, in particular by allowing them to remain within Polish jurisdiction until such time as their claims had been properly reviewed by a competent domestic authority. Taking into account the absolute nature of the right guaranteed under Article 3, the scope of that obligation was not dependent on whether the applicants were carrying documents authorising them to cross the Polish border or whether they had been legally admitted to Polish territory on other grounds.

42. Moreover, in the Court's view, in order for the State's obligation under Article 3 of the Convention to be effectively fulfilled, a person seeking international protection must be provided with safeguards against having to return to his or her country of origin before such time as his or her allegations are thoroughly examined. Therefore, the Court considers that, pending an application for international protection, a State cannot deny access to its territory to a person presenting himself or herself at a border checkpoint who alleges that he or she may be subjected to ill-treatment if he or she remains on the territory of the neighbouring State, unless adequate measures are taken to eliminate such a risk.

43. The Court furthermore notes the respondent State's argument that by refusing the applicants entry into Poland, it had acted in accordance with the legal obligations incumbent on it arising from Poland's membership in the European Union. The Court has already examined similar arguments in *M.K. and Others v. Poland* (cited above, §§ 181-82), and sees no reason to come to a different conclusion in the present case.

44. In the light of the foregoing, the Court considers that the applicants did not have the benefit of effective guarantees that would have protected them from exposure to a real risk of being subjected to inhuman or degrading treatment, as well as torture.

45. The fact that no proceedings in which the applicants' applications for international protection could be reviewed were initiated on the sixteen occasions when the applicants were at the Polish border crossing constituted a violation of Article 3 of the Convention. Moreover, given the situation in the neighbouring State (*M.K. and Others v. Poland*, cited above, §§ 116-17) the Polish authorities, by failing to allow the applicants to remain on Polish territory pending the examination of their applications, knowingly exposed them to a serious risk of chain *refoulement* and treatment prohibited by Article 3 of the Convention.

46. There has accordingly been a violation of Article 3 of the Convention.

III. ALLEGED VIOLATION OF ARTICLE 4 OF PROTOCOL NO. 4 TO THE CONVENTION

47. The applicants complained that they had been subjected to a collective expulsion of aliens. They relied on Article 4 of Protocol No. 4 to the Convention, which reads as follows:

"Collective expulsion of aliens is prohibited."

A. The parties' submissions

48. The applicants referred to the wider policy of not accepting applications for international protection from persons presenting themselves at the Polish-Belarusian border and of returning those persons to Belarus, a situation described in *M.K. and Others v. Poland*, (cited above, §§ 204-11). They submitted that they had been victims of the same policy, since on sixteen occasions the border guards had disregarded their applications for international protection, in breach of Article 4 of Protocol No. 4 to the Convention.

49. The Government submitted that every decision issued refusing the applicants entry into Poland had been based on an individual assessment of their situation and, in consequence, had not involved the collective expulsion of aliens.

50. Firstly, the Government reiterated that as the applicants had not had valid visas to enter Poland, they had been directed to the second line of border control, at which individual interviews had been carried out in a language understood by the applicants. Those interviews had been aimed at obtaining full knowledge of the reasons for which the applicants had arrived at the border without the necessary documents. Secondly, the Government submitted that each interview had been recorded in the form of an official note detailing the reasons given by each of the applicants for seeking entry into Poland and – if necessary – any other circumstances in respect of their cases. Thirdly, they indicated that the decisions denying the applicants entry had been prepared as separate documents in respect of each of the adult applicants (that is to say, on an individual basis) after a careful examination of his or her respective situation.

51. The Government stated that the decisions concerning refusal of entry had been issued on the standardised form and – in the light of that fact – might have seemed similar to each other; however, they had in each instance been issued on the basis of an individual assessment of the situation of each of the applicants. All the applicants had been presented with their individual decision.

B. The Court's assessment

52. The relevant general principles concerning the collective expulsion of aliens were summarised in the judgment in *M.K. and Others v. Poland*, cited above, §§ 197-203.

53. The Court has already found in similar circumstances that the decisions to refuse applicants entry into Poland issued at the border checkpoints constituted an "expulsion" within the meaning of Article 4 of Protocol No. 4 (ibid., §§ 204-05). It sees no reason to hold otherwise in the present case. It remains to be established whether that expulsion was "collective" in nature.

54. The Court notes the Government's argument that each time the applicants were interviewed by the officers of the Border Guard and received individual decisions concerning the refusal to allow them entry into Poland. However, the Court has already indicated that it considers that during this procedure the applicants' statements concerning their wish to apply for international protection were disregarded (see paragraphs 39-40 above) and that even though individual decisions were issued in respect of each applicant, they did not properly reflect the reasons given by the applicants to justify their fear of persecution.

55. The Court further stresses that the applicants in the present case were trying to make use of the procedure of accepting applications for international protection that should have been available to them under domestic law. They attempted to cross a border in a legal manner, using an official checkpoint and subjecting themselves to border checks as required by the relevant law. Hence, the fact that the State refused to entertain their arguments concerning the justification for their applications for international protection cannot be attributed to their own conduct (compare *N.D. and N.T. v. Spain*, nos. 8675/15 and 8697/15, § 231, 13 February 2020).

56. Moreover, the independent reports concerning the situation (in particular regarding the border checkpoint at Terespol) indicate that the applicants' case constituted an exemplification of a wider State policy of refusing entry to foreigners coming from Belarus, regardless of whether they were clearly economic migrants or whether they expressed a fear of persecution in their countries of origin (see *M.K. and Others v. Poland*, cited above, §§ 98-114 and 208-09).

57. The Court concludes that the decisions refusing entry into Poland issued in the applicants' case were not taken with proper regard to the individual situation of each of the applicants and were part of a wider policy of not receiving applications for international protection from persons presenting themselves at the Polish-Belarusian border and of returning those persons to Belarus, in violation of domestic and international law. Those decisions constituted a collective expulsion of aliens within the meaning of Article 4 of Protocol No. 4.

58. Accordingly, the Court considers that in the present case there has been a violation of Article 4 of Protocol No. 4 to the Convention.

IV. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION TAKEN IN CONJUNCTION WITH ARTICLE 3 OF THE CONVENTION AND ARTICLE 4 OF PROTOCOL NO. 4 TO THE CONVENTION

59. The applicants furthermore complained that they had not had an effective remedy under Polish law by which to lodge with the domestic authorities their complaints under Article 3 of the Convention and Article 4 of Protocol No. 4. They relied on Article 13 of the Convention, which provides:

"Everyone whose rights and freedoms as set forth in [the] Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity."

A. The parties' submissions

60. The applicants referred to the Court's findings in *M.K. and Others v. Poland* (cited above, §§ 219-20). They submitted that their situation was similar to that examined in that judgment and that the Government had not put forward any new circumstances.

61. The Government submitted that the applicants had had at their disposal an effective remedy – namely an appeal to the head of the National Border Guard against the decisions concerning refusal of entry – which they had failed to make use of. The Government acknowledged that an appeal did not have suspensive effect, but they argued that the domestic provisions were in this respect in accordance with European Union law, which obliged them to ensure that a third-country national who had been refused entry into a member State did not enter the territory of that State. The Government emphasised that the lack of suspensive effect of the appeal in question resulted from the special character of the decision on refusal of entry. They argued that if a

foreigner did not fulfil the conditions for entry into Poland, the decision on refusal of entry had to be executed immediately, as there would be no grounds for the foreigner in question to remain on the territory of Poland. The Government also pointed out that in the event that the head of the National Border Guard issued a negative decision, domestic law provided the possibility of lodging a complaint with an administrative court.

62. Moreover, the Government argued that the decisions to refuse the applicants entry had been taken individually by officers of the Border Guard after taking into account the conditions existing at the moment when the decision was taken. They stressed that the applicants could come to the border checkpoint again and – in the event that they fulfilled the conditions for entry – be admitted to the territory of Poland.

B. The Court's assessment

63. The Court has already concluded that the return of the applicants to Belarus amounted to a violation of Article 3 of the Convention and Article 4 of Protocol No. 4 (see paragraphs 46 and 58 above). The complaints lodged by the applicants on these points are therefore "arguable" for the purposes of Article 13 (see, in particular, *Hirsi Jamaa and Others v. Italy* [GC], no. 27765/09, § 201, ECHR 2012). Furthermore, the Court has ruled that the applicants in the present case were to be treated as asylum-seekers (see paragraph 40 above); it has also established that their claims concerning the risk that they would be subjected to treatment in breach of Article 3 if returned to Belarus were disregarded by the authorities responsible for border control and that their personal situation was not taken into account (see paragraph 57 above).

64. In addition, the Court has already held that an appeal against a refusal of entry and a further appeal to the administrative courts were not effective remedies within the meaning of the Convention because they did not have automatic suspensive effect (see paragraph 26 above). The Government did not indicate any other remedies which might satisfy the criteria under Article 13 of the Convention. Accordingly, the Court finds that there has been a violation of Article 13 of the Convention taken in conjunction with Article 3 of the Convention and Article 4 of Protocol No. 4 to the Convention.

V. APPLICATION OF ARTICLE 41 OF THE CONVENTION

65. Article 41 of the Convention provides:

"If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party."

A. Damage

66. The applicants claimed 34,000 euros (EUR) in respect of non-pecuniary damage and EUR 640 in respect of pecuniary damage for expenses incurred for train tickets from Brest to Terespol for the whole family on sixteen occasions.

67. The Government submitted that the amounts indicated by the applicants were entirely unsubstantiated and exorbitant.

68. The Court, ruling on an equitable basis, awards the applicants EUR 28,000 jointly in respect of both pecuniary and non-pecuniary damage.

B. Costs and expenses

69. The applicants, who were represented by a lawyer of their choice and were granted legal aid, also claimed EUR 1,637.81 in respect of costs and expenses.

70. The Government considered that claim exorbitant.

71. According to the Court's case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these were actually and necessarily incurred and are reasonable as to quantum. In the present case, regard being had to the documents in its possession and the above criteria, the Court considers it reasonable to award the applicants EUR 1,600 less EUR 850 received under the Court's legal-aid scheme, plus any tax that may be chargeable to them, covering costs under all heads.

C. Default interest

72. The Court considers it appropriate that the default interest rate should be based on the marginal lending rate of the European Central Bank, to which should be added three percentage points.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the application admissible;
2. *Holds* that there has been a violation of Article 3 of the Convention;
3. *Holds* that there has been a violation of Article 4 of Protocol No. 4 to the Convention;
4. *Holds* that that there has been a violation of Article 13 of the Convention taken in conjunction with Article 3 of the Convention and Article 4 of Protocol No. 4 to the Convention;
5. *Holds*

   (a) that the respondent State is to pay the applicants jointly, within three months, the following amounts, to be converted into the currency of the respondent State at the rate applicable at the date of settlement:

   (i) EUR 28,000 (twenty-eight thousand euros), plus any tax that may be chargeable, in respect of pecuniary and non-pecuniary damage;

   (ii) EUR 750 (seven hundred fifty euros), plus any tax that may be chargeable to the applicants, in respect of costs and expenses.

   (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points.
6. *Dismisses* the remainder of the applicants' claim for just satisfaction.

   Done in English, and notified in writing on 30 June 2022, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Liv Tigerstedt Deputy Registrar
Marko Bošnjak President