

# "We are afraid they will shoot at some point. And it's not a joke, it can happen even by accident".

The report on the Grupa Granica's anti-repression work carried out by the Szpila Collective and the Helsinki Foundation for Human Rights from the beginning of the humanitarian crisis (autumn of 2021) until the end of December 2022.

Situation at the Polish-Belarusian border zone in the context of criminalisation of humanitarian and medical aid during the humanitarian crisis.

Our duty is to protect human rights and prevent further fatalities and people disappearances in the border area.

We stand together with the international human rights defenders in the fight against criminalisation of saving lives.

## Contact persons:

### **Szpila Collective**

+48 785 931 935

szpila@riseup.net

### **Aleksandra Łoboda, Grupa Granica and Helsinki Foundation for Human Rights**

aleksandra.loboda@hfhr.pl

+48 665 477 656

### **Katarzyna Czarnota, Grupa Granica and Helsinki Foundation for Human Rights**

katarzyna.czarnota@hfhr.pl

+48 697 097 604

# INTRODUCTION:

The humanitarian crisis in the Polish–Belarusian border region has been ongoing since the summer of 2021. The provisions of the August 2021 Ministry of Internal Affairs Regulation introducing the possibility of returning foreigners to the state border line and the provisions on issuing orders to leave the territory of the Republic of Poland introduced by an amendment to the Law on Foreigners in October 2021 in practice lead to gross violations of migrants’ rights, such as the right to seek asylum, the right to dignity, the right to personal security and freedom, the right to freedom from torture, and even the right to life. Quasi-legalization of push-backs and their use by Polish uniformed services against migrants crossing the Polish–Belarusian border indirectly led, among other things, to a number of negative consequences, in the form of an observed increasing number of deaths, missing persons, violence. People left by the Polish uniformed forces in the forest without the ability to call for medical assistance, access to warm shelter, food, drinking water are often further exposed to violence by Belarusian officers, or smugglers and human traffickers. The risk of loss of health or life particularly affects those belonging to vulnerable groups, such as children, the elderly, and the sick and disabled. For these reasons, as of the end of September 2021, the situation on the Polish–Belarusian border is defined by human rights activists as a humanitarian crisis.

Additionally to the policies resulting in depriving migrants of their universal human rights, the Polish government also makes attempts to criminalise humanitarian aid. Activists are often detained, intimidated and misinformed, which is aimed at creating a chilling effect and discouraging people from taking action.

Informal coalition Grupa Granica, which provides an umbrella for activities related to both the humanitarian crisis in the Polish–Belarusian border area and the war in Ukraine, has brought many changes and challenges. First and foremost, we have had to come to terms with a situation in which our activities will be needed for months and perhaps even years to come. In response to the escalating conflicts, rising violence, and human rights violations on the Polish–Belarusian border, we brought vital assistance where other support usually did not reach.

Intervention responses and systemic actions were needed all the time. In response to the introduction of the state of emergency in the Polish–Belarusian border area, and later the construction of the wall and the Polish state's policy of double standards, lined with racism and xenophobia

Below there are figures showing our actions in response to the humanitarian crisis in the Polish–Belarusian border region. Behind each of these figures, there is a human story. Today, unfortunately, we are not surprised to hear of yet another push-back of young children or people with disabilities, or testimonies of torture and sexual violence. The humanitarian crisis continues. We continue to act to prevent further deaths, disappearances or further escalation of violence.

→ From the beginning of the crisis until the end of January 2022, we have helped a total of more than 14,000 people. There were certainly many more people in need of assistance. Some groups requesting help consisted of dozens of people.

- The number of missing persons reported by their families or others (only directly to the Grupa Granica) from the beginning of the humanitarian crisis until January 2023 is 296.
- Since the beginning of the humanitarian crisis (August 2021), the number of fatalities that were officially confirmed is 32. Grupa Granica is in contact with the families of some of the deceased and are trying to support them with funeral arrangements, body transport or legal proceedings.
- 10 judgments were issued by the Polish courts which confirmed that the manner in which migrants and migrant women were returned to Belarus, is a gross violation of Polish, EU and international law. This confirms our statement that push-back to Belarus is an inhumane practice that should not take place.
- Grupa Granica is an informal coalition, an umbrella that enables many people to be protected and safe. Our aim is first and foremost to de-escalate violence and fight for respect for humanitarian law, and our main slogans are 'No one is illegal', and "Providing help is legal and it constitutes our duty"

**We are presenting the report on the Grupa Granica's anti-repression work carried out by the Szpila Collective and the Helsinki Foundation for Human Rights from the beginning of the humanitarian crisis (autumn of 2021) until the end of December 2022.**

We continue to see attempts to criminalise activities of those who, in the name of human dignity and respect for human rights, tirelessly provide humanitarian assistance in the Polish-Belarusian border area. Polish law does not criminalise providing aid, but in fact, it criminalises the failure to provide aid to a person in immediate threat to life or health'. In response to the rising tide of unjustified repression, which is mainly aimed at creating a chilling effect and discouraging people from taking action, a helpline has been set up to provide free legal assistance – if you need help – call +48 785 931 935.

## 2021:

- Since the beginning of Grupa Granica's operations at the Polish-Belarusian border (autumn of 2021), the main forms of repression against activists providing humanitarian aid have been: hours-long detention in the forest, in an atmosphere of intimidation and lack of information. These actions, usually after a few hours, ended only with identity checks. We have received reports of both verbal aggression by officers (mainly TDF: Territorial Defense Force, Polish Wojska Obrony Terytorialnej – WOT), but also physical violence (e.g. forcing people to lie on the ground, face down, with their hands visible), tugging, attempts to force them to leave the vehicle. Humanitarian and medical aid workers were threatened with serious legal consequences during such actions, which had no justification whatsoever.

- Another recurring motive in 2021 was to transport people who were in the exclusion zone (including those who had the right to be there) to border guard units or police stations. This action was officially justified by identity checks activities, despite the fact that these persons already had the proper documents at the time of the check.

## 2022:

- Since the beginning of 2022, there has been an increased tendency for humanitarian activists to face more serious charges under the criminal code. We do not rule out that this could be just the beginning of the wave of repressions we will face.
- We are also concerned about the increasing aggression, sense of impunity and abuse of direct coercive measures by military and Border Guard troops against activists in the border area forests. We regularly receive reports which indicate that **the guards aim the gun at activists, humiliate them, shout vulgarities, attempt to intimidate them, and order to lie down on the ground**. There is growing concern that the uniformed officers carrying out these activities appear unpredictable, and humanitarian activists say outright that they fear that one day someone will shoot at them – if only by accident.

### Testimonies: witnesses to similar situations mentioned:

- + "We were coming back from a group, the intervention was tiring, we had to give an IV to a pregnant woman. It was already dark, but it was around 6-7 p.m. We didn't know we'd be walking back in the dark. Suddenly, out of the darkness, two men jumped out of the woods at us and screamed. It was quite unexpected, so we were a bit stumped. They glared into our eyes, one was pointing a gun at us. For that one second, I thought he might really shoot. Eventually, we shouted at each other, and we checked each others' identities. From the beginning, they were aggressive, and seemed scared. Later, they got over it a bit and started apologising to us. When we talked to them about why they acted the way they did, why they tried to frighten people like that, they told us that "it's the surprise effect that counts". I think they were men from the Border Guard, accompanied by one soldier from the Polish Army or Territorial Defense Force."
- + "The girls were returning from a humanitarian intervention, sometime in the morning. Suddenly, a man with a long gun (probably from the TDF) appeared in front of them, pointed at them, reloaded his weapon and started shouting – LIE DOWN! LIE DOWN! A young boy, probably scared himself. Then he apologised."
- + "I was coming out of the forest with two other people, we were walking along a road, a mode, it was before six in the morning. We noticed two people on the road, we were walking straight towards them. When they saw us, they started running very fast towards us. I saw that they were uniformed people, army? Border Guards? As we ran, one of the men reloaded his gun and, aiming in our direction, continued to run, shouting "Lie the fuck down".

I shouted to him very loudly "Are you fucking kidding me?!", I showed my empty hands and they were still shouting "Lie the fuck down". They were already at our side still aiming at us with guns. I said there I would not lie down and they were to show their documents immediately and say who the hell they were. The men were visibly upset, shaken. One of them handed me his documents, I can't remember his name, he was from the Polish Army. The other, masked one, did not say who he was. I showed my ID and asked if I could go home now. They apologised and did not ask anything. We walked away towards the road."

- Court decisions in the past year have shown that the main aim of repression by uniformed services against humanitarian activists in the Polish-Belarusian border region is to create a so-called chilling effect, aimed at intimidation or discouragement.
- In the vast majority of cases, courts discontinue proceedings, issue acquittals and disregard requests for pre-trial detention, while at the same time, they indicate in the wording of the decisions that the need to provide assistance to those in need should not be subject to any doubt. One person has received compensation for unquestionably unjust detention, which took place in early 2022.

## Repression in numbers. We know of:

- at least 9 humanitarian aid workers on the Polish-Belarusian border, who in 2022 were charged with organising illegal border crossings (an act under Article 264 § 3 of the Penal Code<sup>2</sup>) or aiding and abetting in the organisation of an illegal border crossing (act under Article 18 § 3 of the Penal Code in connection with Article 264 § 3 of the Penal Code). The court in 2022 decided to discontinue 2 proceedings. Another one was discontinued by the prosecutor's office. In the remaining two, a decision has not yet been issued;
- at least one pre-trial proceedings initiated in relation to related to facilitating the stay in Poland of persons who do not have the right to lawful residence on the territory of the Republic of Poland, i.e. for an act under Article 264a of the Penal Code
- at least 5 persons against whom, in 2022, the prosecutor's office submitted a motion to the court for the application of temporary arrest in relation to the above-mentioned charges (the courts did not grant any of these motions)
- at least 1 person charged with a petty offence of aiding and abetting illegal border crossing, an act under Article 49a § 2 of the Code of Petty Offences<sup>3</sup>; the court issued an acquittal in 2022.
- at least 3 journalists detained and punished for entering the zone of the state of emergency (eventually acquitted by the Supreme Court) and 5 journalists and photojournalists who were detained (for periods ranging from minutes to hours) in connection with their

work in the vicinity of the state of emergency zone, which took place in 2021. A number of proceedings are ongoing in relation to the case, including complaints filed in 2022 with the European Court of Human Rights

- persons fined for entering a state of emergency zone or the zone of temporary prohibition to stay in the border zone for the purpose of rendering assistance, in the amount ranging from PLN 20 to PLN 500 (the exact number of persons fined is not known, but due to the partial abolition of the zone, the courts are currently discontinuing more and more proceedings)
- at least 5 people who refused to accept the fine and against whom court proceedings are still pending in which they are charged with an offence for entering the temporary border zone
- 3 people to be punished in 2022 for entering a 200-metre-wide no-go zone along Poland's border with Belarus under Article 54 of the Code of Offences<sup>4</sup>. A non-final decision was made discontinuing the case. The court ruled that on this basis (or on the basis of any other provision) one cannot be punished for violation of this prohibition introduced on the basis of the special law on the construction of a wall on the border)
- 2 people detained in December 2021 near Narewka village by soldiers – the court in October 2022 found the detention and search of activist to be unjustified and irregular. Requests have been made to the court for compensation for the detention.
- 3 people detained in January 2022 by the Border Guard near Terespol – the court, following a complaint about the detention, found that it was unjustified, illegal and irregular. Claims for compensation for unquestionably wrongful detention were filed. One person has been granted compensation by the court and two are still under investigation.
- Many people have been unjustifiably detained for up to several hours in the forest, or taken to Border Guard/Police facilities, and released without charge. We see the detention of activists for several hours during humanitarian aid as one of the threats to civil rights. These people were usually not informed of their rights or the reasons for the action taken against them. If they are detained by a branch of the Territorial Defence Forces, they also do not know the names of the people carrying out such detention (they present these troops as masked men with long weapons). This constitutes, among other things, a violation of their right to contact their defence counsel. During such actions, the services demand that the activists identify themselves, state their reasons for being in the forest, they also demand that their phones be unlocked, and on more than one occasion checks have been carried out on their cars and luggage.
- At least 10 interrogations of residents of Podlasie region (the region close to the Polish-Belarus border) who were summoned as witnesses to Border Guard posts in the past year. The questions posed concerned hosting refugee persons in their homes or transporting them, suggesting participation in illegal activities.

- 8 people charged with disturbing public order (Article 51 § 1 of the Code of Petty Offences<sup>5</sup>) during a solidarity gathering in connection with the detention of humanitarian aid volunteers in Podlasie in 2022. The court discontinued the case.
- Three people are subject to legal aid in connection with a warrant sentence for disrupting public order after a solidarity demonstration with refugees held near a refugee detention centre in Lesznowola city in 2022.

In December 2021, a squad of police raided a humanitarian aid base run by the Club of Catholic Intelligentsia (polish Klub Inteligencji Katolickiej – KIK). The search and questioning of witnesses lasted from approximately 9pm until 7am. These actions were carried out on the basis of an attempted accusation of organising illegal border crossings, and the activists were questioned as witnesses. Among other things, computers, phones and documentation were seized.

The situation almost repeated itself in February 2022, when a large police force (around 6 police buses) once again appeared at the aid station. This time, after a conversation with the activists, the search did not proceed. In the end, the prosecutor's office did not charge anyone and dropped the case. In connection with the events, the Club of Catholic Intelligentsia filed a complaint to the European Court of Human Rights (pending).

We would like to remind you that any attempt to deprive migrants of the possibility to obtain humanitarian and medical assistance and the accompanying push-backs constitute a potential threat to health and life. The risk is particularly high in winter, as evidenced by recent cases of hypothermia and subsequent deaths. A total of over 30 deaths have been confirmed since the beginning of the humanitarian crisis.

**We will always respond to violence against another human being. Regardless of where they come from.**

<sup>1</sup> Art. 162 § 1 of the Penal Code: Whoever fails to help a person in a situation endangering his or her life or health by not being able to help without endangering his or her life or health, shall be subject to the penalty of imprisonment for up to 3 years.

<sup>2</sup> Art. 264 § 3 of the Penal Code: Whoever, against the law, organizes other persons to cross the border of the Republic of Poland: shall be subject to a penalty of imprisonment of 6 months to 8 years.

<sup>3</sup> Art. 49A of the Code of Petty Offences: § 1. Whoever unlawfully crosses the border of the Republic of Poland, shall be subject to a fine; § 2. Aiding and abetting is punishable.

<sup>4</sup> Art. 54 of the Code of Petty Offences: Whoever violates the rules of order issued under the authority of the Act on behaviour in public places, shall be subject to a fine of up to PLN 500 or to a reprimand.

<sup>5</sup> Art. 51 § 1 of the Code of Petty Offences: Whoever, by shouting, noise, alarm or other prank disturbs the peace, public order, rest at night or causes disorder in a public place, shall be subject to the penalty of arrest, restriction of liberty [e.g. community work] or a fine.