POLISH RESPONSE TO THE WAR IN UKRAINE: THE PROTECTION OF REFUGEES

Izabela Kraśnicka[†]

Charles Szymanski[††]

The authors dedicate this article to all the Ukrainian refugees who have crossed the Polish border, fleeing the Russian invasion and seeking a safer place to live, and to all the individual Poles who have gladly made sacrifices to help them achieve this goal.

TABLE OF CONTENTS

INTRODUCTION....504
I. RESPONSE OF CIVIL SOCIETY....505
II. RESPONSE OF POLISH GOVERNMENT....507
III. EU LEGAL FRAMEWORK....508
A. The applicability and supremacy of EU law to Poland....508
B. The Common European Asylum System....509
C. Temporary Protection Directive....510
D. Council Implementing Decision (EU) 2022/382 of 4 March 2022....512
IV. POLISH LEGAL FRAMEWORK....514
V. THE NEGATIVE SIDES OF THE POLISH RESPONSE....515
CONCLUSIONS....516
A. Overall Effectiveness....516
B. Prospects for the Long Term....518
C. The Strategic and Geopolitical Benefits of Polish Assistance....519

[†] Professor of Law and Vice-Dean for International Cooperation and Development, University of Bialystok, Poland.

[††] Visiting Professor of Law, University of Bialystok.

INTRODUCTION

Immediately after February 24, 2022, when, in total violation of all international obligations, Russia invaded Ukraine, Poland, as a close neighbor, opened its doors to the Ukrainian refugees.

The war led to migration on a magnitude that Poland has never experienced in the past, and in the first four weeks of the war (February 24–March 24, 2022) the number of refugees accepted in the country reached almost sixty percent of the total Ukrainian refugee flow to the neighbors as reflected in the table below.[1]

Country	**Number of refugees**	**%**
Poland	2,206,119	59.2
Romania	572,754	15.37
Moldova	376,748	10.11
Hungary	336,701	9.04
Russian Federation	271,254	7.28
Slovakia	263,939	7.08
Belarus	6,341	0.17
TOTAL	3,727,806	100

With time, some of the refugees continued their travels to other countries, some returned to Ukraine, and some stayed in Poland and registered for some kind of national protection scheme. The most current statistics (dated November/December 2022) show that once again Poland has kept the highest number of Ukrainians within its borders and provided temporary protection to 1,529,355 people out of the total 4,805,531 registered in all European states.[2]

The influx of refugees on a massive scale was accompanied by widespread relief efforts organized in two general dimensions—civil and governmental (with governmental on both central and local levels)—that had separate and joint fields of the assistance provided. The humanitarian assistance provided to refugees could be labeled as inclusive, that is, aiming at integration of the refugees within society, and not separating them in specially designed camps.

This article aims to provide a general introduction and an overview of the Polish reaction to the war in terms of assistance needed by

1. *See Operational Data Portal, Ukraine Refugee Situation*, U.N. REFUGEE AGENCY, https://data.unhcr.org/en/situations/ukraine (last updated Mar. 7, 2023).

2. *Id.*

the specific victimized group of every conflict—refugees. Response of the civil society and the government complimented each other and are worth analyzing together with the legal framework drafted by the domestic law and the applicable European Union acts. It should also be underlined that Poland is party to all international conventions concerning the protection of refugees including the 1951 Convention Relating to the Status of Refugees and its 1967 Protocol. In addition to the positive aspects and overall effective help provided, the article will also point to the darker context of this humanitarian crisis.

As the topic is very recent and the war is still ongoing, the presented text is based on the available data information, news, reports of the public authorities as well as those of the non-governmental organizations and academics together with the authors' own experience. With time, scholarly publications will appear with deeper analysis of the sociological, economical, and legal aspects of Poland's assistance to the Ukrainian refugees. This article will hopefully add to the publications on this topic offered to American readers.

I. RESPONSE OF CIVIL SOCIETY

The general perception among citizens and refugees alike is that Poland has overnight become one big non-government organization (NGO) that, through the efforts of thousands of citizens, has organized the aid that was needed immediately and in the long term. Very often, private actions combined with the capabilities of NGOs give a faster effect (comparing to the possible public actions) that was necessary especially in border activities, in the first moments of the appearance of refugees on Polish soil.[3]

With the arrival of the first refugees, the Polish government prepared reception points that were set up at each of the border crossings. Ukrainian refugees could—optionally, without an administrative obligation to register—rest, get a meal, obtain necessary information, get medical assistance, and receive help with temporary housing. Donations centers near borders offered transport and accommodation around the country. Those efforts were fueled by the private citizens and NGOs appearing with all kinds of assistance.[4]

3. *See generally* Lidia Kurasinska, *Polish Business and Ordinary Citizens Scramble To Help Ukrainian Refugees*, FORBES, (Feb. 27, 2022), https://www.forbes.com/sites/lidiakurasinska/2022/02/27/polish-businesses-and-ordinary-citizens-scramble-to-help-ukrainian-refugees/?sh=d85ff853d094.

4. Chris Melzer, *People Across Poland Show Solidarity with Refugees from Ukraine*, U.N. REFUGEE AGENCY, (Mar.1, 2022),

There are several dimensions of the civil society's response toward refugees: from immediate basic needs such as psychological and medical care (taking care of war trauma) and housing, through broader issues including registration, identity cards, or insurance, up to long-term solutions such as employment, education, and integration under new circumstances.

After the outbreak of the war, spontaneous reaction dominated with major roles played by humanitarian aid NGOs (the well-established, experienced ones as well as the small, local subjects) and private citizens who organized themselves outside any formal structure.

It is estimated that seventy-seven percent of the Polish society has been involved in helping Ukrainian refugees—mostly during the very first weeks of the war.[5] Poles have spent at least PLN 5.5 billion (EUR 1.18 billion) on the assistance although it is difficult to measure the material help such as contributions of food, clothing, or rent-free housing.[6]

Worth noting is the readiness and natural instinct to help, greatly seen throughout the Polish academia, often in cooperation with foreign institutions.

For example, the Polish Academy of Sciences runs a special grant program for Ukrainian scholars in cooperation with the U.S. National Academy of Sciences (NAS) which has launched a special fund that will be used to help temporarily resettle fleeing Ukrainian scientists and their families in neighboring countries. Scientists from Ukraine will be able to continue their research at NAS institutes.[7] The Polish National Science Center has opened special programs to provide opportunities for Ukrainian academics to continue their research at Polish universities.[8]

https://www.unhcr.org/news/stories/2022/3/621dd8214/people-across-poland-show-solidarity-refugees-ukraine.html.

5. Zuzana Papazoski, *Poland's Cities on the Front Lines of Russia's War*, NAT'L DEMOCRATIC INST., (Nov. 28, 2022), https://www.ndi.org/our-stories/polands-cities-front-lines-russia-s-war#:~:text=According%20to%20the%20Polish%20Economic,an%20estimated%20%242%20billion%20USD.

6. POLISH ECON. INST., HOW POLISH SOCIETY HAS BEEN HELPING REFUGEES FROM UKRAINE 5 (2022).

7. *Academy of Sciences and the U.S. National Academy of Sciences Will Help Scientists from Ukraine*, RSCH. IN POL. (Mar. 28, 2022), https://researchinpoland.org/news/the-polish-academy-of-sciences-and-the-u-s-national-academy-of-sciences-will-help-scientists-from-ukraine/.

8. *See NCN for Ukraine*, NAT'L SCI. CTR., https://ncn.gov.pl/en/for-ukraine (last visited Mar. 17, 2023).

Individual universities and faculties within universities came up with a magnitude of ways to help Ukrainian students and teaching staff, offering acceptance and free accommodation. Some law schools were able to employ Ukrainian professors (for instance at the Szczecin Law School legal clinic) or established short term scholarship programs (such as the Bialystok Law School) addressed to the Ukrainian academics fleeing the war.

II. RESPONSE OF POLISH GOVERNMENT

The Polish Border Guard, as the security agency tasked with patrolling the borders, was the first government agency that was directly involved in the refugee assistance providing necessary services at the borders themselves.[9]

As access to information was a key issue, the government website addressed to Ukrainians was immediately opened to provide basic information.[10]

Responsibility for procedures related to the legalization of refugees stays in Poland, together with the coordination and provision of statutorily granted rights rests with public administration authorities based on several national statutes, including laws concerning self-government, public finances, family benefits, or employment regulations. Poland is divided into sixteen administrative units (provinces), and the local coordination of all actions is supervised by the head of each province. In addition, mayors of the biggest Polish cities developed supportive programs and administered help centers for refugees.[11]

The two main channels of the governmental response were the legal action necessary to build a specific framework for the necessary assistance and the funding action to gather and provide financial resources crucial for the proper execution of all the activities. Both took time, as they needed to be formally approved and legitimized, which triggered some accusations of the delayed and insufficient response (along with the rightful critique of the Polish government's actions

9. *See* Ewelina Szczepanska, *Entry of Refugees from Ukraine to Poland*, BORDER GUARD HEADQUARTERS (Mar. 1, 2022), https://www.strazgraniczna.pl/pl/aktualnosci/9881,Wjazd-uchodzcow-z-Ukrainy-do-Polski.html.

10. *See Get a PESEL Number and a Trusted Profile – a Service for Ukrainian Citizens in Connection with the Armed Conflict on the Territory of This Country*, SERV. OF THE REPUBLIC OF POL., https://www.gov.pl/web/gov/uzyskaj-numer-pesel-oraz-profil-zaufany—usluga-dla-obywateli-ukrainy (Aug. 17, 2022 8:58 AM).

11. *See* GRAŻYNA FIRLIT-FESNAK ET AL., SOCIETY AND POLITICS IN THE FACE OF THE REFUGEE CRISIS IN THE FIRST MONTH OF WAR 13–14 (Working Paper, 2022).

against some NGOs).[12] But with the proper distance of time it should be argued that where the civil society could and did act directly, the government did what was expected in due time, complementing the non-governmental response and eventually bearing most of the costs of the long-time refugee assistance.

The estimates place the amount of spending by private citizens and authorities in Poland to support Ukrainian refugees at one percent of the Polish economic output, equaling to over $5 billion.[13]

III. EU LEGAL FRAMEWORK

A. The applicability and supremacy of EU law to Poland

Poland is a member of the European Union (EU), and therefore is subject to EU law. The relevant treaties that, taken together and culminating in the Treaty of Lisbon, comprise EU law, provide for a division of powers between the EU and its component member states. The EU has certain exclusive competences, some competences are shared between the EU and the member states, and others are reserved to the member states. Where the EU possesses the competence to act, the law it creates in this sphere is supreme vis a vis the law of the member states. In the event of any contradiction or collision between EU and member state law in this area, EU law prevails. The severity of this principle is somewhat mitigated by the subsidiarity doctrine, whereby member states are given a timeframe in which to transpose EU law into their own national laws. This transposition process allows the member states to account for local conditions and allows for small variations in implementation, so long as the principles contained in the applicable EU law are maintained.

In Poland and Hungary, in particular, there have been some recent controversies over the EU's power to regulate certain aspects of their respective legal and political systems to preserve the rule of law.[14] The Polish Constitutional Court has gone so far as to decide that the Polish constitution, rather than EU law, governs how the Polish judicial system may be structured. Notwithstanding these disputes, it must be stressed that the basic principle of the supremacy of EU law is still maintained in Poland, where, as in case of regulating the influx of war

12. Eliza Rutynowska, *Thank Poles, Not Government, for Ukraine Refugee Welcome*, EU OBSERVER (Mar. 14, 2022), https://euobserver.com/opinion/154528.

13. Piotr Skolimowski, *Poland Will Spend 1% of GDP to Aid Ukraine Refugees, Study Shows*, BL (Jul. 27, 2022), https://www.bloomberg.com/news/articles/2022-07-27/poland-will-spend-1-of-gdp-to-aid-ukraine-refugees-study-shows.

14. *See* Judgment of Polish Constitutional Tribunal, July 14, 2021, ZP 7/20.

refugees from Ukraine, the EU and member states agree the EU possesses competence in an area. Consequently, the starting point for examining the legal rights of Ukrainians fleeing the war and seeking refuge in Poland is an analysis of applicable EU law.

B. The Common European Asylum System

Initially, the EU left questions of regulating asylum and migration to the member states.[15] This changed by the late 1990s, for various geopolitical reasons.[16] The collapse and disintegration of the Soviet Union and Yugoslavia created a new and unstable situation on the borders of what had been a union of Western European and Mediterranean states.[17] Previously, these neighboring Eastern European states had largely a closed or at least highly controlled border with the EU.[18] As many of these states became free of Soviet and Russian control, their borders became more porous. Moreover, the dissolution of Yugoslavia was not peaceful, and led to a series of wars over the course of the 1990s.[19] Conflicts between Serbia and Croatia, within Bosnia, and finally between Kosovo and Serbia, led to thousands of deaths and hundreds of thousands of war refugees seeking asylum in the EU. In response, the EU Council met in Tampere, Finland in 1999, and issued a declaration concerning the creation of a Common European Asylum System (CEAS).[20]

Pursuant to the Tampere Declaration, the new CEAS should contain standards for the determination of member states' responsibility for asylum seekers, the creation of a common asylum application procedure, and certain common minimum rights for those applying for asylum.[21] Stemming from this Declaration, the EU did enact various regulations and directives duly creating a CEAS. The Dublin regulation notably confirmed a system whereby asylum seekers were restricted to the first EU state in which they attempted entry, although

15. Maryellen Fullerton, *Asylum Crisis Italian Style: The Dublin Regulation Collides with European Human Rights Law*, 29 HARV. HUM. RTS. J. 57, 64 (2016) [hereinafter Fullerton, *Asylum Crisis Italian Style*]; Maryellen Fullerton, *A Tale of Two Decades: War Refugees and Asylum Policy in the European Union,* 10 WASH. UNIV. GLOB. STUDS. L. REV. 87, 95–98 (2011) [hereinafter Fullerton, *A Tale of Two Decades*].

16. Fullerton, *Asylum Crisis Italian Style*, *supra* note 15, at 64–65; Fullerton, *A Tale of Two Decades*, *supra* note 15, at 95.

17. Fullerton, *Asylum Crisis Italian Style*, *supra* note 15, at 64–65.

18. *See* Fullerton, *A Tale of Two Decades*, *supra* note 15, at 96.

19. Fullerton, *Asylum Crisis Italian Style*, *supra* note 15, at 65.

20. Fullerton, *Asylum Crisis Italian Style*, *supra* note 15, at 65.

21. Fullerton, *A Tale of Two Decades*, *supra* note 15, at 95–96.

later rules attempted to impose some "solidarity" obligations upon other member states to provide financial support and even to take in quotas of asylum applicants. The effectiveness and even legal clarity of the CEAS has been heavily criticized. The competence of the EU has been in practice limited to questions of setting minimum standards for *asylum* claims and procedures, pursuant to its freedom, peace, and security powers, specifically found in Article 78 of the Treaty on the Functioning of the European Union (TFEU).[22] While reference is made to eventually establishing a common immigration policy in Article 79 of the TFEU, procedures for admitting economic and other migrants are left to the member states.[23] Consequently, different types of migrants may find themselves under different types of legal regimes.[24] Moreover, under the EU's subsidiarity principle, member states enact and enforce their own laws that embody EU law. This leads to wide variations in the actual enforcement of what should be common standards.[25]

Whatever the overall flaws of the CSEA, it did produce a vital piece of legislation that would ultimately help millions of Ukrainian refugees fleeing the Russian invasion of their country in February 2022. This was the Temporary Protection Directive of 2001.[26]

C. Temporary Protection Directive

The Temporary Protection Directive of 2001 was one of the first pieces of EU asylum legislation produced in response to the Tampere Declaration. It was prompted by the recent wars in Bosnia and Kosovo, which had resulted in hundreds of thousands of war refugees

22. *See* Consoldiated Version of Treaty on the Functioning of the European Union, art. 78, 2016 O.J. (C 326) 76.

23. *See id.* at art. 79.

24. Constanze Janda, *"We Asked for Workers . . ." Legal Rules on Temporary Labor Migration in the European Union and in Germany*, 39 COMPAR. LAB. L. & POL'Y J. 143, 146 (2017); *see also* Vladislava Stoyanova, *The Right to Life Under the EU Charter and Cooperation with Third States to Combat Human Smuggling*, 21 GER. L. J. 436, 443 (2020) (also noting that some legal confusion arises given the shared competence between the EU and member states over asylum and migration issues).

25. *See* Fullerton, *Asylum Crisis Italian Style*, *supra* note 15, at 66.

26. Council Directive 55/EC, art. 1, 2001 O.J. (L. 212) 14. (on Minimum Standards for Giving Temporary Protection in the Event of a Mass Influx of Displaced Persons and on Measures Promoting a Balance of Efforts Between Member States in Receiving Such Persons and Bearing the Consequences Thereof) [hereinafter TPD].

entering the EU, primarily nearby Austria and Germany.[27] It provides a host of special rights to certain types of asylum seekers, streamlining the asylum application process and providing a right to housing, health care, education, and to seek employment.[28]

Coverage of the Temporary Protection Directive is limited to "the event of a mass influx of displaced persons from third countries [into the EU] who are unable to return to their country of origin."[29] Displaced persons are particularly defined as including "persons who have fled areas of armed conflict or endemic violence."[30] The application of this Directive is triggered by a proposal from the European Commission, submitted to the European Council. The European Council then makes a decision whether to provide temporary protection, and if it does, it must indicate the category of people receiving such protection, and the date this protection begins. Temporary protection must last either for one year, or at such time determined by the European Council, based, for example, on an analysis of whether it is safe for the displaced persons to return to their home country.[31]

According to the directive, member states must provide a fast-track process for providing qualified displaced persons with a residence permit and appropriate visas, and associated costs must be waived or kept to a minimum.[32] Further, once accepted, displaced individuals must be authorized to seek employment or to become self-employed.[33] Additionally, displaced individuals should be provided access to social welfare programs and with access to medical care when necessary, including in the case of illness or emergencies.[34] The right to medical assistance is particularly important for unaccompanied minors and victims of rape, torture, and other severe forms of abuse. Displaced persons must also be given access to housing, or the means to obtain housing if they cannot afford it.[35] They should also be provided with sustenance where they lack the means to provide for

27. *See* Ayelet Shachar, *Instruments of Evasion: The Global Dispersion of Rights Restricting Migration Policies,* 110 CALIF. L. REV. 967, 1006 (2022).

28. *Id.; see also* Joseph Meyer, *Putin's Refugee Crisis: The United States and European Union Must Expand Access to Both Ukrainian and Russian Refugees Driven Away by Putin's War of Aggression*, 36 GEO. IMMIGR. L. J. 1131, 1134–35 (2022).

29. TPD, *supra* note 26, at art. 1.

30. *Id.*, at art. 2(c)(i).

31. *Id.*, at art. 4–6.

32. *Id.*, at art. 8–9.

33. *Id.*, at art. 12.

34. TPD, *supra* note 26, art. 13(2).

35. *Id.*, art. 13(1).

themselves.[36] Displaced persons under the age of 18 must be provided access to the member state's education system on the same terms as member state nationals.[37]

Those qualified for temporary protection do not receive an automatic right of free movement within the EU. In fact, to the extent they attempt any onward movement within the EU, they may be returned to the member state which first provided them with asylum.[38] There are, however, specific procedures permitting the reunification of families of displaced persons who are dispersed in various member states.[39]

As noted earlier, the Temporary Protection Directive was enacted in the aftermath of various wars in the Balkans, and therefore too late to help victims of those conflicts. It remained unused for over 20 years, until 2022, when Russia began its invasion of Ukraine.[40]

D. Council Implementing Decision (EU) 2022/382 of 4 March 2022

In the immediate aftermath of Russia's unprovoked attack on Ukraine on February 24, 2002, the European Council moved at lightning speed (by its own standards) to dust off the Temporary Protection Directive and implement its terms for Ukrainians fleeing the war. On March 4, 2022, it issued its Implementing Decision (EU) 2022/382, "Establishing the Existence of a Mass Influx of Displaced Persons from Ukraine Within the Meaning of Article 5 of Directive 2001/55/EC, and Having the Effect of Introducing Temporary Protection."[41] The European Council defined three categories of people who were provided with temporary protection. To qualify, people in all of these categories must have been present in Ukraine before February 24, 2022, and must have fled the country on or after February 24, 2002. They are: 1) Ukrainian citizens and their family members; 2) Non-Ukrainian citizens who had the status of internationally or nationally protected persons, and their family members; and 3) Non-Ukrainian

36. *Id.*, art. 13(2).

37. *Id.*, at art. 14(1).

38. *Id.*, at art. 11.

39. TPD, *supra* note 26, at art. 15(2).

40. Elena Chachko & Katerina Linos, *Ukraine and the Emergency Powers of International Institutions,* 116 AM. J. INT'L L.775, 781 (2022); Martijn Stronks, *Locked in Temporality: The European Governance of Refugees by Means of Time,* 47 YALE J. INTL. L. Online 34, 38 n.21 (2022).

41. Council Implementing Decision 2022/382 2022 O.J. (L. 71) (Establishing the Existence of a Mass Influx of Displaced Persons from Ukraine Within the Meaning of Article 5 of Directive 2001/55/EC, and Having the Effect of Introducing Temporary Protection) [hereinafter Implementing Decision].

citizens who were lawful residents of Ukraine, and were unable to safely return to their home countries after the start of the war.[42] With respect to the third category, member states were also given the option to apply "adequate protection under national law" rather than the provisions of the Directive.[43]

The European Council also noted in its decision that the member states agreed to waive the application of Article 11 of the Directive, which would have otherwise prohibited Ukrainian displaced persons from having a right of free movement throughout the EU.[44] This was a significant decision, particularly for Poland and other member states bordering Ukraine. It effectively gave Ukrainians a right to choose which member state to ultimately obtain asylum.[45] As a result, Ukrainian refugees flooding into Poland could opt to leave to other EU member states, even after a short time.[46] These might include member states with more generous social benefits, or better job markets, such as Germany or Sweden. For Poland, this option was critical, as its major cities, especially the capitol, Warsaw, were reaching their capacity to absorb more Ukrainian refugees in a relatively short period of time. Poland was not only one of the most geographically proximate options for fleeing Ukrainians, and the one with the best transport links with Ukraine, but also the closest neighbor on a linguistic and cultural level. If Ukrainian refugees did not have the possibility of moving to farther destinations within the EU, Poland would have been left with an unsustainable four or five million refugees, rather than one or 1.5 million.

Finally, as with all aspects of the CSEA, the protections of the Temporary Protection Directive were EU minimum standards, and member states were free to provide greater protections.[47] In the case of Ukraine, member states could, for example, extend temporary protected status to a broader class of persons than that set forth in the Directive. In practical terms this could mean including Ukrainians

42. *Id.* at art. 2(1).

43. *Id.* at art. 2(1) and (2).

44. *Id.* ¶ 15 of Preamble.

45. Jaya Ramji-Nogales, *Ukrainians in Flight: Politics, Race, and Regional Solutions,* 116 AM. J. INT'L L. UNBOUND 150, 151 (2022) (noting sea change from the EU's Dublin Regulation rules, which required refugees to stay and be processed in first safe EU member state which they reached); Chachko & Linos, *supra* note 40, at 781 (also noting the EU's departure from the Dublin asylum framework).

46. Meyer, *supra* note 28, at 1131 (noting that by March 11, 2022, Warsaw and Krakow could no longer accept refugees).

47. Meltem Ineli Ciger, *Temporary Protection of Ukrainians in the European Union*, THE JAPAN INST. OF INT'L AFFS. (Oct. 10, 2022), https://www.jiia.or.jp/en/column/2022/10/europe-fy2022-02.html.

who fled the country to the EU *before* the invasion actually began, i.e., prior to February 24, 2022.[48]

IV. POLISH LEGAL FRAMEWORK

The point of departure for the domestic Polish legal analysis lies in the Polish Constitution. The Polish Constitution states that foreigners have the right of asylum in accordance with principles specified in the statute, and that foreigners who seek protection from persecution may be granted status of a refugee in accordance with international agreements to which Poland is a party.[49]

As a result, Polish domestic laws relating to the protection of foreigners, including refugees, are compatible with the international (including EU as introduced in the previous part) obligations resulting from Poland being signatory to international treaties and a member of the European Union.

General principles are laid down in the 2003 law on granting foreigners protection on the territory of the Republic of Poland,[50] but the unprecedented situation required a specifically designed regulation. On March 12, 2022 the Polish parliament adopted the Law on Assistance to Ukrainian Citizens in connection with the armed conflict on the territory of that country.[51] The 2022 Law (called the Special Law) guarantees the following fundamental elements for the refugees from Ukraine:

1. Legal residence in Poland (including a personal identification number and automatic approval for an eighteen month stay);

2. Financial and non-financial aid to address basic needs (one-time cash benefit and several non-financial areas of support such as full-day food, medication, shelter, transportation to places of accommodation);

3. Access to the job market and employment rules (with special regulations for the medical personnel, teachers, psychologists);

4. Access to medical care (on the same scale as for insured Polish citizens);

48. *Id.*

49. Art. 56, Constitution of the Republic of Poland, Apr. 2, 1997, Journal of Laws No. 78, Item 483 (1997).

50. Act on Aliens of June 13, 2003, Journal of Laws No. 128, Item 1176 (2003) (as amended).

51. Law of Mar. 12, 2022 on Assistance to Citizens of Ukr. In Connection with Armed Conflict on the Territory of that Country, Journal of Laws 2022, No. 583 (2022).

5. Access to schools and kindergartens for children (public education free as it is for Polish children).[52]

In addition, the Special Law provided financial aid (a daily allowance) to the Polish citizens who offered their homes to the Ukrainian refugees and several other relief actions were included in the provisions, such as access to higher education and the right to undertake and carry out economic activity in the territory of Poland on the same principles as applicable to Polish citizens.[53]

Financing of the Ukrainian refugee's assistance is done through a special Aid Fund established by the government to provide funding or subsidies for tasks related to assisting Ukraine citizens, especially those affected by war.[54] The program's funds can be used to finance activities carried out on Polish territory, as well as outside of it.[55] Some of the Fund's resources have been delegated to the local governments to support reception of the refugees as well as Poles who were willing to help.[56]

The European Union financial help came within the European Commission Asylum, Migration and Integration Fund, and Poland received substantive European funds to meet the challenges related to the refugee influx.[57]

V. THE NEGATIVE SIDES OF THE POLISH RESPONSE

The Polish response to the war and the general welcoming and supporting attitude of Poles toward Ukrainian refugees have received general attention and appreciation around the world.[58] Indeed, the society felt the natural instinct to help, and the spirit of solidarity ran throughout the country and landed at the borders and in cities and

52. *Id.*

53. *The Act on Assistance for Ukrainian Citizens,* ASS'N FOR LEGAL INTERVENTION (Jan. 25, 2023), https://ukraina.interwencjaprawna.pl/the-act-on-assistance-for-ukrainian-citizens/ (offering a summary and practical guide of the law on a website of one of the NGOs).

54. *See Humanitarian Support for Ukraine*, THE REPUBLIC OF POL. (July 4, 2022), https://www.gov.pl/web/usa-en/humanitarian-assistance-for-ukraine.

55. *Id.*

56. *Id.*

57. *Poland: Funding from the EC to Support Those Arriving from Ukraine*, EUR. COMM'N (Oct. 28, 2022), https://ec.europa.eu/migrant-integration/news/poland-funding-ec-support-those-arriving-ukraine_en.

58. Alisha Ebrahimji, et al., *Strangers Are Leaving Strollers, Car Seats, Winter Coats and Toys at the Polish Border for Ukrainian Refugees,* CNN (Mar. 9, 2022), https://edition.cnn.com/2022/03/09/world/ukrainian-refugee-aid-poland-border-trnd/index.html; Jo Harper, *How Poland's Business Community is Helping Ukrainians,* BBC NEWS (Mar. 18, 2022), https://www.bbc.com/news/business-60744216.

villages in every corner of Poland. An accurate report of the situation must, however, point to some darker shades of Poland's efforts to help.

Immediately after the war broke out, organized crime groups, especially those dealing with human trafficking, appeared at the borders and preyed upon the vulnerability of the scared people, alarming human rights organizations and Polish police and security services.[59]

It also has to be noted that even though the first wave of assistance was accompanied with overwhelming social understanding and sympathy, with time, the Ukrainian presence and privileges offered to them were negatively viewed by some parts of the society, building "anti-Ukrainian sentiment" in the light of the political and economic crisis arriving in Poland.[60]

Finally, the situation on another Polish border should not be forgotten. The refugee and migration crisis on the border with Belarus has caused major violations of all the international obligations as the "push-backs" continue and the Polish Border Guard is accused of inhumane reactions, while residents of the local villages rush with help and the NGOs are organizing support and protesting against government decisions.[61]

CONCLUSIONS

A. Overall Effectiveness

While not perfect, Poland's efforts to help Ukrainian refugees escaping the war have been very effective. Even though some Western intelligence agencies had predicted that Russia would invade Ukraine in February 2022, there was not an expectation that Poland would be flooded with millions of Ukrainian refugees within a very short time period, most of whom would be women and children needing immediate support. Perhaps this was due to expectations that any invasion would conclude rather quickly, ending in a Ukrainian defeat within days or weeks. Against this backdrop, Poland, especially though the help of its civil society in the initial, most difficult phase, was able to achieve incredible results in helping these refugees. Its success can be

59. *Poland: Trafficking, Exploitation Risks for Refugees*, HUM. RTS. WATCH (Apr. 29, 2022), https://www.hrw.org/news/2022/04/29/poland-trafficking-exploitation-risks-refugees.

60. Andrew Higgins, *In Poland, a Warm Welcome for Ukrainian Refugees Wobbles*, N.Y. TIMES (Nov. 15, 2022), https://www.nytimes.com/2022/11/15/world/europe/poland-ukrainian-war-refugees.html.

61. Grażyna Baranowska, *Pushbacks in Poland: Grounding the Practice in Domestic Law in 2021*, 41 POLISH Y.B. INT'L L. 193, 195–99 (2021).

measured in three parts: getting the Ukrainians into Poland; providing for their immediate needs (food, shelter and medical care); and either assisting them in their onward journey to other parts of the EU or integrating them into Polish society, in terms of providing social benefits, finding employment, and enrolling children in schools.

Managing an influx of millions of war refugees over the Polish border was not an easy proposition in February 2022. The Polish-Ukrainian border was not an open one. Instead, it represented the external border of the EU, and moreover also served as the border for the EU's Schengen visa-free travel zone. Once a person lawfully crossed the Polish border, theoretically (with the absence of internal border controls between EU Schengen members) they could access any other part of the EU. As a result, the border controls were particularly strict here, in order to safeguard not only Polish interests but also those of fellow EU members. Finally, the spread of Covid-19 was still a concern at the beginning of 2022, with Ukrainian vaccination rates well below those found in Poland and the rest of the EU. This consideration also warranted careful checks on who could lawfully enter Poland and the EU from Ukraine.

All of these legitimate considerations might have led to a situation where only a trickle of war refugees might be admitted on a daily basis. This, in turn, would have led to a backlog of hundreds of thousands of vulnerable people waiting on the Ukrainian side of the border for admission into Poland, in inhospitable winter conditions. Many of those waiting would have then been expected to make illegal crossings in Poland outside designated entry points, leading to further chaos and instability. Instead, the Polish border guards processed huge numbers of Ukrainian war refugees in a lawful and orderly fashion, getting them safely into the country (and out of a war zone), and putting them in a position to obtain further assistance. Identity documents were checked, but in a fast and efficient way, and normal, time-consuming bureaucratic processes were abandoned in the interest of quickly responding to an emergency situation.

Once the Ukrainians arrived on Polish soil, they were by and large immediately given food, warm clothing and supplies for children (strollers, etc.) by individual Poles or by NGOs. They were also given transportation to major Polish cities away from the border area, and assistance and transport to major EU cities outside of Poland, if the refugees so desired. For those who elected to stay in Poland, civil society provided immediate housing and sustenance. This was especially critical during the period before any applicable government programs could take effect.

Ultimately, various Polish government programs provided financial incentives for Poles to house Ukrainian refugees, and also provided direct cash assistance to the refugees themselves. This led to many Ukrainians moving from temporary accommodations (schools and churches) to more stable arrangements in private homes or apartments. Polish language lessons were offered to ease the refugees' transition into Polish society, workplaces, and schools, although in any case the similarities between the Ukrainian and Polish languages are such that the transition was not exceptionally difficult. Many Ukrainians were able to find entry level, low-skilled jobs if they so desired, and those that achieved some proficiency in Polish were able to obtain more advanced forms of employment. Polish schools made great efforts to enroll and accommodate Ukrainian students, and individual Polish teachers and children did their best to make them feel welcome.

Despite some minor bumps, overall, the Polish response was even beyond the best that could have been expected under the circumstances.

B. Prospects for the Long Term

As the dawn rises on New Year's Eve, 2022, the war in Ukraine rages on. There do not appear to be any realistic prospects for peace in the short or intermediate terms. In recent months Russia has adopted a strategy of attacking Ukraine's energy infrastructure with various missiles and drones, with an aim—already partially realized—of turning off the light and heat for Ukrainians over the course of the long winter. Taken together, these considerations (a long-term war with Ukrainian civilians facing a difficult winter) raise a number of complicated issues for Poland.

Most immediately, if living conditions for Ukrainians continue to deteriorate as a result of Russia's destruction of Ukraine's sources of energy, a new wave of refugees may cross into Poland. This may add hundreds of thousands of additional people to the already one million or so Ukrainian refugees staying in Poland. Moreover, these new refugees would probably be older or otherwise vulnerable, unable to tolerate the lack of heat in their homes for the duration of the winter. While some of these new refugees might go to onward destinations in the EU, based on past experience, many would stay, putting an additional strain on Polish resources. Poland could probably still absorb this additional influx, unless Ukraine's electricity and heating network was completely destroyed, forcing millions of refugees over the border instead of several hundred thousand. In this darker scenario, the EU would need to provide additional help in absorbing this wave of

refugees. Given the legal framework of the Temporary Protection Directive, enabling Ukrainians to seek refuge and obtain support anywhere in the EU, and based on the past solidarity of EU member states to the initial crisis, this too, should be possible.[62]

With respect to prospects of the war becoming long-term—and even very long-term (lasting several years or more)—Poland would be faced with maintaining a refugee population of up to 1.5 million or more refugees. In the global context, this is not unheard of, with Turkey hosting millions of Syrians for the past several years and Jordan maintaining millions of Palestinian refugees for decades, to give just two obvious examples. Economically, there would be some strains, particularly in providing social assistance and education from the state. On the other hand, the Polish labor market has shown a capacity to absorb those Ukrainians ready and available for work, averting what might have been a projected labor shortage in certain sectors.

The problem over the long term may be more social rather than economic. Precisely because of the closeness of the Polish and Ukrainian language and culture, there is some danger of "Polonization" of the Ukrainian refugees over time as they become more and more integrated into Polish society. This may be particularly true for Ukrainian children, who largely receive instruction in Polish in the Polish school system. Additionally, as Ukrainians progress in their careers in Poland, attaining even a higher standard of living from what they may have been used to back home, they may be more reluctant to return to a war-torn Ukraine, even if peace is achieved in several years. Poland must therefore maintain the delicate balance of continuing to welcome and to integrate Ukrainian refugees into all aspects of Polish society, while allowing them space to keep their Ukrainian identity so that returning home after the peace is at least a viable option.

C. The Strategic and Geopolitical Benefits of Polish Assistance

Poland's help to Ukrainian war refugees was for the most part spontaneous and altruistic, a truly collective effort to help a friend in need. Polish society still has a collective memory of the horrors of foreign occupations and the scars from numerous wars, particularly World War II. In other words, Poles know full well what it means to

62. *See* Katerina Linos & Elena Chachko, *Refugee Responsibility Sharing or Responsibility Dumping?,* 110 CALIF. L. REV. 897, 929-30 (2022) (very positively assessing the EU's implementation of the TPD in response to the invasion of Ukraine).

be invaded by a larger neighbor and to flee the country to seek safety, and they want to help Ukrainians now put into the same situation.

At the same time, Poland is not blind to the geopolitical opportunities that may be opened up by the war and the burgeoning alliance between Poland and Ukraine, which is based, in part, upon Poland's help when Ukraine needed it most. A Ukrainian victory in the war would remove or at least diminish the age-old threat Russia has posed to Poland's national security. Concurrently, Ukraine's subsequent post-war admission into the EU has the potential to radically change the balance of power within the EU to Poland's favor. Poland and Ukraine, as two large countries, could exert significant influence within the EU to the extent they coordinated their foreign policies. Finally, there is at least an implicit understanding in Polish business circles that Poland should have a significant role in the reconstruction of post-war Ukraine. That is, to the extent a new Marshall Plan is devised to rebuild Ukraine, perhaps in conjunction with any war reparations that can be obtained from Russia, Polish businesses should have some priority in obtaining available reconstruction contracts.[63]

Still, all these projections are rather speculative, presuming a complete Ukrainian victory followed by Ukrainian EU membership, and finally, the existence of ample reconstruction funds from the US and EU. While all these events and the benefits that flowed from them would be welcome by Poland, they do not drive Polish behavior in helping ordinary Ukrainian refugees. Rather, Poland has risen to the occasion to do the right thing in helping its neighbor in the face of Russian aggression on moral and historical grounds, more than future economic and political gains.

63. *See generally* Anna Gromada & Krzysztof Zeniuk, *Why Poland May Have Most to Gain from a Russian Defeat in Ukraine*, GUARDIAN (Nov. 13, 2022), https://www.theguardian.com/commentisfree/2022/nov/13/poland-russia-defeat-ukraine-western-europe?CMP=Share_iOSApp_Other.