

Situation on the Polish–Belarusian border

October–November 2022

Another winter brings a threat of an increase in the number of fatalities and missing persons on the Polish–Belarusian border

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Report of the Grupa Granica: October 1 – November 30, 2022



● INTRODUCTION

Grupa Granica is an informal coalition, supported by non-governmental organizations, institutions and individuals; it has been operating continuously since August 2021. It was created in response to the humanitarian crisis on the Polish-Belarusian border. During this time, together we managed to create mechanisms for providing humanitarian, legal and medical assistance in very difficult conditions related to the humanitarian crisis, systematic violations of the law by state officials and the ongoing criminalization of migration and humanitarian aid. Activities carried out in our informal coalition made it possible to give direct support to many migrants and in some cases prevented further deaths on the Polish-Belarusian border. One of the goals of Grupa Granica is to provide reliable information about the scale of the humanitarian crisis and the situation on the Polish-Belarusian border, taking into account the perspective of migrants.

Winter brings a particular threat to the health and life of refugees. Every push-back and leaving people in the cold, without access to food, water and warm shelter, can end tragically. Especially now, it is important to take action to de-escalate violence and prevent further deaths caused by hypothermia. Recently, medical humanitarian organizations have started operating in Podlasie. Yet still, more support is needed.

From August 2021 to the end of November 2022, Grupa Granica provided humanitarian aid to at least 13,500 people. Among them there were men, women, children, people with disabilities and the elderly. For some of them, humanitarian interventions saved their health and even their lives. In a situation in which providing humanitarian aid, including medical aid, is shifted onto the shoulders of society, and the scale of the crisis is still large, we are doing our best to monitor the situation and respond to violence against people fleeing conflicts, wars, persecution and hunger.

- **Numbers – the scale of the crisis**

We keep on reminding that regardless of the way of crossing the border, as well as the purpose of travel, people who find themselves on the territory of Poland have a number of fundamental rights that must be respected in every situation. These include, above all, the right to be treated with dignity, freedom from torture, personal safety and access to humanitarian and lawful administrative procedures. These rights are also applicable to those who have crossed the border in an irregular manner. The right to asylum is a fundamental human right.

Between October 1 and November 30:

- we received requests for humanitarian aid from 1104 people,
- we managed to provide humanitarian aid to 629 people,
- we provided legal assistance to 16 people,
- we provided specialistic medical assistance to 118 people,
- we documented 200 push-backs,
- we reported that 21 people were missing.

Since the beginning of the humanitarian crisis, at least 28 deaths have been confirmed on both sides of the border (we may never know how many people actually died on the border).

- **Another winter constitutes an increased risk of more missing people and deaths at the border**

Despite the well-documented violence that migrants experience in Belarus, Polish officers continue to carry out push-backs, which is not only a violation of the principle of not returning foreigners to countries where they may be in danger (the principle of non-refoulement), but is also one of the reasons for the large number of disappearances of migrants and further deaths.

Forcing people to return to Belarus by crossing border barriers or rivers, often in extreme weather conditions and without access to humanitarian and medical assistance, destroying their phones, taking their clothes: i.e. the way push-backs are carried out brings huge risk of loss of health and even life of migrants. During 15 months of the humanitarian crisis on the Polish-Belarusian border, Grupa Granica alone received 184 reports of the disappearance of 256 people. On average, around 15 cases are registered per month. There are still 195 people listed as missing.

- **Risk of further growth of number of missing persons**

In October and November alone, we received 21 reports of missing persons. It is important to remember that these numbers are only a fraction of reality, as they come from statistics obtained only on the basis of direct information from relatives or travel companions of those missing. We probably do not know about many more who cannot be found.

- **Risk of more deaths**

We also need to take into account missing people who might have died from hypothermia and drowning, when they failed to cross rivers or swamps and to survive being pushed back, or being left in the forest in the cold without being able to call for help. To this day, we are unable to estimate the exact number of fatalities. Unfortunately, there is a big probability that it is much higher than the 28 confirmed cases. The next winter months mean more cases of hypothermia. In the last month, we provided medical assistance to 118 people.

- **Separating family members and the threat of human trafficking**

Push-backs in many cases involve separation of the person from the family or group and sending him or her back to Belarus, where people are in imminent danger. In some cases, people are taken to Guarded Centers for Foreigners, where access to telephones is severely limited. Policy of violence and lack of access to safe asylum procedures literally throws people into the hands of

smugglers. Negative consequences include increased risk of human trafficking on the Polish–Belarusian border.

- **Countries of origin of people seeking protection in the European Union**

Among those who asked for humanitarian aid from Grupa Granica in October and November, 241 people (almost 1/4 of all), were Syrians. The second most common country of origin was Yemen, with 105 people we helped. The third largest group were people from the Democratic Republic of Congo (85). Other people who crossed the border were mostly from Cameroon, Republic of Congo, Ethiopia, Sudan, Iraq, Eritrea, Côte d'Ivoire and Somalia. In the vast majority of countries mentioned, conflicts and crises last for many years, which forces more people to look for a safe life somewhere else. In many cases, the situation is deteriorating with each year, which is also influenced by global problems, such as the climate crisis. We can expect that more and more people will seek protection and a safe life beyond the borders of their countries.

- **Push-backs – the most important decisions and effects of systematic legal actions**

Polish courts have already ruled in at least eight cases that the method of returning migrants to Belarus is unlawful. In accordance with Polish, EU and international law, the officers are obliged to give migrants the access to the administrative procedures provided for them by law. If a person wishes to apply for international protection, such an application must be accepted and processed. In accordance with the international principle of non-refoulement, regardless of the willingness to apply for protection, no person should be returned to a country where they may be in danger. Due to the prevalence of violence and inhumane treatment of migrants by the Belarusian officers, returning people crossing the border to Belarus is therefore illegal, as it is associated with the danger of losing life and health of the people who were pushed back. Unfortunately, it is still a very common practice, some people are pushed back even 20–30 times. This is a deadly threat for them, especially in winter, considering that the cause of most deaths on the border was hypothermia.

- **Professional medical assistance – there is never enough of it**

Recently, some professional humanitarian organizations responded to our call for support by providing medical and humanitarian aid. In November, we started cooperation with Intersos, an Italian humanitarian organization that helps people

in crisis situations. Intersos employs medical staff who support interventions that require specialized medical assistance. Recruitment is still open.

Work of specialized rescue teams in Podlasie is particularly important due to the beginning of winter. Because of frost, snow and difficult conditions, people crossing the border are more and more often in a poor physical condition. Basic first aid is being provided during most interventions, but in some cases there is a need for more specialized help. The most common ailments are, e.g. hypothermia, dehydration, stomach problems resulting from lack of access to drinkable water, and the so-called trench foot – foot injury that comes due to the contact with the moisture and cold.

The most important court decisions and legal analyzes issued in October and November

- **Guidebook of the Helsinki Foundation for Human Rights for officers of the Border Guard**

In the context of recent court verdicts, the Foundation has published a guide in which it reminds border guards that they are obliged to refuse to carry out unlawful orders. Pursuant to the Penal Code (Article 231) for exceeding powers or failing to fulfill their duties, public officers may be punished with imprisonment of up to 3 years. If the perpetrator acts unintentionally, he or she may be punished with imprisonment for up to 2 years.

Officers may also be subject to criminal liability under other provisions of the Penal Code, in particular with regard to: exposing a person to danger, causing grievous bodily harm, mistreating a person deprived of liberty, failing to provide assistance, interfering with a rescue operation, abandoning a minor or a helpless person or unlawful deprivation of liberty. These actions are punishable by up to 12 years in prison.

Officers cannot excuse themselves by saying that they were "following orders". An order from a superior is not enough to free oneself from liability for unlawful acts. Both the officer and his commander may be responsible for the committed crime. Everyone is responsible within the limits of their own fault, regardless of the responsibility of others.

According to Art. 63 of the Border Guard Act, officers are obliged to refuse to carry out an order or other instruction if it would involve committing a crime. In such a situation, officers should report the refusal to execute the order in written form to the Commander-in-Chief of the Border Guard, omitting the official route.

The Helsinki Foundation for Human Rights offers legal assistance to officers who face negative consequences due to refusal to carry out an order.

Link to the guide:

<https://hfhr.pl/co-nowego/poradnik-prawny-dla-strazy-granicznej>

- **Decision of the Provincial Administrative Court (WSA) in Białystok of October 27, 2022 on the case of a sixteen-year-old Syrian deported to Belarus in December 2021.**

The court decided that the Border Guard broke the law by returning the Syrian to Belarus and not granting him the protection guaranteed by the regulations on unaccompanied minors. Sixteen-year-old O.A. was caught and returned to Belarus in December last year. The Border Guard thought then that the minor was under the care of another Syrian. However, they did not verify this version thoroughly. In fact, A.S. was formally a stranger for the minor. In addition, even though O.A. suffers from a chronic neurological disease, he has not received any medical consultations.

The Ombudsman has filed a complaint in this case. The court issued a decision in which it upheld the complaint of the Ombudsman, admitting it to be justified in most aspects. Court ruled that there had been a violation of the law and that O.A., as an unaccompanied minor, should have been appointed a legal representative. The Provincial Administrative Court said that the Border Guard violated the principle of non-refoulement, according to which a person cannot be returned to a country where he or she may be in danger. It was also added that the migrants had not been informed about the threats they may encounter in Belarus. Border Guards also violated Art. 4 of Protocol No. 4 to the European Convention on Human Rights, which states that persons should not be collectively expelled from the territory of the country.

- **Decision of the District Court in Warsaw from November 17, 2022 on granting compensation to a journalist stopped in the state of emergency zone.**

Three journalists, including Maja Czarnecka, were stopped in the state of emergency zone at the Polish-Belarusian border in September 2021. They were checked and identified, their equipment was taken away, they were transported to the police station and held there for a day. They were then transported to the District Court in Sokółka, where a request was made to fine each of the accused with a fine of 2000 PLN. Ultimately, the court gave the journalists a reprimand.

The Ombudsman applied for the cassation of this judgment, which was accepted by the Supreme Court. On January 18, 2022, journalists were acquitted. In the justification for the acquittal, it is written that limiting the freedom of movement on the basis of the regulation constituted a violation of the fundamental freedoms guaranteed by the Constitution.

Among others, it violated article 52 sec. 1 of the Constitution, which states that: "Everyone is guaranteed the freedom to move around the territory of the Republic of Poland and to choose the place of residence." In the opinion of the Court, the regulation under which the ban on residence was introduced "goes beyond the permissible statutory delegation".

Maja Czarnecka and her lawyer, Patrick Radzimierski, then began to seek compensation from the Polish state. The District Court in Warsaw decided on November 1 to grant compensation to the journalist.

As Patrick Radzimierski wrote, "The judgment constitutes a precedence since the court confirmed the unlawfulness of the regulation prohibiting entry to the zone."

Our main demands:

- 1) Undertaking actions aimed at preventing further deaths and disappearances of people on the border
- 2) Putting an end to illegal push-backs, which are not only a violation of Polish, international and EU law, but also a direct threat to the health and life of migrants;
- 3) Repealing the provisions of the Regulation of the Ministry of Interior and Administration from August 2021 that introduce the possibility of returning a foreigner to the state border line, and the provisions on issuing decisions on leaving the territory of the Republic of Poland introduced by the amendment to the Act on foreigners from October 2021;
- 4) Creating dignified and safe conditions for lawfully applying for international protection on the Polish-Belarusian border (also outside border crossings), with respect for international and EU law;
- 5) Complying with the procedures provided for by law, consisting in accepting applications for international protection or initiating return procedures against foreigners who crossed the Polish border in an unregulated manner;
- 6) Introducing identification mechanisms to ensure special protection for people belonging to vulnerable groups, including in particular children, victims of human trafficking, victims of torture, pregnant women, the elderly, the sick and people with disabilities;

- 7) Preventing and responding to abuses, including abuse of authority or failure to fulfill duties by officers performing service on the Polish–Belarusian border;
- 8) Providing the public with reliable information on the situation on the Polish–Belarusian border and putting an end to presenting the migration solely as a threat to state security.
- 9) Providing support to the inhabitants of the border areas and implementing recovery programs to reverse the negative effects of the humanitarian crisis.

The importance of language

There are no illegal people, there is violence that is illegal

We would like to draw your attention to the incorrectness of the commonly used phrase "the growing scale of illegal migrants". Only the scale of migration can grow, not migrants. Moreover, only the act can be defined as illegal, not the person. We will not call someone convicted of e.g. theft, illegal. This term is used very often, which justifies and supports the rhetoric of criminalization of migration. Irregular border crossing has consequences under criminal and migration law, but it does not make the migrant illegal.

A humanitarian crisis, not a migration crisis

Another term that is commonly misused is the refugee/migration crisis. This term points to migrants as the cause of the crisis. We encourage you to use the phrase "**humanitarian crisis**", which describes the unprecedented scale of instrumentalization of migrants by the Belarusian regime, and also refers to inhuman treatment, deprivation of dignity and dehumanization.

Terms like "the wave of refugees/migrants" are both semantically incorrect, dehumanizing and racist.

Language shapes reality and influences attitudes. On the example of the humanitarian crisis on the Polish–Belarusian border, we observe how the way of presenting the situation has become a tool for building social consent to violence against other people. Let's work together to counter the incitement of hatred and the manipulation with use of fear.