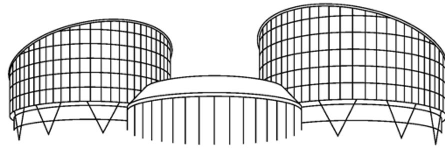

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIRST SECTION

CASE OF T.Z. AND OTHERS v. POLAND

(Application no. 41764/17)

JUDGMENT

STRASBOURG

13 October 2022

This judgment is final but it may be subject to editorial revision.

COUNCIL OF EUROPE

CONSEIL DE L'EUROPE

In the case of T.Z. and Others v. Poland,

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

Lorraine Schembri Orland, *President,*
Krzysztof Wojtyczek,
Ioannis Ktistakis, *Judges,*
and Liv Tigerstedt, *Deputy Section Registrar*,

Having regard to:

the application (no. 41764/17) 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") on 13 June 2017 by six Russian nationals, Ms Z.T. ("the first applicant") and Mr M.M. ("the second applicant"), who are married, and their four minor children (collectively "the applicants" – relevant details listed in the appended table), who had been granted legal aid and were represented by Mr M. Matsiushchankau, a lawyer practising in Vilnius;

the decision to give notice of the application to the Polish Government ("the Government"), represented by their Agent, Mr J. Sobczak, of the Ministry of Foreign Affairs;

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 parties' observations;

Having deliberated in private on 20 September 2022,

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

SUBJECT MATTER OF THE CASE

1. The present case concerns numerous refusals of the Polish authorities to examine the applicants' requests for international protection, their denied entry to Poland and return to Belarus.

I. THE APPLICANTS' ARRIVAL IN POLAND

2. Between August 2016 and March 2017 the applicants travelled to the Polish-Belarusian border crossing at Terespol on twenty-two occasions. In their submission, they expressed a wish to lodge an application for international protection on each occasion, and when talking to the border guards, they expressed fears for their safety if returned to Chechnya. The first applicant submitted that when she had been in Chechnya she had been stalked by a man whose advances she had rejected and who had links to the military. She alleged that the man in question had threatened her after she had married the second applicant. The applicants further submitted that the second applicant had been detained by the police on false charges. He had been taken

to an undisclosed location, where he had been tortured and threatened. Subsequently, unidentified persons had tried to set the applicants' house on fire. After that the applicants had left their home and travelled to Belarus with the aim of travelling onwards to Poland. They could not remain in Belarus as their visas were about to expire, and in practice it would have been impossible for them to obtain international protection there. When they tried to cross the Polish border, the border guards summarily turned them away, sending them back to Belarus.

3. Each time 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 rather that they were trying to emigrate for economic or personal reasons. The applicants did not appeal against the administrative decisions.

4. In March and April 2017 the applicants travelled to the border crossing at Terespol on three occasions. This time they had with them a written application for international protection, which – according to their statements – they tried to lodge with officers of the Border Guard (*Straż Graniczna*). The applicants were again denied entry to Poland and returned to Belarus.

II. INTERIM MEASURE INDICATED BY THE COURT AND FURTHER DEVELOPMENTS

5. On 13 June 2017, when the applicants again presented themselves at the border crossing at Terespol, their representative lodged a request under Rule 39 of the Rules of Court, asking the Court to prevent the applicants from being removed to Belarus.

6. At 10.05 a.m. on 13 June 2017 the Court (the duty judge) decided to apply Rule 39, indicating to the Polish Government that the applicants should not be removed to Belarus until 27 June 2017. The Government were informed of the interim measure before the planned time of the expulsion. Nevertheless, the applicants were returned to Belarus at 11.25 a.m. The official note prepared by border guards on that occasion stated that, when at the border, the applicants had expressed a wish to enter Poland and to travel to Germany in order to join the second applicant's sister who resided there, and to start to live and work there.

7. On 19 June 2017 the applicants returned to the border checkpoint at Terespol, carrying with them an application for international protection and a copy of a letter informing their representative of the Court's decision concerning the interim measure. This time they were allowed to enter Poland and submit applications for international protection.

8. On 27 June 2017 the Court (the duty judge) extended the interim measure until 27 July 2017.

9. Taking into account the fact that the applicants had been admitted to Poland and that – pending proceedings concerning their application for international protection – they were not at risk of expulsion, on 20 July 2017 the Court (the duty judge) decided to lift the interim measure under Rule 39.

10. On 20 April 2018 the head of the Aliens Office (*Szef Urzędu do Spraw Cudzoziemców*) refused to grant international protection. That decision was upheld by the Refugee Board (*Rada do Spraw Uchodźców*) on 2 October 2019.

III. COMPLAINTS

11. The applicants complained that they had been turned away from the Polish border to Belarus, without their asylum requests being examined. They relied on Article 3 of the Convention, Article 4 of Protocol No. 4 to the Convention and Article 13 in conjunction with Article 3 of the Convention and Article 4 of Protocol No. 4.

THE COURT'S ASSESSMENT

I. ADMISSIBILITY

12. 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, subsequently, the administrative courts of the opportunity to examine their allegations of a violation of the Convention.

13. All the complaints raised by the applicants 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 that measure, jointly for all of the complaints.

14. The Court has 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 an appeal of that kind – and any further appeals to the administrative courts that could have been brought subsequently – did not constitute an effective remedy within the meaning of the Convention (see *M.K. and Others v. Poland*, nos. 40503/17 and 2 others, §§ 147-49, 23 July 2020). The Court sees no reason to hold otherwise in the instant case.

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

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

II. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

17. The relevant general principles concerning *non-refoulement* and the 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).

18. In that judgment the Court examined a very similar situation concerning applicants who had tried to cross the border in Terespol in 2017, and in particular whether those applicants could be considered asylum-seekers and whether they had substantiated their submissions that Belarus was not a safe country for them and that they were at risk of "chain *refoulement*" to Chechnya, which would have violated their rights under Article 3 of the Convention. In that instance, the Court found that the Polish State was under an obligation to ensure the applicants' safety, specifically by allowing them to remain within Polish jurisdiction and by guaranteeing safeguards against them having to return to their country of origin until such time as their claims had been properly reviewed by a competent domestic authority. It therefore held that pending an application for international protection, a State could not deny access to its territory to a person presenting himself or herself at a border checkpoint who alleged that he or she might be subjected to ill-treatment if he or she remained on the territory of the neighbouring State, unless adequate measures were taken to eliminate such a risk. The Court sees no reason to hold otherwise in the present case, where the applicants likewise 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.

19. In view of the above, the fact that no proceedings in which the applicants' applications for international protection could be reviewed had been initiated 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 (see *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.

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

III. OTHER ALLEGED VIOLATIONS UNDER WELL-ESTABLISHED CASE-LAW

21. The applicants also raised other complaints which are covered by the well-established case-law of the Court. Having examined all the material before it, the Court concludes that they disclose a violation of Article 4 of Protocol No. 4 as well as of Article 13 of the Convention in conjunction with Article 3 of the Convention and Article 4 of Protocol No. 4 in the light of its findings in previous judgments (see *M.K. and Others v. Poland*, cited above, §§ 204-11 and 219-20, and *D.A. and Others v. Poland*, no. 51246/17, §§ 81-84 and 89-90, 8 July 2021).

APPLICATION OF ARTICLE 41 OF THE CONVENTION

22. The applicants, who were represented by a lawyer of their choice and were granted legal aid, claimed 28,000 euros (EUR) each in respect of non-pecuniary damage, a total of EUR 704 in respect of pecuniary damage for expenses incurred for train tickets from Brest to Terespol for the whole family on twenty-two occasions, and EUR 1,300 in respect of costs and expenses incurred in the proceedings before the domestic courts and EUR 29.29 for those incurred before the Court.

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

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

25. In respect of costs and expenses, having regard to the documents in its possession, the Court considers it reasonable to award the full sum claimed rounded up to EUR 1,330, less EUR 850 received under the Court's legal-aid scheme, covering costs under all heads, plus any tax that may be chargeable to the applicants.

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 and of Article 13 of the Convention in conjunction with Article 3 of the Convention and Article 4 of Protocol No. 4 as regards the other complaints raised under the well-established case-law of the Court;

4. *Holds*
   (a) that the respondent State is to pay the applicants jointly, within three months, the following amounts, to be converted into the currency of the respondent State at the rate applicable at the date of settlement:
      (i) EUR 28,000 (twenty-eight thousand euros), plus any tax that may be chargeable, in respect of pecuniary and non-pecuniary damage;
      (ii) EUR 480 (four hundred and eighty 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;

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

Done in English, and notified in writing on 13 October 2022, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Liv Tigerstedt	Lorraine Schembri Orland
Deputy Registrar	President

APPENDIX

No.	Applicant's Name	Birth year	Nationality
1	Ms Z.T.	1981	Russian
2	Mr M.M.	1976	Russian
3	D.M.	2009	Russian
4	S.M.	2010	Russian
5	S.M.	2012	Russian
6	K.M.	2014	Russian