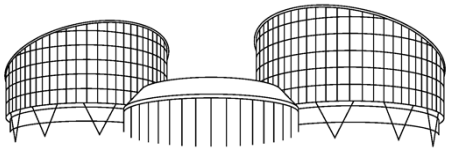

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIRST SECTION

CASE OF D.A. AND OTHERS v. POLAND

(Application no. 51246/17)

JUDGMENT

Art 3 • Expulsion • Repeated denial of access to asylum procedure at Polish-Belarusian border, exposing applicants to risk of chain-*refoulement* to Syria and inhuman and degrading treatment and torture Art 4 P4 • Collective expulsion of aliens through wider policy of refusal of entry, in disregard of applicants' intention to apply for international protection Art 13 (+ Art 3 and Art 4 P4) • Lack of effective remedy by which to lodge complaints with the domestic authorities Art 34 • Hinder the exercise of the right of application • Non-compliance with interim measure under Rule 39

STRASBOURG

8 July 2021

Request for referral to the Grand Chamber pending

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 D.A. and Others v. Poland,

The European Court of Human Rights (First Section), sitting as a Chamber composed of:

Ksenija Turković, *President,*
Péter Paczolay,
Krzysztof Wojtyczek,
Alena Poláčková,
Raffaele Sabato,
Lorraine Schembri Orland,
Ioannis Ktistakis, *judges,*
and Renata Degener, *Section Registrar,*

Having regard to:

the application (no. 51246/17) 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 three Syrian nationals, Mr D.A., Mr M.A., and Ms S.K. ("the applicants"), on 20 July 2017;

the decision to give notice to the Polish Government ("the Government") of the complaints under Article 3 of the Convention, Article 4 of Protocol No. 4 to the Convention, Article 13 in conjunction with Article 3 of the Convention and Article 4 of Protocol No. 4 to the Convention and under Article 34 of the Convention;

the decision not to have the applicants' names disclosed;

the decision to give priority to the application (Rule 41 of the Rules of Court);

the decision to indicate an interim measure to the respondent Government under Rule 39 of the Rules of Court and the fact that this interim measure has not been complied with;

the observations submitted by the respondent Government and the observations in reply submitted by the applicants;

the comments submitted by the United Nations High Commissioner for Refugees, who was granted leave to intervene by the President of the Section;

Having deliberated in private on 15 June 2021,

Delivers the following judgment, which was adopted on that date:

INTRODUCTION

1. The case concerns alleged pushbacks of the applicants – Syrian nationals – at the Polish-Belarusian border. The applicants alleged that the Polish authorities had repeatedly denied them the possibility of lodging applications for international protection, in breach of Article 3 of the Convention. They also relied upon Article 4 of Protocol No. 4 to the Convention, alleging that their situation had not been reviewed individually

and that they were victims of a general policy followed by the Polish authorities with the aim of reducing the number of asylum applications registered in Poland. The applicants stated that, under Article 13 in conjunction with Article 3 of the Convention and Article 4 of Protocol No. 4 to the Convention, lodging an appeal against a decision denying someone entry into Poland did not constitute an effective remedy for asylum-seekers as it would have no suspensive effect. Moreover, the applicants complained that the Polish authorities had not complied with the interim measure granted to them by the Court, in breach of Article 34 of the Convention.

THE FACTS

2. The applicants, Mr D.A., Mr M.A. and Ms S.K., were born in 1987, 1992 and 1993 respectively. They are Syrian nationals who currently reside in Belarus. The first two applicants are brothers, the first and the third applicants are married. The applicants were represented by Mr J. Białas, a lawyer practising in Warsaw.

3. The Government were represented by their Agent, M J. Chrzanowska and, subsequently, by Mr J. Sobczak, of the Ministry of Foreign Affairs.

4. The facts of the case, as submitted by the parties, may be summarised as follows.

I. THE APPLICANTS' SITUATION PRIOR TO THE APPLICATION FOR INTERIM MEASURES

5. On three occasions between 14 and 18 July 2017 the applicants travelled to the Polish-Belarusian border crossing at Terespol. According to the applicants, each time they expressly stated a wish to lodge an application for international protection.

6. According to the applicants, when talking to the border guards they expressed fears for their safety. They stated that they came from Syria where a violent armed conflict was going on. The first and second applicants had received conscription orders from the Syrian Army and had failed to comply with them. They submitted that this fact put them at risk of fifteen years' imprisonment if returned to Syria. Moreover, the first and second applicants declared that they belonged to the Druze ethno-religious group, which was one of the most persecuted minorities in Syria, both by the Assad regime and by Sunni extremists.

7. The applicants also stated that although they had resided and studied in Belarus since 2013 (the first and second applicants) and 2015 (the third applicant) they could not remain in that country, as they had recently graduated, their visas had expired and in practice it would be impossible for them to obtain international protection there.

8. On all occasions 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 (specifically in order to join their family who lived in Europe or to pursue professional careers outside Belarus). This conclusion was based on the summary official notes from the interviews prepared by the officers of the Border Guard in Polish and not signed by the applicants. The official notes in question observed that the applicants indicated that the first and the second applicant had recently graduated from their studies in Minsk and were very successful in the field of film-making. They wished to advance their careers in Europe. According to those official notes, the applicants had also indicated that they had family members in the United Kingdom, Germany and France and wanted to visit them and seek their support in starting a life in Europe.

9. The applicants did not appeal against any of the administrative decisions issued before 20 July 2017.

II. INTERIM MEASURES INDICATED BY THE COURT

10. On 20 July 2017, when the applicants presented themselves at the border crossing in Terespol, their representative submitted a request under Rule 39 of the Rules of Court asking the Court to prevent the applicants' removal to Belarus.

11. On 20 July 2017, at 10.08 a.m. the Court (the duty judge) decided to apply Rule 39 of the Rules of Court, indicating to the Government that the applicants should not be removed to Belarus until 3 August 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 border guards on this occasion stated that, when at the border, the applicants had expressed the wish to enter Poland in order to find a better place to work, to develop professionally and to visit their families who reside in the United Kingdom and Germany.

12. On the same day, 20 July 2017, the Helsinki Foundation for Human Rights – a non-governmental organisation with which the applicants' representative worked – sent a letter to the head of the National Border Guard informing him about the applicants' allegations that their wishes to lodge applications for international protection had been ignored at the Terespol border crossing and about the interim measure issued by the Court.

III. DEVELOPMENTS FOLLOWING THE APPLICATION OF AN INTERIM MEASURE

13. On 21 July 2017 the applicants returned to the border checkpoint in Terespol carrying with them a copy of the letter informing their representative of the Court's decision concerning the interim measure. They submitted that they had expressly stated that they had sought international protection and had showed the border guards copies of the letters summoning the first and the second applicants to serve in the Syrian Army. The applicants alleged that when confronted with the situation of the officers of the Border Guard ignoring their requests for international protection, they had tried to record the course of the interviews on their mobile telephones. However, when the officers conducting the interviews had realised that, they had demanded the applicants' telephones and erased the recordings.

14. The applicants were again turned away and sent back to Belarus. The Government submitted that in the course of their conversation with the officers of the Border Guard, the applicants had not expressed any need for international protection; rather, they submitted that after having had finished their studies, they no longer had the right to stay in Belarus and wanted to enter Poland in order to travel to the United Kingdom, join their family residing there and continue their professional careers.

15. On 21 July 2017 the Government requested that the Court reconsider its decision concerning the interim measure indicated under Rule 39 of the Rules of Court. The Government argued that the applicants had never requested international protection, nor had they given any reasons for such protection.

16. On 3 August 2017 the Court (the duty judge) decided to extend the interim measure until 8 September 2017 and to clarify that the indication made to the Government on 20 July 2017 – that the applicants should not be removed to Belarus – should be understood in such a way that, when they presented themselves at a Polish border checkpoint, the applicants' applications for asylum should be received and registered by the Border Guard and forwarded for examination by the competent authorities. Pending examination of their asylum application, the applicants should not be sent back to Belarus.

17. On 7 September 2017 the Court (the duty judge) decided to extend the interim measure until further notice.

18. On 20 October 2017, when submitting their observations on the admissibility and merits of the case, the Government again requested that the Court lift the interim measure indicated under Rule 39 of the Rules of Court. They cited the same reasons as those cited in their previous request. On 22 February 2018 the President of the Section refused their request.

IV. THE APPLICANTS' APPEALS AGAINST THE REFUSAL-OF-ENTRY DECISIONS OF 20 AND 21 JUNE 2017

19. On 25 July 2017 the applicants lodged appeals against the decisions refusing them entry to Poland issued on 20 and 21 June 2017.

20. On 15 September 2017 the head of the National Border Guard upheld those decisions. He stated, *inter alia*, that under domestic law an interview with a foreigner who did not have documents allowing him or her to cross the Polish border was to be held by an officer of the Border Guard without the participation of other persons and aimed to identify the reasons for the foreigner's arrival at the border. The head of the National Border Guard indicated that, during their interviews, the applicants had not expressed any wish to apply for international protection, but instead cited only professional and personal reasons for their wish to travel to Poland. He stressed that, had the applicants expressed a wish to apply for international protection, their applications would have been received. However, in the absence of such statement on their part, the officers of the Border Guard could not have presumed that the applicants were asylum-seekers. When referring to the interim measure indicated by the Court, the head of the National Border Guard stated that it was impossible to remove from Polish territory a person who had not legally crossed a border in the first place and that domestic law provided no basis for allowing the applicants to enter Poland, even despite the interim measure.

21. The applicants lodged appeals with the Warsaw Regional Administrative Court (*Wojewódzki Sąd Administracyjny w Warszawie*). The appeals referred only to the decisions upholding the refusal-of-entry decisions issued on 21 June 2017.

22. On 7 March 2018 the Warsaw Regional Administrative Court quashed the decisions of the head of the National Border Guard and the head of the Terespol Unit of the Border Guard issued on 15 September 2017 and 21 July 2017 respectively.

23. The Warsaw Regional Administrative Court stressed that the procedure of refusal of entry to a foreigner, in which only an official note is prepared by the officers of the Border Guard, was a specific summary procedure that may be conducted only in very clear cases and only when it did not violate the provisions relating to the right to asylum and international protection. It indicated that in the applicants' cases the official notes were very brief, did not contain information about the languages spoken by the applicants, the presence of an interpreter or the questions asked by the border guards. The Warsaw Regional Administrative Court noted that the brevity of the notes had to be contrasted with the fact that the applicants presented photographs of themselves carrying written declarations that they wished to apply for international protection and – in the case of the first and second applicants – copies of their conscription

orders summoning them to join the Syrian military, repeated statements of the applicants and their representative throughout the proceedings indicating the wish to apply for international protection, as well as the content of the interim measure issued in their case by the Court. It held that all these circumstances did not allow it to be determined without any doubt that the applicants, when present at the Polish border, had indeed expressed the wish to apply for international protection, but they made it highly probable.

24. Moreover, in the domestic court's opinion, the sole fact that the applicants had an interim measure granted by the Court should have indicated to the border guards that their case demanded more thorough examination. Consequently, it held that the applicants should have been more thoroughly interviewed by officers of the Border Guard and that their interviews should have been recorded in the form of detailed minutes. In the court's opinion, the summary official notes prepared by the border guards were insufficient for establishing whether the applicants had indeed expressed the wish to lodge applications for international protection.

25. The Warsaw Regional Administrative Court also discontinued the proceedings concerning the refusal of entry into Poland as the applicants were no longer at the Polish-Belarusian border.

26. The applicants' representative lodged cassation appeals against the judgments of 7 March 2018. He argued that the Warsaw Regional Administrative Court should have held that the applicants had indeed lodged applications for international protection. He also questioned the decision to discontinue the proceedings.

27. On 14 December 2018 the Supreme Administrative Court (*Naczelny Sąd Administracyjny*) dismissed the cassation appeals. It relied on the same reasons as the court of first instance. It reiterated that the officers of the Border Guard had failed to review properly the applicants' case and that the official note prepared by them was insufficient to issue a refusal-of-entry decision. It also stressed that, as the decision had been immediately executed, the proceedings had to be discontinued and – if the applicants attempted to enter Poland again – new administrative proceedings should be initiated.

RELEVANT LEGAL FRAMEWORK AND PRACTICE

28. The relevant domestic law and practice concerning granting international protection to aliens and the refusal-of-entry procedure, including reports concerning situation at the border checkpoint in Terespol, are set out in the Court's judgment in the case of *M.K. and Others v. Poland* (nos. 40503/17, 42902/17 and 43643/17, §§ 67-117, 23 July 2020).

THE LAW

I. ADMISSIBILITY

A. The issue of jurisdiction under Article 1 of the Convention

29. Article 1 of the Convention provides:

> "The High Contracting Parties shall secure to everyone within their jurisdiction the rights and freedoms defined in Section I of [the] Convention."

1. The parties' submissions

30. In their submission to the Court, the Government pointed out that the present case was of a specific character as it involved decisions to refuse entry into Poland issued by the border authorities at checkpoints on the Polish-Belarusian border. The Government indicated that the applicants had been on Polish territory only briefly and had not been legally admitted to this territory. As a result, the jurisdiction of the Polish authorities over them had been limited to the issuance of the decisions refusing them entry.

31. The applicants submitted that under Article 1, the Convention applied to all persons under a Contracting Party's jurisdiction, which was not limited to its territory. They argued that the Convention applied in all situations in which effective control by the authorities of the Contracting Party was exercised. They also pointed out that the Terespol border checkpoint, where they had been subjected to border checks, was situated 2,600 metres into Polish territory and that the officers of the Border Guard who conducted the border control of foreigners exercised full authority over foreigners seeking entry into Poland. They further submitted that under both international law and European Union law it was clear that the principle of *non-refoulement* protected persons who were subjected to border checks even before they were allowed entry into a State by its border authorities.

2. The third-party intervener

32. The United Nations High Commissioner for Refugees ("the UNHCR") submitted that the obligation of *non-refoulement* applied wherever the State exercised its jurisdiction, including at the border.

3. The Court's assessment

33. The Court notes that it has already addressed the issue of the State's jurisdiction over the applicants, who presented themselves to border control at the land border checkpoints (see *M.A. and Others v. Lithuania*, no. 59793/17, § 70, 11 December 2018), including at the Terespol border crossing on the Polish-Belarusian border (see *M.K. and Others v. Poland*, cited above, §§ 126-131). In the latter judgment, the Court pointed out that

the railway border checkpoint in Terespol was placed on the border with the neighbouring state and was operated by the relevant units of the Polish Border Guard. It further noted that all procedures followed at this checkpoint in respect of border checks, granting or refusing the applicants entry into Poland and accepting for review their applications for international protection, were conducted exclusively by officials of the Polish State and were regulated by domestic and EU law. The Court therefore established that the actions complained of by the applicants were attributable to Poland and thereby fell within its jurisdiction within the meaning of Article 1 of the Convention (see *M.A. and Others v. Lithuania*, cited above, § 70, and *M.K. and Others v. Poland*, cited above, § 132).

34. The Court sees no reason to depart from these findings in the present case. Accordingly, the Court concludes that the events giving rise to the alleged violations fall within Poland's "jurisdiction", within the meaning of Article 1 of the Convention.

B. Exhaustion of domestic remedies

35. The Government submitted that the application was inadmissible due to the non-exhaustion of domestic remedies.

1. The parties' submissions

36. The Government submitted that the applicants had failed to appeal against three out of five decisions refusing them entry into Poland and had lodged their applications when their appeals against the remaining two decisions had still been pending. They indicated that appealing against those decisions to the head of the National Border Guard would have resulted in the re-examination of the applicants' cases. Moreover, in the event that the head of the National Border Guard upheld the decisions, the applicants could have lodged an appeal with the administrative court. The Government relied upon examples of judgments of the Warsaw Regional Administrative Court in which the decisions concerning refusal of entry to Poland were quashed. They submitted that the existence of such judgments proved that an appeal to the administrative court could have constituted an effective remedy in cases similar to the applicants' situation.

37. The applicants submitted that the right to lodge an appeal against the decision refusing them entry did not constitute an effective remedy. They stressed that the decision concerning the refusal to grant them entry was immediately enforceable and that an appeal against it would not have suspensive effect. Consequently, even if they had lodged such appeals, they would have been returned to Belarus and exposed to the risk of chain-*refoulement* to Syria. They also argued that the National Border Guard was a hierarchical formation, subordinate to and supervised by the Minister of the Interior and Administration and as such implemented

a wider governmental policy of not accepting for review applications for international protection submitted by refugees presenting themselves at the Polish border. Therefore, in the applicants' opinion, any review executed by the head of the National Border Guard would not be independent.

2. The Court's assessment

38. The Court has held in numerous previous cases that where an applicant seeks to prevent his or her removal from a Contracting State, alleging that such a removal would place him or her at risk of treatment contrary to Article 3 of the Convention or Article 4 of Protocol No. 4 to the Convention, a remedy will only be effective if it has automatic suspensive effect (see, among other authorities, *Čonka v. Belgium*, no. 51564/99, §§ 81-83, ECHR 2002-I; *Hirsi Jamaa and Others v. Italy* [GC], no. 27765/09, § 199, ECHR 2012; *Gebremedhin [Gaberamadhien] v. France*, no. 25389/05, § 66, ECHR 2007-II; *M.S.S. v. Belgium and Greece* [GC], no. 30696/09, § 293, ECHR 2011; and *A.E.A. v. Greece*, no. 39034/12, § 69, 15 March 2018).

39. It is undisputed that in the present case the applicants had the possibility to lodge an appeal against each of the decisions concerning refusal of entry within fourteen days of the moment when they were informed of those decisions. However, under Polish law such appeals would not have had automatic suspensive effect on the return process (see *M.K. and Others v. Poland*, cited above, § 74). It follows that the applicants had no access to a procedure by which their personal circumstances could be independently and rigorously assessed by any domestic authority before they were returned to Belarus (see *M.A. and Others v. Lithuania*, cited above, § 84).

40. As the applicants' complaints concerned allegations that their return to Belarus would expose them to a real risk of suffering treatment contrary to Article 3 of the Convention, the Court considers that the sole fact that an appeal against the decision on refusal of entry would not have had automatic suspensive effect (and, in consequence, 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 court that could have been brought subsequently – did not constitute an effective remedy within the meaning of the Convention. Consequently, the Court does not deem it necessary to consider the remainder of the applicants' arguments concerning the accessibility and effectiveness of those appeals.

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

C. Conclusion on admissibility

42. The Court further notes that the application is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. It is not inadmissible on any other grounds and must therefore be declared admissible.

II. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

43. The applicants complained that they had been exposed to the risk of torture or inhuman or degrading treatment in Syria as a result of having been returned to Belarus, from where they would probably be sent back to Russia, and then to Syria, and that their treatment by the Polish authorities had amounted to degrading treatment. They relied on Article 3 of the Convention, which provides:

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

44. The Court observes that the applicants' arguments focus on two different aspects of the alleged violation of Article 3 of the Convention: firstly, the risk that they would suffer inhuman and degrading treatment when sent back to Belarus and, subsequently, to Syria, and the fact that despite that risk the Polish authorities sent them back to Belarus without having properly reviewed their claims; and secondly, the treatment of the applicants by the Polish authorities during the so-called "second-line" border-control procedure. With respect to the latter aspect of this complaint, the applicants argued that the whole situation – that is to say the fact that the statements made at the border were bluntly disregarded and the fact that they were denied the procedure to which they were entitled by law and instead returned to Belarus – constituted degrading treatment.

A. Alleged violation of Article 3 of the Convention on account of the applicants being denied access to the asylum procedure and exposed to a risk of inhuman and degrading treatment and torture in Syria

1. The parties' submissions

(a) The applicants

45. The applicants did not contest the Government's submission that the Polish authorities were bound by both the domestic legislation and EU law regulating border checks (see paragraphs 49-50 below). They noted, however, that all the legislation cited by the Government provided the protection of fundamental rights – particularly in respect of the

non-refoulement principle. They submitted that the actions taken at the border checkpoint at Terespol had violated those provisions.

46. The applicants reiterated that each time 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 the risk posed by their return to Syria and by the fact that they had no genuine chance of applying for international protection in Belarus or – if sent there – in Russia. In their opinion, the officers of the Border Guard had been bound to treat them as persons in search of international protection whose claims under Article 3 of the Convention should have been heard by the relevant domestic authority. Instead, the border guards disregarded their statements.

47. The applicants alleged that their return to Belarus had put them at risk of being deported to Russia and, subsequently, to Syria owing to the fact that neither Belarus nor Russia were safe countries for refugees from Syria. They cited a number of reports indicating that asylum seekers were routinely expelled from both those countries.

48. The applicants submitted that the ongoing military conflict in Syria placed them at serious risk of treatment contrary to Article 3 of the Convention. They indicated in particular that the first and the second applicants had received conscription orders summoning them to join the Syrian military. As they had not complied with the orders, they were at risk of penalty for desertion. They indicated that persons who refused to serve in the Syrian army were subject to detention, ill-treatment and torture. The applicants also indicated that they were part of the Druze religious group which was persecuted by both Assad's regime and the Sunni extremists.

(b) The Government

49. The Government noted that the Polish-Belarusian border was at the same time 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. The Government explained that foreigners who presented themselves at the Polish-Belarusian border were subjected to the verification of their documents. If they did not fulfil the conditions for entry, they were directed to the second line of border control, where detailed interviews were carried out by officers of the Border Guard. This interview was a crucial element of this part of the border checks, and the statements given by a foreigner on that occasion would have been the only element allowing him or her to be identified as someone seeking international protection. In the event that it was evident from the statements made by the foreigner that he or she was in search of such protection, the application in this regard was accepted and forwarded to the relevant authority for review and the foreigner was directed to a centre for aliens. However, in the event that the foreigners in question expressed other

reasons for their attempt to enter Poland (economic or personal, for example) a decision refusing entry was issued and immediately executed.

50. The Government emphasised that the above-mentioned procedure had its basis in the Schengen Borders Code and that the officers of the Border Guard complied with it because Poland is a member of the European Union.

51. Referring to the circumstances of the present case, the Government stated that on each occasion when the applicants had arrived at the border checkpoint at Terespol they had been interviewed by officers of the Border Guard. The Government submitted that at no point did any of the applicants give reasons that would have justified the granting of international protection. As a result, no applications in this regard had been received from them.

52. The Government further stressed that all the applicants had arrived in Belarus four years (the first and the second applicant) and two years (the third applicant) before lodging their applications with the Court. The applicants had not, in their oral statements to the border guards, referred to any treatment that had been in breach of Article 3 of the Convention or any risk of their receiving such treatment while staying in Belarus. On the contrary, the Government submitted that – according to the applicants' own statements – they continued to reside in Belarus during the proceedings before the Court and were not subject to any ill-treatment.

2. Third-party intervener

53. The UNHCR submitted that, although Polish law provided for standards of protection of the rights of asylum-seekers in line with relevant international law, in practice a significant number of asylum-seekers at Terespol border crossing were arbitrarily deprived of access to a fair and efficient asylum procedure and returned to Belarus. The third-party intervener noted that, at the relevant time, the UNHCR had not been granted access to the Terespol transit zone where pre-screening interviews of potential asylum-seekers took place. However, in the period from May 2016 to September 2017, the UNHCR registered 182 telephone calls in which the persons concerned alleged that they had expressed an intention to seek international protection at the Polish-Belarusian border at Terespol but were nonetheless denied access to the procedure and summarily returned to Belarus. Moreover, from March 2016 to September 2017 the UNHCR received written statements, interventions and queries concerning 96 further cases of such denial of access to asylum procedure. The third-party intervener also indicated that 275 similar incidents that had allegedly taken place in 2016 and 2017 had been reported by their partner organisation.

54. The UNHCR stressed that the interviews with potential asylum-seekers were very brief and conducted in circumstances that did not allow sufficient consideration for confidentiality and privacy of the persons

interviewed. They also did not provide sufficient procedural guarantees. The UNHCR indicated that, despite its mandate to supervise the application of the provisions of the 1951 Geneva Convention relating to the Status of Refugees at the relevant time, neither its employees nor any representatives of non-governmental organisations had been allowed access to the area at the Terespol border crossing, where the second line of border control took place. The UNHCR's representatives could only observe this area from a distance, through a glass wall.

55. The UNHCR further submitted that the principle of *non-refoulement* prevented the states from returning a person who presented themselves at the border claiming to be at risk or fearing return to his or her country of origin or any other country. They stressed that the state must assess, prior to the removal and subject to procedural safeguards, the appropriateness of the removal of each person individually. The third-party intervener submitted that in their assessment, the Polish authorities had routinely failed to adhere to this standard at the Terespol border crossing.

3. The Court's assessment

(a) General principles

56. The Court has recently summarised general principles concerning its case-law under Article 3 of the Convention as it relates to persons seeking protection against expulsion in its judgments in cases *Ilias and Ahmed v. Hungary* ([GC], no. 47287/15, § 124, 21 November 2019, and *M.K. and Others v. Poland ,* cited above, §§ 166-173.

57. The Court has in particular acknowledged the importance of the principle of *non-refoulement* (see, for example, *M.S.S. v. Belgium and Greece*, cited above, § 286, and *M.A. v. Cyprus*, no. 41872/10, § 133, ECHR 2013 (extracts)). It reiterated that the expulsion of an alien by a Contracting State may give rise to an issue under Article 3, and hence engage the responsibility of that State under the Convention, where substantial grounds have been shown for believing that the person in question, if deported, would face a real risk of being subjected to treatment breaching Article 3 in the destination country.

58. The Court has noted that the exact content of the expelling State's duties under the Convention may differ depending on whether it removes applicants to their country of origin or to a third country (see *Ilias and Ahmed*, cited above, § 128). In cases where the authorities choose to remove asylum-seekers to a third country, the Court has stated that this leaves the responsibility of the Contracting State intact with regard to its duty not to deport them if substantial grounds have been shown for believing that such action would expose them, directly (that is to say in that third country) or indirectly (for example, in the country of origin or another country), to treatment contrary to, in particular, Article 3 (see *M.S.S.*

v. Belgium and Greece, cited above, §§ 342-43 and 362-68; *M.K. and Others v. Poland*, cited above, § 171).

59. Consequently, the Court has indicated that where a Contracting State seeks to remove an asylum-seeker to a third country without examining the asylum request on the merits, the main issue before the expelling authorities is whether or not the individual will have access to an adequate asylum procedure in the receiving third country. This is because the removing country acts on the basis that it would be for the receiving third country to examine the asylum request on the merits, if such a request were made to the relevant authorities of that country (see *Ilias and Ahmed*, cited above, § 131 and *M.K. and Others*, cited above, § 172). The Court has further clarified that in all cases of removal of an asylum-seeker from a Contracting State to a third intermediary country without examination of the asylum request on the merits, regardless of whether or not the receiving third country is an EU Member State or a State Party to the Convention, it is the duty of the removing State to examine thoroughly the question of whether or not there is a real risk of the asylum-seeker being denied access, in the receiving third country, to an adequate asylum procedure, protecting him or her against *refoulement.* If it is established that the existing guarantees in this regard are insufficient, Article 3 implies a duty that the asylum-seeker should not be removed to the third country concerned (see *Ilias and Ahmed*, cited above, § 134 and *M.K. and Others*, cited above, § 173).

(b) Application of the above principles to the present case

60. The Court notes first of all that the Government disputed whether the applicants, when presenting themselves on a number of occasions at the Polish border, expressed a wish to lodge applications for international protection or communicated any fear for their own safety. The Government submitted that the applicants did not raise any claims in that respect and – in consequence – could not be considered asylum-seekers. In this context the Court notes that it had already established in its judgment on the case of *M.K. and Others* 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 (*M.K. and Others v. Poland*, cited above, § 174). The existence of such a practice is further substantiated by the submissions presented in the present case by the United Nations High Commissioner for Refugees (see paragraph 53 above) and by the judgments of the domestic administrative courts that held that the officers of the Border Guard had not conducted sufficient evidentiary proceedings in the applicants' cases (in particular by failing to conduct and properly record the interviews with the applicants – see paragraphs 23-24 and 27 above).

61. In addition to that, the applicants' account of the statements that they gave at the border is also corroborated by documents presented by them to

the Court at all stages of the proceedings, especially written statements that they wished to apply for international protection and conscription orders summoning the first and the second applicants to join the Syrian military, carried by them at the time 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 – specifically when requesting that interim measures be indicated in their cases) but failed to hand them to the officers of the Border Guard who were about to decide whether to admit them into Poland or return them to Belarus.

62. In any event, the Court points to the fact that the applicants' letter indicating their wish to apply for international protection, which comprised at least a general account of the reasons for their fear of persecution, was sent to the Government at the time when they were informed by the Court of the application of an interim measure in the applicants' case – namely, on 20 June 2017 (see paragraph 11 above). Information about the applicants' claims was also subsequently submitted directly to the Border Guard by the non-governmental organisation working with the applicants' representative (see paragraph 12 above). It follows that, from those dates onwards, the Government were aware of the applications made by the applicants and of the existence of the documents substantiating them and were obliged to take those materials into account when assessing the applicants' situation.

63. Accordingly, the Court cannot accept the Government's argument that the applicants had presented no evidence whatsoever that they were at risk of being subjected to treatment in violation of Article 3. The applicants indicated individual circumstances that – in their opinion – substantiated their applications for international protection and produced relevant documents substantiating 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*".

64. The Court is 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 Syria 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 that 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 had been carrying documents authorising them to cross the Polish border or whether they had been legally admitted to Polish territory on other grounds (see *M.K. and Others v. Poland*, cited above, § 178).

65. The Court furthermore notes the respondent Government's argument that by refusing the applicants entry into Poland, it acted in accordance with the legal obligations incumbent on them arising from Poland's membership in the European Union.

66. The Court indicates, however, that the provisions of European Union law, including the Schengen Borders Code and Directive 2013/32/EU, clearly embrace the principle of *non-refoulement*, as guaranteed by the Geneva Convention, and also apply it to persons who are subjected to border checks before being admitted to the territory of one of the member States (see *M.K. and Others v. Poland*, cited above, §§ 78-84). Those provisions (i) are clearly aimed at providing all asylum-seekers effective access to the proper procedure by which their claims for international protection may be reviewed (see also *Sharifi and Others v. Italy and Greece*, no. 16643/09, § 169, 21 October 2014) and (ii) oblige the State to ensure that individuals who lodge applications for international protection are allowed to remain in the State in question until their applications are reviewed (see *M.K. and Others v. Poland*, cited above, §§ 91 and 181).

67. The Court thus notes that, under the Schengen Borders Code, the Polish authorities could have refrained from sending the applicants back to Belarus if they had accepted their application for international protection for review by the relevant authorities. Consequently, the Court considers that the impugned measure taken by the Polish authorities fell outside the scope of Poland's strict international legal obligations (see, for a similar outcome, *M.S.S. v. Belgium and Greece*, § 340, and *Ilias and Ahmed*, § 97, both cited above).

68. 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.

69. The fact that no proceedings involving review of the applicants' applications for international protection were initiated on the five occasions when the applicants were present at the Polish border crossings and that – despite their allegations concerning the risk of chain-*refoulement* – on each of those occasions the applicants were sent back from the Polish border to Belarus, constituted a violation of Article 3 of the Convention.

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

B. Alleged violation of Article 3 of the Convention on account of the applicants' treatment by the Polish authorities during border checks

71. The applicants also argued that there has been a violation of the prohibition of degrading treatment on account of the manner in which they

were treated during border checks at Terespol border checkpoint (see paragraph 44 above). In that respect, they submitted that they had been placed in a situation in which statements made by them at the border had been bluntly disregarded by the border guards and that they had been denied the procedure to which they were entitled under the domestic law.

72. The Court notes that those arguments are closely related to the issue of the applicants' lack of access to the asylum procedure. Consequently, having regard to the finding of a violation of Article 3 on account of the applicants' exposure to the risk of inhuman and degrading treatment, as well as torture, in Syria and their lack of access to the asylum procedure (see paragraph 69 above), the Court considers that it is not necessary to examine whether there has been a violation of Article 3 with respect to the way in which the applicants were treated during the border checks (see also *M.K. and Others*, cited above, § 187).

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

73. The applicants furthermore complained of the fact that they were subjected to a collective expulsion of aliens. They relied on Article 4 of Protocol No. 4 to the Convention, which provides:

> "Collective expulsion of aliens is prohibited."

A. The parties' submissions

1. The applicants

74. The applicants submitted that various human rights organisations had reported an increase in the number of allegations made by individuals that, despite their repeated and clearly formulated statements at the Polish-Belarusian border indicating a wish to lodge an application for international protection, they had been denied such a possibility. They relied upon, *inter alia*, the report by the Polish Ombudsman, indicating that it proved that the interviews carried out by the officers of the Border Guard had not been aimed at establishing the individual situation of foreigners arriving at the Polish border but at demonstrating that the reasons such foreigners sought entry into Poland were mainly of an economic nature (see *M.K. and Others v. Poland*, cited above, §§ 98-105). They noted that the foreigners, even if they directly expressed their fear of torture or other forms of persecution, were still asked in detail about their economic, professional and personal situation and not about their experiences relating to any fears that they had expressed. Statements lodged by foreigners expressing the intention to lodge applications for international protection and the reasons indicated therefor were ignored. The applicants also submitted that the statistics presented by the respondent Government

showed that in 2017 there had been a significant decrease in the number of applications for international protection being received at the Polish-Belarusian border (particularly at Terespol border checkpoint). According to the applicants, this change had resulted from the execution by the Polish Border Guard of a policy adopted by the Government of pushing back refugees.

75. The applicants also submitted that, as a matter of general practice, neither lawyers nor representatives of non-governmental organisations or representatives of the UNHCR were allowed to observe or take part in interviews conducted during border control. In their opinion, the lack of any possibility for those being interviewed to consult a lawyer or a member of an organisation assisting refugees demonstrated the lack of transparency of the actions taken by the Border Guard. It was also one of the elements supporting the conclusion that the applicants had not been provided with the possibility to have their cases reviewed individually and, in consequence, that their expulsion had been of a collective nature.

2. The Government

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

77. 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, the Government indicated that the decisions denying entry had been prepared as separate documents in respect of each of the applicants (that is to say on an individual basis) after a careful examination of his or her respective situation. All the applicants had been presented with the decisions. Fourthly, the Government emphasised the fact that the number of attempts a foreigner had made to cross the border did not influence the decisions taken by the border guards.

B. The Court's assessment

1. General principles

78. The Court has recently summarised general principles concerning its case-law under Article 4 of Protocol No. 4 to the Convention in its judgments in cases *N.D. and N.T. v. Spain* ([GC], nos. 8675/15 and 8697/15, §§ 166-188 and 193-201, 13 February 2020) and *M.K. and Others v. Poland,* cited above, §§ 197-203.

79. The Court has confirmed, in those judgments, that the notion of expulsion used in Article 4 of Protocol No. 4 should be applied to measures that may be characterised as constituting a formal act or conduct attributable to a State by which a foreigner is compelled to leave the territory of that State if his or her personal circumstances have not been examined, including the situations in which persons who arrived at the border of the respondent State were stopped and returned to the originating State (see *N.D. and N.T v. Spain.*, cited above, §§ 187 and 197).

80. The Court also reiterates that the purpose of Article 4 of Protocol No. 4 is to prevent States from being able to return a certain number of foreigners without examining their personal circumstances and therefore without enabling them to put forward their arguments against the measure taken by the relevant authority (see *Sharifi and Others*, § 210, and *Hirsi Jamaa and Others*, § 177, both cited above). In order to determine whether there has been a sufficiently individualised examination, it is necessary to consider the circumstances of each such case and to verify whether a decision to return a foreigner took into consideration the specific situation of the individuals concerned (see *Hirsi Jamaa and Others*, cited above, § 183).

2. Application of the above principles to the present case

81. The Court points out that it has already established in its previous judgment that the decisions of refusal of entry issued at the Polish-Belarusian border checkpoint in Terespol, and the return of foreigners from this border checkpoint to Belarus, constituted "expulsion" within the meaning of Article 4 of Protocol No. 4 (see *M.K. and Others v. Poland*, cited above, § 205) It has also determined that at the relevant time in Poland there was 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, supported by the statement of governmental officials and substantiated by a number of independent reports (see *M.K. and Others v. Poland*, cited above, § 208-209).

82. With regard to the present case, the Court notes the Government's argument that each time the applicants presented themselves at the Polish

border they had been 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 established that during this procedure the officers of the Border Guard disregarded the applicants' statements concerning their wish to apply for international protection (see paragraphs 61-63 above). Consequently, even though individual decisions were issued with respect to each applicant, they did not properly reflect the reasons given by the applicants to justify their fear of persecution. Hence, they were not based on a sufficiently individualised examination of the circumstances of the applicants' cases (see *Hirsi Jamaa and Others*, cited above, § 183).

83. The Court notes that the circumstances of the delivery of those decisions were similar to the ones described in the case *M.K. and Others v. Poland* (cited above, § 208). In that case, the Court found that there was a wider state 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. The Court further observes, given its findings above (see paragraphs 61-63 above), the applicants' submissions (see paragraphs 74 above) and the information provided by the third-party intervener (see paragraph 54 above), that the applicants' cases were part of the same wider policy, established in that judgment. Consequently, the decisions issued in the applicants' cases constituted a collective expulsion of aliens within the meaning of Article 4 of Protocol No. 4.

84. 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 AND ARTICLE 4 OF PROTOCOL No. 4 TO THE CONVENTION

85. The applicants furthermore complained that they had not been afforded 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

1. *The applicants*

86. The applicants stressed that they had presented substantial grounds for believing that, if they were returned to Belarus, they would face the risk of chain-*refoulement* and consequently of treatment contrary to Article 3 of the Convention. In consequence, they should have had access to a remedy with automatic suspensive effect. However, the decisions concerning refusal of entry were enforceable immediately and the lodging of appeals against those decisions would not have suspended their execution.

87. They further argued that statistics showed that appeals to the head of the National Border Guard were very unlikely to succeed and the proceedings before the administrative courts could take up to three years to be concluded. In their view that rendered such appeal ineffective, given the circumstances of their cases.

2. *The Government*

88. 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. 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 the administrative court.

B. The Court's assessment

89. 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 70 and 84 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*, cited above, § 201). Furthermore, the Court has ruled that the applicants in the present cases were to be treated as asylum-seekers (see paragraph 64 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 82 above).

90. 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 paragraphs 40 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 and Article 4 of Protocol No. 4 to the Convention.

V. ALLEGED VIOLATION OF ARTICLE 34 OF THE CONVENTION

91. Lastly, the applicants complained that the Government failed to comply with the interim measures indicated by the Court in the applicants' cases. They relied on Article 34 of the Convention, which provides:

> "The Court may receive applications from any person, non-governmental organisation or group of individuals claiming to be the victim of a violation by one of the High Contracting Parties of the rights set forth in the Convention or the Protocols thereto. The High Contracting Parties undertake not to hinder in any way the effective exercise of this right."

Rule 39 of the Rules of Court provides:

> "1. The Chamber or, where appropriate, the President of the Section or a duty judge appointed pursuant to paragraph 4 of this Rule may, at the request of a party or of any other person concerned, or of their own motion, indicate to the parties any interim measure which they consider should be adopted in the interests of the parties or of the proper conduct of the proceedings.
>
> 2. Where it is considered appropriate, immediate notice of the measure adopted in aparticular case may be given to the Committee of Ministers.
>
> 3. The Chamber or, where appropriate, the President of the Section or a duty judge appointed pursuant to paragraph 4 of this Rule may request information from the parties on any matter connected with the implementation of any interim measure indicated.
>
> 4. The President of the Court may appoint Vice-Presidents of Sections as duty judges to decide on requests for interim measures."

A. The parties' submissions

1. The applicants

92. The applicants argued that the failure by the Polish Government to comply with the interim measure indicated by the Court in respect of their

cases constituted a violation of Article 34. They indicated that they had provided the Court with sufficient information in support of their requests for interim measures, which had resulted in those measures being granted. The applicants stressed that, according to the Court's jurisprudence for as long as the measure was in place, the Government in question were bound by it. The applicants pointed out that the Government had contested the interim measures since the very day on which they had been indicated to them and had deliberately failed to comply with them.

93. The applicants reiterated that their visas had expired and that they were at risk of being returned from Belarus to Russia and then to Syria, where they faced the danger of treatment breaching Article 3 of the Convention.

2. The Government

94. The Government argued that the respondent State had created no hindrance to the effective exercise of the applicants' right of application. The Government stated in particular that their not executing the interim measures indicated by the Court on 20 July 2017 had not breached – in the circumstances of the present cases – Article 34 of the Convention. They indicated that the required conditions for the imposition of the interim measures had not been met and that the measures ought to be lifted.

95. The Government pointed out that Rule 39 of the Rules of Court might be applied only in restricted circumstances, when there was an imminent risk of irreparable damage. In the Government's opinion, in the applicants' cases no imminent risk of irreversible harm to any of the rights guaranteed by the Convention had occurred. The applicants had remained on the territory of Belarus for a few years before they had submitted their applications for interim measures. According to the Government, they had not faced any real risk of harm; nor had they proved that continuing to stay in Belarus would give rise to such risk.

B. The Court's assessment

1. General principles

96. According to the Court's established case-law, since interim measures provided for by Rule 39 are indicated by the Court for the purpose of ensuring the effectiveness of the right of individual petition, a respondent State's failure to comply with such measures entails a violation of the right of individual application (see *Mamatkulov and Askarov v. Turkey* [GC], nos. 46827/99 and 46951/99, § 125, ECHR 2005-I; *Paladi v. Moldova* [GC], no. 39806/05, § 88, 10 March 2009; and *M.K. and Others v. Poland*, cited above, § 230).

97. The Court has repeatedly stated that, taking into consideration the type of circumstances in which interim measures are indicated and the vital role played by them in the Convention system (*Mamatkulov and Askarov*, cited above, §§ 100 and 125; and *Amirov v. Russia*, no. 51857/13, § 67, 27 November 2014), it is not open to a Contracting State to substitute its own judgment for that of the Court in verifying whether or not there existed a real risk of immediate and irreparable damage to an applicant at the time when the interim measure was indicated. It is for the Court to verify compliance with the interim measure, while a State which considers that it is in possession of material capable of convincing the Court to annul the interim measure should inform the Court accordingly (see, *mutatis mutandis*, *Tanrıkulu v. Turkey* [GC], no. 23763/94, § 131, ECHR 1999-IV, and *Paladi*, cited above, § 90). At the same time a High Contracting Party may lodge at any time a request to lift an interim measure.

2. Application of the above principles to the present case

98. The Court firstly notes that the interim measures indicated in respect of the applicants' case on 20 July 2017 included instructions to the authorities to refrain from returning the applicants to Belarus. Despite the indication of the interim measures, the applicants were turned away from the checkpoint not only on the days on which the measure was indicated (see paragraph 11 above) but also on another occasion, a day later (see paragraph 14 above). It should be noted that on that occasion the applicants were carrying with them a copy of a letter informing them of the indication of an interim measure in respect of their case.

99. The Court furthermore observes that the respondent Government has continually questioned the possibility to comply with the interim measure, by indicating that the applicants were never legally admitted to Poland in the first place and that, therefore, they could not have been removed. The Government also disputed the legitimacy of the interim measure in question; they submitted that there had not been a sufficient factual basis for the measure and that the applicants had abused this tool in order to force the Border Guard to admit them to Poland. The Court would point out that the respondent Government has continued to rely on those arguments even after the Court rejected them by dismissing the Government's applications for the measure to be lifted (see paragraphs 16 and 18 above).

100. The Court further notes that the interim measure issued in the applicant's case has still not been complied with and remains in force.

101. Accordingly, the Court concludes that Poland has failed to discharge its obligations under Article 34 of the Convention.

VI. RULE 39 OF THE RULES OF COURT

102. The Court reiterates that, in accordance with Article 44 § 2 of the Convention, the present judgment will not become final until (a) the parties declare that they will not request that the case be referred to the Grand Chamber; or (b) three months after the date of the judgment, if referral of the case to the Grand Chamber has not been requested; or (c) the Panel of the Grand Chamber rejects any request to refer under Article 43 of the Convention.

103. It considers that the indication made to the Government under Rule 39 of the Rules of Court (see paragraph 11 above) should remain in force until the present judgment becomes final or until the Court takes a further decision in this connection (see operative part).

VII. APPLICATION OF ARTICLE 41 OF THE CONVENTION

104. 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

105. The applicants claimed 10,000 euros (EUR) to be paid to each of the applicants separately in respect of non-pecuniary damage.

106. The Government submitted that the amount indicated by the applicants was excessive and unjustified.

107. The Court, ruling on an equitable basis, grants the applicants' claim in full and awards EUR 10,000 to each of the three applicants in respect of non-pecuniary damage, plus any tax that may be chargeable.

B. Costs and expenses

108. The applicants did not submit any claim for costs and expenses.

C. Default interest

109. 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 on account of the applicants being denied access to the asylum procedure and exposed to a risk of inhuman and degrading treatment and torture in Syria;

3. *Holds* that it is not necessary to examine whether there has been a violation of Article 3 of the Convention on account of the applicants' treatment by the Polish authorities during border checks;

4. *Holds* that there has been a violation of Article 4 of Protocol No. 4 to the Convention;

5. *Holds* 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;

6. *Holds* that Poland has failed to discharge its obligations under Article 34 of the Convention;

7. *Decides* to continue to indicate to the Government under Rule 39 of the Rules of Court that it is desirable in the interests of the proper conduct of the proceedings not to remove the applicants to Belarus – if and when they present themselves at the Polish border crossing – until such time as the present judgment becomes final, or until a further decision is made;

8. *Holds*
   (a) that the respondent State is to pay to each of the three applicants, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 10,000 (ten thousand euros)**,** to be converted into the currency of the respondent State at the rate applicable at the date of settlement, plus any tax that may be chargeable to the applicants, in respect of non-pecuniary damage;
   (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.

Done in English, and notified in writing on 8 July 2021, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

{signature_p_2}

Renata Degener
Registrar

Ksenija Turković
President