



# The Lawless Zone: Polish-Belarusian Border Monitoring

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## Executive summary:

- This report summarises the eleven months of the ongoing humanitarian crisis at the Polish-Belarusian border which began in August 2021. It covers the monitoring activities at the border from autumn 2021 to June 2022. The final part contains recommendations for Polish authorities and the EU.
- Since the onset of the crisis, the Helsinki Foundation for Human Rights has monitored the situation at the Polish-Belarusian border, documenting human rights violations against migrants, local residents, and those providing humanitarian aid.
- In accordance with the national legislation adopted last year, but against the EU and international law, the Polish forces (military, police, Border Guards, foresters) carry out illegal collective expulsions (pushbacks), in which migrants are collectively sent back to Belarus without initiation of the administrative procedures required under law.
- In many cases, the Polish forces ignore the migrants' declarations of the intention to apply for international protection, which results in a breach of the right to asylum.
- Migrants are forced by the Polish officers to cross the border back to Belarus outside of the authorized crossing points, over a razor wire fence or across border rivers. This practice not only has no legal basis, but also is extremely inhuman, and in many cases endangers life and limb of those pushed back.
- Returning migrants to Belarus, the Polish forces do not pursue identification of the involved third-country nationals which is a prerequisite to providing legally required assistance to vulnerable persons, including unaccompanied minors, persons with disabilities, or victims of human trafficking.
- Pushbacks are performed despite the well-documented reports of violence used against migrants by the Belarusian officers, which is a breach of the principle of non-refoulement forbidding a country from returning foreigners to countries where they would likely be in danger of persecution.
- As a result of the unlawful pushback policy, migrants are exposed to health risks and a risk of death, as well as inhuman and degrading treatment.
- Restriction of civil rights in 183 towns and villages along the Polish-Belarusian border also caused violation of the rights of their inhabitants, in particular freedom of movement.
- Because humanitarian relief organizations are prohibited from operating in the areas adjacent to the border, it is for the local dwellers

and grassroots community initiatives to save the lives and health of migrants who upon crossing the border found themselves in the Polish forests, often in poor health.

- Activists, local residents, and migrants report an increase in brutality of both Polish and Belarusian forces in the recent months.
- The Polish authorities make attempts to criminalize the aid provided in the border area, as evidenced by the increasingly frequent cases of arrests and criminal prosecution of those providing humanitarian aid, with the possible intent of producing a chilling effect.
- During the 11-month humanitarian crisis, the Polish authorities have undertaken no actions aimed at the de-escalation of violence, or that would restore compliance with the law by the Polish forces, ensure accountability for human rights violations, or provide support for the local residents burdened with the negative consequences of the crisis.
- Partial lifting of the ban on access to the zone, with no changes to the policy of unlawful pushbacks, and without ensuring protection of universal human rights, is not an adequate solution to the problems recognized in this report; the report comprises recommendations of actions to be undertaken in a short and long-term perspective.

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# 1. Research background and context

In August 2021, a humanitarian crisis began on the Polish-Belarusian border. For eleven months now, migrants have been reaching the Polish border from Belarus, originally chiefly from countries of the Middle East and Africa<sup>1</sup>. Many of these people seek international protection in Poland, although their countries of destination are in most cases those of Western Europe. This uncommon migration route is a result of the targeted operation of the Belarusian regime, intended to exert political pressure on the Member States of the European Union. Via, and in cooperation with, travel agencies operating i.a. in Syria, Iraq, and Lebanon, Belarus offers migrants from destabilized and war-stricken states fully paid tourist visas. Travel is organized with the help of unofficially authorized middlemen, in collaboration with Belarusian embassies located in each country of departure. Those who receive information about the opportunity to travel to the EU are often misled and confounded into thinking that this is a safe passage, and that crossing the border takes place in an authorized manner. Following a several days' stay in Belarus, the migrants are sent by the Belarusian officers to the border area where they are most frequently forced to cross the border to Poland, Lithuania, or Latvia. Belarusian public officials and other people involved in the creation of the migration route collect money from the migrants. In the border zone, Belarusian forces use violence, instrumentally exploit migrants and restrict their freedom, in order to organize provocations, by forcibly pushing them over the border, among others<sup>2</sup>.

The response of the Polish authorities; thus, in the vast majority of cases sending migrants back to the Belarusian side by force whilst denying them the right to humanitarian aid and the right to asylum<sup>3</sup>; has led to a situation where hundreds, and at the peak of the crisis (i.e., in October and November of 2021) even thousands of migrants were compelled to camp out in extreme conditions in the woods in the Polish-Belarusian border area.

Since the beginning of the crisis, the Polish Border Guard<sup>4</sup> consistently communicates news about groups of foreigners apprehended upon crossing the Polish-Belarusian border and „turned back to the borderline with Belarus”. Under international law, returning any person outside of the borders of a given country without examining their individual situation, and in particular, ignoring the intention of applying for international protection declared by such person, is referred to as a pushback. Pushbacks are a method of operation inconsistent with both international and EU law, as well as with the Constitution of the Republic of Poland<sup>5</sup>. As a result of this practice, migrants are exposed to health risks and/or the risk of death<sup>6</sup>. For instance, migrants are forcibly pushed back across border rivers or

directed towards wetlands, notably in the Białowieża Forest area. The weather conditions alone in which the pushbacks were executed in the fall and winter, represented a threat to the life of migrants<sup>7</sup>. Those risks affect in particular persons belonging to vulnerable groups, i.e. children, elderly persons, and people with illnesses and disabilities. In the Polish-Belarusian border area the media have so far noted at least 16 deaths on the Polish side of the border, and more on the Belarusian side<sup>8</sup>. The total number of deaths is unknown due to lack of access to the border area for independent researchers, relief organizations, and journalists.

Here it is important to stress that irrespective of the manner in which a person crosses a border or their purpose and destination, any person who has entered the territory of Poland, by law, exercises a number of fundamental rights which must be respected in all situations. These rights include primarily: the right to be treated with dignity, prohibition of torture, a right to personal security or a right to access to human and administrative procedures provided for by law. These rights also apply to persons who have crossed the border in an irregular manner. At the same time, it should be noted that according to international law, persons applying for international protection in principle should not be penalized for crossing the border against the law<sup>9</sup>.

Importantly, today we can no longer speak of a temporary crisis situation, but a process which should be considered in a long-term perspective. Interviews with migrants as well as social media monitoring imply that more groups of people, who predominantly have no possibility of using legal means of entry into the European Union, may opt for the migration route via Belarus in the future<sup>10</sup>. The experience of other European states shows clearly that a migration route, once it has been opened, is not easily closed. The challenge which Poland is facing today was unknown a year ago: foreigners seeking ways of entry into the European Union - so as to obtain protection from persecution and armed conflicts - may be prompted to arrive to Poland in an unauthorized manner via its eastern border. Such a situation entails a necessity of creating a safe and humane system which shall ensure protection of the Polish border on the one hand, and respect for the fundamental rights of migrants and local communities, on the other.

### Previous research

The first report which offered a comprehensive analysis of the situation at the Polish-Belarusian border was developed and published in December 2021 by Grupa Granica<sup>11</sup>. The document included a timeline of events, an analysis of the scale of the humanitarian crisis, and a legal commentary,

among others. In April 2022, a report on the situation at the border was issued by Amnesty International<sup>12</sup>, and Fundacja Ocalenie (the Ocalenie Foundation) published its report in May<sup>13</sup>. The situation at the Polish-Belarusian border was examined twice by the Human Rights Watch as well<sup>14</sup>. Each of these reports was written at a different stage of the crisis and adopted a different research perspective. Since the very onset of the humanitarian crisis, the situation at the border has been constantly changing, both in terms of the nature and the scale of the described phenomena. The most significant change, marking a breaking point in the last months, was brought by the closing of a warehouse facility located in the Belarusian Bruzgi (in March 2022), where the migrants were being detained in the winter. As a result, in late March and April several hundred people in a dramatic situation: sick, disabled, with small children, were left in the Polish woods. Another change noticeable within the recent months is seen in the rise in violence inflicted on migrants by officials of both states, and yet another – in the attempts at criminalizing humanitarian aid made by law enforcement agencies. The Helsinki Foundation for Human Rights (here referred to as HFHR) has been systematically monitoring and documenting violations of human rights at the Polish-Belarusian border from the very beginning of the crisis. This report is the product of this activity as well as a recapitulation of a subsequent stage of the crisis.

2.

# Research Methodology

The report results from the systematic monitoring of the situation at the Polish-Belarusian border carried out by workers of the HFHR. The HFHR is among the organizations brought together by Grupa Granica, an informal network of activists involved in providing humanitarian, medical, and legal aid in the border area from the very onset of the crisis, which has subsequently evolved into a wide social movement. In the course of the monitoring operations, the HFHR team engaged in participant observation, documented violations of human rights, and conducted interviews with migrants as well as with those providing direct humanitarian aid. These activities were carried out in parallel to providing legal assistance and initiating strategic litigation before Polish and international courts in key cases.

For the purposes of this report, the researchers made use of an extensive database of interviews with, and testimonies of, migrants, conducted in the course of the eleven months of the crisis both by the HFHR and by Grupa Granica. These interviews were conducted in person<sup>15</sup> or indirectly<sup>16</sup>; and information obtained in this way served the primary purpose of documentation and advocacy. For the purposes of the present study, 17 selected interviews were thoroughly analyzed. The researchers also reviewed a series of draft reports from humanitarian interventions carried out by those providing direct support at the Polish-Belarusian border.

From March 24th to May 31st, 2022, the researchers conducted additional 15 unstructured interviews<sup>17</sup> with residents of the border zone, medical doctors working at hospitals in the area, activists providing humanitarian, medical, and legal aid, and foresters. The exchanges were held both in person in the Polish-Belarusian border area, and via telephone. Our interviewees were individuals involved to varying degrees in providing relief in the Polish-Belarusian border zone.

The primary unquestionable obstacle in carrying out monitoring activities was a ban on entry into the border zone. No possibility of examining the situation in the immediate vicinity of the Polish-Belarusian border entailed the need to rely in this respect on accounts of persons staying in the zone, i.e. migrants and residents of towns and villages located in the border area, as well as other persons who were permitted access to the zone, such as foresters and medics, among others. Another difficulty faced by the researchers was the fact that the majority of those interviewed carry out their activities – by necessity – covertly. All of the conversations held were therefore rendered anonymous in such a way as to guarantee protection of the interlocutors' identity. Most of the interviews conducted at this stage of research were not recorded, and the statements cited in

the report provide no information as to the exact place or date of interview. Wherever possible, neither the professional nor social function of the interviewees are indicated.

### Terminology

For the purposes of the present report, the authors use the term of ‘migrants’ so as to define the position of those crossing the Polish-Belarusian border, in the most general terms. However, we should note that many among these people are forced migrants in search of international protection, and therefore the term ‘migrants’ equally incorporates refugees. The most common reasons for seeking protection is the fear of persecution in the country of origin, or flight from war – this applies notably to persons originating from countries such as Yemen, Syria, or Afghanistan<sup>18</sup>. It should be stressed here that only admission of migrants to appropriate administrative procedures allows for a rigorous assessment of the risks upon return to country of origin, and enables determining whether they should be granted international protection in compliance with Polish law.

The report uses inclusive and gender-sensitive language whenever possible.

# 3. Human rights violations at the Polish-Belarusian border

### 3.1. Ban on staying in the border zone

On September 2nd, 2021, the President of the Republic of Poland declared introduction of a state of emergency in parts of the Podlaskie and Lubeskie voivodeships, invoking a “particular threat to the safety and security of citizens and public order due to the current situation at the state border of Republic of Poland with the Republic of Belarus”<sup>19</sup>. On the basis of the President’s regulation, on the very same day, the Council of Ministers adopted a series of restrictions of freedom and human and civil rights in the area under state of emergency, notably a ban on staying in specified locations, facilities, or areas, a suspension of the right to organize and hold assemblies, and restriction of access to public information<sup>20</sup>. The state of emergency was initially introduced for a period of 30 days, and subsequently extended by another 60 days<sup>21</sup>, thereby exhausting the maximum period of the emergency state permissible by the Constitution of the Republic of Poland<sup>22</sup>.

During this period, the right of entry to towns and villages located along the border with Belarus was limited to groups of persons indicated in the Regulation of the Council of Ministers, in particular to its inhabitants. Despite much criticism, organizations providing humanitarian or legal aid or representatives of the media were not included among those authorized to enter the border zone<sup>23</sup>. Restricted access to the border zone during a period of increased migration at the Polish-Belarusian border not only prevented humanitarian aid from being provided to those whose life and health was put at risk by the actions of forces of both states, but also has led to a lack of public control over a part of the Polish territory at this sensitive moment.

The broad scope of restrictions of civil rights and the exclusion of non-governmental organizations and reporters from the border zone raised considerable doubt as to their constitutionality<sup>24</sup>. These doubts were confirmed by the judgment of the Supreme Court: in the ruling of 18 January 2022 (Case no. I KK 171/21), the Supreme Court acquitted the three journalists whose entry to the area covered by state of emergency in September 2021 had been penalized. Supreme Court ruled the journalists’ sentence to be „clearly wrongful”, holding that the Regulation of the Council of Ministers introducing an absolute ban on staying in the zone exceeded its legislative powers, and additionally did not satisfy the requirement of proportionality. The court further ruled that the introduction of a state of emergency was inconsistent with the Constitution of the Republic of Poland. According to the Supreme Court, the Council of Ministers had no right to – by introducing a general ban on staying in the area covered by

state of emergency, applicable 24 hours a day – exclude reporters from exercising their constitutional freedom of obtaining information in this area. This restriction could only apply to designed areas and specified times of a day or night. The Supreme Court also found that the exclusion of charitable activities of the Polish Red Cross resulting from the restrictions on staying in the area under state of emergency constituted a breach of a statutory regulation, granting the PRC an entitlement to operate on the territory of the entire country.

After the maximum period of a state of emergency permissible by the Constitution of the Republic of Poland was exhausted, the Parliament amended the Act on the State Border Protection<sup>25</sup> by allowing the minister responsible for internal affairs to declare a temporary ban on staying within a specified area in the border zone. Under that law, restrictions to access to the border zone can be prolonged without any specified time-limit, pursuant to the Minister's decision. Such a ban, covering an area identical to the one previously covered by the state of emergency, was introduced prior to the termination of the state of emergency<sup>26</sup>. It was subsequently extended to June 30th, 2022<sup>27</sup>.

The amendment to the Act on the State Border Protection introducing restrictions nearly identical to the restrictions accompanying the state of emergency in terms of the possibility of staying in the border zone, should be viewed as bypassing the Constitution of the Republic of Poland<sup>28</sup>. The Constitution allows to introduce such far-reaching restrictions of civil rights in strictly defined cases and for a maximum period of 150 days<sup>29</sup>. The state of emergency and the resulting restrictions may be introduced only via a special procedure involving the Council of Ministers, the President of the Republic of Poland, and the Sejm (Polish Parliament). However, the amendment to the Act on the State Border Protection does not provide for such procedural guarantees. Furthermore, the argument made by the legislator, concerning a supposed threat to a national security from foreigners crossing the border, should be called into question. This argument has never been supported by any kind of data testifying to negative effects in the field of security due to increased migration at the Polish-Belarusian border.

Under the new law, starting from September 2nd, 2021, until the date of publication of the present report, an area along the border with Belarus, ca. 3 kilometers wide from the border inland within the Polish territory, was covered by a ban on staying applying to non-residents of that area and persons not excluded from the ban listed in the issued regulations. Despite numerous calls to admit reporters and humanitarian organizations

to work in the zone<sup>30</sup>, the situation did not change in this respect. Provisions amending the Act on the State Border Protection did allow for the possibility of granting a permit for a conditional admission to the border zone which applies primarily to reporters. However, such an access may be granted only with a permission and under a close supervision of the Border Guard, which is incompatible with the press freedom standards.

According to the communication of the Minister of Interior and Administration of July 1st, 2022, the ban on staying in the border zone is to be partially lifted<sup>31</sup>.

## Consequences faced by the migrants

### Lack of humanitarian aid

Consequences of the introduced ban on staying in the border zone necessarily affect the migrants crossing the Polish-Belarusian border. Due to lack of the admission of humanitarian organizations to operate in the zone, the people crossing the Polish-Belarusian border, often in poor health, are not reached with the necessary assistance which in other circumstances could be provided e.g. by the Polish Red Cross. Due to the adopted regulations, migrants, including persons seeking international protection and vulnerable groups, against the EU law, are deprived of unrestricted and direct access to legal, medical, and psychological assistance or the support of the Office of the United Nations High Commissioner for Refugees (UNHCR)<sup>32</sup>. In effect, migrants have to rely on the benevolence and the limited resources of grassroots initiatives and private individuals providing humanitarian aid.

### Lack of medical aid

Another problem resulting from the ban on staying in the zone is the severe restriction of the migrants' access to medical aid. Although ambulances are allowed to enter the zone, it is often the case that they refuse to dispatch: either due to the irregular status of migrants<sup>33</sup> or due to difficult access to locations where the migrants are staying (in the woods, far from roads)<sup>34</sup>. What is more, calling for an ambulance for persons who have crossed the Polish-Belarusian border entails an intervention of the Border Guard, which in numerous cases has resulted in returning migrants back to Belarus. This has intensified many people's fear of calling and using public medical aid – including those in poor health. Nevertheless, the Ministry of Interior and Administration did not accede to the appeal launched by a

medical practitioners' initiative named the 'Medycy na Granicy' ('Medics on the Border') to be admitted to operate in the zone<sup>35</sup>.

The medical professionals providing voluntary medical aid for migrants along the Polish-Belarusian border report that a major part of their interventions was needed to provide an emergency life-saving aid. They invoke cases of setting fractured bones, dressing wounds, administering intravenous drips, or providing medical treatment following miscarriages onsite in the woods, often during the night<sup>36</sup>. During a session of the parliamentary Health Committee, an overview of the tragic situation in the border area was presented by representatives of the 'Medycy na Granicy'. In their opinion, the poor state of health of those found in the Podlasie forest is largely a direct result of the conditions in which they are forced to stay. Those people suffer from cold-exposure and lack of access to drinking water and food. The 'Medycy na Granicy' team indicated that among those assisted to, there were individuals in grave condition who required hospitalization, and who nevertheless did not give consent to call an ambulance, fearing yet another pushback to Belarus<sup>37</sup>. During a session of the Health Committee a representative of the 'Medycy na Granicy' gave the following account of the condition of those provided assistance by the medics in the border area:

The health condition of those requiring medical aid in the woods of Podlasie in the vast majority of cases results exclusively from the conditions which they endure. These are people suffering from a cold-exposure and lack of access to drinking water and to food. This is why the medical procedures performed in this terrain are battlefield medicine. It is the kind of medical science which goes back in time. Providing treatment there, we had to deal with conditions which we only read about in books discussing history of medicine. Trench foot – it's a type of necrotic-suppurative foot damage due to prolonged exposure, injury, and moisture – was a condition typical for soldiers staying in trenches. It has also been a typical condition among our patients. Another common condition was that these people, over periods of several days – sometimes as long as two weeks, had no access to drinking water and whatever water they could find they filtered through leaves. They consumed this water and vomited as a result, they had abdomen pains. This has been really happening. This is the kind of medical science we have been practicing in the 21st century in a country of the European Union.

## Lack of legal support

The ban on entering the border area also substantially impedes the migrants' access to legal support. Regardless of whether the foreigners are staying in the woods along the border or in Border Guard facilities located near the border, they are deprived of the possibility of direct contact with lawyers who are not authorized to enter the zone. Such permit may be obtained only from the chief of the local Border Guard division, which requires time and is dependent on a discretionary decision of the Border Guard. As a result, the effectiveness of representing migrants before public authorities so as to protect their fundamental rights, was seriously curtailed.

## Effects of the lack of assistance

The absence of humanitarian organizations in the border area and the hampered access to medical care contributed to a heightened risk of loss of life and health of migrants, which resulted in an increase in the number of deaths<sup>38</sup>. This is evidenced by the established causes of deaths at the Polish-Belarusian border, which included primarily: hypothermia, extreme exhaustion, or a deterioration of health of persons with chronic illnesses, e.g. diabetes<sup>39</sup>. It can be assumed that the lives of at least a part of those individuals could have been saved, had they received medical aid in time, which was hindered by the ban on humanitarian agents' entry to the border area and the restrictions in the movement of others persons in the border zone, as the latter might be able to find those requiring assistance in time.

The exact number of deaths which have taken place in the Polish woods in the course of the eleven-month crisis remains unknown. Accounts of migrants suggest that in the border zone – both on the Belarusian and the Polish side – there are numerous dead bodies not found and identified thus far. Although this kind of information is impossible to be verified, it does reappear in multiple independent accounts. One of the migrating women recounted during the interview that together with her children she witnessed the death of a young man from Yemen, who fell into a swamp on the Polish side of the border, when the temperatures were below zero. As stated by the woman, as soon as the man managed to get out of the swamp, he went into convulsions, started to breathe extremely quickly, and soon died. The people who had traveled with the man, upon exiting the area covered by the ban on staying and encountering officers of the Polish Border Guard, informed the latter of the man's death.



Pic. The body of the dead Yemeni man found in the woods; photograph sent to the authors of this report by one of the reporters

However, this piece of information was to be ignored:

We told the Polish officers that there is a dead body there. They did not want to listen to us. They packed us onto a vehicle and took us back to Belarus<sup>40</sup>.

About a week later the body was found by a resident of the Podlasie region<sup>41</sup>. The witness, currently staying in Syria, confirmed the man's identity, recognizing him in the photograph. This situation may testify to the fact that at least some death notifications are ignored by the Polish forces. As a consequence, all residents of the border area (as well as tourists – once the ban is lifted) are exposed to the risk of accidentally finding dead bodies of migrants in the woods along the border.

## Consequences for the local residents

Consequences of the far-reaching restrictions of freedom and human and civil rights have been affecting residents of the zone covered by the ban on staying for many months, as recounted by the interviewees.

## Controls and searches

For eleven months, the residents have been deprived of the opportunity to move freely in their own neighborhood. In numerous locations, inspection posts were set up for persons moving in the zone covered by the temporary ban on staying and in its vicinity. Officers of the Police, Border Guard, and soldiers of the Armed Forces carry out controls of the persons and vehicles entering and exiting the border area, usually inquiring about the destination and purpose of their journey, the passengers' personal data, or recording the numbers from mileage counters in vehicles. During these controls, the officers check travellers' identity documents, as well as documents confirming the right to enter the zone, e.g. relating to their residency in the area. Frequent searches of vehicles are performed as well. This is a considerable nuisance for many residents, notably when these checks reoccur several times a day as they drive to work, school, preschool, or shops.

Daily checks by the police, the Border Guard and the army are tiring in themselves. Constantly having to explain: "What are you doing here?", when I've lived here all my life – that's not funny at all, it is simply tedious. Those who help the refugees are subject of all kinds of harassment, including setting inspections on them, fiscal audits for instance; when the car is stopped, they inform you that the car is on some kind of list of suspicious vehicles. I have heard of cases where one local resident who openly admits saving people in the forest, had the forces set up patrol by his window, maliciously making noise with their engines turned on at night, or light up the house with car headlights. The residents report that the forces can enter any residence for no reason. I myself have witnessed a situation when I was visiting friends and suddenly, we saw officers of Railroad Police with flashlights looking inside through the windows on all sides of the house<sup>42</sup>.

Those residing in the zone and providing humanitarian aid to migrants recounted during the interviews that they felt followed and intimidated. They described behaviours on the part of the forces involving i.a. flashlights flashed in windows of their houses, officers surveilling private property and setting up night patrols next to their place of residence. One resident of the Podlasie region describes it in the following way:

People are being intimidated. Of course, we go to the woods and if we see a person who needs some help, then we do help them. We give them water, food, clothes. We cannot let them die from

exhaustion in the forest. (...) Near the house, at the corner, a police vehicle was parked several times. They stood there all night, as if they had been told to do so, with the lights on, facing our house. (...) No one stepped out or asked any questions, they just stand there to make sure you know you are being watched. (...) We are afraid, of course, and I understand none of this (...)<sup>43</sup>.

In at least several cases, the police carried out searches of private property (houses). One of the cases involved an agritourism farm in Juszkowy Gród<sup>44</sup>. The search was conducted without a prosecutor's order (warrant), using only the officers' identity cards, and the police officers invoked a "search for illegal migrants". Despite the fact that those steps were subsequently authorized by the prosecutor, the information we have gathered does not confirm that charges have been pressed against anyone. This may therefore suggest that the sole aim of these actions was to produce a chilling effect.

Both the routine checks of vehicles moving in the vicinity of the border zone, and the searches of private houses are questionable in view of Article 50 of the Constitution of the Republic of Poland which guarantees inviolability of the home and states that any search of a home, premises, or vehicles may be made only in cases specified by statute.

### Operations and actions of solidares against civilians

Importantly, operations consisting of performing identity checks and searching the vehicles moving in the Polish-Belarusian border area are often also carried out by soldiers of Armed Forces, including soldiers of the Territorial Defence Forces who in principle are not mandated to perform controls on civilians nor have the proper training in this respect. Soldiers may acquire the right to use coercion against civilians only under strictly defined conditions. In response<sup>45</sup> to the HFHR's request for access to public information, the Ministry of National Defence stated that, in this regard, solutions provided for in the Act on Border Guard were used<sup>46</sup>. However, due to the lack of publicly accessible documents in this regard, it remains unclear whether the soldiers serving at the Polish-Belarusian border are entitled to use the powers indicated in the Act and to what extent, and whether this procedure was set in motion correctly<sup>47</sup>.

The Minister of National Defence<sup>48</sup> and the Head of the Chancellery of the President of the Republic of Poland<sup>49</sup> maintain that appropriate decisions and resolutions were issued; they are, however, classified<sup>50</sup> and therefore

cannot be made available as public information. Previously, however, similar decisions and resolutions were published in official journals<sup>51</sup>.

However, with neither the knowledge of the content of the decision issued by the Ministry of National Defense nor that of which units of the Armed Forces were directed to operate at the Polish-Belarusian border (along with the tasks conferred on them, their numbers, the area in which they can operate together with the duration of operations) it is impossible to establish which soldiers and to what extent can exercise the mandate of Border Guard officers. Without the aforementioned information, the persons against whom the soldiers take action, do not know whether they are obliged by law to comply with the instructions given by soldiers<sup>52</sup>.

### Impediment to visiting relatives

The residents also raise the problem of impossibility to host in their houses non-residents of the zone who do not have the right of entry. This concerns in particular visits of family members and friends, but also e.g. persons providing psychological support. Even though it is legally possible to apply to the competent chief of local divisions of the Border Guard for an entry permit for a particular person<sup>53</sup>, whether such a pass is issued depends on a discretionary decision of the Border Guard authorities. This precludes potential spontaneous visits as well. Negative consequences of these provisions are felt also in relation to the arrival in Poland of persons fleeing the war in Ukraine. Numerous residents of the Polish-Belarusian border area have declared their willingness to offer shelter for the Ukrainian refugees in their houses, which however is not – in principle – possible in the area covered by the ban on staying<sup>54</sup>.

Such state of affairs is to be viewed in terms of a possible violation of Article 52 of the Constitution of the Republic of Poland which guarantees that freedom of movement as well as the choice of place of residence and stay within the territory of the Republic of Poland shall be ensured to everyone.

### Obstruction to running a business

Many residents face the problem of being unable to continue their business activity, in particular in the tourism industry which was brought to a standstill with the ban on staying in the border zone. This concerns notably regions such as the Białowieża Forest. During an interview, one of the residents stated:

Entrepreneurs, not only those working in tourism, lose commissions and jobs. Both service and manufacturing companies are left without support, and with numerous limitations<sup>55</sup>.

As raised by entrepreneurs, the compensation available for the duration of limitations in business activity, do not cover the incurred losses to a sufficient degree<sup>56</sup>.

### Militarization of the area

The introduction of a border zone entails an increased presence of soldiers and a general militarization of the area. In many residents, their presence gives rise to a sense of threat and oppressiveness:

We are tired of it and we're afraid. Białowieża has become a military zone. The government no longer gives subsidies, businesses collapse, people will have no other option but to move out away from here. (...) Just now they put a military settlement [army tents] in the middle there, and shooter columns with rifles. (...) It is the people who are left with the most serious consequences, nearly everyone who has been helping has PTSD [post-traumatic stress disorder]. (...) We stay up all night, we suffer from depression and nightmares about people dying in the woods<sup>57</sup>.

Another resident indicated:

We want to raise the problem of the excessive level of militarization of the area where we live. The army, men in uniform with long firearms have been an integral part of the landscape for many months now, which causes incessant controls, constant suspicion, approaching residents as potential smugglers. The children see and hear the trucks transporting people in the direction of the border and then vehicles coming back empty. They keep asking why the children whom they saw have to hide out in the woods, why aren't they given any help. In schools, full indoctrination is taking place on the minister's instructions, for instance, children are not to draw what they feel, but they get graded tasks to draw pictures of soldiers captioned #muremzapolskimmundurem [#supporth-epolishtroops] etc. There is no psychological support, and the residents feel as if living in a ghetto<sup>58</sup>.

Some residents additionally complain of misuse of the position of power by the officers performing checks of persons and vehicles, of their rudeness, or of purposeful protracting of operations. They indicate that the questions asked during these checks often unjustifiably intrude on the persons' privacy. Similar activity was also witnessed and experienced by the HFHR researchers who frequently during their stay in the border area were apprehended and questioned in detail by the officers as to the purpose of their stay, and frequently approached with hostility during such controls.

## Implications for the general public

### Lack of access to information

With the introduction of a state of emergency, and the subsequently adopted provisions restricting the possibilities of staying in the border zone, public access to accurate and reliable information on the situation on the Polish-Belarusian border has been seriously hampered. The state of emergency restrictions include limited access to public information<sup>59</sup>. The adopted provisions also prohibited entry to the border zone for independent observers, despite the fact that independent monitoring is an essential tool of human rights protection. It should be emphasized here that such monitoring protects not only individuals whose fundamental rights might be at risk, but also the state and its institutions, allowing for an unbiased assessment of the situation and thereby increasing public trust for the actions taken by the state. Prohibiting independent observers from accessing areas adjacent to the Belarusian border has to raise a considerable doubt as to observance of the law by state authorities on site, and their respect for human rights.

### Restricted freedom of the media

Including journalists and reporters in the ban on staying in the border zone jeopardizes freedom of the press. The European Court of Human Rights has repeatedly stressed the key role and value of the media, pointing to the fact that freedom of expression is among the basic pillars of a democratic society<sup>60</sup>. The media's task is to share information, but more importantly, the public opinion has the right to obtain information. Unrestricted access to crisis zones for reporters and journalists should therefore constitute a principle with only strictly interpreted exceptions. In circumstances of justified restriction of reporters' access to specified areas, the authorities should implement a system of press credentials

which would take account of the principle of non-discrimination and transparency of decisions issued in this respect<sup>61</sup>. These standards are not met by the possibility provided for in the amendment to the Act on State Border Protection of issuing permits to enter the border zone only under the supervision of the Border Guard. Criticism of the ban of access for journalists in the Polish-Belarusian border zone has been voiced by the European Federation of Journalists<sup>62</sup> and Reporters without Borders, among others<sup>63</sup>.

### Risk of abuse of power by the forces

There is a high risk that isolation and militarization of the border zone in addition to the absence of media will lead to an increase in grave abuse of power by officers, and in the long term also result in radicalization. This is a highly undesirable situation not only from the point of view of those present in the Polish-Belarusian border area, but of the general public as well.

## 3.2. Forced returns of migrants to Belarus

The practice of collective returning of migrants to Belarus (so-called push-backs), documented since the beginning of the crisis at the Polish-Belarusian border, constitutes a grave violation of human rights<sup>64</sup>. This practice consists in a forced return of persons crossing the Polish-Belarusian border back to the territory of Belarus without examining individual circumstances of each person involved. It involves a risk of violation of the principle of non-refoulement, i.e. of not returning foreigners to countries where they may be in likely danger<sup>65</sup>, and of the right to apply for international protection<sup>66</sup>. Starting in August 2021, representatives of Polish authorities, invoking the need to protect the Polish border and state security, have been openly communicating information about groups of migrants who have crossed the Polish border in an irregular manner being returned to Belarus. At the peak of the crisis in October and November of 2021, these numbers were as high as several hundred people per day. The Border Guard states that in 2021 they returned to Belarus nearly 40,000 people in total<sup>67</sup>. According to the findings of journalists, this number was most probably several times lower as many people were returned from the Polish territory multiple times<sup>68</sup>.

## Apparent legalization of pushbacks

The Polish authorities have attempted to legalize the practice of forced return of migrants from Poland without completing the appropriate procedures in their case. On August 20th, 2021, pursuant to the Regulation of the Minister of Interior and Administration<sup>69</sup>, the Border Guard acquired a mandate to “return to the borderline” persons not belonging to one of the categories of foreigners permitted to enter Poland during the COVID-19 pandemic, on the sole basis of verbal instruction. The fact that persons declaring intent to apply for international protection in Poland are not included in the regulation was considered by the Polish Ombudsman as inconsistent with the Constitution of the Republic of Poland and the 1951 Refugee Convention<sup>70</sup>. The Ombudsman commented that: “As soon as on the day after the changes to the regulation were adopted, the Polish Ombudsman’s Office received the first signals and information that the constitutional right to apply for a refugee status in Poland is not respected by the Border Guard officers and that the attempts at returning foreigners to the Polish-Belarusian border were made”.

The issued resolution must be considered unlawful in light of international and EU law. The Schengen Borders Code stipulates that whenever an illegal crossing of the border by a foreigner outside of a border crossing point is identified, appropriate administrative proceedings aimed at enforcing obligation to return, in accordance with the guarantees provided for by the Directive 2008/115/EC, should be implemented<sup>71</sup>. In such an event, a foreigner is given the possibility of filing an application to be granted international protection, which should result in a suspension, cancellation of, or desistance from the initiated proceedings, accepting the foreigner’s application and allowing his or her entry to Poland in order to take part in the asylum procedure. The Schengen Borders Code does not provide for the possibility of returning a foreigner to the state borderline with no decision issued in this respect.

In its decision of 28 March 2022, the District Court in Bielsk Podlaski, VII Branch Criminal Division in Hajnówka (case no. VII Kp 203/21) ruled the Minister’s regulation to be “issued in excess of its statutory mandate”. The court further ruled that the apprehension in order to transport to the borderline with Belarus of three men from Afghanistan, who crossed the Polish-Belarusian border in August 2021, was “illegal, unjustified, and invalid”. The Court further indicated that transporting a group of people in the middle of the night into a strict nature reserve, without appropriate equipment, was highly inhumane and unlawful. In other cases currently

brought before the Provincial Administrative Court in Białystok, complaints had been lodged against the practice of immediate returning to the border; these cases are currently pending<sup>72</sup>.

A further step was taken with the amendment of the Act on Foreigners and certain other acts, which came into force on October 26th, 2021. In accordance with the adopted provisions, in cases of those apprehended immediately after their illegal crossing of the border, a decision of an obligation to leave the Republic of Poland is issued, and is immediately enforceable. Lodging an appeal against this decision does not entail a suspensive effect, which makes the remedy ineffective. Moreover, the adopted law do not explicitly preclude issuing or executing the 'obligation to leave' decision in the event of a declaration of intent to apply for international protection. This amendment therefore undoubtedly contradicts the Polish Constitution, EU law and international law which has been criticized by a number of national and international institutions, including the Polish Ombudsman office, the OSCE, and the UNHCR, among others<sup>73</sup>.

So far, the Provincial Administrative Court in Warsaw has repealed at least three decisions of the Border Guard on the obligation to leave the Republic of Poland issued on the basis of the amended law. It indicated that, in each case, the authorities are required to assess whether the foreigners are not being returned to a country where their life or health could be in danger<sup>74</sup>. It is well-known that Belarus is not a safe country. The Provincial Administrative Court further indicated that both international and EU law requires in such an event that lodging a remedy suspends the expulsion. What is more, the hearing of a foreigner must be conducted in the form of minutes (protocol) before a decision is issued in his or her case. A memo is not sufficient evidence confirming that a foreigner did not declare intention to apply for international protection during the proceedings.

The adopted law should be therefore considered unlawful in light of international and EU standards regarding protection of the rights of those expelled. It does not mention the obligation to examine the grounds precluding expulsion or returning a foreigner from a country's territory, such as the risk of torture in a country to which an individual is to be returned (Article 3 (1) of the Convention on the Prohibition of torture or other inhuman, cruel, or degrading treatment or punishment) or a declaration of intent to apply for international protection (Article 9 (2) of the Directive of the European Parliament and Council 2013/32/EU of 26 June 2013 on common procedures for granting and withdrawing international protection), in each case. In the course of the proceedings, no interview protocols are

made, and filing an appeal does not entail a suspensive effect. As a result, issuing decisions on an obligation to leave the Republic of Poland and an immediate removal of migrants to the borderline involves a high risk of violation of their fundamental rights.

It is worth remarking here that neither the regulation granting the Border Guard powers to “return to the borderline”, nor the amendment of the Act on Foreigners regarding decisions of an obligation to leave the territory of the Republic of Poland, contain any implementing rules which would indicate the manner in which the migrants are to be returned to a country which refuses their readmission (Belarus must be currently considered such a country).

The law do not specify the border crossing points via which foreigners are to be returned and the documents on the basis of which they are to cross the border in the event of not having a travel document. As a result, migrants are often forced to cross the border towards Belarus in an unauthorized manner (over razor wire fence or a border river). Not only should such actions be deemed highly inhumane, they are also inconsistent with international law. It should be inferred from the principle of territorial sovereignty that no person can be sent to another state without the consent of the latter state. States have the sovereign right to decide whether a foreigner in question has the right to enter their territory. Thus, readmission agreements regulating the rules of returning persons who do not fulfill the conditions for entry are often signed between the states involved<sup>75</sup>. In each case, transferring aliens should be carried out upon agreement of the state of destination and via an official border crossing point. The Polish Border Guard, returning people to Belarus in an unauthorized manner, in spite of an absence of a legal basis for such practices and in view of the evident lack of intent on the part of Belarus to readmit migrants, operates in a way which should be deemed a violation of the basic principles of law.

## Pushbacks as a practice

### Operations of the Polish services

Returning to the borderline consists in practice in transporting migrants to the border with Belarus, outside of an official border crossing point, and coercing them to cross a razor wired fence over to the Belarusian side. Some migrants are pushed back to the border immediately after apprehension in the wooded terrain along the state border, others are being removed upon first being transported to the Border Guard facilities



Pic. Photograph taken in June 2022. The feet of a 12-year-old girl from Mali staying in the Polish-Belarusian border area since January. The doctor who reached the girl identified marks of frostbite on her feet and a broken big toe with onycholysis (toenails falling off). The girl was also dehydrated.

or even hospitals where they had been admitted due to their necessary hospital treatment. In view of the fact that the Polish-Belarusian border area is thickly wooded, as a result of these actions, migrants are usually abandoned in the middle of the forest and are exposed to dangerous conditions while staying in wooded terrain with no access to warm shelter, food, drinking water, and medical aid.

As accounted by migrants, the Polish officers use existing holes in the fence or proceed to cut the fence on their own, and subsequently force the returned persons to cross to the Belarusian side. Among the methods used in order to coerce migrants to return to Belarus, these are most commonly mentioned: threats, hounding with dogs, and threatening with firearms. Instances of forcing migrants to cross a border river have been noted as well. One of the migrants reported that he was forced by the Polish Border Guard officers to swim across the Świsłocz river even though

he did declare that he could not swim, with air temperatures below zero degrees Celsius on that day (the incident took place in November 2021):

The Polish officers transported me to the river. My questions as to where we were going were left unanswered. I was told to step out of the car and approach the river bank. At that point I realized that they wanted me to get in. For me, this was an extremely difficult experience, as I cannot swim. I was very much afraid. I told them I could not swim, but they were laughing at me. They pulled a gun, pointed it in my direction and started yelling that they would kill me if I did not go in. I had no choice. (...) I was very much afraid that I would drown. They stood on the river bank, mocking me<sup>76</sup>.

Notes from humanitarian interventions show that due to having to cross a razor wire fence or swimming across a border river, many people sustained injuries of various kind such as scratches and cuts, broken limbs, as well as extreme cold and hypothermia. The health condition of some of these people was grave enough to require immediate medical intervention.

Repeated pushbacks and brutality of the forces produced in the migrants a deep fear of contact with the border guards of both states. This fear is often manifested equally towards any other person clad in uniform or clothes resembling a uniform, e.g. such as those worn by foresters. As a result, migrants hide in the woods along the border, fearing contact with anyone who could potentially notify the authorities of their location. One of the foresters who had been providing spontaneous humanitarian aid in the forest along the border since the beginning of the humanitarian crisis commented as follows:

I am ashamed of our country when a refugee upon seeing me – a public servant – runs away screaming like an animal<sup>77</sup>.

Even though in the migrants' assessment the Belarusian forces are far more brutal, cases of violence occur on the Polish side as well. Review and study of the notes from humanitarian interventions mention the following forms of abuse inflicted by the Polish officers, as reported by migrants: intimidation, derision, threatening to use firearms, pushing, forcing to cross a razor wired fence over to the Belarusian side, hounding with dogs, using tear gas, forcing persons to enter a river despite cold temperatures, refusing humanitarian and medical aid, destruction of telephones and SIM cards, deliberate deception, and transporting people to the Belarusian border despite them being freezing and exhausted.

## Operations of the Belarusian forces

Findings of investigative reporters<sup>78</sup> and human rights organizations<sup>79</sup> prove that Belarusian officers push migrants over to the Polish side of the border using various forms of violence. Those assisted by activists and provided with humanitarian relief reported: abuse of their dependent position by the Belarusian officers, forms of grave violence inflicted on them, detention in camps (located in the forest near the border or in warehouses and military infrastructure), and subsequent gathering near a specific part of the border and coercion to cross it. According to migrants, one of the aims of these actions was to provoke a specific reaction of Polish officers. To this end, migrants are often forced to cross the border in places visible to the Polish officers, and the Belarusian forces throw stones, beams, and other objects in their direction. One of the migrant women recounts:

The Belarusians transported us to an encampment in the woods. It was cold; there were several families with children there and one elderly man. We slept in makeshift shelters built out of tree branches, it was raining and it was very cold. We had no way of returning to Minsk nor of approaching the Polish border. We sat there near the border strip, and there was a sandy forest road nearby. Belarusian officers would rake this road so that they could see footprints in case anyone tried to get away on their own. Sometimes they would come to us and tell everyone to show them the soles of their shoes, and if anyone tried to get away on their own, they were beaten up. We only had access to water, and we were kept there for several days and nights. At that point we realized the kind of situation we were in. After a couple of days, they gathered the people in one spot, they put us in cars, then let us out close to the border and told us to run. I believe that they toyed with us and used us to get a reaction from the Polish officers – they ordered us to run precisely towards them. Those who did not want to run were beaten by them, thrown in the river, depending on the location where they have crossed the border. In my view, their main goal was not to let people through, but to group them together and deliberately “throw them” at the Polish border guards. Sometimes they would illuminate them with strong beams of light or throw objects. (...) The Polish officers then would push us back to the other side. (...) Our pleas for asylum were being ignored<sup>80</sup>.

Migrants relate that in most cases the Belarusians do not allow them to travel back to Belarus and return to Minsk. Instead, they are ordered to stay in the border zone under close supervision and coerced into making

further attempts at crossing the border with Poland, to which end violence is often used, including sexual abuse. During their stay in the Belarusian border zone, migrants are forced to live in makeshift shelters, tents, or army warehouses, with limited access to food, drinking water, and sanitary facilities and hygiene products. As related by one of the migrants during an interview:

After we crossed to the other side, the Belarusian armed forces took us to another place. It was this huge warehouse, we spent many weeks there. It was terrifying (...). The Belarusians could do to us whatever they wanted, everybody was afraid. I was extremely afraid as I saw that some people were being taken away and then they came back with fear in their faces, as if something terrible had happened. You could see in their eyes that something was wrong. (...) Servicemen would come and sometimes take boys and sometimes women. They raped them and locked them away. (...) They would transport them somewhere and then leave them there like that. (...) Often they pointed rifles at people, beat them very hard, so hard that they broke their bones. Every one of us was afraid. (...) We were sometimes provided food by the Red Cross, but we were always hungry. (...) There were hundreds of other people there with us<sup>81</sup>.

According to the notes from humanitarian interventions, among forms of violence inflicted by the Belarusian officers usually mentioned by migrants are: beating with hands or rifle butts, kicking, tearing the hair, threatening with firearms, firing guns at their feet or in the air, hounding with dogs, denying access to food and drinking water, stealing and extorting money in exchange for permission to return to Minsk or for food and water, psychological humiliation and stripping of dignity<sup>82</sup>. There are also accounts of sexual abuse. One of the women spoke out about a gang rape in the basement of the warehouse which she fell victim to when trying to protect her daughter<sup>83</sup>. For those reasons, migrants approached by those providing aid usually beg not to be sent back to Belarus. One of the residents of Podlasie told us during the interview:

The people I helped told me that on the Belarusian side people hang themselves on trees. They cannot take it anymore. They often say that they would rather die than go back to Belarus<sup>84</sup>.

Those who managed to return to Minsk claim that this was usually possible only if Belarusian officers were bribed. Not everyone has financial resources to do that, especially in view of the frequent cases of stealing

from migrants by the Belarusian forces. One of the local residents actively involved in providing assistance in the woods reported that Belarusians inflict punishment on the migrants if the latter are returned across the border:

A few days ago, I saw them here in the forest, I gave them water. Later they texted me saying that the Belarusians cut off a piece of his finger as a punishment for being pushed back. He sent photos. This is bestiality<sup>85</sup>.

### Damaging telephones

As evidenced in the interviews with migrants as well as in reports from humanitarian interventions, a common practice used by the forces of both states is to destroy or damage telephones and SIM cards belonging to those crossing the border. As reported in one of the reports from a humanitarian intervention in September 2021:

Three Afghan men, three Iraqi (Kurdish) men and two Yemeni men. Hungry, terrified, soaking wet, freezing. A few of them speak good English, they translate to each other into Dari and Kurdish. They have been pushed back over the border several times (the Iraqi men – 19 times within the last 2 weeks) by Polish and Belarusian officers. Sometimes they are turned back when still in the woods, sometimes they manage to reach the village buildings. They say that when they encounter Polish officers, they plead for asylum. As a response, they are yelled at and threatened, they are prodded and pushed towards the border. The Polish Border Guard damage their phones (we have photographs of telephones with damaged charging ports and broken cameras) and take away their SIM cards. Whenever they encounter officers on the Belarusian side, the latter point firearms at them and keep them at gunpoint, telling them to go back to Poland. Often, they beat them up. They have told us that they feel like ping-pong balls in a game between servicemen of two countries. During this intervention, the Border Guard took multiple attempts at preventing migrants from contacting an attorney. Following these incidents, they were pushed back to the border unbeknown to the attorney. Only an intervention of MPs, the media, and activists managed to prevent another pushback<sup>86</sup>.

We should state here that being deprived of telephones makes it impossible for the migrants to know their own location and make emergency calls, which poses an additional threat of loss of life or health. Damage to



Pic. A migrant's telephone damaged by the Polish Border Guard, fall 2021.

telephones also results in no possibility of documenting the situation in the border zone and the experienced violence.

### Lack of administrative procedures

Both the migrants' accounts and official statistics and data communicated by the Border Guard show that in spite of the seeming legalization of pushbacks, no administrative proceedings are brought against the majority of foreigners returned to Belarus which would result in an issued decision, and their expulsion from the territory of Poland is carried out solely on the basis of a verbal instruction to return to Belarus. According to the Border Guard, in 2021, ca. 40,000 attempts at illegal crossing the border from Belarus to Poland were recorded<sup>87</sup>, whereas during the period from 26 October 2021 to 31 December 2021 decisions of an obligation to leave the territory of the Republic of Poland were issued against 2,380 foreigners only<sup>88</sup>. It is not clear in which cases the Border Guard decides to issue a decision and when the foreigners are returned only on the basis of a verbal instruction. It is also unclear whether a register of people who were returned to Belarus without a decision being issued is kept or

not. Most probably, many people are not even identified by the forces prior to their expulsion from the territory of Poland, and their personal circumstances and family situation is not verified.

Cases were reported where the Polish forces handed the apprehended migrants documents to sign that were written in Polish, thus, incomprehensible to them, and which served as a basis for returning them to Belarus. Such practice may preclude effective declaration of intent to apply for international protection. One of the migrants recounts:

After the Belarusian forces made us go across the river, we strayed in the Polish forest for several hours. In the group that walked with me there was a woman, in other groups were families with children, including small children and babies a few months old. I was soaking wet and shaking from the cold. The Polish forces found us in the forest and transported us to some kind of facility. We were locked in a garage with no windows, with dirty walls, one blow heater, and mattresses on the ground<sup>89</sup>. Some time later officers came in and asked us if we wanted asylum in Poland. We all said we did. After a while we were brought documents written in Polish, to sign. We thought this was a confirmation of our declaration. Once we signed those, we were given a translation in Arabic and English. These were documents for return to Belarus and an EU entry ban. Later we were pushed back<sup>90</sup>.

### Closure of the warehouse in Bruzgi

Those subjected to pushbacks are in highly diverse physical and psychological conditions. Many migrants are in a state of extremely low body temperature and of exhaustion. These are often people who had no access to food and drinking water for many days, which forced them to drink dirty water from swamps or puddles and consume leaves. Their psychological condition is most often poor, they feel stripped of dignity and sense of agency.

The situation was particularly difficult in the spring of this year following the closing of the warehouse in the Belarusian village of Bruzgi. The warehouse had held several hundred migrants placed there for the winter months, in squalid conditions<sup>91</sup>. On March 20th, 2022 the Belarusian officers abandoned all of these people in the forest along the border<sup>92</sup>. These were primarily people too weak to survive in the woods in winter conditions, notably pregnant women, children, elderly persons, people with illnesses or with various kinds and degrees of disability. All of these people were placed in the Podlasie forest at a time when temperatures still fell below zero degrees Celsius at night with snowfall. Without regard for the

extreme weather conditions and the migrants' poor physical condition, the Polish Border Guard continued to perform consistent pushbacks, and the Belarusian officers forced these people to return to Poland.

As testified by a national of Iraq regarding the closing of the warehouse in Bruzgi:

There are many people there, women, disabled people. In one family near here there is a boy in a wheelchair missing a leg, many people are exhausted, they were tortured during wars. There is nothing left for us. They deceived us, we have no other choice, we will keep on trying, as in our country we will be shot at anyway. The Belarusians pointed guns at us and told us to get out. If anyone didn't want to do that, they said that they would send us to Ukraine<sup>93</sup>.

Following the closing of the warehouse in the Belarusian Bruzgi, three families from Iraq, among others, were forced to cross the border with Poland. Each of the families had several children, including sick and disabled children. One of the families carried a completely paralyzed 20-year-old on a stretcher, the other had a 10-year-old boy with a profound intellectual disability, and the third – a 8-year-old girl with epilepsy. The families travelled as one group. They were apprehended by the Polish Border Guard several times and returned to the Belarusian side, despite their declaration of intent to apply for international protection in Poland and the visibly poor condition of the entire group, in particular of the children. The Border Guard used tear gas against them twice. During one of the captures the Border Guard accepted the application for protection from the family of the paralyzed 20-year-old, the two other families, however, were yet again pushed back to Belarus. At that time in the border area it was snowing, with temperatures oscillating around zero degrees Celsius. As a consequence of the repeated pushbacks the families were forced to camp out in the woods, keeping themselves warm by a campfire and drinking water from snow melted over the fire. They had no access to food or medical aid. Some of the children developed a fever, others had kidney inflammation. Dr. Paulina Bownik and a number of non-governmental organizations alarmed the public about the case. Only after multiple interventions, on April 1st, 2022, following another apprehension, the families were taken to the Border Guard facility in Czeremcha, where their application for international protection was subsequently accepted. Both families were placed in the guarded center for foreigners in Białystok where they are still staying today. Lawyers of the HFHR filed complaints in the cases of both families to the European Court of Human Rights<sup>94</sup>.

## Results of pushbacks

In the absence of an identification mechanism and due to collective expulsions of migrants to Belarus, pushbacks entail incidents of: separating families<sup>95</sup> and returning unaccompanied children<sup>96</sup> or persons requiring immediate medical assistance<sup>97</sup>. In at least several cases, there were incidents of miscarriage in pregnant women as a result of these actions<sup>98</sup>.



Pic. 10-year-old disabled boy from Iraq forced to camp at the Polish-Belarusian border area due to repeated pushbacks performed on his family from Poland to Belarus. Źródło: Wyborcza.pl

Moreover, Grupa Granica has recorded 187 cases of migrants who went missing on the Polish-Belarusian border so far<sup>99</sup>. In each of these cases, the activists were contacted by members of families searching for information about their missing relatives with whom they lost contact during their stay in the Polish-Belarusian border area. The search proves to be a difficult task as the Border Guard does not keep records of persons against whom they applied the regulation on returning to the borderline, so that in most cases there is no trace of their presence in Poland. Currently no institution is systemically involved in helping these families in their search for their relatives. It can be assumed that at least some of these people died in the border area, but their bodies have not been found so far.

Forcible return of migrants to the Belarusian territory is therefore not only a violation of the law regarding access to asylum procedures. These operations are to be seen in the light of putting migrants at risk of loss of life and health and inhuman treatment (Articles 2 and 3 of the European Convention of Human Rights). Pushbacks are particularly dangerous when

temperatures in the forest are low and those pushed back to the borderline are in poor physical condition, with open wounds, injuries, chronic illnesses, or left without necessary medication. Pushing migrants back to the borderline with Belarus and forcing them to cross a razor wire fence leads to a violation of their right to dignity, and in extreme cases – to a breach of the prohibition of torture and inhuman or degrading treatment, thereby violating Articles 30 and 40 of the Constitution of the Republic of Poland.

## Humanitarian interventions carried out by community members

### Providing assistance in the woods

With no presence of humanitarian agents in the border zone<sup>100</sup>, the responsibility of providing aid often consisting in saving health and lives of migrants, fell on the residents and other persons authorized to stay in the zone. However, for persons without proper training, helping entails a high risk of experiencing trauma, as recounted by many local residents involved in providing aid, and is continued to the detriment of their family lives or professional careers. Some of these people have been involved in providing humanitarian aid in the forest along the border for eleven months now, often completing various kinds of courses to be able to do so, e.g. courses in providing first aid, recognizing the signs of hypothermia, navigating in the woods at night, or acquiring basic knowledge of asylum law. At the same time, these people keep a strong sense that their actions are met with hostility on the part of state authorities, and in some cases their activity is even criminalized.

An approximate number of social humanitarian interventions carried out in the Polish woods since the beginning of the crisis is difficult to estimate, as many individuals, groups, and informal initiatives are providing relief work independently and without gathering data in this respect. From October 2021 to June 2022 Grupa Granica alone provided assistance for ca. 11,000 people<sup>101</sup>.

The pushback policy, the brutality of forces and the increasing criminalization of humanitarian aid have led to a situation where those taking part in humanitarian intervention fear contact with the Polish authorities, and are often forced to work covertly. In order to avoid exposing migrants to the risk of (often repeated) pushbacks, activists resigned from informing the Border Guard of the migrants they encounter; they had done so only



Pic. Assistance provided during a humanitarian intervention by one of the doctors  
(private archive)

at the beginning of the crisis. One of the local residents provided the following commentary:

At first, we called the forces when we spotted someone. Now we know that they are simply pushed back. And they might meet their death there.<sup>102</sup>.

This often leads to dramatic situations where the responsibility for providing assistance, including helping members of vulnerable groups such as persons in poor health, unaccompanied minors<sup>103</sup>, victims of human trafficking or persons who have experienced sexual abuse, including rape on the Belarusian side, falls on local residents and activists. One of the women we interviewed, a medical professional, commented on this in the following manner:

Those interventions we carried out when going into the forest, saved many people's health and in some cases were even life-saving, I think. It is really strange to know that I have to hide if I want to exercise my medical profession along with its inherent duty to save people's lives and health<sup>104</sup>.

## Harassment and violence

Those providing aid report intrusive forms of harassment or even violence used against them by the forces. These actions consist in unjustified deprivation of liberty, often lasting many hours, of those subjected to controls and checks on site; brutal treatment of those apprehended and/or detained; insinuating that providing humanitarian aid is a crime; threats of initiating criminal proceedings in relation to their alleged organizing of illegal border crossing; coercing to unlock telephones in order to search through their contents; forcing persons to lie on the ground with their hands behind their head, or keeping them at gunpoint<sup>105</sup>.

During one of the humanitarian interventions the forces confiscated medical equipment belonging to members of staff of Ocalenie Foundation, used as a life-support system<sup>106</sup>. The activists related that during the apprehension they were surrounded by fifteen uniformed officers with unlocked firearms who refused to show identification<sup>107</sup>. In another incident, a translator working with Grupa Granica was brutally apprehended by TDF (Territorial Defence Forces) soldiers who subsequently made attempts at pulling him out of the car by force and, as in many other cases, refused to show identification and give a ground for apprehension<sup>108</sup>.

There are even incidents where lawyers who provide legal aid for the migrants and have the suitable powers of attorney to do so, face insinuations made by the officers regarding their alleged role in organizing “human smuggling”, and are approached with hostility.

As related by one activist:

One unlocked telephone which was fastened to the dashboard (the owner of the telephone was near the trunk of the car) was extorted from us; some time later, as they threatened us to use force, we were compelled to unlock our remaining phones, to which we objected. We handed the telephones locked. The unlocked phone had Google Maps navigation turned on along with the search history, in the photo gallery were photos of 8 passports from an intervention a month prior (...). All the while the policemen did not give us any kind of information about themselves. The entire interior of the car was searched, along with our backpacks and personal belongings (pockets). (...) In spite of our pleas and although we invoked the applicable law, the unlocked phone was not returned to us for the whole duration of the check. (...) At that, they implied that

“they knew what we had done”, they also tried to convince us that we were in the area of the “emergency zone”, which was not true. They informed us that we were suspected of having committed an offense. For the whole duration of the check we were sitting in our car surrounded by officers, we had to keep all doors open for more than an hour. The police vehicles kept the light signal flashing for the whole time<sup>109</sup>.

In the assessment of the local residents and activists interviewed by the HFHR researchers, force brutality is increasingly visible. It must be then considered whether this intensifying brutality results from the psychological burden felt by the officers who have been compelled for eleven months now to execute unlawful orders putting migrants’ life and limb at risk<sup>110</sup>. Our interlocutors reported that violence and abuse are more frequent within structures characterized by lower levels of experience and professionalism, such as the Territorial Defence Forces. One resident of Podlasie reported that:

The TDF are the worst. These are untrained people gathered at random who are the most prone to exhibit brutal behaviours. They play at waging little wars, and so they put themselves and others at risk. Professional soldiers are trained to protect civilians for years, and here they are told to work against civilians for months now... To take part in pushbacks of children, of women... This is why some of them end up taking drugs, because they cannot cope with it when sober. Their use of alcohol is condoned. I don’t find that surprising either<sup>111</sup>.

In February 2022, the UN Special Rapporteur on Human Rights Defenders raised the problem of intimidation of activists working to aid migrants, and called on the Polish authorities to investigate all cases of persecution against human rights defenders working at the Polish-Belarusian border<sup>112</sup>.

### Offering shelter

Some residents of towns and villages located in the zone covered by the ban on staying offer shelter for migrants in their own homes. Others leave doors to barns, utility rooms or other buildings located in their yards open for the night. These actions are dictated by a spontaneous willingness to provide aid for those in need. Even though such actions must be regarded as entirely legal<sup>113</sup>, they entail the necessity to operate covertly. Those providing this type of aid are aware that potential disclosure of their actions to authorities would entail intensified inspections

along with possible searches of their houses. Considering the increasing criminalization of humanitarian aid<sup>114</sup>, they are also aware of the risk of criminal proceedings being initiated against them. Such fears seem justified notably in view of the social media posts of the Border Guard published in the recent months, indicative of a tightening of the authorities' policy against those providing humanitarian aid<sup>115</sup>.

Residents of one of the towns near the border recounted that in the winter they found a 17-year-old Somali boy in the woods. The boy's legs were covered in dog bite wounds from when he had been hounded with dogs by Belarusian officers. Being aware that reporting the boy to the forces may result in a pushback to Belarus, the local residents decided to provide him with assistance on their own. The Somali boy was recovering for two weeks, cared for by local residents and medical staff working covertly. Local residents kept bringing the boy food and warm clothes. He also had regular visits from a doctor who prescribed antibiotics to stop the infection in the wounds. This case illustrated the tragic position of the residents of towns and villages along the border, compelled to assume responsibility for saving lives in the complete absence of support from the state, and even in fear that their actions may be purposefully thwarted by state institutions.

### Psychological burden of providing aid

Providing humanitarian aid by individuals without proper training in that field, entails an extremely high risk of trauma. Interviews with local residents are indicative of their overstrain and fatigue. Many people state that they have recognized having symptoms of post-traumatic stress. In addition, the protracted crisis and lack of prospect of change have caused the violence which has been taking place in the border area to become commonplace. The residents involved in providing aid have grown accustomed to the need to operate covertly and avoid contact with the Polish forces, as well as to addressing and solving all difficult situations which arise in the woods independently, with no support from state institutions.

## Proceedings before the European Court of Human Rights

From 20 August 2021 to 18 February 2022, the European Court of Human Rights issued interim measures in 65 cases involving migrants who have crossed the Polish-Belarusian border<sup>116</sup>. All of these cases involved

people hiding in the woods on the Polish side of the border out of fear of pushback from Poland to Belarus, who in cooperation with lawyers submitted a request to the Court for precautionary measure towards a future complaint. In all of these cases except for three, European Court of Human Rights obliged the Polish authorities not to return the applicants to Belarus, and in certain cases also to provide them with the necessary humanitarian or medical aid.

Considering the fact that in all of these cases (except for one) the Polish authorities complied with the Court's orders, this method proved to be the most effective form of legal protection of migrants from pushbacks as of yet. It should be indicated here that this is an unprecedented situation. The statistics published by the Court show that last year nearly ¼ of all interim measures issued by the Court against all states of the Council of Europe concerned Poland, and specifically, the situation at the Polish-Belarusian border<sup>117</sup>.

The sole case in which the Polish authorities openly refused to comply with the interim measure, was the case of a group of 32 migrants from Afghanistan staying at the Polish-Belarusian border near the village of Usnarz Górny (R.A. v. Poland, case no. 42120/21). Initially staying out in the open air and then in tents, the Afghani group spent in the border area 71 days in total. Both the Polish and Belarusian border guard consistently refused to provide aid for the group such as food and warm clothes whilst denying them entry to their territory. The Polish Border Guard also ignored applications for granting international protection filed by the members of the group. The Polish authorities thereby ignored not only the EU provisions requiring the state authorities to accept an application for protection from each person who is to declare such intention, but also the interim measure of the European Court of Human Rights which ordered Poland to ensure access to basic humanitarian and medical aid for the foreigners and admission of attorneys representing them. The Polish authorities had maintained that the group was staying on the Belarusian territory<sup>118</sup>, however, an investigation led by Amnesty International determined that the Afghan encampment had originally been located within the Polish territory before it was moved by the Polish forces to the Belarusian side<sup>119</sup>. The case is currently pending before the Court.

At least 11 applications have been submitted to the European Court of Human Rights by migrants subjected to unlawful pushbacks from Poland. Migrants complained on violations of Articles 2 (Right to life), 3 (Prohibition of torture) and 5 (Right to liberty and security) of the European Convention on Human Rights and Art. 4 of the Protocol No. 4 to the Convention

(Prohibition of collective expulsion of aliens). These cases are currently pending. Considering that some of these cases have already been communicated to the Polish government, the conclusion must be that the Court attaches great importance to cases of this kind.

It should additionally be noted here that in the years 2020-2021 Poland was already reproached by the European Court of Human Rights twice for the unlawful denial of admission of refugees to its territory and of denying them the right to seek asylum<sup>120</sup>. These rulings testify to the fact that the current practice of collective pushbacks of migrants from the Polish territory is not a new phenomenon, but rather, that it is now performed on an unprecedented scale and in an extremely inhuman manner.

### 3.3. Criminalization of humanitarian aid

#### Repression for providing assistance

An increase in repression and attempts at criminalizing those providing humanitarian aid at the Polish-Belarusian border are observed in the recent months. Despite the fact that providing assistance is not penalized by Polish law (on the contrary, the law penalizes failure to provide assistance to anyone in imminent threat to life or health<sup>121</sup>), there are incidents of charges under the Code of Petty Offenses or the Polish Penal Code (here: PC) being pressed against persons working in the border area. Grupa Granica and the Szpila collective<sup>122</sup> have so far received information concerning:

- at least 9 persons providing humanitarian aid at the Polish-Belarusian border who were charged with arranging illegal crossing of a border (an offense under Article 264 § 3 PC) or assisting in arranging an illegal crossing of a border (an offense under Article 18 § 3 of the PC in conjunction with Article 264 § 3 PC);
- at least 5 people in whose case the prosecutor applied to court for a preventive arrest on the above mentioned charges (the courts did not accede to any of these applications);
- at least 1 person charged with assisting in illegal crossing of a border, i.e. an offense under Article 49A § 2 of the Petty Offense Code;
- at least 3 journalists detained and penalized for entering the state of emergency zone (ultimately acquitted by the Supreme Court) and 5 journalists and press photographers who were detained (for several dozen minutes to several hours) in relation to their work in the vicinity of the state of emergency zone<sup>123</sup>;

- fines for entering the state of emergency zone in order to provide aid or assistance, amounting to PLN 20 to 500 (the exact number of persons fined remains unknown);
- at least 4 people subject to proceedings in relation to their refusal to accept a fine for entering the zone covered by the ban on staying;
- at least one case of preparatory criminal proceedings initiated in relation to enabling or facilitating another person's stay within the territory of the Republic of Poland in breach of the law, i.e. an offense under Article 264a PC<sup>124</sup>.

Grupa Granica and Kolektyw Szpila have repeatedly shared information of the unceasing apprehensions and detentions in the Polish-Belarusian border area consisting either in a short-term detention whilst transporting a given person to a Border Guard post or to a police station, or in a detention in a vehicle lasting several hours. They have also noted a rise in cases of the forces' surveillance of particular houses and apartments, and apprehensions and controls. These incidents have been described in section 3.1. of the present report.

Starting in early 2022, there has been a clearly increased tendency to press criminal charges against activists providing humanitarian relief. The courts have not hitherto acceded to any of the prosecutors' requests for provisional arrest. This is a good prognosis for possible future criminal proceedings, but also testifies to the authorities' attempts at producing a chilling effect.

In December 2021, the police carried out a search of the Crisis Intervention Point run by the Warsaw-based Club of Catholic Intelligentsia (Klub Inteligencji Katolickiej, KIK)<sup>125</sup>. The search of the rooms was carried out by several dozen police officers and the hearing of witnesses lasted from 9 PM to 7 AM. The police carried out these operations without a warrant issued by the prosecutor in relation to a suspected criminal activity consisting in assistance in arranging an illegal crossing of a border. The activists present on site were heard as witnesses. Once the search was completed, computers, telephones, and the organization's documentation, among others, were confiscated<sup>126</sup>. The officers' actions and behaviour were assessed by the attorney involved in the operations as disproportionate :

The presence of more than ten police vehicles and several dozen officers, in part armed with long firearms, was a disproportionate reaction. All the more so, that summoning the witnesses for a hearing at a different time was possible. Actions taken by the

Police that night may be regarded in terms of deliberate display of power aimed at deterring those residing in the Podlasie region as well as activists from helping the victims of the humanitarian crisis in the Polish-Belarusian border area<sup>127</sup>.

In their statement, the Warsaw-based Club of Catholic Intelligentsia referred to the search as “acting from a position of power, completely inadequate to the circumstances”<sup>128</sup>. These actions may be also regarded as an attempt at producing a chilling effect on those providing humanitarian aid at the Polish-Belarusian border<sup>129</sup>.

### Wrongful detention

Detaining activists providing humanitarian aid during controls lasting several hours poses a serious threat to civil rights. The practice of apprehension and detention of persons involved in providing aid was viewed negatively by the District Court in Biała Podlaska that ruled the detention of three activists in January 2022 by the officers of the Border Guard to be illegal, unjustified, and invalid (decision of District Court in Biała Podlaska of 18 March 2022, case no. II Kp 92/22). The court stated that a several-hours long detention was not an appropriate reaction to a refusal to accept a fine for a petty offense of entering the area covered by the ban on staying. The court emphasized the fact that the officers’ actions were incompliant with the procedures: they did not draw an apprehension report, all the while maintaining that the activists were not being detained even though they were confined in a Border Guard facility for several hours. According to the court, action taken against these persons “corresponded to all characteristics of detention and has to be defined accordingly, regardless of a differing interpretation of events adopted by the officers”. The court further indicated that the officers “not only operated with no regard for legal grounds but also used utterly inadequate (disproportionate) coercive means, moreover, they acted against pragmatic course of action, very instrumentally departing from the standard manner of detention”. The court also commented on the fact that no protocol had been drawn up, which “resulted in a deprivation of the procedural rights thereby conferred, not excluding the right to establish direct contact with a lawyer or legal advisor”.

# 4. Conclusions and recommendations

## Conclusions

Eleven months into the humanitarian crisis, an increase in the scale of the inflicted violence and dehumanization of migrants on the part of representatives of forces of both states and human rights breaches of both migrants and persons providing humanitarian aid, has been observed at the Polish-Belarusian border. . The increase in the scale of violence is defined here in terms of an increase in brutality on the part of the forces, in particular against vulnerable groups, as observed notably in the spring of this year following the closure of the warehouse in the Belarusian Bruzgi. Although the number of people crossing the Polish-Belarusian border decreased as compared to fall of 2021, the scale and brutality of violence used against them are significantly higher than noted by the authors of this report at the onset of the humanitarian crisis. This is also reported by activists, local residents, and the migrants themselves. The prolonged ban on staying in the border zone and the forces' actions and operations have led to a situation in which the Polish-Belarusian border area was nearly exempt from the law and constitutes a place where numerous law violations occur.

Isolation and militarization of the border zone with simultaneous absence of the media and the ensuing limited possibility of making abuse or violations public, as well as the trauma resulting from having to execute orders which bear signs of inhuman treatment, all entail a risk of increasingly serious abuse of power by the representatives of forces. This is a highly undesirable situation not only for those present in the Polish-Belarusian border area, but also for the general public. The state should take actions aimed at preventing brutality of armed forces rather than condoning, stoking or rewarding it<sup>130</sup>. It should additionally be noted that the situation in Ukraine and the influx to Poland of several million people from this country caused a withdrawal of the attention of both the media and public opinion from the Polish-Belarusian border, which can unquestionably contribute to a greater impunity among the services operating at the border, and to lack of public control over their operations.

Among the most serious violations of human rights registered at the Polish-Belarusian border are primarily the unlawful pushbacks of migrants including individuals seeking protection and persons belonging to vulnerable groups requiring special protection, notably children, victims of torture, persons with disabilities, or elderly persons. Considering the instrumental treatment of migrants and the widespread use of violence by the Belarusian authorities, Belarus cannot be regarded as a safe country. In view of such circumstances, each case of returning a foreigner to the

borderline and subsequently coercing or encouraging them to cross the border towards Belarus is a violation of the principle of non-refoulement. This can also involve a number of other violations, including violations of the right to access asylum procedure, right to freedom from torture and inhuman treatment. These violations also concern the conditions in which the migrants are abandoned by the Polish officers: outside in the forest, with no shelter, no access to food and drinking water and deprived of medical assistance.

The attempt taken by the legislator to create a legal basis for the practice of pushbacks, did not cause the pushbacks to become legal. Both international and EU law require the authorities to accept an application from each individual declaring intent to apply for international protection, and refraining from returning people to territories of states where they may be in likely danger. Polish authorities are also strictly obliged to refrain from using torture and inhuman or degrading treatment of all persons staying within the Polish territory. Yet, transporting people into wooded areas, notably in extreme weather conditions and in dangerous terrain, and abandoning them there all alone at the mercy of Belarusian forces can constitute a form of torture or at least inhuman treatment.

Another observed violation is the very creation of a zone covered by a ban on staying, which not only causes a considerable nuisance for the residents of towns and villages along the border, but also entails serious human rights violations as well as abuse and impunity of the authorities present on site. According to the adopted law prohibiting entry to the border zone, humanitarian organizations, medical professionals, non-governmental organizations providing legal and psychological support for migrants, as well as independent observers and reporters, were excluded from operating at the Polish-Belarusian border. The outcome is a creation of a zone virtually exempt from public control, which constitutes grounds for further violations as recorded.

Attempts to criminalize humanitarian aid made in the recent months can be indicative of a tightening of the state policy at the Polish-Belarusian border. As a result, those providing assistance in the forest along the border are being increasingly forced to operate covertly: hiding not only from the national authorities, but even from their own neighbours.

Those providing shelter for migrants in their own homes, or offering to transport them out of the forest where their lives and health are exposed to real danger, have to expect possible negative legal consequences, even though their assistance is lawful. This leads to dramatic choices that these individuals often have to face.

Negative consequences of the policy pursued by the government at the Polish-Belarusian border also affect the residents of the zone covered by the ban on staying, and in particular those who engage in providing spontaneous assistance in the woods of the border area. With no authorization for humanitarian and medical agents to enter the zone, the entire weight of life-saving aid fell on the residents' shoulders. Eleven months into the crisis many among these people are seriously affected by negative psychological consequences of the situation, struggling with syndromes of post-traumatic stress disorder or being overburdened with the necessity of providing humanitarian aid to the detriment of their private lives, family lives, or professional careers. These people feel that the aid which they provide is met with hostility on the part of the forces.

The HFHR takes the view that it cannot be precluded that the humanitarian crisis on the Polish-Belarusian border evolves to become a long-term problem, with possible further stages of the crisis. At the moment, we are not able to anticipate the course of action taken by the Belarusian regime in the future, and whether the migration route into the European Union leading via the Polish-Belarusian border will open permanently. It may be assumed that numerous migrants originating from countries stricken with armed conflict and mass violations of human rights and who have no possibility of using legal means of entry into the European Union, will seek other pathways of migration, perhaps including the passage via the exterior border of Poland. Experts share the view that that the ongoing climate crisis will without doubt prove to be one of the significant factors causing migration as a phenomenon to become increasingly common globally.

It is therefore necessary to introduce two kinds of actions. The first category is that of intervention measures implemented with the available resources in a short-term perspective in order to prevent further incidents of deaths and damage to the health of persons crossing the Polish-Belarusian border. The second category are operations and activities of systemic effect, which, implemented in a long-term perspective, should lead to a de-escalation of violence at the Polish-Belarusian border, and prevent future violations of human rights. These actions entail building a stable migration policy which guarantees both state security and respect for human rights. At the end of this report, some recommendations for the European Union are included as well.

## Recommendations for the Polish authorities

### In a short-term perspective:

- immediate admission of humanitarian organizations, rescue teams, independent observers, human rights organisations and reporters to operate within the entire territory of the Polish-Belarusian border area;
- repealing the amendment of the Act on the State Border Protection allowing for the introduction of the ban on staying in the border zone;
- stopping unlawful pushbacks which are not only in violation of international and EU law, but also pose imminent threat to life and health of migrants;
- repealing the Regulation of the Ministry of Interior and Administration of August 2021 adopting the possibility of returning foreigners to the line of state border and provisions regarding the issuing of decisions of an obligation to leave territory of the Republic of Poland introduced via amendment of the Act on Foreigners in October 2021;
- creating humane and safe conditions to apply for international protection at the Polish-Belarusian border as provided for by law, also outside of the border crossings points, in compliance with international and EU law;
- compliance with procedures stipulated by law, consisting in accepting applications for international protection or in initiating return proceedings against foreigners who crossed the Polish border in an irregular way;
- implementing mechanisms of identification so as to ensure special protection for persons belonging to vulnerable groups, notably: children, victims of human trafficking, victims of torture, pregnant persons, the elderly, people with illnesses and disabilities;
- prevention and firm response to: violations, misuse of rights granted to, or breach of duty by, the officers serving at the Polish-Belarusian border;
- reliable and accurate, publicly accessible information on the situation at the Polish-Belarusian border should be communicated; and presenting migration exclusively in terms of a threat to state security should cease.

### In a long-term perspective:

- de-escalation of aggressive behaviour of officers of Polish forces;
- thorough investigation of each individual case of death in the Polish-Belarusian border area, the perpetrators should be held responsible;

- determining the fate of migrants who went missing in the Polish-Belarusian border area and creating a support mechanism for those searching for their missing family members;
- recognizing the fact that despite different context, both migrants crossing the border between Poland and Ukraine, and those crossing it in an irregular manner from Belarus are civilians who fell victim to armed conflict and to policies adopted by Russia and Belarus, and therefore both groups deserve humane treatment, respect of human rights and dignity, and access to procedures for applying for international protection;
- developing a long-term migration policy based on principles of universal human rights and protection of the migrants' rights and interests regardless of their origin, religion, and nationality and ethnicity;
- establishing cooperation with Polish and international organizations specialized in providing aid for migrants, as well as with experts, and with academics, so as to develop a common response to the crisis at the Polish-Belarusian border, which, on the one hand, would ensure protection of the borders and state security, and respect for human rights, including protection from human trafficking and abuse, on the other;
- providing support for the residents of the border area and implementing recovery programs to help reverse the negative effects of the humanitarian crisis.

### Recommendations for the European Union

- supporting human rights defenders in their efforts to ensure access for independent observers, humanitarian organizations, and journalists to operate freely in the border zone;
- initiation of infringement proceedings against Poland with regard to the legislation enabling foreigners' return without the observance of the procedural guarantees provided for in the Directive 2008/115/EU and restricting the right to apply for international protection in accordance with the Directive 2013/32/EU;
- supporting organizations, informal groups, and individuals working for the protection of human rights in the Polish-Belarusian border area.

## FOOTNOTES/ENDNOTES

- 1 According to the reports of some local residents, groups of migrants were seen in the area as early as in July 2021.
- 2 The modus operandi of the Belarusian regime was described in detail, cf. see Julia Dauksza, Anastasiia Morozova, Paweł Reszka, *Zobaczyć Mińsk i umrzeć. Jak białoruskie firmy handlują migrantami*, Frontstory.pl, 9 Dec 2021, <https://frontstory.pl/zobaczyc-minsk-i-umrzec-jak-bialoruskie-firmy-handluja-migrantami/>.
- 3 The right to asylum in international law is derived primarily from the Article 14 of the Universal Declaration of Human Rights and Article 1A of the 1951 Refugee Convention.
- 4 Up-to-date information is published by the Border Guard via Twitter: [https://twitter.com/Straz\\_Graniczna](https://twitter.com/Straz_Graniczna), and in the form of regular reports available via website: <https://www.strazgraniczna.pl/pl/aktualnosci/9880,Sytuacja-na-granicy-polsko-bialoruskiej.html>. How the data has been gathered and analyzed was criticized by the Grupa Granica research team in section VI of the report „Kryzys humanitarny na pograniczu polsko-Białoruskim”, <https://www.grupagranica.pl/files/Raport-GG-Kryzys-humanitarny-na-pograniczu-polsko-bialoruskim.pdf>.
- 5 More on this topic, see legal analysis of the Helsinki Foundation for Human Rights available via website: <https://www.hfhr.pl/po-stronie-prawa-analiza-sytuacji-na-granicy-polsko-bialoruskiej>.
- 6 The risk increases with adverse weather conditions, minus temperatures, or when elements of natural landscape are used to inflict indirect violence. In the field of forensic science, such practice is referred to as “weaponization of landscape”. One example of how a river as an element of natural landscape is used to exhaust and deter migrants, is described i.a. by Ikon Duncan and Stefanos Levidis in their article *Weaponizing a River* e-flux, April 2020, <https://www.e-flux.com/architecture/at-the-border/325751/weaponizing-a-river>. The practice has also been elaborated on in several investigations by Forensic Architecture discussing pushbacks as a practice at European borders: <https://forensic-architecture.org>.
- 7 Initial findings of the prosecutor as to causes of deaths of migrants at the Polish-Belarusian border indicate cold-exposure and hypothermia. aa/gp, *Prokuratura zna przyczyny śmierci trzech migrantów. Ich ciała znaleziono przy granicy z Białorusią*, TVN24, 15 Apr 2022, <https://tvn24.pl/bialystok/suwalki-kryzys-na-granicy-polsko-bialoruskiej-prokuratura-bada-zgony-cudzoziemcow-5676398>.
- 8 Data based on the statistics obtained by Grupa Granica.
- 9 Article 31 (1) of the 1951 Refugee Convention.
- 10 Among those crossing the Polish-Belarusian border recently, are nationals of states such as Cuba, India or Egypt, which was rare in the first months of the crisis. Migrants are increasingly reaching Belarus through Russia.
- 11 Grupa Granica, Report, *Kryzys humanitarny na pograniczu polsko-białoruskim*, 1 Dec 2021, <https://www.grupagranica.pl/files/Raport-GG-Kryzys-humanitarny-na-pograniczu-polsko-bialoruskim.pdf>.
- 12 Amnesty International Report, Poland: *Okrucieństwa zamiast współczucia na granicy z Białorusią*, 11 Apr 2022, <https://amnesty.org.pl/wp-content/uploads/2022/04/Raport->

- Amnesty-International-Poland-OKRUCIENSTWO-ZAMIAST-WSPOLCZUCIA-NA-GRANICY-Z-BIALORUSIA.pdf.
- 13 Fundacja Ocalenie, Report, *Przemoc państwa i działania oddolne*, May 2022, [https://ocalenie.org.pl/wp-content/uploads/2022/04/Raport-Fundacji-Ocalenie-z-kryzysu-humanitarnego-na-pograniczu-PL-BY\\_1kor-1.pdf](https://ocalenie.org.pl/wp-content/uploads/2022/04/Raport-Fundacji-Ocalenie-z-kryzysu-humanitarnego-na-pograniczu-PL-BY_1kor-1.pdf).
- 14 Human Rights Watch Report, *Umierajcie tutaj albo idźcie do Polski. Wspólna odpowiedzialność Białorusi i Polski za nadużycia na granicy*, 24 Nov 2021, <https://www.hrw.org/pl/report/2021/11/24/380464> and *Przemoc i push-backi na polsko-białoruskiej granicy*, 8 Jun 2022, <https://www.hrw.org/news/2022/06/07/violence-and-pushbacks-poland-belarus-border>.
- 15 Personal interviews were conducted during direct meetings with interlocutors using a questionnaire comprising of a set of instructions for individual in-depth interviews. The conversations were held while providing humanitarian relief and legal aid in the Podlasie region, primarily in the wooded areas along the border and in hospitals. Each of the interviewed persons joined the interview voluntarily and was free to quit answering at any time. The interviews were conducted in English or assisted by a translator/interpreter. Part of these exchanges were supported by photographic documentation, geolocation information and video footage taken and shared by the migrants. These materials constitute documentation of how the pushbacks were carried out.
- 16 Indirect interviews were conducted in a telephone conversation or with the use of online communication tools (primarily WhatsApp, Facebook, Twitter, Signal). Conversations were held in English or with the help of online translation tools. The primary reason for the necessity of those interviews was the ban on entering and staying introduced in the border zone. Some of the interlocutors sent their geolocation data, photographs, or video footage documenting the pushback process, contacting us initially from the territory of Poland and then Belarus.
- 17 Unstructured interviews were conducted in accordance with a list of instructions for individual in-depth interviews.
- 18 An overview of data on nationalities of the migrants, based on information gathered by Grupa Granica, can be found in an analysis by J. Kopeć, *Uciekali przed wojną. Oto najpełniejsze dane o uchodźcach na polsko-białoruskiej granicy*, Biqdata.pl, 10 May 2022, [https://biqdata.wyborcza.pl/biqdata/7,159116,28432320,uciekali-przed-wojna-oto-najpelniejsze-dane-o-uchodzcach-na.html?fbclid=IwAR38xd5I7Cxq7yV6uUbkmAMqQJzOB7bY-RsNcr\\_4PHhdu6JoXsma4IDu1ChE](https://biqdata.wyborcza.pl/biqdata/7,159116,28432320,uciekali-przed-wojna-oto-najpelniejsze-dane-o-uchodzcach-na.html?fbclid=IwAR38xd5I7Cxq7yV6uUbkmAMqQJzOB7bY-RsNcr_4PHhdu6JoXsma4IDu1ChE).
- 19 Regulation of the President of the Republic of Poland of 2 September 2021 on the introduction of a state of emergency in part of the Podlaskie Voivodeship and in parts of the Lubelskie Voivodeships (Journal of Laws 2021, item 1612).
- 20 Regulation of the Council of Ministers of 2 September 2021 on limitations of freedoms and rights in connection with the state of emergency (Journal of Laws 2021, item 1613).
- 21 Regulation of the President of the Republic of Poland of 1 October 2021 on the extension of state of emergency in parts of the Podlaskie and Lubelskie Voivodeships (Journal of Laws 2021, item 1788).
- 22 Article 230 (2), Constitution of the Republic of Poland.

- 23 See Statement of editorial boards of 30 Polish media and news organizations on prohibiting reporters from entering the state of emergency zone: *Dziennikarze na granicy. Oświadczenie mediów*, Newsweek, 14 Sep 2021, <https://www.newsweek.pl/Poland/polityka/stan-wyjatkowy-na-granicy-z-bialorusia-oswiadczenie-mediow/m0y6v4g>, and the letter drawn up by non-governmental organizations from Lithuania, Latvia, and Poland to the Commissioner of the European Commission on the situation at the EU border with Belarus: Letter to the EC on push-back in Lithuania, Latvia and Poland, the Association of Legal Intervention, 11 Nov 2021, <https://interwencjaprawna.pl/wp-content/uploads/2021/01/Letter-to-the-EC-on-push-back-in-Lithuania-Latvia-and-Poland.pdf>.
- 24 See e.g. statement of the Polish Ombudsman: *Stan wyjątkowy. RPO ma wątpliwości ws. ograniczeń pracy dziennikarzy oraz dostępu do informacji publicznej*, the Polish Ombudsman, 6 Sep 2021, <https://bip.brpo.gov.pl/pl/content/stan-wyjatkowy-rpo-ma-watpliwosci-ws-ograniczen-pracy-dziennikarzy-oraz-dostepu-do> and the Helsinki Foundation for Human Rights: *Stanowisko HFHR w sprawie wprowadzenia stanu wyjątkowego*, the Helsinki Foundation for Human Rights, 2 Sep 2021, <https://www.hfhr.pl/stanowisko-hfpc-w-sprawie-wprowadzenia-stanu-wyjatkowego/>.
- 25 Act of 17 November 2021 amending the Act on the State Border Protection and certain other acts (Journal of Laws 2021, item 2191).
- 26 Regulation of the Minister of Interior and Administration of 30 November 2021 on the introduction of a temporary ban on staying (in a specified area) in the border zone adjacent to the state border with the Republic of Belarus?? (Journal of Laws 2021, item 2193).
- 27 Regulation of the Minister of Interior and Administration of 28 February 2022 on the introduction of a temporary ban on staying in a specified area in the border zone adjacent to the state border with the Republic of Belarus (Journal of Laws 2022, item 488).
- 28 Cf. e.g. Piotr Tuleja, *Czasowy zakaz przebywania w strefie nadgranicznej a kryzys humanitarny*: <https://monitorkonstytucyjny.eu/archiwa/20423>.
- 29 Article 230 of the Constitution of the Republic of Poland.
- 30 See e.g. Appeal of the Council of Europe Commissioner for Human Rights, Commissioner calls for immediate access of international and national human rights actors and media to Poland's border with Belarus to end human suffering and violations of human rights, Council of Europe, 19 Nov 2021, <https://www.coe.int/en/web/commissioner/-/commissioner-calls-for-immediate-access-of-international-and-national-human-rights-actors-and-media-to-poland-s-border-with-belarus-in-order-to-end-hu>.
- 31 Krzysztof Sobczak, *W lipcu nie będzie już zakazu przebywania przy granicy z Białorusią*, Prawo.pl, 9 Jun 2022, <https://www.prawo.pl/prawo/zakaz-przebywania-na-obszarze-przy-granicznym-do-konca-czerwca,515594.html>.
- 32 According to Article 8 (2), Directive 2013/32/EU of the European Parliament and of the Council of 26 June 2013 on common procedures for granting and withdrawing international protection (as amended), the member states ensure that organisations and persons providing advice and counselling to applicants have effective access to applicants present at border crossing points, including transit zones, at external borders.. This provision does allow for limitations introduced for reasons of security, public order, or administrative management of the crossing points concerned, but only on condition that access is not thereby severely restricted or rendered impossible.

- 33 Maciej Zubiel, *Migranci potrzebowali karetki. Dyspozytor chciał zawiadomić policję i Straż Graniczną*, Wp.pl, 10 Oct 2021, <https://wiadomosci.wp.pl/migranci-potrzebowali-karetki-dyspozytor-chcial-zawiadomic-policje-i-straz-graniczna-6692354574797440a>.
- 34 Dziennik.pl, *Karetka nie była w stanie dotrzeć do uchodźców. Akcja „medyków na granicy” trwała ponad 6 godzin*, 21 Oct 2021, <https://wiadomosci.dziennik.pl/wydarzenia/artykuly/8276379,medycy-na-granicy-uchodzcy.html>.
- 35 Martyna Bielska, *Medycy na Granicy: ludzie umierają, my stoimy kilkaset metrów od strefy*, Onet.pl, 19 Oct 2021, <https://wiadomosci.onet.pl/bialystok/medycy-na-granicy-ludzie-umieraja-my-stoimy-kilkaset-metrow-od-strefy/7gs0tn0>.
- 36 Martyna Bielska, *Proszą o ciepło, wodę i dach nad głową. Nie dla siebie, tylko dla dzieci*, Onet.pl, 8 Nov 2021, <https://wiadomosci.onet.pl/bialystok/kryzys-migracyjny-granica-w-oczach-medykow-i-pomoc-uchodzcom/5wtwrrv>.
- 37 Health Committee session on 16 December 2021, transcript available via: <https://orka.sejm.gov.pl/zapisy9.nsf/0/9DCFFD042EFC5883C12587B2004317B6/%24File/0210309.pdf>.
- 38 One example of how the ban on humanitarian organizations' access to the zone impacts the increase in the number of deaths, is e.g. the death of a 38-year-old pregnant Kurdish woman found by activists in the Polish-Belarusian border area in a state of severe hypothermia. Prior to her death the Kurdish woman had spent at least 4 days in the woods on the Polish side of the border together with her family, in which time her health significantly worsened: *Aktywiści domagają się „rzetelnego śledztwa” po śmierci 38-letniej Kurdyjki. „Zmarła kolejna ofiara polityki wywózek”*, Wprost.pl, 6 Dec 2021, <https://www.wprost.pl/kryzys-na-granicy/10563331/granica-polsko-bialoruska-wszczeto-sledztwo-po-smierci-38-letniej-kurdyjki.html>.
- 39 aa/gp, *Prokuratura zna przyczyny śmierci trzech migrantów. Ich ciała znaleziono przy granicy z Białorusią*, TVN24, 15 Apr 2022, <https://tvn24.pl/bialystok/suwalki-kryzys-na-granicy-polsko-bialoruskiej-prokuratura-bada-zgony-cudzoziemcow-5676398>.
- 40 Interview with a migrant from Syria, February 2022.
- 41 Joanna Klimowicz, *Śmierć uchodźcy na granicy. Policja odnalazła ciało w Puszczy Białowieskiej*, Wyborcza.pl, 21 Feb 2022, <https://bialystok.wyborcza.pl/bialystok/7,35241,28137610,smierc-uchodzcy-na-granicy-policja-probuje-odnalezc-cialo-w.html>.
- 42 Interview with a resident of the Podlasie region, April 2022.
- 43 Interview with a resident of the Podlasie region, March 2022.
- 44 FC//rzw, *Policja szukała migrantów w gospodarstwie agroturystycznym. Prosił o otwarcie domku*, TVN24, 28 Nov 2021, <https://tvn24.pl/bialystok/juszkowy-grod-policja-szukala-migrantow-w-gospodarstwie-agroturystycznym-prosili-o-otwarcie-domku-5506247>.
- 45 Decision of the Minister of National Defence No. 1/21/CO MON of 14 December 2021 concerning the refusal of access to public information.
- 46 Article 11B of the Act of 12 October 1990 (Journal of Laws 2021 item 1486 as amended) provides for using units and sub-units of the Armed Forces of the Republic of Poland to support the Border Guard. In view of this provision, the servicemen directed to support the Border Guard exercise to the extent necessary to carry out their tasks, and against all persons, certain specified powers of the officers of the Border Guard, detailed in Article

11 (1) points 2, 4-5a, 5b letter a and b, and points 6, 7, 7a and 10, and Article 23 of the Act on Border Guard.

- 47 This special procedure requires a decision issued by the President of the Republic of Poland or a decision of the Minister of National Defence authorized by the President of the Republic of Poland. Moreover, para. 3 of the Regulation of the Council Ministers of 6 October 2015 on using Border Guard forces and units and sub-units of the Armed Forces of the Republic of Poland in case of a threat to public safety and security or disorderly conduct in the territorial range of a border crossing point and in the border zone (Journal of Laws item 1575) indicates that a detailed decision issued by the Minister of National Defence in agreement with Minister of Interior and Administration is needed which determines i.a. the composition of Armed Forces which are to be used, along with their tasks and numbers of persons involved. and the area in which Armed Forces should carry out these tasks along with their duration. None of the documents listed has ever been published.
- 48 Decision of the Minister of National Defence No. 1/21/CO MON of 14 December 2021 concerning the refusal of access to public information addressed to the HFHR. The decision was appealed against to the Provincial Administrative Court in Warsaw. The appeal has not been considered as of prior to the publication of the present report.
- 49 Decision of the Head of the Chancellery of the President of Poland No. BSK ZOP.0605.235.2021 of 3 February 2022 concerning the refusal of access to public information addressed to the HFHR. The decision was appealed against to the Provincial Administrative Court in Warsaw. The appeal has not been considered as of prior to the publication of the present report.
- 50 According to Article 5 (4) of the Act of 5 August 2010 on the protection of classified information, Journal of Laws 2019, item 742.
- 51 For instance, the decision of the President of the Republic of Poland of 15 March 2020 on the approval of decision on using units and sub-units of the Armed Forces of the Republic of Poland to assist the Border Guard, issued in 2020 due to the COVID-19 pandemic, was published in Monitor Polski (Official Journal of the Republic of Poland) (Monitor Polski 2020, item 288), and the Ministry of National Defence's decision to which the resolution of the President of the Republic of Poland related, was published in the Official Journal of Minister of National Defence (2020, item 48).
- 52 Absence of commonly available documents in this respect calls into question whether the soldiers of Armed Forces RP, including soldiers of the Territorial Defence Forces can in fact effectively exercise the powers of the Border Guard officers. It is hard to imagine that in a democratic state under the rule of law a situation should occur in which soldiers acquire the powers held by the armed forces, including those relating to the with the use of coercion against civilian population, on the basis of classified legal acts.
- 53 Article 12b (2) of the Act of 12 October 1990 on the State Border Protection.
- 54 This problem was raised by the Polish Ombudsman in his address to the Border Guard Commander in Chief: *Uchodźcy z Ukrainy mogliby zamieszkać w strefie objętej zakazem. Straż Graniczna: oceniać każdy przypadek oddzielnie*, the Polish Ombudsman, 23 Mar 2022, <https://bip.brpo.gov.pl/pl/content/rpo-sg-uchodzcy-ukraina-mogliby-mieszkać-w-strefie-objetej--zakazem>.
- 55 Interview with a resident of the Podlasie region, April 2022.
- 56 See e.g. parliamentary question (interpellation) No. 31920 of 3 March 2022: <https://www.sejm.gov.pl/Sejm9.nsf/InterpelacjaTresc.xsp?key=CCBCRX>.

- 57 Interview with a resident of the Podlasie region, March 2022.
- 58 Interview with a resident of the Podlasie region, March 2022.
- 59 §1 (1) point 6 of the Regulation of the Council of Ministers of 2 September 2021 on the limitations of freedoms and rights in connection with the state of emergency.
- 60 See e.g. ECtHR, *Delfi AS v. Estonia*, application No. 64569/09.
- 61 For more on this topic, see.: *Opinia Helsińskiej Fundacji Praw Człowieka na temat ograniczeń w zakresie wolności mediów wprowadzonych w Rozporządzeniu Prezydenta Rzeczypospolitej Polskiej z dnia 2 września 2021 w sprawie wprowadzenia stanu wyjątkowego na obszarze części województwa podlaskiego oraz części województwa lubelskiego oraz w Rozporządzeniu Rady Ministrów z dnia 2 września 2021 w sprawie ograniczeń wolności i praw w związku z wprowadzeniem stanu wyjątkowego*, Helsinki Foundation for Human Rights, 10 Sep 2021, [https://www.hfhr.pl/wp-content/uploads/2021/09/Opinia\\_HFPC\\_stan-wyjatkowy\\_media\\_10.09.2021.pdf](https://www.hfhr.pl/wp-content/uploads/2021/09/Opinia_HFPC_stan-wyjatkowy_media_10.09.2021.pdf).
- 62 Statement of the European Federation of Journalists: Poland: Journalists must be allowed access to Belarus border, 19 Nov 2021, <https://europeanjournalists.org/blog/2021/11/19/poland-journalists-must-be-allowed-access-to-belarus-border>.
- 63 Statement of the Reporters Sans Frontieres / Reporters Without Borders organization: @RSF\_inter calls on the @PLParliament..., Twitter, 3 Sep 2021, [https://twitter.com/RSF\\_en/status/1433822191817269251?ref\\_src=twsrc%5Etfw%7Ctwcamp%5Etweetembed%7Ctwtterm%5E1433822191817269251%7Ctwgr%5E%7Ctwcon%5Es1\\_&ref\\_url=https%3A%2F%2Fwyborczapl%2F77539827531055stan--wyjatkowy-reporterzy-bez-granic-gleboko-zaniepokojeni.html](https://twitter.com/RSF_en/status/1433822191817269251?ref_src=twsrc%5Etfw%7Ctwcamp%5Etweetembed%7Ctwtterm%5E1433822191817269251%7Ctwgr%5E%7Ctwcon%5Es1_&ref_url=https%3A%2F%2Fwyborczapl%2F77539827531055stan--wyjatkowy-reporterzy-bez-granic-gleboko-zaniepokojeni.html).
- 64 See.g. appeal of the UNHCR and IOM for deescalation at the Polish-Belarusian border: UNHCR and IOM Call for immediate de-escalation at the Belarus-Poland border, UNHCR, 9 Nov 2021, <https://www.unhcr.org/news/press/2021/11/618a63674/unhcr-iom-call-immediate-de-escalation-belarus-poland-border.html>.
- 65 The principle of non-refoulement is provided for in Article 33 (1) of the 1951 Refugee Convention and in Article 3 (1) of the 1984 Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.
- 66 The right to asylum derives from the Article 14 of the Universal Declaration of Human Rights and Article 1A of the 1951 Refugee Convention. It is implemented i.a. in Article 6 (1) of the 2013/32/EU Directive and Art. 28 (2) point 2 of the Act on Foreigners.
- 67 Ewelina Szczepańska, *Nielegalne przekroczenia granicy z Białorusią w 2021 r., Straż Graniczna*, 12 Jan 2022, <https://www.strazgraniczna.pl/pl/aktualnosci/9689,Nielegalne-przekroczenia-granicy-z-Bialorusia-w-2021-r.html>.
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- 69 Regulation of the Minister of Interior and Administration of 20 August 2021 amending the regulation on temporary suspension or restriction of border traffic at specified border crossing points (Journal of Laws 2021, item 1536).

- 70 Statement of the Polish Ombudsman: *Zmiany w rozporządzeniu w sprawie czasowego zawieszenia lub ograniczenia ruchu granicznego sprzeczne z Konwencją Genewską i Konstytucją RP*. Wystąpienie RPO do MSWiA, the Polish Ombudsman, 26 Aug 2021, <https://bip.brpo.gov.pl/pl/content/zmiany-w-rozporzadzeniu-w-sprawie-czasowego-zawieszenia-lub-ograniczenia-ruchu-granicznego>.
- 71 Directive 2008/115/EC of the European Parliament and Council of 16 December 2008 on common standards and procedures in Member States for returning illegally staying third-country nationals.
- 72 Cases no. II SA/Bk 892/21, II SA/Bk 893/21 and II SA/Bk 894/21.
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- 77 Interview with a forest worker, March 2022.
- 78 Julia Dauksza, „*Musisz się przebić albo cię zabiją. Teraz powiedzieli tak do mnie*”, Onet.pl, 5 Nov 2021, <https://wiadomosci.onet.pl/bialystok/kryzys-migracyjny-na-granicy-chca-wyjsc-ze-slepej-uliczki-usnarz-co-5-km/neh3wj9>.
- 79 E.g. Amnesty International Report, *Nowe dowody brutalnej przemocy służb białoruskich wobec osób ubiegających się o azyl, migrantów oraz migrantek doświadczających pushbacków ze strony Unii Europejskiej*, 21 Dec 2021, <https://amnesty.org.pl/bialorus-Poland-ue-nowe-dowody-przemocy-wobec-uchodzcow-migrantow-ek/>.
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- 82 Review of reports from humanitarian interventions.
- 83 As reported by Aleksandra Chrzanowska of the Association for Legal Intervention: Natalia Waloch, *Aktywistka z granicy polsko-białoruskiej: „Matka dała się zgwałcić żołnierzom, żeby ochronić córkę”*, Wysokie Obcasy, 25 Mar 2022, <https://www.wysokieobcasy.pl/wysokie-obcasy/7,163229,28263074,aktywistka-z-granicy-polsko-bialoruskiej-matka-dala-sie-zgwalcic.html>.
- 84 Interview with a resident of Podlasie March 2022.
- 85 Interview with a resident of Podlasie, March 2022.

- 86 Fragment of a report from a humanitarian intervention drawn up by an activist, September 2021.
- 87 Ewelina Szczepańska, *Nielegalne przekroczenia...*, op. Cit..
- 88 Response of the Border Guard to the HFHR's request to access public information.
- 89 This room was identified as a garage within the Border Guard facilities in Białowieża, and the fact that migrants were being detained there in unacceptable conditions was confirmed by the Polish Ombudsman following a notification of the HFHR: *Niezapowiedziana wizytacja przedstawicieli BRPO na granicy polsko-Belaruskiej*, Rzecznik Praw Obywatelskich, 18 May 2022, <https://bip.brpo.gov.pl/pl/content/niezapowiedziana-wizytacja-przedstawiceli-brpo-na-granicy-polsko-bialoruskiej>.
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- www.msf.org/msf-leaves-polish-border-after-being-blocked-assisting-migrants-and-refugees, and the Polish Red Cross: *Polski Czerwony Krzyż apeluje o dostęp do migrantów na granicy polsko-białoruskiej*, 30 Sep 2021, <https://pck.pl/polski-czerwony-krzyz-ape-luje-o-dostep-do-migrantow-na-granicy-polsko-bialoruskiej/>, or the Border Aid Project (“Medics on the Border”), *Medycy chcieli pomagać na granicy polsko-białoruskiej. MSWiA nie wyraża zgody*, Dziennik Gazeta Prawna, 30 Sep 2021, <https://www.gazetaprawna.pl/wiadomosci/kraj/artykuly/8259490,medycy-chcieli-pomagac-na-granicy-polsko-bialoruskiej-mswia-nie-wyraza-zgody.html>.
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