Reform of Asylum Policy and Control of Illegal Migration: Pan-European and Polish Approaches[1]

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Abstract

This article considers the development of pan-European and Polish asylum policy and control of illegal migration after the peak of the migration crisis in 2015–16. A sharp increase in the migration burden on the European Union (EU) during this period revealed systemic problems of political regulation of migration in the EU and provoked a confrontation of the interests of national and supranational actors. Despite the decline of migration flows from developing countries in Africa and Asia, the migration policy crisis has worsened over time. It is shown that the consistent position of Poland, coupled with the consolidation of the Visegrad Group, had a noticeable impact on the direction of migration policy reform. This study is based on the regulation acts of the EU, the new Migration and Asylum Pact, the diagnostic document of the Polish migration policy, and other programme documents that are positioned as the basis for the upcoming reforms. The results of the analysis of the provisions concerning the asylum policy and the control of illegal migration indicate that a compromise between national and supranational interests is emerging. The documents reviewed give priority to securitization and to reducing the risks of potential migration crises. The key mechanism for the implementation of the latter is the externalization of migration policy by creating a buffer zone in the Balkan countries, North Africa, and Turkey, which will be entrusted to coordinate migration flows and contain them in case of a crisis. Nevertheless, these measures will require not only a significant increase in financial costs, but also an even greater increase in the role of supranational actors, primarily Frontex and the European Union Agency for Asylum, by expanding their powers in EU members. For its part, Poland sees this as a challenge to national sovereignty, as well a risk to national and regional security. The confrontation of national and supranational

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interests carries risks for the much-needed reform of the aspects of migration policy under consideration and decreases the chances of successfully overcoming possible migration crisis.

Introduction

The European migration crisis has become a systemic challenge for the European Union (EU), demonstrating the existing problems and difficulties in implementing its migration policy. European countries were unprepared to receive a sharply increased flow of illegal migrants and asylum seekers, which led to a crisis in EU migration and border services. Providing refugees and asylum seekers with temporary housing and benefits is becoming an increasingly difficult task for the EU states.

As a result, parties and social movements advocating a sharp tightening of migration policy have become increasingly popular in Europe [Krzyżanowski, 2018]. This is especially noticeable in the transit countries of the EU, which were tasked with coordinating migration flows. The migration crisis has forced such countries to seek a balance between the commitments they have made under regional agreements and national priorities.

In this regard, the study approaches the control of illegal migration and the development of asylum policy in the EU after the peak of the migration crisis in 2015–16 in the context of interaction between national and supranational actors. This article attempts to reveal trends in the development of these aspects of migration policy at the level of the EU as a whole and its members. As an example of the latter, the authors considered Poland as having a significant impact on the EU's position on illegal migration and as seeking to maintain sovereignty in its own migration policy.

Development of EU's Asylum Policy and Control of Illegal Migration in the Context of the European Migration Crisis

Managing migration processes has traditionally been one of the key issues of the EU reflected in almost all fundamental treaties and agreements concluded between member countries. The EU's migration policy is based on the concept of multi-level governance (MLG), which emerged in the early 1990s within the framework of European integration. The development of MLG was accompanied by a gradual increase in the influence of supranational institutions, sometimes to the detriment of the interests of member states. As was shown by O. Yu. Potemkina [2020], the goals of migration policy do not always match at different levels of management, so it is not an easy task to harmonize legislation in this area. The legal basis for the EU's migration policy consists of several documents. Among them the Treaty of Lisbon (2007) is of particular importance [EU, 2007] and contains the main provisions of global and regional agreements on migration such as the UN Convention Relating to the Status of Refugees (1951) and the corresponding Protocol (1967), the Treaty

on the Functioning of the EU (1957), the Schengen Agreement (1985), and the Charter of the Fundamental Rights of the European Union (2000).

The text of the Lisbon Treaty outlines the principle of solidarity between countries on refugee admission (Article 63) and immigration policy (Article 63a) and also emphasizes the role of supranational institutions—the European Parliament and the European Council. Considerable attention has recently been paid to the issues of providing asylum and controlling illegal migration. To standardize and optimize interaction in these areas, special organizations have been created, such as the European Asylum Support Office (EASO) (2010) and the Frontex-EU Agency for the Management of Operational Cooperation at the External Borders (2004). However, their activities were limited by the lack of sufficient powers and staff shortages. Countries' responsibilities for deciding whether to accept asylum seekers have also been standardized—the Dublin Regulation adopted in 1990, and then revised in 2003, 2013, placed responsibility for processing asylum applications on the "countries of first entry" [Karpovich, Zvereva, 2021].

The implementation of these agreements and treaties came along with an increasing involvement of supranational actors in the development of the national migration policy of the EU members. This provoked tension in the interaction between national states and the EU institutions, which intensified in the context of the European migration crisis. Particularly noticeable was the opposition of the Visegrad Group (V4) countries, primarily Poland and Hungary, as well as other organizations, such as Med-5, who insisted on tightening migration policy and strengthening control over the EU's external borders. The political consolidation of such organizations made it possible to launch the transformation of the EU's migration policy, which was focused primarily on its tightening and securitization [Abramova, 2015].

The protection of the external borders of the EU from the illegal entry of third-country nationals and the coordination of migration flows were entrusted to Frontex, whose powers were significantly expanded in 2016 as part of the transformation of the organization into the European Border and Coast Guard Agency [EU, 2016]. Frontex received the right of permanent presence in the EU member states. Moreover, it gained the right to demand the implementation of recommendations to overcome potential threats to the external borders of the EU (Articles 13, 15, 19, and 40, among others).

In 2019, Frontex underwent another reform aimed at expanding the agency's mandate by increasing the permanent corps from 1,500 people in 2016[2] to 10,000 people by 2027 [Frontex, n.d.]. It is assumed that this will be sufficient to "effectively address existing and future operational needs for border and return operations [of *illegal migrants —authors' note*] in the union and third countries, including a rapid reaction capacity to face future crises." To neutralize potential threats at external borders, the concept of active migration management is being updated. It involves *"the proactive management of migration, including the necessary measures in third countries"* [EU, 2019, pp. 1–2] which requires an even greater expansion of the agency's mandate. This suggests that the EU had been preparing for the next round of the European migration crisis, which began in 2021.

It is noteworthy that, despite the compliance with fundamental human rights of illegal migrants, the above document apparently refers only to European citizens. This is evidenced by numerous reports of the unlawful expulsions and violations of the rights of illegal migrants and asylum seekers [Fink, 2020; Łubiński, 2022; Perkowski, 2018].

During the peak of the crisis, the European Commission proposed a mechanism for the resettlement of persons in need of international protection under a quota system. This mechanism provided for the resettlement of 160,000 asylum seekers from Italy and Greece,

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[2]Frontex only achieved this goal in 2022.

who bore most of the costs of implementing the Dublin Regulation [Radjenovic, 2020]. However, Poland, like a number of other countries, sabotaged the implementation of this mechanism and insisted on introducing the principle of "flexible solidarity" [Basov, 2020; Khotivrishvili, 2019]. The result of their strong opposition, as well as the difficulty in implementing the resettlement, was the abolition of the quota system [EPRS, 2017].

A sharp increase in the migration burden on the EU in 2015–16 revealed the systemic problems of the all-European migration policy and the contradictions between supranational and national actors [Malakhov, Kastsyan, 2020]. The adoption of emergency measures was largely implemented at the initiative of the V4 countries, especially Poland, as well as other regional organizations, against the backdrop of growing social tension [Agafoshin et al., 2022; Andreeva, 2021]. Despite the decline in migration flows from Asia and Africa, the crisis in the EU's migration policy has only intensified over time. At present, the EU and its members face the acute problem of adopting a new concept of migration policy that would help ensure effective control over migration flows to Europe without compromising the declared humanistic values.

The New Pact on Migration and Asylum: Trends in the Development of Supranational Asylum Policy and Illegal Migration Control

The tightening of illegal migration control was quite effective—the number of recorded cases of illegal crossings decreased from 511,000 in 2016 to 126,000 in 2020. However, in 2021, a new round of the migration crisis began and the number of illegal border crossings reached 330,000 in 2022 [Frontex, 2023]. Against the background of the intensification of migration flows, the new Pact on Migration and Asylum was brought up for discussion in 2020 [European Commission, 2020]. The pact is positioned by the compilers as the basis of the new EU migration policy. This document is intended to reform the Dublin Regulation and ensure the implementation of the principle of solidarity until 2024. It contains an impressive list of tasks, the implementation of which, on the one hand, provides the greater flexibility for the EU members in terms of the mandatory distribution of asylum seekers and a certain humanization of the Dublin Regulation, according to which asylum seekers will be able to apply in the country where their close relatives live or where they have recently studied or worked [Karpovich, Zvereva, 2021]. On the other hand, the implementation of the objectives of the pact comes down to building more stringent entry barriers and emphasizing the mechanisms for externalization of migration policy through the conclusion of readmission agreements with transit countries and countries of migrants' origin.

The adoption of the pact would allow the EU to reduce the number of asylum seekers and illegal migrants through the "rapid return procedure." In 2020, EASO was reorganized into the European Union Agency for Asylum (EUAA) with broader powers. The reorganization was aimed at simplifying and speeding up the processing of applications and jump starting the expulsion of rejected applicants. At the same time, the text of the pact particularly emphasizes that the rights of migrants should be respected, which, as the events on the Poland-Belarus border in 2021 showed, does not prevent local authorities from acting contrary to such statements.

Paragraph 2.5 of the pact draws attention to the fact that only a third of the migrants who have no legal basis to stay in the European Union actually leave, which is complicated by the problem of "secondary movements" [Aru, 2022]. In this regard, the document emphasizes the need to standardize the return procedure of illegal migrants and create an appropriate securing system at the EU level. Also, European integrated border management is suggested. It is designed to harmonize the immigration policies of the EU members and to increase the efficiency of their interaction, for example, by tightening control over external

borders and managing expulsion of illegal migrants (par. 4.1–4.2). This will be achieved by improving the Eurodac system, removing bureaucratic barriers to tracking the secondary movements of illegal migrants and asylum seekers, and enhancing removal procedures. In addition to strengthening internal control over compliance with migration legislation, this system involves expanding cooperation with third countries in the framework of deportation and readmission (par. 6.5). In 2023, Frontex launched its activities in the non-EU Balkan countries such as Albania, Serbia, North Macedonia, and Montenegro; negotiations are also ongoing with other countries, for example, with Bosnia and Herzegovina [Council ..., 2023].

Furthermore, paragraph 4.3 states that: "The EU will strengthen cooperation with countries of origin and transit to prevent dangerous journeys and irregular crossings, including through tailor-made Counter Migrant Smuggling Partnerships with third countries." In this regard, the EU, together with third country partners, reached an agreement to fight migrant smuggling, for instance, paragraph 5 notes agreements with Turkey, the countries of the Balkan Peninsula, Niger, Libya, and the African Union. To enforce cooperation of third countries, the EU widely uses financial instruments, including trust and investment funds such as the EU Emergency Trust Fund for Africa, which provides monetary compensation to African countries in the form of investments for the readmission, repatriation, and deterrence of migrants on their territory [Zherlitsyna, 2022]. The consequences of this approach can be traced in the development of the Rabat process, which resulted in the encapsulation of the migration crisis in West Africa, seriously aggravating the socio-economic problems in this region.

The externalization of migration policy allowed the EU to use the neighbouring Balkan countries, Turkey, and North Africa as a buffer zone, which is entrusted to coordinate the flows of migrants and refugees, as well as to contain them in the event of a migration crisis. To reduce the pressure on the buffer zone in case of a new round of the migration crisis, it is likely to be carried out through relocating persons to developing countries of Africa and other regions. This was already implemented in 2017 when almost 3,000 refugees were "voluntarily" evacuated from Libya to Niger within the framework of the Emergency Transit Mechanism (the Niamey Mechanism), and in 2019, several hundred people were "resettled" to Rwanda [Claes, Botti, 2019]. However, none of these countries can guarantee the safety of refugees and the observance of their rights; thus, the implementation of such mechanisms may contradict the principle of non-refoulement. At the same time, the EU has long been planning to expand funding for socio-economic projects [Kulkova, 2016] and various initiatives in countries of migrants' origin in Africa, Asia, and Latin America, which will require a significant increase in the budget of trust funds (par. 6.1, 6.3–6.4).

Poland's Priorities in Reforming Asylum Policy and Illegal Migration Control

The essential content of the pact is largely consistent with the views of the Polish authorities, who strongly oppose the acceptance of refugees from Africa and Asia and promote the discourse of securitization of migration policy. So, Poland with the support of V4, largely contributes to the development of the Budapest process, which was launched in 1993 to limit illegal migration, particularly from the countries of Eastern and South-Eastern Europe, as well as Asian countries. This experience was subsequently used by the EU in the development of similar processes for interaction with other regions of the world, for example, within the framework of the above-mentioned Rabat (2006) and Khartoum processes (2014). The practical task of these initiatives is to reach agreements between the EU and third countries on the readmission of illegal migrants and to fight human trafficking and migrant smugglers. At the same time, the declarations of these processes largely

reflected in the new Pact on Migration and Asylum in terms of tightening and externalization of the EU's migration policy, although the modality of the documents varies greatly.

In this context, of particular interest is the development of a new Polish migration policy, which is aimed to fill the legal vacuum in this field. We analyze its priorities on the basis of a diagnostic document prepared by the Polish Interdepartmental Group on Migration Issues with the expert support of the Centre of Migration Research at the University of Warsaw, the Polish National Bank, the National Bureau of the United Nations High Commissioner for Refugees, and the National Bureau of the International Organization for Migration (IOM) in 2020 [Departament…, 2020]. In addition to current legal practices and general objectives of migration policy, the document describes the problems caused by immigration highlighting the issue of illegal migration. Paragraph 3.1 emphasizes the need to strengthen control over compliance with established rules for entry into the country. To achieve this, Poland plans to modernize the existing infrastructure in accordance with European standards within the framework of the Eurodac and Schengen information system, among others, as well as develop new systems for cross-border, police, and judicial cooperation. The implementation of these initiatives, as follows from the document, will require significant financial expenditures to create adequate infrastructure and changes to current legislation.

At the same time, border control in Poland is already quite strict. In 2019 almost 100,000 refusals to enter the country were issued. More than 11,000 foreigners who violated the conditions of stay and about 15,000 illegally employed migrants were identified. About 30,000 decisions were issued obliging foreigners to leave the country. With the implementation of reforms, these figures could grow significantly and control over migration flows could become even more stringent. The latter is evidenced by the events on the Polish-Belarusian border in 2021, when a state of emergency was declared in the border area, and more than 2,000 asylum seekers from the Middle East were detained by Polish border guards. Many of them faced ill-treatment and human rights violations. There are reports of strip searches, placement of people in overcrowded rooms with unsanitary conditions, forced use of sedatives, the use of tasers, and other forms of physical and psychological abuse by the Polish authorities [Amnesty International, 2022]. In addition, many asylum seekers were denied entry to the border, so they were forced to live in the forests on the border between Poland and Belarus until November 2021 when temperatures hovered near zero degrees Celsius; as a result, many of them became victims of hypothermia. Against the background of the warm welcome of refugees from Ukraine, such an ill-treatment of immigrants from the Middle East looks especially cruel. The Polish side justifies these actions referring to migrants as a "hybrid warfare weapon" [Nylec, 2023]. This argument is also gaining popularity in the Baltic countries, V4 [Łubiński, 2022], and other European states. Moreover, a number of officials expressed their gratitude to Poland for such a determination to defend the external borders of the EU [Morgunova, Moraru, 2022].

The document also addresses the problem of implementing the return operations. Paragraph 3.2 specifies the procedure for the voluntary and forced expulsion of migrants. The basis for the application of these procedures may be both the expiration of the legal grounds for staying in Poland and law violations. In the case of voluntary expulsion, migrants are required to leave the country within 15–30 days (in some cases within a year) on their own or with the IOM support provided under an agreement with Poland. Forced expulsion is applied if an illegal migrant has not left the country voluntarily before the deadline, has committed a criminal offense, or poses a threat to national security. Within the latter condition, the Polish authorities include terrorist activities and espionage, as well as *suspicion of participation in these crimes*, which justifies the detention and accelerated expulsion of a person. The expulsion of illegal migrants is conducted at their expense.

Although the majority of deportations are carried out voluntarily (the execution rate in 2019 was almost 90%), the control of illegal migration is a serious burden for Poland.

An important tool for reducing the financial costs and time expenditures associated with the expulsion of illegal migrants is readmission agreements with third countries, including at the EU level. It is planned to expand the number of third countries in which liaison officers of the Polish Border Guard will serve to increase the efficiency of their implementation. For example, the initiative was implemented in Vietnam in 2018 and in Uzbekistan, with territorial responsibility covering Tajikistan and Kyrgyzstan, in 2020. The tasks of liaison officers include interaction with foreign migration services to suppress illegal migration and manage the expulsion of illegal migrants, among other tasks.

The document pays disproportionately less attention to the issue of refugees in Poland (par. 4), the number of which was relatively small before 2022, when the country started to receive a large number of forced migrants from Ukraine. During the period from 2014 to 2020, the Office for Foreigners satisfied less than 3,000 out of 48,000 applications for international protection in the country. At the same time, 31,000 cases were terminated due to the secondary movements of applicants outside Poland. The document draws attention to the reform of the EU's asylum system, which delegates the most of credentials to supranational actors. According to the compilers, this poses a threat to the national sovereignty of the EU members and negatively affects not only national but also regional security. Considering Poland's active participation in discussions on the new Pact on Migration and Asylum, the concerns of the country's authorities may slow its approval.

To ensure national security, the Polish authorities develop mechanisms for the effective coordination of migration flows and to prevent border crossing by illegal migrants and refugees from certain regions of the world. Such "selectivity" is supported by the results of a 2015 opinion poll (par. 5.5). The Polish population rather negatively perceives migrants from African and Arab countries, in contrast to citizens of the U.S., the Czech Republic, and Germany, as well as Ukraine, Vietnam, and others. With the tightening of migration control, the migrants from "undesirable" regions may become even more vulnerable, especially in border areas. At the same time, Poland has become one of the largest recipients of forced migrants from Ukraine. As shown by O. A. Morgunova and N.-F. Moraru [2022, p. 744], the reception of Ukrainians was legislatively underpinned by the Temporary Protection Directive (TDP) of 2001, which provides for the provision of temporary asylum and access to the labour market without the procedure for individual consideration of the application for refugee status. However, the TDP was not applied in the case of Syrians and Afghans fleeing the war to Europe.

In general, Poland's new migration policy is characterized by a fairly high level of elaboration, but yet it is far from flawless due to inner controversy. On the one hand, it articulates the priority of national security, the main threat to which is declared the presence of the migrants from foreign culture countries. On the other hand, the development of the Polish economy is heavily dependent on migrants from developing countries. This "liberal paradox" (according to D. F. Hollyfield) makes it difficult to adopt the final document that determines Poland's long-term migration policy. This paradox is manifested in political discourse. For example, in 2016, Polish prime minister B. Szydło admitted the importance of solidarity with the EU, yet her government did not agree to take part in the resettlement programme for people seeking international protection. In 2017, President of the Republic A. Duda declared Poland an open country, and already in 2021 he had approved the construction of barbed wire and a wall on the border with Belarus. Managing a new migration policy is also complicated due to competition of political parties using pro- and anti-migration arguments. At the same time, the authorities of Warsaw, Krakow, Gdansk, Lublin, Lodz, and Poznan, the largest cities of Poland that are experiencing the strongest

migration burden, could not afford to delay the discussion of their reaction to the migration crisis and developed their own migration policy. City administrations not only prepared documents, declarations, and recommendations for the government, but also created special institutions to support migrants [Adamczyk, 2023]. However, these initiatives have not yet resulted in the approval of a national migration policy.

Despite the difficulties of adopting a state migration policy, Poland has a significant influence on the development of the EU's migration policy, insisting on its securitization, externalization, and full implementation of the principle of "flexible solidarity." Warsaw has several levers of pressure ensuring the protection of national interests. First, the deterrent and coordinating role of Poland on the path of migration flows on the eastern frontier of the EU, which is well understood and appreciated by the largest recipient countries of migrants, for example, Germany. Second, Poland's broad representation in the European Parliament, occupying 52 seats, together with its closest V4 allies, rises to 108. Third, another important channel of influence is the EU Council, which the Czech Republic chaired in 2022, while Hungary's tenure as chair is planned for 2024, and Poland's for 2025. The political consolidation of V4 regarding regional migration policy since the onset of the migration crisis is attracting the attention of other EU members. As a result, V4 is increasingly frequently seen as a role model for Eurosceptic elites throughout Europe and is forcing Brussel to pay more attention to national priorities.

Conclusion

A new round of the migration crisis which began in 2021 forced the development and optimization of tools for political regulation of the illegal migration and asylum system in the EU. A comparison of trends in the development of the aspects of migration policy based on an analysis of EU and Polish policy documents suggests that a compromise between their interests is approaching. In many respects, it was made possible due to the consistent position of Poland, coupled with the consolidation of V4 countries [Podgórzańska, 2016], gaining a significant influence on pan-European approaches to illegal migration control and asylum policy. Currently, their impact reinforces securitization and tightening of migration policy that aims to decrease the number of illegal migrants and asylum seekers. The analysis of the documents shows that the reforms prioritize the reduction of the risks associated with potential migration crises. However, the human rights of migrants from third countries, especially Asian and African countries fade into the background, although the relevant declarations remain in the text.

The key mechanism to achieve this goal is seen in externalization of migration policy through the creation of a buffer zone in the Balkan countries, Turkey, and the states of North Africa. This zone will be entrusted to coordinate and contain the flows of migrants in case of crisis. This may indicate that the implementation of the tasks of the EU's migration policy is practically impossible without the involvement of third countries through various mechanisms such as the Budapest, Rabat, Khartoum, and other processes. Nevertheless, such measures will require significant financial expenditures, which may become a heavy burden for some European countries facing economic slowdown. At the same time, the securitization of the EU's migration policy suggests even greater extension of supranational actors' influence, for example Frontex or the European Union Agency for Asylum (EUAA), by expanding their mandate in member countries and beyond.

Poland perceives these processes as a threat to national sovereignty and to national and regional security. The arising contradictions between national and supranational interests can significantly slow the reforms of asylum policy and impede mechanisms of illegal migration control in the EU. At the same time, if earlier Poland was forced almost

unconditionally to accept the recommendations of the EU's supranational actors, then after 2015 this country demonstrated its readiness to protect its national interests. The latter was made possible due to several levers of pressure available to Poland: its geographical position at the eastern frontier of Europe, its importance for coordinating and containing migration flows, and the consolidation of V4 regarding the regional migration policy.

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