

Periodic report of Grupa Granica on the situation at the Polish- Belarusian border

"We keep finding more bodies in the forests. More victims of the humanitarian crisis... triggered by the apparent legalisation of push-backs and the policy of double standards".

December 2022 – January 2023

*update on the number of fatalities until 17 February 2023

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Context:

Grupa Granica has been monitoring the situation in the Polish–Belarusian border area since August 2021. Changes to the law introduced in the second half of 2021 and the practice of returning migrants crossing the Polish border to Belarus in an irregular manner have led to gross violations of migrants' rights, such as the right to asylum, the right to respect for dignity, the right to personal safety and liberty, the right to freedom from torture and even the right to life. This unlawful practice, criticised by national and international courts in judgments to date, has led to a number of negative consequences, including **an increasing number of deaths and missing persons**.

Increasing number of fatalities in autumn and winter

At the time of publication of the report, further fatalities in the border area are being reported. This report documents the number of fatalities up to 17 February – 9 bodies were found between 1 December 2022 and 17 February 2023. Only some of the dead could be identified. We are in contact with some of the families of the deceased, underlining that none of these people are accidental fatalities.

Recently, we have also received many reports from people who claim to have seen unidentified bodies while crossing the forests – both on the Polish and Belarusian sides. Numerous reports of this type indicate that there are probably many more fatalities on the Polish–Belarusian border than officially confirmed.

Since the beginning of the humanitarian crisis until 17 February 2023, **at least 37 deaths have been confirmed on both sides of the border. The total number of fatalities is unknown due to months of inaccessibility to the border area for independent investigators, aid organisations and journalists**. The causes of deaths reported so far have mostly been hypothermia and drowning.

In winter and autumn, particularly dangerous and difficult weather conditions occur along the Polish–Belarusian border. Due to the fact that the border between Poland and Belarus is mainly a densely forested and often marshy area, the very fact that migrants are left without adequate protection against hypothermia and starvation can lead to their loss of health or life. The manner in which migrants are pushed back to Belarus, most often by taking them to the border forest and forcing them to cross the dam through animal gates or border rivers, is highly inhumane.

Organisations and humanitarian and medical aid workers on the border regularly report cases of frostbitten limbs (leading in extreme cases even to amputation), food poisoning resulting from lack of access to drinking water, hypothermia, fractures and other injuries. Migrants left by Polish officials without the possibility to call for medical assistance, access to warm shelter, food, drinking water, are often additionally exposed to direct violence by Belarusian officers, smugglers and human traffickers. **The risk of loss of health or life particularly affects people belonging to vulnerable groups such as children, the elderly and people with illnesses and disabilities. For these reasons, since the end of September 2021, the situation in the Polish–Belarusian border area is defined by the human rights defenders as a humanitarian crisis.**

The construction of the border fence, which was completed in the summer 2022, did not close the migration route, but made the road more dangerous – migrants either jump over the fence or go around it, which usually means having to cross rivers, marshes or wetlands, and as a result, more people are injured along the way and require medical assistance. We see the need to put in place adequate procedures to effectively provide medical assistance to those in immediate danger of health or life. **Only through rapid response mechanisms and procedures to prevent past instances of ignoring information regarding health or life risks to migrants will further fatalities be prevented.**

Among the factors that contribute to the increasing number of missing or dead migrants at the Polish–Belarusian border, the following should be mentioned first and foremost:

- **Collective expulsions and push-backs of migrants to Belarus without initiating appropriate administrative procedures for them to examine their individual situation**, including family situation, health status or declared fear of persecution if they return to their country of origin,
- **Obstruction of access to protection procedures** resulting from the documented practice of Border Guard officers ignoring the migrants' declared willingness to apply for international protection in the course of the return procedure to Belarus,

- **Damage to migrants' telephones** by both Belarusian and Polish border services, which has been repeatedly documented by organisations providing humanitarian assistance to persons crossing the Polish–Belarusian border,
- **Failure to identify and enter into any official register** the personal data of some persons returned to the border line under the Border Regulation of the Ministry of Internal Affairs and Administration,
- **Arbitrary deprivation of liberty of migrants prior to their return to Belarus**, in the course of which no access to an interpreter or attorney is provided to detained persons and they are not allowed to inform their relatives about the detention,
- **Lack of efficient mechanisms to identify persons belonging to categories of special treatment**, including unaccompanied children, persons with disabilities, persons in poor health, pregnant women, etc,
- **Lack of a functioning mechanism for protection against human trafficking**,
- **Criminalisation of the provision of humanitarian and medical assistance**, understood as an attempt to create a chilling effect by initiating criminal proceedings against persons providing humanitarian and medical assistance to persons crossing the Polish–Belarusian border,
- **Difficult natural conditions** – people's lives are endangered due to the fact they are being left in sub-zero temperatures in a swampy area, in the Białowieża Forest,
- **Weather** with temperatures that can drop as low as -20 degrees Celsius in winter, putting migrants at risk of hypothermia and death,
- **Institutional and administrative barriers** faced by families wishing to obtain information on their missing relatives cause investigations to be launched,
- **Lack of search and rescue efforts in the border forests**, even though it is well known that many migrants use this dangerous migration route and at least some of them may have been lost in the forest or may not even have survived the journey. Activists and journalists are finding an increasing number of bodies.

Increased number of missing persons

Particularly now that conditions are so difficult, any push-back increases the risk loss of health, death or disappearance. Every day we receive reports from people whose loved ones have recently gone missing in the border area. **In total, we have received 226 reports of 317 missing persons since the beginning of the humanitarian crisis. 92 of them were found, which included 12 fatalities.** This means that we still have no information on what is happening to 225 people. Some of them are found after a few months in guarded detention centres for foreigners. In some cases, the bodies of missing persons are found. Information on missing persons that reaches individuals and organisations providing humanitarian and legal assistance in the Polish-Belarusian border area most often comes from their families or fellow travellers. **Most of the reports are received during the autumn and winter season, i.e. when the risk of loss of health or life due to remaining in the forest without access to adequate assistance is greatest.**

Due to the growing threat of human trafficking, some of the people who have found themselves in the Polish-Belarusian border area may have gone missing as a result of the deliberate actions of smugglers and human traffickers. **It is reasonable to assume that there are also unidentified fatalities among the missing persons and that their bodies are located in inaccessible forest areas, e.g. in the swampy areas of the Białowieża Forest.** It must, of course, be assumed that, in some cases, the reason for not making contact may have been the deliberate severance of relations with the family by the person sought. **However, even taking this circumstance into account, the scale of disappearances and fatalities in the Polish-Belarusian borderland should lead to a reaction from relevant state and international institutions.**

Statistics – Humanitarian interventions undertaken between 1 December 2022 and 31 January 2023

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. Since the beginning of the humanitarian crisis, we have been calling for de-escalation of violence and respect for Polish and international law. We emphasise that Poland's security is only possible if the asylum procedures stipulated by law are applied, and the rights and dignity of migrants are respected, while preventing further deaths in the border area.

Recently, we have received information about numerous groups detained on the Belarusian side. From the accounts of those who managed to get to the Polish side, it appears that very often migrants are prevented from getting out by the Belarusian uniforms guarding them. **People who stay on the Belarusian side are also at high risk coming from smuggling networks and human trafficking, and violence perpetrated by the Belarusian border guard.** This happens as a result of the lack of legal and safe avenues to seek protection.

This report focuses on the humanitarian assistance provided by Grupa Granica to people who have crossed the Polish–Belarusian border. Since the beginning of the humanitarian crisis, we have provided medical and humanitarian assistance to at least 14,500 people. However, the aid does not end in the forest. Initiatives supporting and affiliated with the coalition also provide legal, psychological and material assistance to detainees in guarded centres for foreigners, where human rights are also being violated on a regular basis. Due to the lack of systemic solutions, support is also needed for those who have left detention centres or avoided detention. Lawyers cooperating with the Grupa

Granica are also taking legal action to systemically improve the realisation of the rights of migrants in Poland.

Numbers – the scale of the crisis

Between 1 December and 31 January:

- **724 people** asked Grupa Granica for help, min. 12 of these concerned children,
- we managed to reach **278 people**,
- at least **56 interventions** required professional medical assistance,
- we received **25 reports** of missing persons at the border area,
- we registered **544 illegal push-backs**.

Between the beginning of December and 17 February, the bodies of **9 fatalities** of the humanitarian crisis on both sides of the border were found.

Those who ask us for medical and humanitarian aid, comprise both men and women, including pregnant women, children, unaccompanied minors, the elderly and people with disabilities.

Countries of origin of persons seeking protection within the European Union

Among those who asked us for humanitarian and medical aid, **the largest number of people came from Syria**. In addition, many migrants came from **Yemen, Iraq, Sudan, Afghanistan, the Democratic Republic of Congo, Ethiopia and Eritrea**. The vast majority of the people to whom Grupa Granica is providing assistance are escaping from countries where there have been crises, conflict and famine lasting for years, which made safe life impossible. People are forced to seek safety elsewhere. **We can expect the number of migrants to increase**, as living conditions are likely to get worse in many parts of the world, taking into account different crises, among others, the climate crisis and the escalating armed conflicts. Failure to take appropriate action will lead to escalating violence and more deaths.

Some of those who ask us for help are fleeing political persecution or gross human rights violations. Some are persecuted in their own countries, e.g. because of their

sexual orientation or anti-government activities. **People whose freedoms are restricted in this way have the right to seek safety elsewhere.**

Push-backs, collective expulsions and violence perpetrated by the authorities of both countries

In December 2022 and January 2023. **298 people declared that they had experienced a total of 544 push-backs.** Many people are subjected to multiple push-backs (up to dozens of times). In the past two months, **84 people declared that they had been subjected to more than one push-back.** Push-backs constitute a violation of international law and the Polish Constitution. Polish uniformed officers directly expose migrants to danger, in **violation of the international principle of *non-refoulement***, according to which no one can be sent back to a country where they may be in danger. Belarus is such a country, especially because of the violence and migrants' rights violations perpetrated by the authorities. **Given the prevalence of this phenomenon, it can be considered that the authorities knowingly jeopardise the safety of the migrants, for which they may face criminal liability.**

Push-backs are very often accompanied by violence on the part of both Polish and Belarusian services. Very often, due to lack of group support, people travelling alone face the biggest risk of being captured and treated with violence. During the period described, we received reports from, among others, a 17-year-old girl travelling alone, who reported that she had been pushed back three times despite her requests for asylum. Similar testimony came from a 16-year-old Egyptian who, according to his report, was pushed back 7 times to Belarus despite his repeatedly expressed wish to apply for international protection. There were other solo travellers who were pushed back up to 20 times each. **In total, in December and January we received reports about 23 children and minors pushed back to Belarus, of which min. 4 persons were travelling unaccompanied.**

Migrants also reported violence that they experienced during push-backs. **On the part of the Polish services, they mentioned being beaten, threatened, pepper-gas sprayed in their faces, having their clothes and food taken away, and phones destroyed or stolen.** Destroying footwear and clothing is a particularly sophisticated form of cruelty or humiliation, and in the winter months, when

temperatures drop below freezing, can cause an immediate threat to health or life. Destroying people's phones on the road poses a similar risk, as it prevents them from calling for help and contacting their families. **During the period described, 100 people declared that they had experienced violence from Polish services.**

Information from testimonies of migrants crossing the border suggest that **Belarusian services often use more brutal forms, such as beating migrants with various heavy tools (batons, sticks, metal rods).** One man described how the services beat his brother with a hammer, as a result of which he suffered from vomiting, impaired consciousness and was unable to move. **In December and January, 67 people declared that they had experienced violence by Belarusian services.**

The Polish Border Guards declared at the end of December that they had pushed back 50,000 people to Belarus since the beginning of the humanitarian crisis. Many people also declare that they were not given any documents at the time of their push-back, which also violates the law. Due to these numerous testimonies, we have reason to suspect that **there have been many more push-backs, as many of them happen outside formal procedures.**

Medical assistance

In the border area, we continue to observe difficult conditions and frequent changes in temperature. During the period described, temperatures often fell below zero degrees, which is accompanied with snowfall. **Such conditions increase the risk of hypothermia, frostbite and other injuries.** People crossing the borders are often misled.

With the support of local doctors and medics employed by other humanitarian organisations working with Grupa Granica – Intersos and Doctors Without Borders – it is possible to provide professional medical assistance. This is very important, especially in the context of the current weather conditions resulting in hypothermia and the increased number of injuries that come from crossing a 5-metre high wall. **In some cases, the hypothermia is so profound that, according to the medics undertaking intervention, if help had been given several hours later, the patient might not have survived.** We would also like to remind you that in most of the fatalities identified, the cause of death was related to hypothermia.

Since the wall on the Polish–Belarusian border was built, there are more and more injuries coming from falling from it. **These include various types of fractures, dislocations and deep wounds.** We also often observe stomach problems, resulting from the **lack of access to drinkable water, as well as trench feet, i.e. swollen, wet or frostbitten feet,** which is caused by wearing shoes in a moist environment for a long time.

Key court rulings and legal analyses issued in December and January

Report on the anti-repression activities of the Grupa Granica, undertaken by the Szpila Collective and the Helsinki Foundation for Human Rights, from the beginning of the humanitarian crisis (autumn 2021) until the end of December 2022.

The report outlines forms of repression against humanitarian activities on the Polish–Belarusian border in 2021 and 2022. Among them there is detention in the forest for hours in an atmosphere of intimidation and lack of information, verbal aggression, and physical violence. **Since the beginning of 2022, there has also been an increased tendency to charge humanitarian activists with more serious charges from the Penal code. Growing aggression and abuse of direct coercion by Polish uniformed officers has also been observed.** The authors of the report also point out that it is possible that activists will face a wave of further repression.

In the report it is also mentioned that court decisions in the past year have shown that **the main purpose of repression by uniformed services against humanitarian activists in the Polish–Belarusian border area is to create a so-called "chilling effect" aimed at intimidation or discouragement of activists.** In the vast majority of cases, courts discontinue proceedings, issue acquittals and disregard requests for pre-trial detention, while at the same time indicating in the wording of the decisions that the need to provide assistance to those in need should not be subject to any doubt.

Link to report: <https://hfhr.pl/aktualnosci/sprawozdanie-z-dzialan-antyrepresyjnych>

Amendment of the Foreigners Act voted down by the Sejm

On Thursday, 26 January, the Sejm voted through an amendment to the Foreigners Act that blatantly violates the rights of migrants, including the right to due process, effective remedy and judicial protection.

One of the most worrying changes is the **transfer of some of the competences of the Head of the Office for Foreigners to the Commander-in-Chief of the Border Guard**. These include the granting of residence permits for humanitarian reasons. In practice, this means that migrants will have to appeal against the Border Guard's decision to deport them to the Border Guard, which is a direct violation of the principle of right to appeal and the right to a fair procedure. **According to EU law, any decision on the obligation to return should be subject to independent judicial review.**

There is also concern that many decisions taken by the Border Guards are found to be wrong by the courts. For example, as the Helsinki Foundation for Human Rights points out in its position paper: "In only one month in 2019, the Voivodeship Administrative Court in Warsaw examined 37 cases concerning refusal of entry to the territory of the Republic of Poland, in which it was clearly established that the applicants had indeed indicated aspects related to their willingness to apply for international protection in Poland. In as many as 25 cases, the Court overruled the decisions of administrative authorities of both instances, i.e. the Commander-in-Chief of the Border Guard and the commanders of individual Border Guard Posts, and in only 12 proceedings did the Court dismiss the complaints, upholding the decisions on refusal of entry."

The bill also proposes **to reduce the time limit for appealing against deportation decisions by half**. The change is absurd as the migrant will have seven days instead of 14 to appeal, while deportation proceedings usually take many months. In practice, this will not speed up the whole procedure, but **will only make it more difficult to exercise the right of appeal**. We expect that the shortened time frame

will be a major setback for migrants who find the administrative procedure demanding, especially due to their lack of knowledge of the Polish language.

The proposed amendment to **repeal Article 331 of the Act, which suspends the obligation to return pending the consideration by the provincial administrative court of the complaint against the deportation decision**, is also a flagrant violation.

The amendment allows the obligation to return to be enforced before the complaint against the decision is considered by the court, thus depriving migrants of their constitutional right to a court and an effective remedy. We would like to remind that these rights apply to all persons on the territory of Poland. **We strongly emphasise that this change is unlawful as it contradicts the principle of two-instance proceedings.** The Code of Administrative Procedure explicitly states that a decision cannot be enforced before the time limit for appeal has expired.

The Act also provides for the **possibility to enter the data of migrants into the Schengen Information System even before the final decision obliging them to return is issued.**

This means that if such a person is entered into the SIS and is ultimately not obliged to return, they will suffer negative consequences until their data is deleted from the System at their request. For example, he or she may be prevented from crossing borders.

A very important violation is also the **introduction of a new legal instrument – decisions to refuse entry and stay of a migrant**, which will be issued in a single-instance procedure and will not be served on the persons concerned. The HFHR notes that the prerequisites enshrined in the law are so general that they may lead to decisions being taken in a discretionary manner.

The Helsinki Foundation for Human Rights has prepared an analysis of all the changes of the proposed amendment. We encourage you to read the position paper: https://hfhr.pl/aktualnosci/nowelizacja-ustawy-o-cudzoziemcach-opinia-helsinskiej-fundacji-praw-czlowieka?fbclid=IwAROKGG28Ptga1luN2dKzRmV8e4puG4Ef3GKDshNTsF_inVxpzKLrvfy2ugo.

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) Ensuring that Polish law complies with constitutional, international and EU standards, in particular: 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 Foreigners Act from October 2021, and reversing changes that violate the rights of migrants, introduced by the draft amendment to the Foreigners Act of 26 January 2022;
- 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) Providing assistance by state services to families searching for their missing loved ones;
- 8) Preventing and responding to abuses, including abuse of authority or failure to fulfil duties by officers performing service on the Polish-Belarusian border;
- 9) 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.

- 10) Providing support to the inhabitants of the border areas and implementing recovery programs to reverse the negative effects of the humanitarian crisis.
- 11) Using detention of migrants only as a last resort, in accordance with Polish law and human rights standards, and ensuring dignified and humane conditions while awaiting a status decision. Ensuring special protection for children, persons in poor health and victims of violence.