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The migration phenomenon in the context of the principle of state sovereignty: selected issues

Zjawisko migracji w kontekście zasady suwerenności państwa – wybrane zagadnienia

https://doi.org/10.25312/2391-5145.198/2024_01obz

Abctract

The phenomenon of migration on a scale previously unknown after World War II shocked the countries belonging to the European Union. The surge of people seeking protection from persecution, better jobs, educational opportunities, and a desire to be reunited with families already living in the EU has led governments to consider fundamental issues. One of them was the principle of sovereignty and its impact on governments' compliance with accepted international obligations. In many discussions, in my opinion, there was an erroneous juxtaposition of the idea of human rights with the principle of sovereignty, which led to an increase in nationalist sentiments and an escalation of hate speech against foreigners. This article aims to explain the key differences between the concepts of migrant and foreigner, the essence of the principle of sovereignty and its consequences, and the influence of the European Union on the traditional understanding of the state.

Keywords: sovereignty, migration, refugees, state obligations, EU, human rights

Streszczenie

Zjawisko migracji na dotąd nieznaną po II wojnie światowej skalę wstrząsnęło krajami należącymi do Unii Europejskiej. Przypływ ludności, która szukała ochrony przed prześladowaniami, lepszej pracy, możliwości edukacji oraz chęci połączenia się z rodzinami

już żyjącymi w UE, spowodowały, że władze państw zaczęły rozważać fundamentalne kwestie. Jedną z nich była zasada suwerenności i jej wpływ na przestrzeganie przez rządy przyjmowanych zobowiązań międzynarodowych. W wielu dyskusjach pojawiało się w mojej opinii błędne zestawianie idei praw człowieka z zasadą suwerenności, co doprowadziło do wzrostu nastrojów nacjonalistycznych oraz eskalacji mowy nienawiści wobec cudzoziemców. Niniejszy artykuł ma na celu wyjaśnienie kluczowych różnic między pojęciami migrant i cudzoziemiec, istotę zasady suwerenności i jej konsekwencje oraz wpływ Unii Europejskiej na tradycyjne pojmowanie państwa.

Słowa kluczowe: suwerenność, migracja, uchodźcy, zobowiązania państwa, UE, prawa człowieka

Introduction

Migration on a scale unseen since World War II, has shaken the states belonging to the European Union. The influx of people seeking international protection from persecution, as well as better employment opportunities, education, or the desire to reunite with families already living in the EU, has prompted governments to ponder fundamental matters. Among them, a key issue is the principle of sovereignty and its impact on the respect for international obligations undertaken by governments. In many narratives, there has been, in my view, an erroneous, juxtaposition of the idea of human rights with the principle of sovereignty. This has led to a rise in nationalist sentiments and an escalation of hate speech directed at foreigners. In this article, I will attempt to explain the key differences between the concepts of *migrant* and *refugee*, the essence of the principle of sovereignty and its consequences, and the influence of the European Union on the traditional concept of states. This article aims to explain the key differences between the concepts of migrant and foreigner, the essence of the principle of sovereignty and its consequences, and the influence of the European Union on the traditional understanding of the state.

Scope of the concepts of migrant and refugee

Refugee, *migrant*, and *foreigner* – these three concepts function in the social consciousness as synonymous. From the perspective of legal provisions, both national and international, each of these concepts has a different meaning. Depending on the subject to which legal norms apply (especially in the context of differences between a refugee and a migrant), their protection will be different, as will the rights and obligations that apply to them. Legal regulations concerning foreigners are both international and national, with the latter being expected to comply with the former. The term *migration* is defined as the movement of people, which involves crossing a border to settle in another state.[1] A migrant is a person who undertakes immigration, meaning an action through which they establish their place

[1] P. Muus, *International migration and the European Union, trends and consequences*, "European Journal on Criminal Policy and Research" 2001, No. 9, p. 32.

of residence in the territory of a member state for a period of at least twelve months, or which is expected to last that long, having previously been a resident of another member state or a third country. The phenomenon of migration can be considered from various perspectives, such as the causes and effects of migration, the geographical-political nature of the phenomenon, the direction and duration of migration, or the character of the settlement of the migrating population.[2] Currently, the analysis of migration often employs the so-called *push/pull migration* theory, according to which migrations are the result of push factors present in the migrants' current place of residence and pull factors in the destination where migrants are headed.[3] Pull factors in migration include:

- democracy,
- an effective system for protecting basic human rights,
- opportunities for better employment,
- opportunities for obtaining adequate education,
- access to medical care,
- social welfare,
- prospects for economic development,
- political stability,
- a stable labor market,
- the state of the legal system.[4]

On the other hand, factors causing push migration include lack of political stability, poverty and hunger, dictatorships, natural disasters, violations of basic human rights, and environmental destruction.[5] The most significant factor distinguishing between the two phenomena, refugee status and migration, is motivation. A refugee leaves their country of origin because circumstances related to a well-founded fear for their life compel them to seek protection in another country, as will be discussed later in this paper. In contrast, a migrant voluntarily (not coerced by factors such as war, persecution, or fear for their life) leaves their country of origin because they want to settle, pursue education or employment, or reunite with family in a foreign (often more developed) country.

In light of Article 1A of the Geneva Convention, a *refugee* is any person who, due to a well-founded fear of persecution because of their race, religion, nationality, membership in a particular social group, or political beliefs, is outside the country of their nationality and is unable or unwilling to avail themselves of the protection of that country, or who, not having a nationality and being outside the country of their former habitual residence due to similar events, is unable or unwilling to return to that country due to such fears.[6]

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[2] M. Kotowska, W. Pływaczewski, *Przemyt imigrantów jako obszar zainteresowania członków zorganizowanych grup przestępczych. Studium przypadku*, [in:] W. Pływaczewski, M. Ilnicki (eds.), *Uchodźcy – nowe wyzwania dla bezpieczeństwa europejskiego na tle standardów praw człowieka*, Katedra Kryminologii i Polityki Kryminalnej Wydział Prawa i Administracji Uniwersytet Warmińsko-Mazurski w Olsztynie, Olsztyn 2015, p. 78.

[3] P. Kolasa, *Ochrona praw uchodźców w Unii Europejskiej w świetle wytycznych Stolicy Apostolskiej*, Wydawnictwo Uniwersytetu Kardynała Stefana Wyszyńskiego, Warszawa 2010, p. 30–31.

[4] M. Kotowska, W. Pływaczewski, *Przemyt imigrantów*…, op. cit., p. 78.

[5] Ibidem, p. 78.

[6] Art. 1A Geneva Conventions, 30.04.2024, https://www.icrc.org/en/doc/resources/documents/treaty/geneva-convention-1864.htm [access: 20.08.2024].

G. Stenberg asserts that "for an individual to be classified as a refugee, it is necessary to establish a rift between them and the authorities of their home country".[7] There must be a risk of serious harm to that individual as a consequence of political circumstances (e.g., oppositional activities). The act or acts constituting persecution must be carried out by state authorities, other public authorities, or private individuals in situations where state authorities are unable or unwilling to intervene in protecting the individual who is being persecuted.[8] Fear of persecution is considered well-founded when, based on the overall circumstances of the specific case, it is evident that the life, freedom, social status, or living conditions of the individual have been threatened or will suffer serious harm, and if for the stated reasons, they cannot avail themselves of basic human rights and freedoms.[9]

The Principle of Sovereignty and the influx of foreigners

The authority of a state to determine the rules for admitting foreigners (including a special category of foreigners, refugees) and for the departure of its own citizens abroad directly stems from its sovereignty. Following J. Białocerkiewicz, it should be emphasized that admitting a foreigner onto the territory subject to the state is an expression of an act of authority, representing the state's attitude towards outsiders, a stage in the development of international relations, and the extent of permeation of various spheres of social life across state borders.[10] Sovereignty is a theoretical-legal category that is characteristic of various fields of law.[11] The concept of sovereignty is interpreted in various ways, resulting in diverse views regarding sovereignty as a characteristic of a state, a set of competencies, or a certain state of relations with other states.[12] W.J. Wołpiuk even wrote that *the existence of disputes over sovereignty is a fact*.[13] The evolution of the perception of sovereignty can be traced by reading the works of creators of social contract ideas, such as J. Bodin, H. Grotius, T. Hobbes, J. Locke, and J.J. Rousseau. These concepts share the fact that they describe sovereignty through *the supremacy of power*. The concept of sovereignty in this sense was first used by J. Bodin in the 16th century. He clarified the concept of sovereignty: it no longer concerned just power as such, i.e., power having no one and nothing above it, but it dealt with the nature of relations within the state.[14] Bodin's sovereignty meant power; it was the absolute with and perpetual power of the republic. It

[7] G. Stenberg, *Non-Expulsion and Non-Refoulment*, Iustus Förlag, Stockholm 1989, p. 65.

[8] Ibidem, p. 66.

[9] B. Wierzbicki, *Uchodźcy w prawie międzynarodowym*, Wydawnictwo Naukowe PWN, Warszawa 1993, p. 36.

[10] J. Białocerkiewicz, *Status prawny cudzoziemca w świetle standardów międzynarodowych*, Uniwersytet Mikołaja Kopernika, Toruń 1999, p. 101.

[11] A. Pieniążek, *Suwerenność – problemy teorii i praktyki*, Książka i Wiedza,Warszawa 1979, p. 46.

[12] M. Domagała, *Suwerenność a procesy integracji transnarodowej i decentralizacji*, [in:] W. Kaute, P. Świercz (eds.), *Demokracja, liberalizm, społeczeństwo obywatelskie. Doktryna i myśl polityczna*, Wydawnictwo Uniwersytetu Śląskiego, Katowice 2004, p. 156.

[13] W.J. Wołpiuk, *Spór o suwerenność*, Wydawnictwo Sejmowe, Warszawa 2001, p. 5.

[14] R. Rosicki, *O suwerenności*, "Przegląd Naukowo-Metodyczny" 2010, nr 4, p. 63.

was constant, indivisible, and supreme, it could belong to the monarch or to the nation.[15] However, internal and external sovereignty did not imply the possibility of unilateral release from obligations, in accordance with the principle of trust. Internal competencies were limited by the framework of the social contract, which Bodin supported.[16]

In light of Ludwig Erlich's classical concept, the essence of sovereignty consists of two most significant characteristics: autarchy, which is the legal independence from any external factors (primarily from other states), and plenitude, which is independence from internal factors, manifested in the state's competence (and its authorized bodies) to regulate all internal affairs of the state. Sovereignty is characterized by rights and privileges arising from customary law that are independent of any consent from another state.[17] It is precisely the attribute of sovereignty that enables the differentiation of a state from other subjects of international law.[18] K. Skubiszewski describes sovereignty as "the independence of the state from any other authority in its relations with other subjects of international law and its autonomy in regulating internal affairs, i.e., the right to decide on its internal affairs and foreign relations in a manner not limited by any external factor, but without violating the rights of others and in accordance with the fundamental principles of international law".[19] T. Łoś-Nowak emphasizes the importance of principles of international law in defining the concept of *sovereignty as a factor limiting its scope*. He pointed out that the traditional understanding of sovereignty presumes that "state power is supreme, not subject to any external authority, and limited at most by the principles of international law. This is a legal understanding of sovereignty, assuming international independence, supremacy of power over the territory of the state, its indivisibility, equality of rights, and equality before the law".[20] Sovereignty is one of the fundamental characteristics of statehood, along with territory and population.[21] The term sovereignty is used in various ways to describe the legal competencies inherent to the state, to refer to the specific function of a given competency, or to justify a particular exercise of that competency.[22] Among the attributes of sovereignty, the following are listed:

– exclusive jurisdictional competence regarding its own territory and citizens,
– exercise of competencies in foreign policy,
– decision-making on war and peace,
– freedom to recognize states and governments, establish diplomatic relations, decide on military alliances, and membership in international political organizations

[15] J. Bodin, *Sześć ksiąg o Rzeczypospolitej*, Państwowe Wydawnictwo Naukowe PWN, Warszawa 1958, p. 88.

[16] W. Czapliński, A. Wyrozumska, *Prawo międzynarodowe publiczne. Zagadnienia systemowe*, C.H. Beck, Warszawa 1999, p. 11.

[17] L. Erlich, *Prawo narodów*, Księgarnia Stefana Kamińskiego, Kraków 1947, p. 104.

[18] J. Crawford, *Brownlie's Principles of International Law*, Oxford University Press, Oxford 2012, p. 448.

[19] K. Skubiszewski, *Zarys prawa międzynarodowego publicznego*, t. 1, Warszawa 1955, p. 158.

[20] T. Łoś-Nowak, *Państwo jako uczestnik stosunków międzynarodowych*, [in:] A.W. Jabłoński, L. Sobkowiak (eds.), *Studia z teorii polityki*, Wrocław 1998, p. 82.

[21] S. Sowiński, *Suwerenność, ale jaka? Spór o suwerenność Rzeczypospolitej w polskiej euro debacie*, "Studia Europejskie" 2004, nr 1, p. 23.

[22] J. Crawford, *Brownlie's Principles*…, op. cit., p. 448.

– conducting independent financial, budgetary, and fiscal policies.[23]

The consequences of the principle of state sovereignty include the prohibition of the use of force, the principle of non-interference in internal affairs, the right to self-determination, and the principle of sovereign equality of states. State sovereignty implies its independence from other entities, and this independence is protected by international law, which treats states as equals in terms of sovereignty.[24] The consequence of states' independence is their historical equality, expressed by the maxim *par in parem non habet imperium* (an equal has no power over an equal). In international law, this maxim is often invoked as the basis of state immunity, the essence of which, nowadays in limited application, is the concept of equality among sovereigns. This equality has further implications: it relates to the legal conceptualization of the division of power among states.[25] The mentioned classical concept of sovereignty is the result of a long-term evolution that found its full expression only in the 18th and 19th centuries with the emergence of the modern nation-state.[26]

International law and its impact on state obligations

International law, considered a creation of states themselves, is regarded as an element that protects the state, including its sovereignty. This does not change the process of limiting state competencies, as it is usually the result of voluntarily undertaking international legal obligations. The state gains new opportunities to pursue its national interests.[27] The activity and efficiency of the state in various international interdependencies, including in integration processes, simultaneously become conditions for maintaining independence and pursuing its own interests.[28] Already in the judgment concerning the *Lotus case* in 1923,[29] the Permanent Court of International Justice perceived the ability of a state to enter into international obligations as an expression of its sovereignty.[30] The essence of the matter was that the German authorities did not allow a ship, which was supposed to transport weapons to Poland, to pass through, citing their domestic law. In its decision, the PCIJ emphasized that "the essence of some treaties limiting sovereignty is the fact that parties can undertake to perform or refrain from performing a specific act".[31] However, this does not mean a limitation of sovereignty but rather its exercise in a treaty-bound

[23] W. Czapliński, A. Wyrozumska, *Prawo międzynarodowe publiczne*…, op. cit., pp. 113–114.

[24] J. Kranz, *Unia Europejska – zrozumienie konieczności i konieczność zrozumienia*, "Sprawy Międzynarodowe" 2006, nr 1, p. 38.

[25] J. Crawford, *Brownlie's Principles*…, op. cit., pp. 448–449.

[26] D. Greig, *International Community, Interdependence and All That. Political Correctness*, [in:] G. Kreijen, M. Brus, J. Duursma, E. De Vos, J. Dugard (eds.), *State, Sovereignty and International Governance*, Oxford University Press, Oxford 2002, p. 524.

[27] J. Kranz, *Suwerenność w dobie przemian*, [in:] Idem (ed.), *Suwerenność i ponadnarodowość a integracja europejska*, Prawo i Praktyka Gospodarcza, Warszawa 2006, p. 32.

[28] J. Barcz, M. Górka, A. Wyrozumska, *Instytucje i prawo Unii Europejskiej. Podręcznik dla kierunków prawa, zarządzania i administracji*, Wolters Kluwer, Warszawa 2012, p. 34.

[29] S.S. Wimbledon (France, Italy, Japan, United Kingdom v. Germany), 1923 PCIJ Series A No. 1.

[30] R. Kwiecień, *Suwerenność państwa w Unii Europejskiej: aspekty prawnomiędzynarodowe*, "Państwo i Prawo" 2003, nr 2, p. 28.

[31] S.S. Wimbledon (France, Italy, Japan, United Kingdom v. Germany), 1923 PCIJ Series A No. 1.

manner.[32] The PCIJ held that "undoubtedly, every convention creating such an obligation imposes a restriction on the exercise of sovereign rights by the state, in the sense that it requires their exercise in a specified manner. However, the right to enter into international obligations is an attribute of state sovereignty".[33] The Court clearly defined the essence of state sovereignty in the *Lotus case*. The PCIJ held that when states engage in international relations, they are not obliged to present their legal basis for those actions. This is because a consequence of state sovereignty is that states have the freedom to act and may take whatever measures they deem appropriate and necessary in a given situation. The PCIJ emphasized that "international law regulates relations between independent states. The binding legal provisions for states directly result from their own free will, expressed in conventions or customs universally recognized as principles of law, established to regulate relations between these coexisting independent communities or to achieve common goals".[34] The only limitations on state sovereignty are the sovereign rights of other states and norms of international law of a prohibitive nature. States must consent to the application of these norms, with the exception of peremptory norms (ius cogens). Sovereignty can be considered the foundation of the international legal system and the functioning of the international community.[35] Currently, it is impossible to separate the concept of sovereignty from its place in the system of international law.[36] J. Kranz emphasizes that "sovereignty can be viewed as a fundamental organizing concept based on common and universal values, the system of international law, and the international community".[37] R. Kwiecień highlights the fact that "the concepts of sovereignty and international law stem from the same source: the limit of one is the end of the other".[38] Therefore, sovereignty must be regarded as a regulatory idea of international law, i.e., an idea without which the existence and understanding of the structure of this law would be impossible. It can be concluded that sovereignty is the starting point for considerations regarding state obligations arising from acts of international law.

The state possesses specific competencies in international law under the principles of international law. International law regulates these competencies and delineates their boundaries. The most significant characteristic of the state is sovereignty, which implies numerous state competencies – rights – that constitute fundamental principles of customary law.[39] State authorities consciously undertake international legal obligations, thereby accepting that certain issues (e.g., mechanisms related to the protection of human rights) cease to be solely internal matters and become a universal aspiration of the international community. Consequently, there arises a need to establish such legal frameworks and

[32] W. Czapliński, A. Wyrozumska, *Prawo międzynarodowe publiczne*…, op. cit., p. 114.
[33] S.S. Wimbledon (France, Italy, Japan, United Kingdom v. Germany), 1923 PCIJ Series A No. 1.
[34] S.S. Wimbledon (France, Italy, Japan, United Kingdom v. Germany), 1923 PCIJ Series A No. 1.
[35] S. Besson, *Sovereignty in Conflict*, "European Integration online Papers" 2004, Vol. 8, No. 15, p. 25.
[36] W. Czapliński, A. Wyrozumska, *Prawo międzynarodowe publiczne*…, op. cit., p. 135.
[37] J. Kranz, *Pojęcie suwerenności we współczesnym prawie międzynarodowym*, Elipsa Dom Wydawniczy, Warszawa 2015, p. 50.
[38] R. Kwiecień, *Suwerenność państwa. Rekonstrukcja i znaczenie idei w prawie międzynarodowym*, Wydawnictwo Zakamycze, Kraków 2004, pp. 88, 92.
[39] W. Czapliński, A. Wyrozumska, *Prawo międzynarodowe publiczne*…, op. cit., p. 135.

mechanisms in domestic law that correspond to international standards resulting from undertaken international obligations.

The European Unions Influence on the traditional concept of the State

Contemporary processes are causing the traditional conception of the state and sovereignty, as unlimited external and indivisible power, to diminish in significance. Five fundamental areas where phenomena are evident in the modern world are: economy, politics, law, security, and energy. They illustrate the forces and trends blurring the boundaries between the sphere of the nation-state and the international order.[40] An increasingly complex international order limits the autonomy of individual states and increasingly necessitates a departure from traditionally understood sovereignty. A prime example of such changes is the phenomenon of the European Union. D. Milczarek notes that "the EU appears as an original entity with no precedent in the history of international relations and, at the same time, as a syncretic or even hybrid entity, going beyond the framework of traditionally understood federations or confederations of states and still in a state of formation".[41] J. Barcz emphasizes that the EU constitutes a specific integrative structure of a *sui generis nature*. The specificity of the EU manifests in "its unique status within international relations, which does not align with the status of a state or a classical international organization.[42] M. Zirk-Sadowski points out that integration in the social, economic, and political dimensions largely occurs through the use of legal instruments".[43] However, it is important not to forget that building a European identity, while simultaneously not undermining the sense of identity of individual European nations, remains the greatest challenge that the EU continues to face.[44] The Union serves as an example of the most advanced regional system in the world.[45] This is due to its specific legislative system and the continuous impact of European law on the internal legal systems of member states. On February 5, 1963, the Court of Justice issued a judgment[46] in the Van Gend & Loos case in response to a preliminary ruling by a Dutch court. The Van Gend & Loos company transported a certain chemical substance from Germany to the Netherlands in 1960. The Dutch Customs Office ordered the company owners to pay an increased customs duty, which the representatives of Van Gend & Loos disagreed with. They pointed out the inconsistency of

[40] D. Held, *The Decline of the Nation State*, [in:] S. Hall, M. Jacques (eds.), *New Times. The Changing Face of Politics in 1990s*, Verso, London 1999, p. 202.

[41] D. Milczarek, *Status Unii Europejskiej w stosunkach międzynarodowych*, "Stosunki Międzynarodowe" 2001, nr 3–4, p. 26.

[42] J. Barcz, *Charakter prawny i struktura Unii Europejskiej. Pojęcie prawa Unii Europejskiej*, [in:] Eadem, *Prawo Unii Europejskiej. Zagadnienia systemowe*, Wolters Kluwer, Warszawa 2002, p. 50.

[43] M. Zirk-Sadowski, *Instytucjonalny i kulturowy wymiar integracji prawnej*, [in:] L. Leszczyński (ed.), *Zmiany społeczne a zmiany w prawie. Aksjologia, konstytucja, integracja europejska*, UMCS, Lublin 1999, p. 36.

[44] W. van Gerven, *The European Union. A Polity of States and Peoples*, Hart Publishing, Oxford–Portland 2005, p. 47.

[45] P.J. Borkowski, *Polityczne teorie integracji międzynarodowej*, Difin, Warszawa 2007, p. 33.

[46] Case *Van Gend en Loos v Administratie der Belastingen*, 26/62, 1963 ECR 1.

the customs regulations with the provision of Article 12 TEWG. In the judgment, we find one of the fundamental principles of European Union law: the principle of direct effect. The Court ruled "that the Community constitutes a new legal order, in pursuit of which member states have, to a certain extent, limited their sovereign rights. Both member states and their citizens are subjects of this legal order".[47] Therefore, EU law not only entails mutual obligations among member states but also has direct effects on citizens and businesses, granting them individual rights subject to protection by national authorities and courts. In the context of the influence of EU law on the legal systems of member states and the associated issue of sovereignty, it is also worth noting the judgment of the Court dated July 15, 1964, in the case of Flaminio Costa v. E.N.E.L.[48] The Italian government nationalized the production and distribution of electricity in 1963. The Ente Nationale Energia Elettrica (ENEL) was established, and the assets of companies operating in the electricity market were transferred to it. Flaminio Costa was both a consumer of electricity and a shareholder in one of the nationalized companies. The Court emphasized that "by incorporating rights and obligations arising from the Treaty into the Community legal order, which were previously regulated by domestic law, the member states permanently limited their sovereign rights and consequently could not enact regulations contrary to the essence of the Community".[49] This has tremendous significance, especially regarding mechanisms and regulations relating to respect for human rights. No member state can introduce provisions into its national law that are inconsistent with EU law, nor can it offer a lower level of protection and respect for human rights, including the rights of foreigners. Thanks to the establishment of the European Union, we can observe the realization of Immanuel Kant's dream of a world where a violation of law in one place is felt everywhere. The philosopher emphasized that creating a community of states respecting human rights is the best way to achieve the idea of eternal peace (*Foedus Pacificum*). Therefore, it is essential for international law to exist alongside domestic law to protect all individuals. The level of respect for human rights and the quality of the mechanisms created to protect them are evidence of the EU's strengths and weaknesses. Through the lens of compliance with the regulations of the internal laws of individual member countries with European law, we can perceive the level of development of the Union as a community of democratic and rule-of-law states.

The legal basis for admitting foreigners to the territory of a state is of immense importance because, depending on whether the refusal to accept a particular foreigner is due to a lack of courtesy or a violation of existing legal norms, the consequences of non-admission by the state will be quite different. By exercising sovereign power, state authorities can establish rules regarding border crossings.[50] As a general rule, a state is not obliged to

[47] P. Mikłaszewicz, *Zasada pierwszeństwa prawa wspólnotowego w krajowych porządkach prawnych według orzecznictwa ETS i Sądu Pierwszej Instancji. Omówienia wybranych orzeczeń (1963–2005)*, Biuro Trybunału Konstytucyjnego Zespół Orzecznictwa i Studiów, Warszawa 2005, p. 3.

[48] Case *Flaminio Costa v E.N.E.L.*, 6/64, 1964, ECR 585.

[49] Ibidem.

[50] E. Dynia, *Cudzoziemcy w prawie międzynarodowym. Status cudzoziemców w Pol*sce, PFSM, Warszawa 1988, p. 4.

admit foreigners (individuals who are not its citizens) to its territory if there is no international agreement regulating this matter.[51] States regulate the conditions for admitting foreigners to their territory either based on relevant domestic law provisions or on the basis of concluded international agreements, acting in accordance with the commitments made in this regard.[52] The legislator of a EU member state also does not have complete freedom in determining the conditions for the entry and stay of foreigners on the national territory, as they must take into account the provisions of European Union law concerning:

– entry and residence of third-country nationals,

– the privileged position of EU citizens enjoying the right to free movement and residence on the territory of the EU, and

– the special status of their family members who move with them, and norms of international law relating to foreigners.

Therefore, the legal situation of foreigners is shaped not only by domestic law but also, to a significant extent, by international law.[53] A key act in this regard was undoubtedly the Treaty of Amsterdam, which incorporated the Schengen acquis into EU law and granted the EU competence to shape immigration and asylum policies through binding legal instruments.[54] One of the EU's designated objectives became the development of an area of freedom, security, and justice, ensuring the free movement of persons combined with appropriate measures regarding the control of the external borders of the Community area, asylum, immigration, as well as the prevention and combating of crime.[55] The principle of the primacy of applying norms of international law over norms of national law has been confirmed in treaties and in the case law of European and Polish courts.[56] According to the case law of the CJEU, in the event of a conflict between the norms of EU law and the norms of the national law of a given state, the Court advocates the primacy of applying EU law.[57] J. Barcz and A. Wyrozumska point out that although the issue of primacy is not fully regulated in the content of the Constitution of the Republic of Poland, it follows from EU law that there is a primacy of applying both primary law and secondary law derived from EU institutions in relation to all national legal norms, including also in relation to the fundamental law.[58] It must be firmly stated that norms of international law concerning the protection of human rights, refugee protection, and related to common asylum policy, which result from ratified international agreements or are the result of the work of the

[51] S. Sawicki, *Prawo państwa do regulowania międzynarodowego ruchu osobowego*, Wydawnictwo Prawnicze, Warszawa 1986, p. 59.

[52] E. Dynia, *Cudzoziemcy w prawie międzynarodowym*…, op. cit., p. 7.

[53] J. Chlebny, *Komentarz do art. 1. ustawy z dnia 12 grudnia 2013 r. o cudzoziemcach*, [in:] Idem, *Ustawa o cudzoziemcach. Komentarz*, C.H. Beck, Warszawa 2015, p. 7.

[54] The Amsterdam Treaty, 30.04.2024, http://europa.eu/eu-law/decisionmaking/treaties/pdf/treaty_of_amsterdam/treaty_of_amsterdam_en.pdf [access: 20.08.2024].

[55] I. Wróbel, *Wspólnotowe prawo imigracyjne*, Wolters Kluwer, Warszawa 2008, p. 36.

[56] Case *Van Gend en Loos v Administratie der Belastingen*, 26/62, 1963 ECR 1.

[57] Wyrok TSUE z dnia 17 grudnia 1970 r. w sprawie 11/70 Internationale Handelsgesellschaft mbH przeciwko Einfuhr- und Vorratsstelle für Getreide und Futtermittel.

[58] J. Barcz, M. Górka, A. Wyrozumska, *Instytucje i prawo Unii Europejskiej*…, op. cit., p. 471.

bodies of international organizations of which Poland is a member, have a real impact on national standards in this area.

Conclusion

The so-called migration crisis has become the source of serious internal problems within the European Union. The influx of refugees and migrants has caused not only humanitarian problems but, above all, has exposed the ineffectiveness of asylum procedures, border controls, and protection mechanisms previously employed within the framework of migration and refugee policies. It turned out that the European Asylum System, established since 1999, was not prepared for a crisis situation, and its ineffectiveness only confirmed existing discrepancies of interest among member states.[59] As emphasized by Cecilia Wikström, a Member of the European Parliament during the seventh and eighth terms, new regulations should ensure that:

1. All states share responsibility for asylum seekers.
2. Member states with the external borders of the EU (which serve as the first point of arrival in Europe for most asylum seekers) take responsibility for registering arriving individuals as well as for protecting and maintaining the EU's external borders.
3. Persons in need of international protection obtain it much faster than currently, and those found not eligible for asylum are quickly and humanely returned to their countries of origin.[60]

The creation of new regulations applicable to refugee and migration phenomena should be based on previous experiences related to mechanisms for granting (or denying) international protection. The process of verifying whether a person meets the criteria for refugee status or other forms of international protection should be expedited. This would allow those who do not meet the conventional criteria to be returned more quickly to their countries of origin. This would reduce the burden on states located in parts of Europe that constitute the EU's external borders. A separate issue is the fight against organized crime and groups that enable illegal border crossings for foreigners. Only efficient communication between the services of individual EU member states can ensure faster detection of this activity and the apprehension of perpetrators. Members of criminal groups not only facilitate border crossings but also engage in human trafficking and sexual exploitation. The existence of such groups poses a huge challenge not only for individual member states but, above all, for the entire EU.

[59] H. Wyligała, *Strategiczny rozwój narzędzi polityki migracyjnej UE w obliczu kryzysu migracyjnego*, "Rocznik Bezpieczeństwa Międzynarodowego" 2016, Vol. 10(2), p. 185.

[60] *Kryzys uchodźczy: Posłowie pracują nad reformą systemu azylowego w UE (wideo)*, European Parliament, 30.04.204, http://www.europarl.europa.eu/news/pl/headlines/society/20171012STO85934/kryzys-uchodzczy-poslowie-pracuja-nad-reforma-systemu-azylowego-w-ue-wideo [access: 20.08.2024].

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