The Essay Series | *Opinion*

Oxford Law Review, Vol. 1, Issue 1, 2026 DOI: https://10.5281/zenodo.23621036

Between Border Sovereignty and Human Rights: A Critical Analysis of Polish Immigration Law under European Union and International Law

Anna Kowalska[1]

© The Author(s), under exclusive licence to Oxford Law Review 2026.

Immigration law occupies a central position in contemporary debates concerning national sovereignty, human rights, international cooperation, and the rule of law. The movement of individuals across national borders raises questions that extend beyond the regulation of entry and residence. It concerns the protection of refugees, the rights of migrant workers, the responsibilities of receiving states, national security, and the extent to which governments may restrict human mobility in pursuit of legitimate public objectives. Poland provides a significant case study for examining these questions because its immigration policies operate at the intersection of domestic legislation, European Union law, and international human rights obligations. As a Member State of the European Union and the Schengen Area, Poland exercises authority over immigration and border management within a broader legal framework that regulates asylum, fundamental rights, and the treatment of foreign nationals. Its geographical position on the European Union's eastern frontier, its experience of migration from neighbouring countries, and the arrival of displaced Ukrainians following Russia's full-scale invasion of Ukraine in February 2022 have placed considerable demands upon its immigration and protection systems. The central legal question is how Poland can reconcile its authority to regulate its borders with its obligations to protect individuals whose circumstances engage refugee law, human rights guarantees, and the principle of non-refoulement. This relationship illustrates a fundamental principle of constitutional government: state sovereignty provides the authority to regulate migration, but the exercise of that authority remains subject to domestic legislation and binding international and European legal obligations.

The legal framework governing immigration in Poland consists of several interconnected sources. At the domestic level, the Act of 12 December 2013 on Foreigners establishes important rules concerning the entry, residence, and departure of foreign nationals, including procedures for various residence permits. The Act of 13 June 2003 on Granting Protection to Foreigners within the Territory of the Republic of Poland regulates international protection, including refugee status and subsidiary protection. These statutes operate alongside legislation governing employment, administrative proceedings, and other aspects of immigration administration. The Office for

[1] **University of Łódź, Gabriela Narutowicza 68, 90-136 Łódź, Poland; ✉ anna.kowa325@uni.lodz.pl**

Copyright © Oxford Law Review. (www.oxfordlr.com)

Oxford Law Review, Vol. 1, Issue 1, 2026 DOI: https://10.5281/zenodo.23621036

Foreigners, together with other competent public authorities, performs important functions in administering applications and determining immigration status (Office for Foreigners, n.d.). At the European level, Poland is bound by relevant provisions of EU law, including the Charter of Fundamental Rights of the European Union and the legislation governing asylum and border management. International obligations arise under instruments such as the 1951 Convention relating to the Status of Refugees, its 1967 Protocol, and the European Convention on Human Rights. Each source performs a distinct legal function. National legislation establishes administrative procedures, EU law provides common standards and obligations, and international law protects individuals against specified forms of persecution and serious harm. Consequently, immigration decisions cannot always be resolved solely by reference to national policy preferences. Their legality may depend upon statutory authority, compliance with European legal standards, and the protection afforded by applicable international instruments.

State sovereignty remains a fundamental principle of immigration control. States generally possess authority to determine the conditions under which foreign nationals may enter, reside, and work within their territories, subject to applicable legal obligations. Governments may establish visa requirements, regulate employment, impose conditions on residence permits, and remove individuals who lack a lawful basis to remain. However, these powers must be exercised according to law. Poland's participation in the Schengen Area makes this relationship particularly important because the removal of routine internal border controls among participating states increases the significance of external-border management and cooperation between national authorities. Nevertheless, sovereignty should not be understood as unlimited discretion. The authority to control borders must operate within a legal order that recognises human dignity, procedural fairness, and protection against serious harm. Foreign nationals do not lose every legal protection merely because their entry is irregular or their immigration status is uncertain. The rights available to a particular individual depend upon the applicable legal framework, but the state must comply with the obligations that apply to its conduct. The fundamental challenge is therefore not to choose between sovereignty and legality, but to establish procedures through which border control can be exercised consistently with the rule of law.

The protection of refugees represents one of the most important dimensions of this relationship. Article 1A(2) of the 1951 Refugee Convention defines a refugee, subject to the Convention's requirements, by reference to a well-founded fear of persecution for reasons of race, religion, nationality, membership of a particular social group, or political opinion, together with the other conditions specified in that provision. Article 33 establishes the principle of non-refoulement, prohibiting the expulsion or return of a refugee to territories where their life or freedom would be threatened for a Convention reason, subject to the limited qualification contained in Article 33(2) (United Nations, 1951). Additional protection arises under Article 3 of the European Convention on Human Rights, which prohibits torture and inhuman or degrading treatment or punishment. The European Court of Human Rights has interpreted this provision as preventing removal where substantial grounds establish that an individual would face a real risk of treatment contrary to Article 3. The prohibition is absolute and is not subject to a national-security balancing exception.

Copyright © Oxford Law Review. (www.oxfordlr.com)

Oxford Law Review, Vol. 1, Issue 1, 2026 DOI: https://10.5281/zenodo.23621036

Articles 18 and 19 of the Charter of Fundamental Rights of the European Union also protect the right to asylum in accordance with applicable EU and international law and prohibit collective expulsions and removal to a state where there is a serious risk of the death penalty, torture, or other inhuman or degrading treatment (European Union, 2012).

These protections do not mean that every person entering Poland automatically qualifies for refugee status or permanent residence. Rather, they require the competent authorities to assess protection claims under the applicable legal standards and to avoid transfers that would breach binding obligations. Refugee status, subsidiary protection, temporary protection, and ordinary residence permits are distinct legal categories, each governed by its own requirements. The Polish Office for Foreigners explains that international protection may be granted to individuals who satisfy the conditions for refugee status or who face specified forms of serious harm that qualify them for subsidiary protection (Office for Foreigners, n.d.). This distinction is essential because immigration control and refugee protection address different legal questions. The former concerns the state's authority to regulate entry and residence; the latter concerns whether an individual is entitled to protection under the applicable legal framework. A lawful immigration system must be capable of addressing both questions without treating the existence of border-control powers as a justification for disregarding protection claims.

Poland's eastern border has brought these principles into sharp focus. Migration across the border with Belarus has involved allegations of instrumentalised migration, security concerns, irregular crossings, and measures intended to prevent entry into Polish territory. Polish authorities have emphasised the need to protect the European Union's external border and respond to security threats. Human rights organisations and European legal institutions have raised concerns about access to asylum procedures, the treatment of migrants, and the legality of certain border practices. These competing considerations require legal analysis rather than an assumption that either border security or refugee protection must invariably prevail. States may adopt lawful measures to prevent irregular entry and respond to genuine security threats, but those measures must remain compatible with applicable asylum and human rights obligations. The relevant questions include whether individuals can access procedures required by law, whether their circumstances are assessed where necessary, and whether proposed returns would expose them to prohibited risks. A measure may pursue a legitimate objective and nevertheless require scrutiny because of the means employed to achieve it. The rule of law demands that border measures possess a lawful basis, pursue legitimate purposes, and comply with applicable procedural and substantive safeguards.

Judicial decisions provide important guidance concerning the relationship between border control and fundamental rights. In *Hirsi Jamaa and Others v. Italy* (2012), the European Court of Human Rights examined the interception and return of migrants to Libya without an adequate assessment of their individual circumstances. The Court found violations of the European Convention on Human Rights, including Article 3 and the prohibition of collective expulsion under Article 4 of Protocol No. 4. Although the case concerned Italy rather than Poland, its reasoning is relevant to the wider European legal framework governing border operations and non-refoulement.

Copyright © Oxford Law Review. (www.oxfordlr.com)

Oxford Law Review, Vol. 1, Issue 1, 2026 DOI: https://10.5281/zenodo.23621036

It demonstrates that migration control cannot automatically displace human rights obligations where a state exercises jurisdiction over the individuals concerned.

A further relevant authority is *X v. Staatssecretaris van Justitie en Veiligheid* (Case C-392/22), decided by the Court of Justice of the European Union on 29 February 2024. The case concerned the transfer of an asylum applicant to Poland under the Dublin system and the assessment of risks associated with pushbacks and detention at the Polish-Belarusian border. The Court held that the existence of such practices did not automatically preclude every transfer to Poland. However, a transfer must be ruled out where the applicable legal test is satisfied and substantial grounds establish that the individual would face a real risk of treatment contrary to Article 4 of the EU Charter, in the circumstances specified by the judgment (Court of Justice of the European Union, 2024). The decision should not be misrepresented as a blanket judicial finding that every transfer to Poland is unlawful. Its significance lies in requiring a careful, evidence-based assessment of the individual's prospective treatment. It demonstrates how the principle of mutual trust between EU Member States operates alongside the obligation to protect fundamental rights.

Administrative fairness is equally important in Poland's immigration system. Decisions concerning visas, residence permits, asylum claims, and removal can have profound consequences for individuals and their families. A refusal may separate family members, interrupt employment, prevent continued education, or expose an applicant to serious risks. Immigration administration must therefore comply with applicable procedural requirements and provide appropriate legal grounds for decisions. The Polish administrative framework establishes procedures through which immigration matters are considered and, where permitted, challenged. The Office for Foreigners provides information about international protection procedures, applicants' rights and obligations, and the submission of applications (Office for Foreigners, n.d.). Effective legal protection requires applicants to understand the decisions affecting them, to have access to available remedies, and to receive meaningful consideration of relevant evidence. Interpretation and translation are particularly important where an applicant cannot understand the language of proceedings. Vulnerable individuals, including children and survivors of trafficking, may require additional safeguards under the applicable legal framework. Administrative efficiency is a legitimate objective, but speed cannot replace the careful assessment required where a decision may affect fundamental rights. Conversely, prolonged administrative delays can leave migrants in uncertainty and create difficulties for families, employers, and public institutions. A fair system must therefore combine timely decisions with effective procedural protection.

Labour migration presents a different but closely related set of legal questions. Poland has become an important destination for foreign workers in sectors including manufacturing, construction, logistics, agriculture, and services. Labour migration can help address workforce needs and provide migrants with opportunities to improve their economic circumstances. However, access to employment depends upon compliance with the rules governing lawful residence and work authorisation. The legal position varies according to nationality, immigration status, the type of employment, and any applicable exemption. A visa permitting entry does not necessarily authorise every form of employment, and a work permit does not automatically resolve every question

Copyright © Oxford Law Review. (www.oxfordlr.com)

Oxford Law Review, Vol. 1, Issue 1, 2026 DOI: https://10.5281/zenodo.23621036

concerning lawful residence. Applicants and employers must therefore examine the conditions attached to the relevant documents rather than assume that one authorisation satisfies all immigration requirements.

An important legislative development occurred in 2025, when Poland enacted the Act of 20 March 2025 on the Conditions for the Admissibility of Entrusting Work to Foreigners in the Territory of the Republic of Poland. The legislation entered into force on 1 June 2025 and established a revised framework governing the conditions under which foreign nationals may be entrusted with work in Poland (Republic of Poland, 2025). Its practical significance concerns both migrant workers and employers, who must comply with the applicable authorisation and employment requirements. From a rule-of-law perspective, the effectiveness of such legislation should be assessed by examining whether its requirements are sufficiently clear, whether employers and workers can comply with them in practice, and whether violations are addressed consistently. Excessively complex procedures can increase the risk of non-compliance, while weak enforcement may expose workers to exploitation. A balanced legal framework must protect the integrity of the labour market while ensuring that foreign employees can exercise the rights afforded to them by applicable law.

The protection of migrant workers also requires attention to the relationship between immigration status and employment vulnerability. Workers who depend heavily upon a particular employer for their residence or work authorisation may be reluctant to report wage theft, unsafe working conditions, discrimination, or other forms of abuse. The possibility of losing employment or jeopardising immigration status may discourage them from seeking legal remedies. These risks demonstrate why labour-law enforcement and immigration administration must operate in a coordinated and rights-respecting manner. Foreign workers are entitled to the protections available under the applicable legal framework, although the scope of particular entitlements depends upon their circumstances and the governing law. Effective inspection, accessible complaint mechanisms, clear employment contracts, and timely adjudication can help reduce exploitation. Employers must understand their legal obligations, and workers must be able to seek assistance without being deterred by avoidable procedural obstacles. The objective is to ensure that immigration control does not create conditions in which unlawful employment practices become difficult to challenge.

The treatment of displaced Ukrainians provides another important perspective on Polish immigration law. Following Russia's full-scale invasion of Ukraine in February 2022, Poland received large numbers of people fleeing the conflict. The European Union activated the Temporary Protection Directive, Council Directive 2001/55/EC, through Council Implementing Decision (EU) 2022/382, creating a framework for immediate protection for eligible displaced persons without requiring each individual to complete the ordinary refugee-status determination process before receiving protection (Council of the European Union, 2022). The Polish response included special arrangements concerning lawful stay, employment, education, and access to specified forms of assistance. Temporary protection, however, remains legally distinct from refugee status and ordinary residence permits. Its duration, eligibility requirements, and associated rights depend upon the relevant EU and national measures. This experience illustrates how immigration law must

Copyright © Oxford Law Review. (www.oxfordlr.com)

Oxford Law Review, Vol. 1, Issue 1, 2026 DOI: https://10.5281/zenodo.23621036

respond to humanitarian emergencies while preserving legal certainty. Temporary arrangements may be necessary in exceptional circumstances, but their administration should provide clear information about eligibility, the transition between legal statuses, and the consequences of changes in residence rights or benefits.

The experience of Ukrainian displacement also raises questions concerning equality and the consistent application of protection standards. Different migration situations may justify different legal responses, particularly where the scale, character, and urgency of displacement differ. Equality before the law does not require every person entering a state to receive an identical immigration status, because asylum seekers, temporary-protection beneficiaries, students, workers, and visitors may have different legal circumstances. It does, however, require public authorities to apply the relevant rules consistently and respect the fundamental rights applicable to each group. Humanitarian protection, labour migration, and ordinary immigration administration serve different purposes, but each must operate within a framework of legal accountability. Clear communication is particularly important when temporary protection arrangements change, because individuals may need to understand how those changes affect employment, healthcare, social assistance, and future residence rights.

The relationship between Polish immigration law and European Union law raises broader questions concerning the distribution of authority between national governments and European institutions. National authorities continue to perform many essential immigration and asylum functions, but EU law establishes common rules and obligations intended to coordinate the treatment of third-country nationals and the management of asylum claims. The Schengen system also means that decisions concerning external borders may have consequences for other participating states. This interconnected framework creates a need for cooperation, information-sharing, and common legal standards. At the same time, Member States face different geographical circumstances, administrative capacities, and political pressures. Poland's position on the European Union's eastern border has made these tensions particularly visible. National authorities may argue that exceptional circumstances require additional measures to protect security, while European institutions and courts may examine whether those measures comply with common legal standards. Such disagreements are part of a legal order in which national authority and supranational obligations coexist. The appropriate response is to examine the relevant provisions, the evidence supporting a measure, and the remedies available under the applicable framework.

The principle of proportionality is particularly important when evaluating restrictive immigration measures. Where applicable, it requires public authorities to demonstrate that a measure pursues a legitimate objective and satisfies the relevant requirements of suitability, necessity, and proportionality. Border surveillance, identity checks, detention, and removal may be authorised in specified circumstances, but their legality depends upon the governing statutory and human rights standards. Detention should not be treated as an automatic consequence of irregular entry where the applicable law requires an individual assessment or consideration of less restrictive alternatives. Similarly, removal decisions must respect the principle of non-refoulement and other

Copyright © Oxford Law Review. (www.oxfordlr.com)

Oxford Law Review, Vol. 1, Issue 1, 2026 DOI: https://10.5281/zenodo.23621036

applicable requirements concerning family life, children, and vulnerability. Proportionality does not prevent states from responding to genuine security risks. Rather, it requires them to demonstrate that the means chosen are legally justified and do not impose restrictions beyond those permitted by law. The continuing availability of independent judicial review helps ensure that immigration powers remain subject to legal scrutiny.

Access to justice remains a practical challenge for many foreign nationals. Immigration proceedings may involve complicated legislation, unfamiliar administrative procedures, language barriers, financial difficulties, and uncertainty about the interaction between national and European legal rules. Applicants may struggle to obtain legal advice or understand the consequences of missed deadlines and incomplete documentation. These difficulties can be especially serious in asylum cases, where the consequences of an adverse decision may be severe. Effective access to remedies requires understandable procedures, adequately reasoned decisions, and meaningful access to review mechanisms under the applicable law. Legal assistance may be particularly important for individuals who cannot afford representation. Courts must be able to review administrative decisions within their jurisdiction, while administrative authorities must comply with binding judicial decisions. At the same time, procedural systems must remain workable and capable of resolving claims without unnecessary delay. Access to justice is therefore not merely an additional benefit of a well-designed immigration system; it is an essential safeguard against administrative error and the misuse of public power.

A critical assessment of Polish immigration law must recognise that the state has legitimate interests in border security, the regulation of employment, the prevention of trafficking, and the maintenance of an effective immigration administration. These interests are compatible with human rights protection when pursued through lawful and proportionate measures. Difficulties arise when broad policy objectives are treated as sufficient justification for measures that fail to comply with specific legal obligations. The existence of a security concern does not, by itself, determine whether a particular return, detention, or refusal of access to a procedure is lawful. Equally, the recognition of human rights does not eliminate the state's authority to regulate migration in accordance with applicable law. The legal task is to reconcile these considerations through clear rules, individual assessment where required, independent oversight, and effective remedies. Poland's experience demonstrates the importance of distinguishing political arguments about migration from the legal standards governing particular decisions. Public debate may legitimately consider the economic, cultural, and security implications of immigration, but administrative decisions must be made according to the relevant legal framework and the evidence available.

In conclusion, Polish immigration law illustrates the continuing tension between border sovereignty and the protection of human rights within a legal system shaped by domestic legislation, European Union obligations, and international law. Poland possesses legitimate authority to regulate entry, residence, and employment, but that authority must be exercised consistently with the Refugee Convention, the European Convention on Human Rights, applicable EU law, and national legislation. The management of the Belarusian border, the regulation of foreign employment, and the protection of displaced Ukrainians demonstrate that immigration law

Copyright © Oxford Law Review. (www.oxfordlr.com)

Oxford Law Review, Vol. 1, Issue 1, 2026 DOI: https://10.5281/zenodo.23621036

must respond to different circumstances while preserving legal certainty and fundamental safeguards. The 2025 reforms concerning the employment of foreign nationals further illustrate that the framework is subject to change and requires careful implementation. Effective governance should promote transparent administrative procedures, timely and reasoned decisions, access to legal remedies, protection against exploitation, and consistent application of the law. It should also recognise that security, economic regulation, and humanitarian protection are not necessarily incompatible objectives. The essential requirement is that each be pursued within the boundaries established by law. Ultimately, the legitimacy of an immigration system depends not only upon its ability to regulate borders, but also upon its capacity to exercise public power lawfully, treat individuals with dignity, and provide effective protection where legal obligations require it. Sovereignty authorises the state to govern, while the rule of law determines the limits within which that authority may be exercised.

References

Council of the European Union. (2022). *Council Implementing Decision (EU) 2022/382 of 4 March 2022 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.* Official Journal of the European Union, L 71, 1–6.

Court of Justice of the European Union. (2024). *X v. Staatssecretaris van Justitie en Veiligheid* (Case C-392/22), judgment of 29 February 2024, ECLI:EU:C:2024:195.

European Union. (2012). *Charter of Fundamental Rights of the European Union.* Official Journal of the European Union, C 326, 391–407.

European Court of Human Rights. (2012). *Hirsi Jamaa and Others v. Italy* [Grand Chamber], Application No. 27765/09, judgment of 23 February 2012.

Office for Foreigners. (n.d.). *International protection and related procedures.* Government of the Republic of Poland. https://www.gov.pl/web/udsc-en

Republic of Poland. (2003). *Act of 13 June 2003 on Granting Protection to Foreigners within the Territory of the Republic of Poland.*

Republic of Poland. (2013). *Act of 12 December 2013 on Foreigners.*

Republic of Poland. (2025). *Act of 20 March 2025 on the Conditions for the Admissibility of Entrusting Work to Foreigners in the Territory of the Republic of Poland.* Journal of Laws 2025, item 621.

United Nations. (1951). *Convention relating to the Status of Refugees*, 189 UNTS 137.

United Nations. (1967). *Protocol relating to the Status of Refugees*, 606 UNTS 267.

Copyright © Oxford Law Review. (www.oxfordlr.com)

Oxford Law Review, Vol. 1, Issue 1, 2026 DOI: https://10.5281/zenodo.23621036

Council of Europe. (1950). *Convention for the Protection of Human Rights and Fundamental Freedoms*, ETS No. 5.

Publisher's Note

Oxford Law Review maintains neutrality with respect to the opinions, interpretations, and conclusions expressed in published articles, as well as jurisdictional claims in published maps and institutional affiliations. The views and arguments presented in this article are solely those of the author(s) and do not necessarily reflect the views of Oxford Law Review, its editors, or its publisher. Responsibility for the accuracy, originality, and integrity of the content rests with the author(s). Publication of an article does not constitute an endorsement by Oxford Law Review of the views expressed therein. All rights relating to the article are governed by the applicable publishing agreement between the author(s) or other rightsholder(s) and the publisher, together with applicable law.

Copyright © Oxford Law Review. (www.oxfordlr.com)