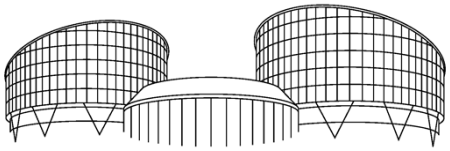

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIRST SECTION

CASE OF SHEROV AND OTHERS v. POLAND

(Applications nos. 54029/17 and 3 others)

JUDGMENT

Art 3 (procedural) • Expulsion • Refusal of border guards to receive applicants' asylum applications and summary removal to Ukraine • Domestic courts' acknowledgement of both procedural shortcomings and the lack of proper assessment by the border authorities did not result in any change of applicants' situation given lack of automatic suspensive effect of appeal • No procedure initiated within which the applicants' applications for international protection could be considered • No examination whether receiving State was safe for applicants, whether they would have access to effective and adequate asylum procedure there or whether they would be exposed to risk of chain *refoulement* and ill-treatment
Art 4 P4 • Collective expulsion of aliens • Wider State policy of not receiving applications for international protection to persons coming from Ukraine • Applicants' attempt to cross a border in a legal manner, using an official checkpoint and subjecting themselves to border checks • Decisions refusing entry taken without proper regard to individual situations
Art 13 (+ Art 3 and Art 4 P4) • Lack of effective remedy with automatic suspensive effect

Prepared by the Registry. Does not bind the Court.

STRASBOURG

4 April 2024

FINAL

04/07/2024

This judgment has become final under Article 44 § 2 of the Convention.
It may be subject to editorial revision.

COUNCIL OF EUROPE
CONSEIL DE L'EUROPE

In the case of Sherov and Others v. Poland,

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

Marko Bošnjak*, President*,
Alena Poláčková,
Krzysztof Wojtyczek,
Ivana Jelić,
Gilberto Felici,
Erik Wennerström,
Raffaele Sabato*, judges*,
and Liv Tigerstedt, *Deputy Section Registrar,*

Having regard to:

the applications 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 the applicants listed in the appended table ("the applicants"), on the various dates indicated therein;

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

the parties' observations;

Having deliberated in private on 12 March 2024,

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

INTRODUCTION

1. The present case concerns the applicants' numerous attempts to enter Poland and to apply there for international protection, their being refused entry to Poland and their being returned to Ukraine.

THE FACTS

2. The applicants' details are set out in the appended table. They were represented by Mr P. Kładoczny, a lawyer with the Helsinki Foundation of Human Rights, a non-governmental organisation based in Warsaw.

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. From December 2016 to January 2017 each of the applicants travelled to the Polish-Ukrainian border crossings at Medyka and Dołchobyczów on at least four occasions (in the case of the first and third applicants), ten occasions (in the case of the fourth applicant) and fourteen occasions (in the case of the second applicant). The applicants submitted that on each visit to the border

crossings, they had expressly stated a wish to make an application for international protection because they were at risk of political persecution in Tajikistan.

6. On each occasion 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 asserted any risk of persecution in their home country but were in fact trying to emigrate for economic or personal reasons. That conclusion was based on summary official interview notes which had been prepared by Border Guard officers in Polish and which were not signed by the applicants.

7. On 31 January 2017 the Helsinki Foundation for Human Rights ("the Foundation") sent letters to the head of the Border Guard Unit in Medyka. It informed him that the applicants had contacted the organisation with allegations of being denied any opportunity to make applications for international protection. The letters stated that all the applicants had been active members of the Islamic Revival Party of Tajikistan, which had been banned by the Tajik authorities in autumn 2015. They also explained that the applicants' colleagues who had belonged to that political party had been imprisoned, tortured and – in a few cases – murdered by the military and that the applicants had fled Tajikistan fearing for their safety. As regards the third applicant, the letter further pointed out his activities in Turkey, where he was involved in running an independent internet portal, Payom.net, which was critical of the Tajik authorities. As regards the fourth applicant, it mentioned his participation in political protests in Istanbul. It was also reported that members of the second applicant's family had been persecuted because of his political activities and that the fourth applicant's wife had already made an application for international protection in Poland, based on the risk of persecution resulting from her husband's political activities: she was accommodated in a reception centre in Poland with their two minor children.

8. The Foundation also provided legal assistance to the applicants, instructing them in the procedure for lodging an application for international protection and how to appeal against the decision refusing entry into Poland.

II. THE EVENTS OF 1 FEBRUARY 2017

9. On 1 February 2017 all four applicants again presented themselves at the Medyka border crossing. They gave statements expressly asking to be allowed to make applications for international protection on account of their past political activities and the risk of political persecution. Moreover, the lawyer from the Foundation, who had previously met with the applicants in Ukraine, was also present at the border crossing on that day. He carried with him letters from the second and fourth applicants authorising him to act for them. In a written statement which he filed with the head of the National Border Guard, he informed the border guard officers that those two applicants

wanted to apply for international protection and that he wished to provide them with legal assistance and be present at their interviews. This was refused. Despite repeated requests, he was denied access to his clients and to their case files.

10. The official notes prepared by the Border Guard officers who had interviewed the applicants on 1 February 2017 stated that: the first and second applicants had submitted that they were unhappy with the general situation in Tajikistan at the time (in particular the country's President and the widespread corruption), that they had taken part in certain political meetings and had come to Poland in order to improve their living conditions; the third applicant had stated that the economic situation in Tajikistan was difficult and did not allow him to find employment, so he had come to Poland in order to settle and find a job; and the fourth applicant had stated that his wife and child were living in Poland, that his wife had applied for international protection in Poland and that he was unhappy with the situation in Tajikistan, concerned that its president was a dictator and wanted to enter Poland in order to find employment and improve his family's living conditions. All four applicants were sent back to Ukraine.

III. THE APPLICANTS' APPEALS AGAINST THE REFUSAL OF ENTRY

11. The applicants submitted that they had wanted to appeal against the decisions denying them entry to Poland when they were still at the Medyka border crossing, on 1 February 2017. They alleged that they had had with them their appeals, in writing, prepared with the help of the lawyer from the Foundation. However, the Border Guard officers had refused to accept the documents. The applicants sent the appeals in question by post on 10 February 2017. The appeals indicated that the applicants had wished to make applications for international protection and therefore they should not have been sent back to Ukraine.

12. On 31 March 2017 the applicants' representative filed additional submissions supplementing the reasons given in the applicants' appeals. Those submissions contained, in particular, written statements by the first third and fourth applicants explaining the reasons why they were seeking international protection. In those statements the applicants explained their links to the Islamic Revival Party of Tajikistan and the nature of their political activities after they had left Tajikistan, as well as indicating that – if returned to Tajikistan – they would be at risk of imprisonment, torture or even death. They further explained that they did not feel safe in Ukraine because agents of the Tajik security services were allowed to operate there and because Ukraine was negotiating a return of refugees to Tajikistan. The first and third applicants added that their families had been visited and threatened by agents of the security services.

13. On 25 April 2017 the head of the National Border Guard (*Komendant Główny Straży Granicznej*) upheld the decision in respect of the first and third applicants. On 27 April 2017 similar decisions were issued with respect to the second and fourth applicants.

14. The head of the National Border Guard stated that an application for international protection could only be made in person, by a foreign national presenting himself or herself at the border. Consequently, the fact that the Foundation had informed the relevant unit of the Border Guard about the applicants' situation was irrelevant for the assessment of their cases. The decisive factors should have been the fact that the applicants had not possessed a valid visa or other document allowing them to enter Poland and the content of the statements they gave to the officers of the Border Guard who had interviewed them at the border. The head of the National Border Guard reiterated that the applicants had given personal and economic reasons for their wish to enter Poland and had not declared the wish to make an application for international protection. He also stressed that border control was supposed to take place without the participation of other persons and that its character precluded the possibility of the presence of a lawyer representing the applicants. In addition to that, the head of the National Border Guard indicated that the system in place was supposed to prevent illegal migration to Poland and that the sole fact that the foreigners present at the border instructed each other to use the key word "asylum" did not oblige the border guards to consider them asylum seekers. If, on the basis of the foreigners' statements as a whole, it was established that they were giving economic and personal reasons for wanting to enter Poland, there was no basis for receiving an application for international protection. With reference to the fourth applicant, the head of the National Border Guard further stated that the fact that that applicant's wife was residing in Poland and had asked the authorities to consider her husband's application for international protection was irrelevant, as domestic law did not provide for family reunion in such cases.

15. All applicants lodged appeals with the Warsaw Regional Administrative Court (*Wojewódzki Sąd Administracyjny*).

16. On 17 October 2017 the Warsaw Regional Administrative Court dismissed the appeal lodged by the second applicant, holding that the proceedings in his case had been conducted by the Border Guard in accordance with the law and that there was nothing to suggest he had expressed the wish to apply for international protection at the border. The court relied in that connection on the content of the official note prepared by the officer of the Border Guard during the border control.

17. On 27 October 2017 the Warsaw Regional Administrative Court set aside the decisions of the head of the National Border Guard and the head of the Medyka Unit of the Border Guard refusing entry to the third applicant. On 9 November 2017 the same court set aside the decisions issued in the case of the first applicant and, on 21 November 2017, in the case of the fourth

applicant. The reasoning was similar in all three judgments. The court held that those applicants should have been interviewed by Border Guard officers and their interviews should have been recorded in the form of a detailed record signed not only by the officers but also by the applicants. The summary official notes signed only by the border guards were insufficient to establish whether the applicants had indeed expressed the wish to apply for international protection. In the judgments concerning the first and fourth applicants the domestic court stressed that the full interview, recorded in detail, should have been conducted in the light of the fact that – according to the official notes – they had declared their dissatisfaction with the political situation in their country of origin and that a non-governmental organisation had informed the authorities that they wished to make an application for international protection. In the case of the fourth applicant, the court further emphasised that the border guard officers had been aware of the fact that his family had already applied for international protection in Poland and, therefore, might have inferred that his reasons to enter Poland were not merely economic. In the domestic court's view, all of those circumstances meant that further inquiry was required.

18. The applicants' representative lodged a cassation appeal against the judgment of 17 October 2017. The head of the National Border Guard lodged cassation appeals against the judgments of 27 October and 9 November 2017. The judgment of 21 November 2017 was not appealed against and became final.

19. On 20 September 2018 the Supreme Administrative Court (*Naczelny Sąd Administracyjny*) quashed the judgment of 17 October 2017 and set aside the decisions of the head of the National Border Guard and the head of the Medyka Unit of the Border Guard which had been issued in the case of second applicant. It also discontinued the proceedings concerning the refusal of entry into Poland. On the same date it dismissed the cassation appeals lodged by the head of the National Border Guard and upheld the judgments of 27 October and 9 November 2017.

20. The Supreme Administrative Court held that the official notes could not have been considered sufficient evidence of the applicants' intentions as expressed at the border, especially in the light of the numerous reports that had been made concerning irregularities in the way in which border control was conducted at the Eastern Polish border at the time. It indicated that the official note could have provided additional evidence of the events that had taken place during border control but could not replace the full interview with the applicants and the record of that interview.

21. In the case of the second applicant, the Supreme Administrative Court also held that the letter sent by a non-governmental organisation to the head of the relevant unit of the Border Guard could not replace the application for international protection that had to be made by the applicant in person. However, the letter, as well as the fact that the second applicant had attempted

to cross the Polish border multiple times, should have alerted the border guards and should have led to an extended interview. It also noted that, as a matter of principle, foreigners had a right to have a representative present at their interview, provided that the representative had been properly appointed and was present at the border crossing. The court discontinued the proceedings concerning the refusal of entry to Poland to the second applicant because he was no longer present at the border.

22. On 15 January 2019 the head of the Medyka Unit of the Border Guard discontinued the proceedings concerning the refusal to allow the first and third applicants to enter Poland because they were no longer present at the border.

IV. FURTHER WHEREABOUTS OF THE APPLICANTS

23. On an unspecified date the first applicant made an application for international protection in Ukraine. It appears that those proceedings are still pending. He also alleged that during his stay in Ukraine, he had been contacted by Tajik security service agents who had tried to persuade him to return to Tajikistan. On 8 February 2019 the first applicant presented himself with his family at the border crossing in Medyka and made an application for international protection. The border guards received his application and forwarded it for consideration by the head of the Aliens Office (*Szef Urzędu do Spraw Cudzoziemców*). In November 2019 the first applicant and his wife and daughter were granted refugee status in Poland.

24. On 8 February 2018 the second applicant made an application for international protection in Ukraine. On 12 November 2018 his application was refused. His appeal against that decision is pending with the Ukrainian authorities. On 9 November 2018 he attempted to cross the border between Ukraine and Hungary. He was arrested and detained until 16 January 2019. According to the applicants' representative's letter of 10 October 2022, the second applicant currently resides in Austria.

25. The second applicant also submitted that his parents, brother, wife and son, who were living in Tajikistan, had been subjected to further persecution related to his political activities. On 31 January 2017 his wife and son had tried to leave Tajikistan but had been stopped at the airport and they remained under house arrest.

26. On an unspecified date the third applicant made an application for international protection in Ukraine. On 31 May 2018 he was informed that his application had been refused. His appeal against that decision is pending with the Ukrainian authorities.

27. In November 2018 the fourth applicant applied for international protection in Austria. On 2 May 2019 his application was granted because of the risk of political persecution in Tajikistan. He is currently residing in Austria with his wife and children.

RELEVANT LEGAL FRAMEWORK AND PRACTICE

28. The relevant legal framework and practice have been summarised in the Court's judgment in *M.K. and Others v. Poland* (nos. 40503/17 and 2 others, §§ 67-115, 23 July 2020).

THE LAW

29. The applicants made various complaints under Article 3 of the Convention, Article 4 of Protocol No. 4 to the Convention and Article 13 of the Convention taken in conjunction with Article 3 of the Convention and Article 4 of Protocol No. 4. The fourth applicant also complained under Article 8 of the Convention.

I. JOINDER OF THE APPLICATIONS

30. Having regard to the similar subject matter of the applications, the Court finds it appropriate to examine them jointly in a single judgment.

II. ADMISSIBILITY

31. The Government submitted that the applications did not disclose any violation of the applicants' Convention rights and that they should therefore be declared inadmissible as manifestly ill-founded.

32. The applicants disagreed. They submitted that the present applications were admissible and disclosed violations of the Convention.

33. The Court notes that the applications are neither manifestly ill-founded nor inadmissible on any other grounds listed in Article 35 of the Convention. They must therefore be declared admissible.

III. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

34. The applicants complained under Article 3 of the Convention that they had been denied access to the procedure for claiming asylum in Poland and that they had been sent to a country which was not safe for them because the asylum procedure there was inadequate and lacked the necessary guarantees and posed a risk of their "chain *refoulement*" by being returned by Ukraine to Tajikistan. They also raised the inadequate conditions of reception for refugees in Ukraine which might expose them to a risk of inhuman and 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

35. The applicants submitted that each time they had been interviewed at the second line of border control in Medyka, they had expressed their wish to apply for international protection. They also submitted that they had been unhappy with the political situation in Tajikistan, which should have alerted the Border Guard officers to the possibility that they might have been involved in opposition activities in Tajikistan. The official summary notes did not reflect the course of their interviews. They were prepared by the Border Guard officers without the applicants' participation. The applicants could not read them and did not know what their contents were.

36. The applicants further argued that Ukraine could not be considered a safe country for them because they had no access to an adequate asylum procedure there and they were at risk of being deported to Tajikistan, which amounted to a risk of treatment contrary to Article 3 of the Convention.

37. The Government noted that the Polish-Ukrainian border was also the external border of the European Union (EU). In consequence, the authorities that conducted border checks were bound by both domestic legislation and EU law (*inter alia* Regulation (EU) 2016/399 of the European Parliament and of the Council of 9 March 2016 on a Union Code on the rules governing the movement of persons across borders – "the Schengen Borders Code"). They also emphasised the main responsibilities of the Border Guard – namely, border protection and border traffic control, including the prevention of illegal migration and the entry into State territory of foreigners not fulfilling the required conditions.

38. The Government explained that all foreigners who presented themselves at the Polish-Ukrainian border were subjected to the same procedure, which was regulated by Polish legislation and EU law. At the first line of border control their documents (travel documents and visas) were checked. 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 foreigners. 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.

39. 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 they had been directed 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. The Government submitted in that connection that when the first applicant had appeared with his family at the border checkpoint on 8 February 2019 and expressed his wish to apply for international protection in Poland, their requests had been forwarded to the Aliens Office and finally granted.

40. The Government stressed that in the oral statements that they had given to the border guards the applicants had not made any reference to treatment in breach of Article 3 of the Convention or to any risk of being subjected to such treatment while in Ukraine.

41. 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

42. The general principles concerning *non-refoulement* and the return of asylum seekers in the context of the prohibition of degrading or inhuman treatment, as well as the principles concerning procedural guarantees and the obligations of the expelling State, have been summarised in *M.K. and Others v. Poland* (nos. 40503/17 and 2 others, §§ 166-73, 23 July 2020).

43. In particular, 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 v. Hungary* [GC], no. 47287/15, § 128, 21 November 2019). 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*, [GC], no. 30696/09, §§ 342-43 and 362-68, ECHR 2011).

44. 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 for 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 will be for the receiving third country to

examine the asylum request on the merits, if such a request is made to the relevant authorities of that country (see *Ilias and Ahmed*, cited above, § 131).

45. 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 (ibid., § 134). It suffices in that regard, if the removing countries opt for removal to a safe third country without examination of the asylum claims on the merits, to examine thoroughly whether that country's asylum system can deal adequately with those claims. In the alternative, as stated above, the authorities can also opt to dismiss unfounded asylum requests after an examination on the merits, where no relevant risks in the country of origin are established.

46. In *M.K. and Others v. Poland* (cited above), the Court examined a situation concerning applicants who had tried to cross the border between Poland and Belarus at Terespol in 2017, and in particular whether those applicants could be considered asylum-seekers and whether they had substantiated their claims that Belarus was not a safe country for them and that they were at risk of "chain *refoulement*" to Chechnya, which would violate 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 providing safeguards against their having to return to their country of origin until such time as their claims had been properly considered by an appropriate domestic authority. It therefore held that pending the examination of 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 and claiming 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 (ibid., § 179).

47. In *M.K. and Others v. Poland* the applicants were sent to Belarus, whereas in the present case they were sent to Ukraine, a Contracting Party to the Convention.

48. However, this difference did not exempt the Polish authorities from conducting a thorough examination of the applicants' situation. They had presented themselves at the border checkpoint and claimed that they might be in danger if sent back to their country of origin. Despite this they did not have the benefit of effective guarantees that would have protected them from

exposure to a risk of being subjected to inhuman or degrading treatment. The Court considers that in order to fulfil their procedural obligations under Article 3 of the Convention the Polish authorities should either have allowed the applicants to remain in Polish territory pending the examination of their asylum application or, before sending them back to Ukraine, they should have examined whether that State was safe for the applicants and whether they would have access to an adequate asylum procedure there (see *Ilias and Ahmed*, cited above, § 137).

49. The Court observes with satisfaction that the administrative courts acknowledged several shortcomings of the domestic procedure and found that the border authorities had not properly assessed the applicants' situation (see paragraphs 17, 20 and 21 above). In particular, the courts noted that the border authorities had failed to gather the necessary evidence to establish whether the applicants' intention had been to apply for international protection. Instead, they had turned the applicants away on the basis of an interview recorded in the form of a summary official note which the applicants had had no opportunity to read and sign (see paragraphs 17, 19 and 21 above). However, the Court notes that those findings of the domestic administrative courts did not result in any change of the applicants' situation, given that the appeal to those courts did not have automatic suspensive effect (see in that regard the Court's conclusion in paragraph 68 below). For that reason the Court is not dispensed of its duty to determine whether the applicants had access to an asylum procedure in Poland.

50. In view of the above, the fact that no procedure within which the applicants' applications for international protection could be considered had been initiated when the applicants were at the Polish border crossing and that they were sent back to Ukraine without an examination of whether the receiving State was safe for them and whether they would have access to an effective and adequate asylum procedure there, or whether they would be exposed to a risk of chain *refoulement* and treatment prohibited by Article 3 of the Convention, constituted a violation of the procedural limb of that Article.

51. There has accordingly been a violation of the procedural limb of Article 3 of the Convention.

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

52. The applicants complained that they had been expelled in a way that amounted to "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

53. The applicants asserted that there was a wider policy of not accepting applications for international protection from persons presenting themselves at the eastern border checkpoints. They submitted that they had been victims of that policy since on numerous occasions the border guards had ignored their applications for international protection, in breach of Article 4 of Protocol No. 4 to the Convention.

54. 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.

55. 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 why 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 applicants (that is to say, on an individual basis) after a careful examination of his individual situation.

56. 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 made on the basis of an individual assessment of the situation of each of the applicants. All the applicants had been given a copy of their individual decision.

B. The Court's assessment

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

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

59. The Court notes the Government's argument that each time the applicants tried to enter Poland, they were interviewed by Border Guard

officers and received individual decisions refusing them entry into Poland. However, the Court has already stated that it considers that during this procedure the applicants' statements that they wished to apply for international protection were disregarded (see paragraph 48 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. Similar findings had been made by the domestic courts (see paragraphs 20 and 21 above).

60. The Court further stresses that the applicants in the present case were trying to make use of the procedure for 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. The fact that the State refused to entertain their arguments concerning the justification for their applications for international protection cannot therefore be attributed to the applicants' own conduct (compare *N.D. and N.T. v. Spain* [GC], nos. 8675/15 and 8697/15, § 231, 13 February 2020). Moreover, the request of the lawyer representing the second and fourth applicants, who was present at the border checkpoint on 1 February, to be present at the applicants' interviews and to have access to their case files was refused (see paragraph 9 above).

61. The Court concludes that the decisions refusing the applicants entry into Poland were not taken with proper regard to the individual situation of each of them and were part of a wider policy of not receiving applications for international protection from persons presenting themselves at the Polish-Ukrainian border and of returning those persons to Ukraine, 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.

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

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

63. The applicants furthermore complained that an appeal against a refusal of entry and a further appeal to the administrative courts did not have automatic suspensive effect. 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

64. The applicants submitted that even though they had a right of appeal, the decisions refusing their entry to Poland had been executed immediately and their appeals had not had suspensive effect.

65. 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 made 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 EU 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 to refuse 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 and that all applicants had made use of that possibility.

66. Moreover, they argued that the decisions to refuse the applicants entry had been taken individually by Border Guard officers 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 – could then be admitted to the territory of Poland. In this connection the Government relied on the example of the first applicant (see paragraph 23 above).

B. The Court's assessment

67. The Court has already concluded that the return of the applicants to Ukraine amounted to a violation of Article 3 of the Convention under its procedural limb and of Article 4 of Protocol No. 4 (see paragraphs 51 and 62 above). The complaints lodged by the applicants in relation to those issues are therefore "arguable" for the purposes of Article 13 (see, among other authorities, *Hirsi Jamaa and Others v. Italy* [GC], no. 27765/09, § 201, ECHR 2012).

68. 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 *M.K. and Others v. Poland*, cited above, § 148, and *A.B. and Others v. Poland*, no. 42907/17, § 23, 30 June 2022). 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.

VI. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

69. The fourth applicant also complained under Article 8 of the Convention that he had been deprived of any possibility of joining his wife and two minor children, who had made applications for international protection in Poland.

70. Having regard to the facts of the case, and having regard also to the submissions of the parties and its findings above, the Court considers that it has dealt with the main legal questions raised by the case and that there is no need to examine the remaining complaint (see *Centre for Legal Resources on behalf of Valentin Câmpeanu v. Romania* [GC], no. 47848/08, § 156, ECHR 2014).

VII. APPLICATION OF ARTICLE 41 OF THE CONVENTION

71. 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

72. Each of the applicants claimed 34,000 euros (EUR) in respect of non-pecuniary damage. They made no claims in respect of pecuniary damage.

73. The Government considered those claims unsubstantiated and unreasonably high.

74. The Court, making its assessment on an equitable basis, awards each applicant EUR 13,000 in respect of non-pecuniary damage, plus any tax that may be chargeable.

B. Costs and expenses

75. The applicants made no claims for costs and expenses. Accordingly, the Court awards no sum in this respect.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Decides* to join the applications;

2. *Declares* the applications admissible;

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

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 there is no need to examine the merits of the complaint under Article 8 of the Convention made in application no. 54255/17;

7. *Holds*
   (a) that the respondent State is to pay each applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 13,000 (thirteen thousand euros), in respect of non-pecuniary damage, plus any tax that may be chargeable;
   (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;

8. *Dismisses* the remainder of the applicants' claims for just satisfaction.

Done in English, and notified in writing on 4 April 2024, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Liv Tigerstedt Deputy Registrar	Marko Bošnjak President

APPENDIX

List of cases:

No.	Application no.	Case name	Lodged on	Applicant Year of birth Place of residence Nationality
1.	54029/17	Sherov v. Poland	20/07/2017	**Jama SHEROV** 1958 Warsaw Tajikistani
2.	54117/17	Saygoziev v. Poland	20/07/2017	**Mahmadsobir SAYGOZIEV** 1981 Neudörfl (Austria) Tajikistani
3.	54128/17	Salimov v. Poland	20/07/2017	**Ziyoviddin SALIMOV** 1977 Yahotyn (Ukraine) Tajikistani
4.	54255/17	Mazhitov v. Poland	20/07/2017	**Fatkhudin MAZHITOV** 1983 Vienna (Austria) Tajikistani