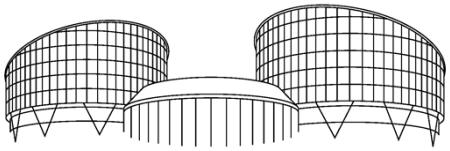

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIRST SECTION

CASE OF A.B. AND OTHERS v. POLAND

(Application no. 42907/17)

JUDGMENT

Art 3 • Expulsion • Refusal of border guards to receive asylum applications and summary removal to a third country, exposing the applicants to a risk of chain-refoulement to country of origin and inhuman and degrading treatment and torture • Systemic practice of misrepresenting statements given by asylum-seekers • State's obligation to ensure the applicants' safety, in particular by allowing them to remain within its jurisdiction, pending examination of their application for international protection
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

30 June 2022

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

In the case of A.B. and Others v. Poland,

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

Marko Bošnjak, *President,*
Péter Paczolay,
Krzysztof Wojtyczek,
Alena Poláčková,
Raffaele Sabato,
Lorraine Schembri Orland,
Ioannis Ktistakis, *judges,*

and Liv Tigerstedt, *Deputy Section Registrar*,

Having regard to:

the application (no. 42907/17) 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 six Russian nationals, Mr A.B. (the first applicant), Ms A.E. (the second applicant), their three minor children and Ms A.K. (the third applicant) ("the applicants"), on 16 June 2017;

the decision to give notice of the application to the Polish Government ("the Government");

the decision not to disclose the applicants' names;

the parties' observations;

Having deliberated in private on 7 June 2022,

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

INTRODUCTION

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

THE FACTS

2. The applicants' details are set out in the appended table. The first and the second applicants are married and have three minor children (applicants four, five and six). The third applicant is in a domestic partnership with the first and second applicants. They were represented by Mr M. Matsiushchankau, a lawyer practising in Vilnius.

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

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

I. THE APPLICANTS' ARRIVAL IN POLAND

5. Between 21 February and 14 April 2017, the applicants travelled to the Polish-Belarusian border crossing at Terespol on twenty-four occasions. According to them, on each occasion they expressed 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 told the border guards that they were from Chechnya. The first applicant submitted that he and his father had been persecuted by officers of the Kadyrov regime, who had threatened to confiscate their farm and had accused them of supporting terrorism. After their refusal to give up their farm, the first applicant had been arrested and tortured on several occasions. Subsequently, the first applicant had been threatened with charges of terrorism, at which time his father agreed to give up the family farm. After that he, the second applicant, their children and the third applicant had left their home and travelled together to Belarus, with the aim of travelling onwards to Poland. They told the border guards that they could not remain in Belarus and that it would be impossible for them to obtain international protection there. The border guards then summarily turned them away, sending them back to Belarus.

7. 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. The official notes prepared by the officers of the Border Guard (*Straż Graniczna*) observed that the applicants had cited in particular (i) the wish to work in Europe, (ii) the loss of the family business and financial difficulties, (iii) the lack of employment opportunities in Chechnya, (iv) the wish to provide their children with a better future, and (v) the wish to join family members who were living in Poland and who could help them find employment. The applicants did not appeal against the administrative decisions issued on those occasions.

8. On eight further occasions in April and May 2017, the applicants again travelled to the border crossing at Terespol. On those occasions they had with them a written application for international protection, which – according to their statements – they tried to lodge with the officers of the Border Guard. The applicants were again denied entry into Poland and returned to Belarus.

II. INTERIM MEASURE INDICATED BY THE COURT

9. On 16 June 2017, when the applicants presented themselves at the border crossing at Terespol, their representative lodged a request under

Rule 39 of the Rules of Court, asking the Court to prevent the applicants from being removed to Belarus. He indicated that, as Russian citizens, the applicants had no genuine possibility of applying for international protection in Belarus and were at constant risk of expulsion to Chechnya, where they would face the threat of torture and other inhuman and degrading treatment.

10. At 10.48 a.m. on 16 June 2017 the Court (the duty judge) decided to apply Rule 39 of the Rules of Court, indicating to the Polish Government that the applicants should not be removed to Belarus until 30 June 2017. The Government were informed of the interim measure before the planned time of expulsion. The applicants were nevertheless returned to Belarus at 11.25 a.m. The official note prepared by the border guards on that occasion stated that, when at the border, the applicants had expressed the wish to enter Poland because they had lost all their property, had debts and wished to live and work in Europe.

III. DEVELOPMENTS FOLLOWING THE APPLICATION OF AN INTERIM MEASURE

11. On 19 June 2017 the applicants returned to the border checkpoint at Terespol. They submitted that they were carrying (i) a copy of a letter informing their representative of the Court's decision concerning the interim measure, and (ii) a written application for international protection. They also clearly expressed a wish to lodge this application. Again, they were turned away to Belarus.

12. At the same time as the applicants were present at the border crossing, a Polish lawyer cooperating with the applicants' representative sent a copy of the applicants' application for international protection *via* email, fax and ePUAP to the Border Guard at Terespol and to the Polish Border Guard headquarters in Warsaw. She also informed the department of the Ministry of Foreign Affairs in charge of dealing with proceedings before international human rights bodies (where the agent of the Polish Government in charge of dealing with the Court is based) of that fact. In her letter she also made reference to the interim measure indicated by the Court on 16 June 2017 under Rule 39 of the Rules of Court.

13. The Government alleged that, when present at the border, the applicants had not expressed a wish to apply for international protection, nor had they presented any documents. The official notes prepared by the officers of the Border Guard stated that during their questioning on 19 June 2017 the applicants submitted that they wished to enter Poland because they did not wish to live in Chechnya any longer, they had lost their property, had debts and they wanted to live in Poland.

14. On 23 June 2017 the Government requested the Court to lift the interim measure indicated under Rule 39 of the Rules of Court. They argued that the applicants had never requested international protection, nor given any

reasons to justify such protection. The Government stated that, in their opinion, the applicants had abused the interim measure in order to pressure the Polish Border Guard officers into giving them permission to enter Poland.

15. On 30 June 2017 the Court (the duty judge) decided not to lift the interim measure but to extend it until 21 July 2017, and indicated to the Government that – in the light of the submissions made to the Court (especially the documents attached to the request for an interim measure and the applicants' submissions to the Court, copies of which had been sent to the Government) – it appeared that the applicants had tried to submit a request for international protection.

16. On 17 July 2017 the applicants informed the Court that they had left the area of the Polish border and returned to Russia. Consequently, on 19 July 2017 the Court (the duty judge) decided to discontinue the application of the interim measure in the applicants' case.

RELEVANT LEGAL FRAMEWORK AND PRACTICE

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

THE LAW

18. The applicants made various complaints under Article 3 of the Convention, Article 4 of Protocol No. 4 to the Convention, Article 13 of the Convention in conjunction with Article 3 of the Convention and Article 4 of Protocol No. 4, and under Article 34 of the Convention.

I. ADMISSIBILITY

A. The Government's preliminary objection

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

B. The parties' submissions

20. The Government submitted that the applicants had failed to appeal against the decisions refusing them entry into Poland, thus depriving the Polish administrative authorities and, further, the administrative courts of the possibility to examine their allegations about a violation of the Convention.

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

C. The Court's assessment

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

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

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

D. Conclusion on admissibility

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

II. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

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

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

A. The parties' submissions

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

28. The applicants also argued that the official notes drafted by the officers of the Border Guard did not accurately reflect the content of the statements given by them and should not be regarded as constituting valid evidence of those statements. They alleged that their return to Belarus had put them at risk of being deported to Chechnya owing to the fact that Belarus was not a safe country for refugees from Russia. By failing to initiate proceedings for international protection on at least thirty-three occasions when the applicants had presented themselves at the border, the Polish authorities had knowingly exposed them to the risk of chain *refoulement* and treatment prohibited by Article 3 of the Convention. They further submitted that their applications for international protection had contained a summary of the reasons. They produced a copy of their application of 16 June 2017 and correspondence sent by their lawyer to various Polish authorities and submitted that at the latest on that date the border guards were or should have been aware that they required international protection.

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

30. The Government explained that all foreigners who presented themselves at the Polish-Belarusian border were subjected to the same procedure, regulated by Polish legislation and EU law. At the first line of border control their documents (travel documents and visas) were verified. If they did not fulfil the conditions for entry, they were directed to the second line of border control, at which detailed interviews were carried out by officers of the Border Guard. This interview, during which only an officer of the Border Guard and the foreigner in question were present, was a crucial element of this part of the border checks, and the statements given by a foreigner on that occasion would be the only element allowing him or her to be identified as someone seeking international protection. If it was evident

from the statements made by the foreigner that he or she was seeking such protection, the application in this regard was accepted and forwarded to the relevant authority for review within forty-eight hours and the foreigner was directed to the relevant centre for aliens. However, if the foreigner in question expressed other reasons for his or her attempt to enter Poland (economic or personal, for example) a decision refusing entry was issued and immediately executed.

31. Referring to the circumstances of the present case, the Government stated that on all the occasions on which the applicants had arrived at the border checkpoints at Terespol they had been subjected to the second line of border control and interviewed by officers of the Border Guard. The Government submitted that at no point had any of the applicants given reasons that would have justified the granting of international protection. As a result, no applications had been forwarded to the head of the Aliens Office.

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

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

B. The Court's assessment

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

35. The Court notes that it has already established in its judgment in *M.K. and Others v. Poland* that, at the relevant time, a systemic practice of misrepresenting statements given by asylum-seekers in the official notes drafted by the officers of the Border Guard existed at the border checkpoints between Poland and Belarus (ibid., § 174). The existence of such a practice is corroborated by a large number of accounts collected from other witnesses by the national human rights institutions (in particular by the Children's Ombudsman – ibid., §§ 109-14) and further substantiated by the submissions presented by the United Nations High Commissioner for Refugees (see *D.A. and Others v. Poland*, no. 51246/17, § 53, 8 July 2021).

36. The applicants' account of the statements that they gave at the border is also corroborated by documents presented by them to the Court, especially by copies of the applications for international protection, in particular the application of 16 June 2017, which the applicants had been carrying when they presented themselves at the border. The Court does not find it credible that the applicants possessed those documents (which they submitted to the

Court) but failed to hand them to the officers of the Border Guard who were about to decide whether to admit them into Poland or to return them to Belarus. The applicants' version of events in this respect is also supported by the fact that they had made numerous attempts to cross the border.

37. Accordingly, the Court cannot accept the argument of the Polish Government that the applicants presented no evidence whatsoever that they were at risk of being subjected to treatment violating Article 3. The applicants indicated individual circumstances that – in their opinion – substantiated their applications for international protection and produced documents in support of their claims. They also raised arguments concerning the reasons for not considering Belarus to be a safe third country for them and why, in their opinion, returning them to Belarus would put them at risk of "chain *refoulement*". Those arguments were substantiated by the official statistics, which indicate that the asylum procedure in Belarus is not effective as far as Russian citizens are concerned (*M.K. and Others v. Poland*, cited above, § 177).

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

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

40. The Court furthermore notes the respondent State's argument that by refusing the applicants entry into Poland, it had acted in accordance with the legal obligations incumbent on it arising from Poland's membership in the European Union. The Court has already examined similar arguments in

M.K. and Others v. Poland (cited above, §§ 181-82), and sees no reason to come to a different conclusion in the present case.

41. 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.

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

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

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

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

> "Collective expulsion of aliens is prohibited."

A. The parties' submissions

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

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

47. Firstly, the Government reiterated that as the applicants had not had valid visas to enter Poland, they had been directed to the second line of border control, at which individual interviews had been carried out in a language understood by the applicants. Those interviews had been aimed at obtaining full knowledge of the reasons for which the applicants had arrived at the

border without the necessary documents. Secondly, the Government submitted that each interview had been recorded in the form of an official note detailing the reasons given by each of the applicants for seeking entry into Poland and – if necessary – any other circumstances in respect of their cases. Thirdly, they indicated that the decisions denying the applicants entry had been prepared as separate documents in respect of each of the adult applicants (that is to say, on an individual basis) after a careful examination of his or her respective situation.

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

B. The Court's assessment

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

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

51. The Court notes the Government's argument that each time the applicants were interviewed by the officers of the Border Guard and received individual decisions concerning the refusal to allow them entry into Poland. However, the Court has already indicated that it considers that during this procedure the applicants' statements concerning their wish to apply for international protection were disregarded (see paragraphs 36- 37 above) and that even though individual decisions were issued in respect of each applicant, they did not properly reflect the reasons given by the applicants to justify their fear of persecution.

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

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

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

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

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

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

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

A. The parties' submissions

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

58. The Government submitted that the applicants had had at their disposal an effective remedy – namely an appeal to the head of the National Border Guard against the decisions concerning refusal of entry – which they had failed to make use of. The Government acknowledged that an appeal did not have suspensive effect, but they argued that the domestic provisions were in this respect in accordance with European Union law, which obliged them

to ensure that a third-country national who had been refused entry into a member State did not enter the territory of that State. The Government emphasised that the lack of suspensive effect of the appeal in question resulted from the special character of the decision on refusal of entry which had to be executed immediately, as there would be no grounds for the foreigner in question to remain on the territory of Poland. The Government also pointed out that in the event that the head of the National Border Guard issued a negative decision, domestic law provided the possibility of lodging a complaint with an administrative court.

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

B. The Court's assessment

60. 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 43 and 36 above). The complaints lodged by the applicants on these points are therefore "arguable" for the purposes of Article 13 (see, in particular, *Hirsi Jamaa and Others v. Italy* [GC], no. 27765/09, § 201, ECHR 2012). Furthermore, the Court has ruled that the applicants in the present case were to be treated as asylum-seekers (see paragraph 35 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 54 above).

61. In addition, the Court has already held that an appeal against a refusal of entry and a further appeal to the administrative courts were not effective remedies within the meaning of the Convention because they did not have automatic suspensive effect (see paragraph 23 above). The Government did not indicate any other remedies which might satisfy the criteria under Article 13 of the Convention. Accordingly, the Court finds that there has been a violation of Article 13 of the Convention taken in conjunction with Article 3 of the Convention and Article 4 of Protocol No. 4 to the Convention.

V. ALLEGED VIOLATION OF ARTICLE 34 OF THE CONVENTION

62. Lastly, the applicants complained that the Government had failed to comply with the interim measure indicated by the Court in the applicants' case. 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, in so far as relevant:

"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.

..."

A. The parties' submissions

63. The applicants argued that the failure by the Polish Government to comply with the interim measure indicated by the Court in respect of their case had constituted a violation of Article 34. They pointed out that the Government had contested the interim measure and had deliberately failed to comply with it.

64. 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 not executing the interim measure indicated by the Court on 16 June 2017 had not breached – in the circumstances of the present case – Article 34 of the Convention. The Government further questioned the possibility of complying with the interim measure, by indicating that the applicants had never legally been admitted to Poland in the first place and, therefore, they could not have been removed.

B. The Court's assessment

65. The relevant general principles concerning failure of a respondent State to comply with interim measures indicated by the Court under Rule 39 of the Rules of Court were summarised in the judgment in *M.K. and Others v. Poland* (cited above, §§ 229-34).

66. The Court notes, firstly, that the interim measure indicated in respect of the applicants' case on 16 June 2017 included instructions to the authorities to refrain from returning the applicants to Belarus. Despite the indication of the interim measure, the applicants were turned away from the checkpoint not only on the day on which the measure was indicated (see paragraph 10 above) but also on another occasion, on 19 June 2017 (see paragraph 11 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.

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

VI. APPLICATION OF ARTICLE 41 OF THE CONVENTION

68. 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

69. The applicants claimed 34,000 euros (EUR) in respect of non-pecuniary damage and EUR 1,056 in respect of pecuniary damage for expenses incurred for train tickets from Brest to Terespol for the whole family on thirty-three occasions.

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

71. The Court, ruling on an equitable basis, awards the applicants EUR 30,000 jointly in respect of both pecuniary and non-pecuniary damage.

B. Costs and expenses

72. The applicants claimed EUR 722.44 in respect of costs and expenses.

73. The Government considered that claim exorbitant.

74. According to the Court's case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these were actually and necessarily incurred and are reasonable as to quantum. In the present case, regard being had to the documents in its possession and the above criteria, the Court considers it reasonable to award the applicants EUR 700, plus any tax that may be chargeable to them, covering costs under all heads.

C. Default interest

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

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the application admissible;

2. *Holds* that there has been a violation of Article 3 of the Convention;

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

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

5. *Holds* that there has been a violation of Article 34 of the Convention;

6. *Holds*
   (a) that the respondent State is to pay the applicants jointly, within three months, the following amounts, to be converted into the currency of the respondent State at the rate applicable at the date of settlement:
      (i) EUR 30,000 (thirty thousand euros), plus any tax that may be chargeable, in respect of pecuniary and non-pecuniary damage;
      (ii) EUR 700 (seven hundred euros), plus any tax that may be chargeable to the applicants, in respect of costs and expenses;
   (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

7. *Dismisses* the remainder of the applicants' claim for just satisfaction.

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

Liv Tigerstedt Deputy Registrar	Marko Bošnjak President

APPENDIX

No.	Applicant's Name	Birth year	Nationality
1	Mr A.B.	1991	Russian
2	Mrs A.E.	1992	Russian
3	Ms A.K.	1996	Russian
4	I.B.	2009	Russian
5	A.B.	2012	Russian
6	A.B.	2015	Russian