



Disappearances on the Polish-Belarusian border. Pushbacks as a factor in enforced disappearances in Poland



Ochrymy Podlewkowie

Suszczy Brzek

Planta

Krynica Bernacki Most

Minkówka

Grodzisk

Zablotczyża

Naręzka

Mikłaszewo

Skupowo

Stózek

687

Guszczewina

Swinoroje

Gruszyca

159

PUSZCZA

BIAL

BIAŁOWIEŚKA

Eutownia

HAJNOWKA

Budy

Teremski

NAB

175

Krynica

Zwierzyniec

19

Pogorzecze

689

Zastawa

2
Czerlonka Leśna

185

Grudki

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Disappearances on the Polish-Belarusian border. Pushbacks as a factor in enforced disappearances in Poland

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Introduction. The problem of disappearances in the context of a crisis of migration and asylum policies in Europe Katarzyna Czarnota	6
1. Methodology Katarzyna Czarnota, Olga Wanicka	12
2. Monitoring the situation from the perspective of various actors— Police, Humanitarian Organizations, and Border Guards Katarzyna Czarnota, Olga Wanicka	16
3. Assessing the scale of migrant disappearances amid the humanitarian crisis on the Polish-Belarusian border Olga Wanicka, Katarzyna Czarnota	28
4. Pushbacks in Polish law—the Border Regulation by the Ministry of the Interior and Administration and the Amendment to the Act on Foreigners Marcin Sośniak	36
5. International law and disappearances Grażyna Baranowska	50
6. Legal regulations concerning disappearances. Legal acts—national legal system Marcin Czachor	60
7. Summary and recommendations for change: Katarzyna Czarnota, Grażyna Baranowska, Olga Nowicka, Marcin Czachor, Marcin Sośniak	74
8. Annex. Access to public information	80

Introduction. The problem of disappearances in the context of a crisis of migration and asylum policies in Europe

KATARZYNA CZARNOTA

Since August 2021, a humanitarian crisis has been unfolding at the Polish-Belarusian border. In response to the increased number of individuals crossing the border outside of official checkpoints, Poland has implemented regulations and practices that allow for expedited and often undocumented forced returns of migrants. These returns frequently involve undocumented detentions, effectively restricting individuals' freedom both *de facto* and *de jure*. In most cases, migrants are forced to return to Belarus without their identities being verified and without the Polish Border Guard conducting the legally required administrative procedures. These returns are carried out through service gates in the newly constructed barrier or via marshy areas and border rivers. As a result, many people have required urgent medical attention for fractures, injuries, dehydration, hypothermia, exhaustion, and the worsening of pre-existing chronic conditions. In the absence of specialized humanitarian and medical assistance¹, aid was provided for many months primarily by grassroots organizations and local residents of the border region. In response to the ongoing crisis, new non-governmental organizations were established in the Podlasie region², and organizations such as Medics at the Border³, InterSOS⁴, and Doctors Without Borders (Médecins Sans Frontières)⁵ also began their operations there.

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- 1 More on limited access to systemic medical care: K. Czarnota, M. Górczyńska: "Gdzie prawo nie sięga. 11 miesięcy kryzysu humanitarnego na polsko-białoruskim pograniczu" (English: The Lawless Zone. Polish Belarusian Border Monitoring). Link: <https://hfhf.pl/en/publications/the-lawless-zone--12-months-of-the-polish-belarusian-border-crisis> (access date: 16.06.2024).
 - 2 E.g. Stowarzyszenie Egala, We Are Monitoring, No To Ci Pomogę, Podlaskie Ochotnicze Pogotowie Humanitarne, Fundacja Bezkrę.
 - 3 The group "Medics at the Border" was an initiative of individuals with medical backgrounds who provided medical assistance during the crisis on the Polish-Belarusian border in the fall of 2021. The operation lasted 39 days. The group was formed in response to insufficient systemic aid and the health and life-threatening conditions faced by migrants due to the actions of Border Guard officers. Despite numerous appeals, including from medical authorities, the Ministry of Interior and Administration did not grant permission for medics to enter the area that was under a state of emergency at the time. They were forced to operate outside of this zone. During their mission, they provided aid to over 200 individuals: <https://oko.press/dr-jakub-sieczko-sieczko-nagroda-anody-2022-nieocenzurowane-wystapienie-tvp1> (access date: 16.08.2024).
 - 4 An Italian organization InterSOS also provided medical assistance in 2022: <https://hfhf.pl/upload/2022/10/en-border-group-brief-july-october-2022.pdf> (access date: 16.07.2024).
 - 5 Médecins Sans Frontières (MSF) launched its first activities in the fall of 2021. In January 2022, their crisis response team was withdrawn due to repeated obstruction by Polish authorities, who blocked access to the forested border area. An official statement in English from 6 January 2022: <https://tinyurl.com/mvky4v45> (access date: 16.07.2024). MSF resumed their mission in 2023. An assessment of the situation from MSF's perspective in 2024 was published in the report: "Śmierć, rozpacz i nędza: Ludzkie koszty polityki migracyjnej

Due to the ongoing practices at the Polish-Belarusian border, the number of recorded fatalities continues to rise, yet the true scale of these deaths remains uncertain. According to the authors of the first comprehensive analysis in Poland focused on mapping deaths and their causes within the context of the humanitarian crisis, 116 deaths have been documented at the border across four countries (Belarus, Latvia, Lithuania, and Poland) from 2021 through the end of March 2024. Additionally, witnesses who were present at the border during this time have reported at least 26 more deaths⁶.

Families searching for their missing relatives in Poland often face significant administrative, geographical, and linguistic obstacles when seeking information or attempting to initiate an investigation to locate their loved ones. Given that these families usually reside in distant countries, it is challenging for them to take effective action. Furthermore, families often fear contacting the authorities of the country whose actions may have led to the disappearance. Due to histories of persecution, they frequently avoid reaching out to their own embassies or consulates for assistance. Consequently, organizations and social movements have become the primary forces in the search and rescue operations for missing persons in Polish-Belarusian border zone⁷. Since migrants who are forcibly turned back to Belarus are generally not recorded in the border guards' registers, Polish authorities routinely claim they have no knowledge of the missing persons or the scope of the issue. With state authorities not actively searching for these individuals, organizations and aid groups are left to search the forests independently. Given the continuous rescue operations in Podlasie, it is human rights defenders who have received the most information and requests for help in locating individuals whose fate is unknown and who were last seen in the Polish-Belarusian border region.

As a result, Poland now faces the challenge of developing new, long-term mechanisms to ensure that the rights of missing persons and their families are respected. In light of the growing number of reported disappearances at the border, we present this first publication aimed at diagnosing the situation, identifying the barriers families encounter when trying to report a disappearance effectively, and initiating a

UE" (English: "Death, Despair, and Destitution: The Human Costs of EU Migration Policies": <https://www.msf.org/death-despair-and-destitution-human-costs-eu-migration-policies> (access date: 16.07.2024).

6 The report, edited by Alicia Pałęcka, is available on the Survivor Foundation website: https://ocalenie.org.pl/wp-content/uploads/2024/07/PL_No-Safe-Passage.-Migrants-deaths-at-the-European-Union-Belarusian-border.pdf (access date: 30.07.2024).

7 Podlaskie Voluntary Humanitarian Rescue (Podlasie Ochotnicze Pogotowie Humanitarnie) with search and rescue teams, informal coalition of organizations and human rights defenders Border Group (Grupa Granica), Ocalenie Foundation (Fundacja Ocalenie), Human Constanta, Sienos Grupė, Gribu palīdzēt bēgļiem.

search—while advocating for the Polish state to adhere to universal standards, particularly regarding the protection of migrants’ rights and the registration and documentation of reported disappearances. We also highlight the role of state officials—specifically the Border Guard—as a contributing factor to disappearances, as well as the role of the Polish Police, the institution legally obligated to search for every missing person which however has not fulfilled this duty sufficiently. We analyse the current laws governing missing persons at the border and present recommendations for necessary reforms. Equally critical areas of focus include advocacy, further research into the phenomenon of disappearances, forensic visual investigations and strategic litigation, which over time should ensure that Poland adheres to human rights standards and actively works to prevent disappearances, including enforced ones. This requires changes in the practices of state agencies, as these institutions currently operate inadequately to protect the rights of migrants and prevent the growing number of disappearances and the identification of deceased victims.

We are also concerned that the current political discourse which centres around the “threat” in border areas and the need to defend against a “hybrid war,” leads to the instrumentalization of migration and the law. Border violence and abuses on the part of the authorities are often pushed into the background as inconvenient truths, particularly when they involve documented violence towards women, children, or those fleeing destabilized and war-torn countries. To provide broader context on the political decisions that have led to the instrumental use of migrants and the onset of the humanitarian crisis, it is important to briefly reference the 2020 Belarusian presidential election.

Following the presidential election in Belarus on 9 August 2020, Alexander Lukashenko announced that he had been re-elected for a sixth consecutive term by a majority vote. However, civil society, international organizations, and global public opinion widely rejected these results, claiming that the election was rigged and that independent media reports and any signs of criticism were suppressed by the authorities during the campaign. This situation was addressed by the United Nations High Commissioner for Human Rights⁸. Numerous irregularities were also confirmed by the Special Rapporteur of the Organization for Security and Cooperation in Europe (OSCE), who, representing seventeen member states, stated that there was “overwhelming evidence”⁹

8 *Situation of Human Rights in Belarus in the Context of the 2020 Presidential Election*, 15 February 2021, UN Doc. A/HRC/46/4 and *United Nations High Commissioner for Human Rights, Situation of Human Rights in Belarus in the Context of the 2020 Presidential Election*, 4 March 2022, UN Doc. A/HRC/49/71.

9 Office for Democratic Institutions and Human Rights, *Report of the OSCE Rapporteur to the Moscow Mechanism on Alleged Human Rights Violations Related to the August 9, 2020 Presidential Election in Belarus*, Note Verbale No. 358/2020, 5 November 2020, p. 55.

that the election was fraudulent. Demonstrations continued for several months, met with brutal responses from Belarusian authorities, including excessive use of force, mass arrests, and torture. Politically active individuals and critics of the regime were forced to leave the country in search of safety. Otherwise, they were threatened with detention and torture¹⁰ by Belarusian services actively supported in their operations by Russian Federation officials.

On 21 September 2020, the UN General Assembly's Human Rights Council adopted a resolution addressing the worsening human rights situation in Belarus during the period leading up to the 2020 presidential election and its aftermath (UN Doc. A/HRC/RES/45/1).

In 2020 and 2021, Western governments and organizations supported the democratic opposition in Belarus while also implementing political decisions to impose a series of sanctions on the Lukashenko regime. These included banning Belarusian officials from entering neighbouring countries and imposing economic, financial, and political sanctions. A pivotal moment occurred in May 2021 when Belarusian authorities, under the false pretence of a bomb threat on board Ryanair flight 4978 from Athens to Vilnius, forced the plane to divert and land in Minsk. Upon landing, they arrested two passengers: opposition journalist Roman Protasevich and his partner Sofia Sapega. This event led to another wave of sanctions, with the EU banning Belarusian carriers from entering EU airspace and using EU airports. In retaliation, the Lukashenko regime, in collaboration with Russia and private travel agencies (including from Syria and Iraq), began selling visas and airplane tickets to Belarus. These actions deceived hundreds of people, who, often lacking legal avenues to enter the European Union, purchased travel packages (often falsely promised with assurance) in an attempt to reach EU countries. As a result, a new migration route was established, financially benefiting the Belarusian authorities, smugglers, and other organized actors.

The ongoing crisis is being exploited by politicians from across the political spectrum. The politicization of forced migration and its associated challenges has led to a focus on "security," while the lack of systemic solutions and the marginalization of migrants' rights are largely ignored. As a consequence, these rights violations push migrants and their rights into social invisibility, exacerbated by the media's limited role in documenting and contextualizing these cases. Reporting on

10 <https://www.gov.uk/government/news/uk-statement-belarusian-presidential-elections-2020>; Statement by the High Representative on behalf of the European Union on the Presidential Election, 11 August 2020.

“migration crises”¹¹ frequently relies on generating “moral panic,” defined as the widespread fear that *forced migration*¹² threatens the welfare of the majority population within a nation-state. Many journalistic accounts and reports from border areas, driven by emotion, contribute to a general “fatigue from the tragedy of refugees.” The repeated discovery of bodies and reports of families subjected to brutal pushbacks are losing their immediacy, leading to less frequent coverage in the media. This shift turns the initial “moral panic” into a routine sense of normalcy.¹³ At the same time, the regulations implemented at the Polish-Belarusian border since 2021, along with the state’s singular focus on border security, have not enhanced safety. To expedite their duties, border officials often exploit the lack of a requirement to identify every individual entering the country. As a result, they are unable to recognize potential threats, such as Belarusian and Russian forces engaging in border provocations¹⁴.

Moreover, it is crucial to recognize that the law is being instrumentalized in the ongoing border crisis. The legal asymmetries at the Polish-Belarusian border are marked by the systematic and strategic exploitation of the fact that EU member states are bound by more stringent obligations than Belarus. Latvia, Lithuania, and Poland are parties to the European Convention on Human Rights (ECHR), UN human rights conventions, and EU law. The regime of Alexander Lukashenko intentionally leverages this asymmetry, making EU member states more vulnerable to legal pressure (due to the consequences of human rights violations), while significantly lowering the cost of non-compliance in Belarus, which uses disinformation and chaos-inducing tactics, such as border provocations. The instrumentalization of this crisis means that it cannot be reduced to a purely humanitarian challenge or a simple security issue. Framing the situation at the Pol-

11 The use of this term introduces the misconception that migration is the cause of the crisis, rather than the lack of an efficient and secure migration policy.

12 Migrants who, due to bad economic, socio-political or environmental situations, are de facto forced to leave their country of origin due to the deteriorating situation. In the case of the Polish-Belarusian border region, the country of origin of male and female migrants provides a rationale for referring to the phenomenon of forced migration. The authors use this term to draw attention to the differences between the experience of, for example, temporary labor emigration of citizens of European countries and the situation of citizens of countries with a different history and social, legal and economic context. The main countries of origin of people crossing the Polish-Belarusian border, for example, are: Syria, Iraq, Afghanistan, Yemen, Somalia, Ethiopia. Detailed statistics are available on the We Are Monitoring association’s website: <https://hfh.pl/publikacje/raport-gdzie-prawo-nie-siega-11-miesiecy-kryzysu-humanitarnego-na-polsko-bialoruskim> (access date: 16.07.2024).

13 Czarnota.K., Tam gdzie oko kamery i świadków nie sięga, (English: Where the eye of the camera and witnesses does not reach), text found at: <https://www.bbng.org/tam-gdzie-oko-kamery-i-swiadkow-nie-siega> (access date: 16.06.2024).

14 An example of the November 2021 provocation is presented in the Border Emergency Collective’s visual report produced with the support of the HFPC: <https://vimeo.com/user182357215> (access date: 16.07.2024).

ish-Belarusian border in black-and-white terms—whether by focusing solely on human suffering or exclusively on the necessity of defending the state border against perceived threats—is an oversimplification. This narrative ignores the fact that migrants and their rights have been manipulated by a hostile actor to exert political pressure. The instrumentalization of migrants must not result in their rights being deemed irrelevant. Strategic and geopolitical solutions are needed at the border that go beyond the predictable strategies expected by Belarus. The legal asymmetry and the exploitation of the lack of legal and safe routes to cross the Polish border are deliberately manipulated by the Lukashenko regime to undermine accusations of human rights violations in Belarus by creating situations where human rights are, in fact, violated in Poland. This tactic is not aimed solely at Poland but at the European Union as a whole. Consequently, since 2021, the governments of Belarus, the Russian Federation, and Poland have all leveraged migration issues for their domestic political agendas. Such a politicized debate stifles genuine, expert-driven efforts to explore alternative approaches.

1.

Methodology

KATARZYNA CZARNOTA
OLGA WANICKA

Assessing the Scale of Migrant Disappearances in Poland – The Context of the Humanitarian Crisis from 2021 to 2024

To achieve the main goal of this study, several research techniques were employed: in-depth interviews, telephone interviews, monitoring, and the analysis of documents and existing data (Desk Research). Requests for access to public information regarding the procedures currently applied to missing and deceased persons at the Polish-Belarusian border were submitted to several police units: the County Police Headquarters in Hajnówka, Poviát Police Headquarters in Białowieża, Voivodeship Police Headquarters in Sokółka, Poviát Police Headquarters in Białystok, the Voivodeship Police Headquarters in Białystok, Poviát Police Headquarters in Sopot, the Police Headquarters in Warsaw, and the District Police Headquarters II in Warsaw. The Helsinki Foundation for Human Rights received responses from all these police units, except for the Poviát Police Headquarters Białowieża and the Poviát Police Headquarters Białystok.

Additionally, as part of the monitoring process, requests for access to public information were submitted to selected prosecutor's offices (PO Łomża, PO Suwałki, PO Lublin, PO Zamość, PO Białystok) and two forensic medicine departments (the Department of Forensic Medicine at the Medical University of Białystok and the Department of Forensic Medicine at the Medical University of Lublin). The Helsinki Foundation for Human Rights received responses to all the questions from these institutions.

In the analysis of existing data, statistical information on the phenomenon of disappearances was obtained and verified from associations and informal groups providing emergency humanitarian aid in the Podlasie region (the informal coalition Grupa Granica, Podlaskie Volunteer Humanitarian Rescue). Information from reports on similar topics from previous years was also utilized (Grupa Granica, Ocalenie Foundation, We Are Monitoring). Four monitoring visits were conducted in the Podlasie region. A review was also undertaken of the activities of interdisciplinary teams and groups working at the border-zones to prevent disappearances and enforced disappearances, as well as groups focused on reporting deaths and disappearances of migrants at Europe's borders. Systematic monitoring of disappearances in connection with the humanitarian crisis is crucial, as it sheds light on the actions of state actors—specifically the Border Guard and the Police—and their potential involvement in enforced disappearances.

In light of the above, this report also includes an analysis of the impact of pushbacks on the number of disappearances. Pushbacks, a term often used colloquially, involve the forced return of individuals crossing the border irregularly (outside official border checkpoints) back to the

METHODOLOGY

country they came from, without any assessment of their individual circumstances. Despite the regulations adopted in 2021, which ostensibly legalized the practice of returning migrants to the Belarusian border, such actions remain in violation of both Polish and international law, as confirmed by the consistent rulings of administrative courts. These repeated instances of denying access to asylum procedures and the resulting legal chaos only deepen the ongoing crisis of the rule of law. The theoretical framework for this study is defined by the intersection of international law standards and domestic legal regulations.



2.

Monitoring the situation
from the perspective
of various actors—
Police, Humanitarian
Organizations, and Border
Guards

KATARZYNA CZARNOTA
OLGA WANICKA

2.1 Monitoring of selected police units in Podlasie as the first stage of diagnostic research

Legally, all search-and-rescue operations for missing persons on Polish territory are the responsibility of the Police and the designated criminal-investigative divisions. Each province has a department for searches and identification of persons, reporting to the Provincial Police Commanders, and ultimately to the Criminal Bureau of the National Police Headquarters in Warsaw. The definition of disappearance and the procedures for Police response when receiving information about a disappeared person on Polish territory are outlined in the Executive Order No. 48 of the Commander-in-Chief of Police dated 28 June 2018 on the conduct of the police search for a missing person and the procedure in the event of finding a person of undetermined identity or unknown corpses and human remains (hereinafter: Executive Order No. 48). A disappearance, as defined by the Executive Order, is an event that makes it impossible to determine the whereabouts of an individual and requires locating them or providing assistance to protect their life, health, or freedom. The primary goal of the initial monitoring phase was to identify potential discrepancies between the legal provisions of the order and their practical implementation in cases of reported disappearances of individuals who crossed the Polish-Belarusian border irregularly, as well as to identify any barriers to conducting search operations. In essence, the monitoring sought to verify whether, in practice, the principle of the universality of law is being upheld, ensuring protection for all persons who disappeared on Polish territory, regardless of their legal status, origin, or how they crossed the border.

In January 2024, researchers from the Helsinki Foundation for Human Rights conducted the first phase of monitoring at selected police stations in Podlasie, focusing on search-and-rescue activities in response to reports of missing migrants, as well as monitoring actions taken when the remains of a foreigner were found in the region. The monitoring covered two police stations, in Hajnówka (KPP) and Sokółka (KPP), along with the Provincial Police Headquarters in Białystok (KWP)¹⁵. The issues addressed during the monitoring were divided into thematic areas and primarily concerned the following: procedures for receiving and registering reports, the scale of the phenomenon (number of investigations and their outcomes), actions taken in connection with search operations (including the involvement of NGOs), access to, and the scope of, information on the progress of investigations available to those reporting disappearances, procedures followed when migrant bodies (including unidentified bodies) were found, and the collection,

¹⁵ KPP - Komenda Powiatowa Policji - (Police District Domain); KWP - Komenda Wojewódzka Policji (Regional Police Headquarters).

preservation, storage, and potential comparison of DNA profiles with those of family members residing outside Poland.

The monitoring involved semi-structured interviews, where researchers used a checklist to gather information on the compliance of police actions with the regulations contained in the Executive Order No. 48. Each interview lasted between 40 to 90 minutes and was conducted with the commanders of the monitored stations.

The selection criteria for the monitored stations were based on prior research, allowing for the identification of:

- The unit most frequently receiving disappearance reports, which also often collaborates with grassroots search-and-rescue groups seeking assistance in finding or identifying bodies (Podlaskie Volunteer Humanitarian Rescue) (KPP Hajnówka),
- The operational territory and the scope of duties resulting from it (KPP Hajnówka, KPP Sokółka, KWP Białystok),
- The presence of physiographic factors that increase the risk of disappearance and death in the Białowieża National Park area for individuals who have crossed the border irregularly and may have gone missing in the park (KPP Hajnówka).

Additionally, the broader context included data on 374 migrant disappearances (which were verified as part of the project) and unidentified remains (not belonging to Polish citizens) found by locals, passersby, activists, and officials in Podlasie. In several instances, disappearance reports were submitted to the aforementioned police units.

2.2. Main findings

Police units are legally obligated to conduct search-and-rescue operations for any person who goes missing within Polish territory, regardless of their status, country of origin, or other factors. The responsibility for these operations, including their supervision and coordination, lies with officers in the criminal investigation divisions. It should be noted that the Police do not have dedicated personnel for these tasks; instead, officers conduct searches in response to reports as part of their other duties, with preventive units operating under similar principles. Even before the emergence of migration-related challenges, assessments of police actions in this area were critical. In 2014, the Polish Supreme Audit Office (NIK) conducted an audit to evaluate whether a cohesive and effective system for searching for missing persons had been organized and implemented by the appropriate authorities and institutions in Poland. Although this audit was conducted a decade ago, its findings¹⁶ are relevant to the broader context of the current issue. Even ten years ago, the systemic solutions implemented did not fully ensure cohesive actions in conducting search operations for missing persons. According to NIK, the most significant irregularities included:

- Incorrect classification of search levels, which impacted the scope of actions taken.
- Failure to undertake actions as required by established procedures, such as not accepting reports, not publishing images of missing persons, not conducting checks in hospitals and other locations, and not collecting biological material.
- Problems in cooperation between the Police and entities that influence the effectiveness of search operations, particularly municipal and local guards and volunteer search-and-rescue groups.
- Lack of oversight over search activities.
- Problems in cooperation between the Police and the Prosecutor's Office in identifying unidentified bodies.
- Insufficient training of Police officers in the field of search operations for missing persons.

These irregularities significantly affected the effectiveness of search operations for missing persons.

¹⁶ NIK o poszukiwaniu zaginionych (English: Supreme Audit Office on the search operations for the missing persons). Report dated 15 April 2015: <https://www.nik.gov.pl/aktualnosci/nik-o-poszukiwaniu-zaginionych.html> (access date: 06.06.2024).

NIK identified several causes for these issues:

- Inadequate training of officers.
- Unreliable actions.
- Lack of knowledge and appropriate equipment.

According to data from the ITAKA Foundation¹⁷ (collected for the aforementioned NIK report published in 2015), 30 percent of families of missing persons (mostly Polish citizens) had difficulties reporting the disappearance to the Police. Additionally, NIK found that officers did not always take action after receiving a report—sometimes, the first actions were taken only after 200 days, and in some cases, no actions were taken at all.

After analysing the challenges faced by those reporting the disappearance of a migrant, the research team concluded that the humanitarian crisis has presented the Police with new challenges. Furthermore, the previously identified areas of irregularities overlap with current ones, exacerbating the problems in responding to the disappearances of migrants. Examples of this include cases where reports and information on disappearances submitted by human rights defenders and HFPC representatives were ignored, leading to the refusal to conduct search-and-rescue operations, verification actions, or registration in the National Police Information System. This also prevents families of disappearance victims from accessing procedures for identifying deceased migrants through DNA verification. It is important to note that Police officers justify their unreliable actions by stating that there is no evidence that “the foreigner crossed the Polish border” (a determination often made with the Border Guard, which, as mentioned earlier, does not register data for the majority of individuals crossing the border and being returned to Belarus).

Other issues identified by HFPC that directly impact the disappearances or enforced disappearances of migrants include:

- Commanders and the Central Bureau for Missing Persons of the National Police Headquarters show a lack of knowledge regarding

¹⁷ ITAKA Foundation was established in 1999. It is the only organization in Poland to provide comprehensive support and help in a situation where somebody goes missing. However ITAKA does not conduct search and rescue operations for migrants. The scope of their activities is mainly focused on cooperation with the Police, publishing information through social media, printing posters and providing psychological support. Protection mechanisms are mainly designed to assist Polish citizens. Website: <https://linktopoland.com/en/itaka-foundation-centre-for-missing-people/>

the regulations under which the Border Guard operates at the Polish-Belarusian border and are unaware that, for objective reasons, the Border Guard is currently not a reliable source of information on who crossed the border and when.

- The lack of actions taken by criminal police investigative units in response to the steadily increasing number of missing persons and fatalities in Podlasie since 2021 significantly hinders independent investigations into the causes of deaths and disappearances and holding perpetrators accountable.
- There are no effectively functioning protection mechanisms in Poland for victims of human trafficking, people with disabilities, or unaccompanied minors in Podlasie. The lack of legal entry routes leads to increased smuggling activity and the threat of human trafficking.
- There is a lack of knowledge and training on migrants' rights and the phenomenon of forced disappearances (for search-and-rescue officers and commanders).
- Inconsistencies in the actions taken by officers from different police stations when receiving reports and the types of actions taken. The farther a Police unit is located from Podlasie, the less likely it is that a report will be accepted, and the person reporting will receive written confirmation.
- The Police do not take advantage of the experience, resources, and equipment of informal search-and-rescue groups that have emerged in Podlasie since 2021 (including the Podlaskie Volunteer Humanitarian Service).
- Reports of life-threatening situations are sometimes ignored, leading in some cases to fatalities due to the failure to take action.
- The unreliability of police officers' actions stems from a lack of knowledge regarding the acceptance of reports and the officers' duties as outlined in Executive Order No. 48 of the National Police Headquarters.

The above-mentioned issues apply both to the units monitored in Podlasie and police stations in Sopot and Warsaw, where HFPC representatives submitted reports containing information about missing persons in Poland and the need to take action.

2.3. Perspective of human rights defenders and grassroots search-and-rescue teams

The majority of reports about disappearances—understood as the loss of contact and the inability to obtain information on the whereabouts of a person who had crossed or intended to cross the Polish-Belarusian border—were made to the County Police Headquarters in Hajnówka. These reports were filed by human rights activists who, in response to the humanitarian crisis, established a grassroots initiative led by residents of Podlasie called the Podlaskie Ochotnicze Pogotowie Humanitarne—POPH (English: Podlaskie Voluntary Humanitarian Service). Information about the circumstances of the disappearances often came from the families of the missing persons residing in their countries of origin (e.g., Syria, Iraq, Afghanistan, Yemen, Somalia, Sudan). These families would provide details about the journey (usually organized with a visa to Belarus and an intention to reach the Polish border) and the circumstances in which contact with their relatives was lost. Disappearances were also reported by witnesses (human rights activists providing humanitarian assistance) who observed actions taken by the Border Guard against migrants, after which the fate and location of the detained person became unknown and could not be determined. In some cases, those providing humanitarian assistance attempted to contact the Border Guard unit to which the person had been taken, unsuccessfully requesting the possibility of contacting the migrant. In many cases, this was denied even when humanitarian workers had signed power of attorney documents from the migrants. There were also instances where migrants themselves re-established contact after being forcibly returned to the border line. During interviews, those providing humanitarian assistance indicated that despite assurances from the Border Guard, individuals who had previously declared their intention to seek international protection were subsequently transported to Belarus. There was no consistent pattern regarding the period during which the fate of a missing person remained unknown—some indicated it was from several days to a few weeks, while in other cases, the missing persons remain unaccounted for. The Helsinki Foundation for Human Rights remains in contact with the families whose relatives disappeared in 2021, 2022, and 2023, and whose fate is still unknown. It is important to emphasize that in the vast majority of cases, the fate and location of the found persons were not determined by the actions of state officials; rather, it was the migrants themselves who re-established contact with their families from Belarus. Another concerning situation, noted by humanitarian workers, involves individuals who were detained after crossing the border irregularly (i.e., outside official border crossings) and were in poor health, requiring medical assistance. In hospitals in Podlasie, it was common practice for Border Guard officers to monitor migrants, stationing guards in hospital corridors to prevent contact between the patients and their legal representatives. Particularly alarming are cases where, after medical assistance was provided and a list of recommendations for further treatment was issued (e.g., a broken leg or foot), the person was forcibly returned to the border and forced to cross

to the Belarusian side. It should be noted that, according to Article 28a of the Act of 15 April 2011 on Medical Activity (Journal of Laws of 2011 No. 112 item 654), a healthcare entity operating a hospital is obliged to report the admission or death of a patient whose identity cannot be established or confirmed based on identity documents to the telephone number, fax number, or email address provided by the Police unit—no later than within 8 hours of admission or death. The described practice of Border Guard officers towards patients (who, according to the officers, are under the jurisdiction of the Border Guard) as described above, in reality, hinders families, close ones, or the person reporting the disappearance from determining the whereabouts of the individual and making contact, which can take several weeks. At the same time, it is important to emphasize that if the Police were to act efficiently and reliably by accepting reports and taking actions in accordance with the provisions of Executive Order No. 48 of the National Police Headquarters of 28 June 2018, the likelihood of¹⁸ identifying the whereabouts of the disappeared person would significantly increase.

Relatives and legal representatives of the disappeared persons often learned about the person's removal to Belarus after a stay in a Polish hospital (and the fact of being in a Polish hospital) from the migrants themselves who were forced to return to Belarus. It is also important to note that it is not possible to precisely determine the scale of undocumented actions taken by Border Guard officers. The regulations in force are misinterpreted by the Border Guard (with the apparent legalization of pushbacks¹⁹), resulting in the creation of a grey area where the possibilities of documenting officers' actions and holding them accountable are very limited. The main reason for the inability to document the actions of state officers is the restricted access to the border area imposed on organizations monitoring human rights violations, humanitarian aid workers, and potential witnesses. In the context of reporting disappearances, it is worth noting that some representatives of non-governmental organizations have refrained from reporting due to the loss of trust in Polish state officers after successive stages of the humanitarian crisis.

In the context where the burden of providing humanitarian aid and monitoring the situation on the Polish-Belarusian border was shifted onto society which since 2021 has organized and built mechanisms for

18 The practice of Border Guard officers towards hospital patients is described, among others, in the following article: <https://oko.press/prawo-do-ubiegania-sie-o-status-uchodzcy-fikcja> (access date: 16.07.2024).

19 An attempt to explain the concept of “apparent legalization” has been undertaken by the authors of the report “Gdzie prawo nie sięga. 11 miesięcy kryzysu humanitarnego na pograniczu polsko-białoruskim” (English: “Where the law does not reach. 11 months of humanitarian crisis in the Polish-Belarusian borderland”): <https://hfhr.pl/publikacje/raport-gdzie-prawo-nie-siega-11-miesiecy-kryzysu-humanitarnego-na-polsko-bialoruskim> (access date: 16.07.2024).

humanitarian assistance, it is impossible to precisely determine the scale of disappearances. The absence of official monitoring bodies and the lack of documentation by the Border Guard prevent an accurate assessment of the extent of violations.

Cases of pushbacks, disappearances, and deaths of migrants on the Polish side of the border are usually documented by the media, aid organizations, humanitarian workers, and human rights activists. Through efforts to file search operation requests with local police stations in Podlasie, several cases can be referenced, describing the situation from two perspectives: the individuals reporting the disappearances and the commanders of the stations to which the reports were submitted. Between the autumn of 2021 and 15 April 2024, the County Police Headquarters in Hajnówka received a total of four reports of missing migrants. None of these reports were classified at the highest search level, despite situations where the missing person was still alive at the time of the report, and the person reporting had informed the authorities about poor health conditions, chronic illness, or the exhaustion of the person being searched for. Additionally, NGO representatives tried to report over 10 cases of disappearances. Particular attention should be given to those cases that exemplify failure to take appropriate actions, as well as the unreliability of the responses.

2.4. Disappearance reports leading to the discovery of a deceased person

Based on interviews with representatives of search-and-rescue teams operating within the Podlaskie Voluntary Humanitarian Service, researchers from the Helsinki Foundation for Human Rights identified three cases where attempts were made to mobilize police officers to conduct search-and-rescue operations to save the lives of migrants. In all three cases, the person being searched for died, and their remains were found through continued searches by human rights defenders and POPH teams.

The first case concerns the death of Mahlet Kassa, a 28-year-old woman from Ethiopia who was being searched for by human rights defenders at the beginning of 2023. After irregularly crossing the border, she was in poor health. She remained in the forest while her companions sought medical help. As a result, they were returned to Belarus. The police ignored²⁰ the information about the need to initiate search operations and did not register the case as a disappearance. Officers entered the forest with flashlights, and after calling out, ended their activities.

²⁰ This case was described in the article: <https://bialystok.wyborcza.pl/bialystok/7,35241,29522102,etiopka-ktora-zmarla-pod-hajnowka-miala-na-imie-mahlet-rodzina.html> (access date: 16.07.2024).

The individuals accompanying Ms. Kassa immediately informed Border Guard officers about her location and the need for assistance. According to the foreigners' accounts, these officers ignored the information. As mentioned, those reporting were immediately returned to Belarus²¹. No search operations were initiated, and no measures were taken to find the woman and prevent her death. Her remains were found several days later by a member of the POPH search-and-rescue team.

The second case of a disappearance reported to the police officers occurred in February 2023. Documented communication between a member of the POPH search-and-rescue team and a police officer indicates that actions were taken inadequately. Additionally, it should be noted that when the first attempt was made to report this disappearance to the Police, the person reporting was told to report the matter to the Border Guard instead of the Police. Human rights activists who undertook the search operations and indicated that the missing person was located in the strict reserve of the Białowieża Forest were not granted permission to enter and conduct search-and-rescue operations. The documented unsuccessful report of the disappearance, poor weather conditions on the day of the report, the prevention of entry into the strict park area, and the lack of action by the officers led to a situation where, a month later, the remain of the missing person was found in the Strict Reserve of the Białowieża Forest by members of the POPH search-and-rescue team (a documented photograph shows the deceased lying next to a burned-out fire). Considering the cause-and-effect relationships between the described events, it is misleading to claim that the person died solely from hypothermia, as this closes the investigation into the reasons the person was exposed to hypothermia. The remains were transported to the country of origin with the organizational assistance of POPH.

In the last discussed case, the disappearance of a diabetic Syrian citizen was reported. In this instance, the information provided about the poor health condition and adverse weather conditions should have warranted the classification of the disappearance at the first search level (activated when there is a risk of immediate threat to life or health). The incident occurred in October 2023. In the report, human rights activists from POPH highlighted the circumstances, noting the person's poor health and offering to support the officials in the search operations. According to information obtained by the Helsinki Foundation for Human Rights via public information request, the County Police Headquarters in Hajnówka, handling the case, indicated that none of the reported disappearances had been classified at the first level. It can be assumed that with a different decision—resulting in the immediate

21 Pushback case managed by the HFPC Migration Department.

deployment of search-and-rescue teams—the missing person could have been found in time, preventing their death.

Finally, it is worth noting that prosecutors have not yet classified cases of migrant deaths at the border as acts described in Article 155 of the Penal Code (involuntary manslaughter). Considering the cause-and-effect relationship between the actions of Border Guard officers and the consequences thereof, criminal law experts working on the report suggest considering Article 162 of the Penal Code (regarding the failure to provide assistance to a person in a situation posing an immediate danger to life or serious harm to health), particularly in cases where a report of a disappearance or a situation indicating that a person was in life-threatening danger was ignored by Police or Border Guard search-and-rescue groups (as occurred in several cases). When officials ignore the need to undertake search-and-rescue actions and the person left in the forest subsequently dies, hypothermia is merely a result of the situation, not the sole cause of death.

During the research process, none of the monitored police organizational units confirmed whether officers verify the legality and correctness of Border Guard actions involving the return of foreigners to the border line and the potential risk of disappearance during the search operations.



3.

Assessing the scale of migrant disappearances amid the humanitarian crisis on the Polish- Belarusian border

OLGA WANICKA
KATARZYNA CZARNOTA

3.1. Verification process

To achieve the research goal of estimating the extent of migrant disappearances, the research team first analyzed data provided by organizations and individuals engaged in humanitarian aid in the region (mentioned in the introduction). This analysis unfolded in two primary stages: the first (15 September – 31 December 2023) involved categorizing and verifying information concerning the number of missing persons, while the second stage entailed developing a database that was reviewed monthly. Even now, humanitarian organizations continue to receive reports of disappearances and requests for help in locating those who have lost contact due to the ongoing crisis. The lack of an active governmental body responsible for monitoring the scale of these disappearances and holding accountable those whose actions may contribute to them remains a significant factor potentially leading to more migrant disappearances.

At the initial stage, the team examined approximately 400 unstructured and uncategorized reports of individuals reported missing, either temporarily or permanently, from the autumn of 2021 to August 2023. After eliminating duplicates, they worked on verifying 374 cases of lost contact involving 80 women and 284 men, including 39 minors and 149 adults. Of these, 174 reports indicated that the disappearances likely occurred in Poland (130 people), Belarus (36 people), Latvia (3 people), Lithuania (2 people), or Ukraine (3 people). In 39 cases, the exact location of the disappearance was not specified.

Other missing data included names (33 people), age (186 people), gender (10 cases), nationality (46 people), and contact information of the person reporting the disappearance (81 cases). Contact details for follow-up were available in 279 cases. Initial contact was made via WhatsApp, Signal, e-mail and, in some instances, text messages or direct communication with individuals associated with organizations or initiatives working on migrant rights in Poland.

3.2. Scope of disappearances

The authors of this report define the scope of migrant disappearances on the Polish-Belarusian border as the number of confirmed instances of lost contact and unknown fates of migrants who disappeared in the border region. The loss of contact or the inability to obtain information about a person's fate or actions taken against them within Poland is considered within the specific context of the humanitarian crisis on the Polish-Belarusian border. The research team did not explore migrant disappearances related to human trafficking in Poland or the emerging labour exploitation issues. The primary focus was on pushbacks and potential undocumented actions by Polish state representatives. Never-

theless, some recommendations will apply generally to all non-citizens residing in Poland, regardless of their country of origin or legal status.

It is important to note that the emergency humanitarian work of responding, at all hours, to calls for assistance—providing water, food, warm clothing, medical care, and legal support to those in Polish border forests—is an arduous and demanding task. NGOs and human rights activists prioritize the protection of migrant lives, especially as the number of deaths among migrants continues to rise²².

Humanitarian aid is defined, among other sources, in the European Consensus on Humanitarian Aid:²³

“The objective of EU humanitarian aid is to provide a needs-based emergency response aimed at preserving life, preventing and alleviating human suffering and maintaining human dignity wherever the need arises if governments and local actors are overwhelmed, unable or unwilling to act. EU humanitarian aid encompasses assistance, relief and protection operations to save and preserve life in humanitarian crises or their immediate aftermath, but also actions aimed at facilitating or obtaining access to people in need and the free flow of assistance. EU humanitarian assistance is provided in response to man-made crises (including complex emergencies) and to natural disasters as needed.”

3.3. Barriers to effective search operations

Most NGOs in Podlasie emerged after 2021 in response to the increasing deaths of sick and injured individuals due to pushbacks. Humanitarian workers, journalists, and private citizens also made independent efforts to locate missing persons, often relying on limited information about the aid provided. In some cases, investigations led to the identification of missing persons who had been buried in Poland. One notable example is the intervention by Piotr Czaban

22 The report, edited by Alicja Pałęcka, is available at: https://ocalenie.org.pl/wp-content/uploads/2024/07/PL_No-Safe-Passage.-Migrants-deaths-at-the-European-Union-Belarusian-border.pdf (access date: 30.07.2024).

23 The European Consensus on Humanitarian Aid outlines the policy framework for the EU when acting in response to humanitarian crises. The Consensus sets out why, how, and when the EU acts. Signed by the Council, European Parliament and European Commission in 2007, the Consensus aims at improving the coherence, effectiveness, and quality of the EU’s humanitarian response. The overriding objectives enshrined in the Consensus, are: preserving life, preventing and alleviating suffering, and helping to maintain human dignity in the face of natural hazards and human-induced disasters. It should be emphasized that, in the context of the Polish-Belarusian border and the use of so-called pushbacks, the responsibility for providing support, emergency aid, and protection—aimed at saving and safeguarding lives during a humanitarian crisis or immediately thereafter, as well as facilitating or gaining access to those in need and ensuring the free delivery of aid—has been shifted to civil society. Link to document: https://civil-protection-humanitarian-aid.ec.europa.eu/who/european-consensus_en. (access date: 16.07.2024).

which enabled a person buried as “Unknown” to be identified by their family. As part of its project, the Helsinki Foundation for Human Rights observed the barriers faced by families attempting to report a disappearance. A major challenge was the language barrier, which made it nearly impossible for families to effectively and independently report a disappearance, even when they were able to travel to Poland and try to report the case in person. Families attempting to report disappearances from their home countries faced additional administrative barriers, including a lack of knowledge among police officers about the proper procedures. Another factor increasing the risk of disappearance is the separation of families during forced returns to the border by Border Guard officers, an event that has occurred multiple times and has led to legal actions.

The vast majority of those reporting lost contact with loved ones did so from outside Poland, in countries where access to legal avenues for independent reporting was limited. As previously mentioned, in some cases, individuals whose relatives are missing may be afraid to report the disappearance through state officials, such as at local police stations, due to the situation in their home country. This situation particularly affects those whose motivation for leaving their home country was to escape persecution or the risk of enforced disappearance. The first step involved determining whether the person in question remained unaccounted for and if their fate was known. If the disappearance likely occurred on the Polish-Belarusian border, the reporting individuals were informed about the possibility of assistance in filing a missing person report in Poland, receiving support from the Itaka Foundation, and obtaining legal advice from the Migration Department of the Helsinki Foundation for Human Rights.

As a result, information was collected about missing persons who were found alive, those who were found deceased, and those who remain unaccounted for.

3.4. Deceased migrants

Another category of missing persons related to the instrumentalization of migration and the humanitarian crisis are those identified as deceased victims. Following the verification of 374 disappearance reports and the analysis of documents provided by the families of missing persons during the project, 31 deaths were confirmed (comprising three women and twenty-six men). In two cases, gender identification was not possible due to the condition of the remains. Identifications were made based on specific distinctive features. The deceased individuals were from Afghanistan (6 people), Yemen (5 people), Ethiopia (4 people), Syria (4 people), Sudan (3 people), Iraq (3 people), Egypt (1 person), Nigeria (1 person), and Turkey (1 person). For three individuals, the country of origin could not be determined. The bodies were discovered

by humanitarian aid workers, migrants, or law enforcement officials in Poland (16 cases), Belarus (14 cases), and Latvia (1 case).

In some instances, the only evidence of death was a document issued by the embassy of the deceased person's country or media reports. There were occasions when the information about the context and cause of death was incomplete—families had no access to detailed information about the circumstances of the death (e.g., they were informed by fellow travellers—other migrants—who sent a photo of the deceased person found in Belarus). In some cases, families received a burial certificate or information through their country's embassy in Belarus or Russia. In eight cases, confirmation of death came from the family. Two identifications of deceased victims were made in Poland (by the family), while three individuals were identified through information available in Polish and Belarusian media or on the Belarusian Border Committee's website. In other cases, families refused to share detailed information on the verification process of the death. NGOs are also working to update the list of deceased victims.

3.5. Disappeared persons who re-established contact with relatives or were found alive

Through phone contact with those who reported disappearances, it was determined that 120 individuals re-established contact with their families (27 women and 93 men). None of these individuals were found through search-and-rescue operations conducted by Polish Police or Border Guard officers.

Re-establishing contact often occurred within the first four days or, in some cases, two weeks after the disappearance. By verifying the status of individuals who re-established contact, it was found that 59 of them were located in Poland (including 12 in a guarded centre for foreigners, 6 in hospitals, and in 41 other cases, families declined to disclose where the person was found). The remaining 40 individuals reconnected with their families from Belarus (30 people), Lithuania (4 people, including one in a guarded centre), Latvia (5 people, including three in a refugee centre), and one person from Russia. In other cases, no information is available on the exact circumstances under which contact was re-established. Those who were contacted about their reports often expressed concerns about their safety, and in accordance with their wishes, this information was not recorded.

It is also noteworthy that the individuals who temporarily disappeared due to the crisis in border policies²⁴ enabling safe passage to EU coun-

²⁴ The debate on the crisis, understood as a failure of migration policy, has been gaining momentum for at least a decade. It is also crucial how the issue is defined: there is a shift away from the term

tries through the borders of Poland, Belarus, Lithuania, and Latvia originated from countries plagued by conflicts, prolonged instability, and, in some cases, issues of forced disappearances (Syria – 48 people, Iraq – 12 people, Yemen – 10 people, Cuba – 9 people, DR Congo – 4 people, Egypt – 4 people, Eritrea – 3 people, Somalia – 3 people, Sudan – 3 people, Ethiopia – 2 people, Cameroon – 2 people, Afghanistan – 1 person, Gambia – 1 person, India – 1 person, Congo – 1 person, Mali – 1 person, Palestine – 1 person, Tunisia – 1 person). For 13 individuals, no information regarding their country of origin could be obtained.

Due to a lack of trust in institutions or law enforcement and experiences of violence, the information provided about the circumstances of discovery was often brief.

Notably, since the project began in September 2023, the Helsinki Foundation for Human Rights has recorded new reports of disappearances. By the end of June 2024, the Foundation had received information on 57 additional missing persons. The monthly updates, conducted since March 2024, allowed for the verification of the status of all newly reported missing persons as well as those initially included in the original database. As of 30 June 2024, it was determined that the status of 151 individuals previously reported as missing, with whom the Helsinki Foundation for Human Rights had been in contact, could not be confirmed. However, the status was verified and confirmed in 11 cases, with some of these individuals represented by the Helsinki Foundation for Human Rights. Meanwhile, the number of individuals who independently re-established contact with their families increased from 120 to 133 as of 30 June 2024. Sadly, another deceased individual was identified, bringing the total number of confirmed deceased persons, previously reported as missing, to 32 by the end of June 2024. As mentioned earlier, in 95 other cases, the Foundation was unable to contact and verify information about the ongoing disappearance or recovery due to inactive contact details for those reporting the disappearance, which hindered further communication. The verification process also encountered difficulties in obtaining power of attorney from those reporting the disappearance, primarily due to geographic and technological barriers (e.g., lack of access to printers). However, it is noteworthy that online methods of contacting courts and services are becoming increasingly popular, which is significant for the potential future implementation of an online system for reporting and verifying disappearances to the police.

“migration crisis” towards framing the situation as a crisis of EU mechanisms in providing legal and safe routes for seeking international protection. Researchers intentionally use this terminology. In this context, the perspective of UN expert François Crépeau is particularly insightful: <https://www.ohchr.org/en/press-releases/2015/08/migrant-crisis-lets-not-pretend-europes-response-working-un-rights-expert> (access date:16.07.2024).

To date, families of missing persons could seek help from local offices of the International Red Cross and Red Crescent Movement (ICRC), which would relay information about the disappearance and its context to the local Polish Red Cross (PCK). Research conducted during the project, however, revealed that this reporting method is not widely used due to geographic barriers (long distances to ICRC offices), limited financial resources, logistical challenges in reaching the ICRC, and the limited availability of this reporting option. It should be noted that the ICRC and the Polish Red Cross (PCK) have very limited capacity to conduct search operations. Nevertheless, PCK's involvement can be beneficial, particularly concerning deceased victims and support with access data from state officials.

In conclusion, following the verification of 374 reports of missing migrants related to the humanitarian crisis, submitted by human rights defenders and organizations involved in humanitarian aid since 2021, the Helsinki Foundation for Human Rights determined by 30 June 2024, that 133 individuals had been found alive, 32 deceased, while the current status of disappearance or recovery for 151 individuals could not be confirmed, despite initial contact with those who reported the disappearance. Fifty-eight individuals remain unaccounted for; however, their families did not always choose to pursue further actions or seek assistance in reporting the disappearance to the Polish police. In 11 cases of active disappearance, the families of the missing persons are receiving legal assistance from the Helsinki Foundation for Human Rights. The confirmed missing persons are citizens of Syria, Cameroon, India, Somalia, and Afghanistan.



4.

Pushbacks in Polish law— the Border Regulation by the Ministry of the Interior and Administration and the Amendment to the Act on Foreigners

MARCIN SOŚNIAK

In response to the humanitarian crisis on the Polish-Belarusian border, the Polish government introduced new legal regulations aimed at ostensibly legalizing simplified procedures for returning foreigners beyond Poland's border. First, in August 2021, through an amendment to the regulation issued by the Minister of the Interior and Administration on 13 March 2020, concerning the temporary suspension or limitation of border traffic at specific border crossings (Journal of Laws 2020, item 435, as amended, hereinafter referred to as the Border Regulation or the Regulation), a practice known as pushbacks, which involves the immediate return of foreigners to the border line, was incorporated into Polish law. Soon after, in October 2021, the Sejm amended the Act on Foreigners by introducing a new procedure for issuing decisions requiring foreigners to leave Polish territory. However, this amendment did not repeal the Border Regulation. As a result, these two procedures—pushbacks under the Border Regulation and the procedure for issuance of decisions for departure under the Act on Foreigners—have coexisted, applied in identical factual situations, with the choice of which to apply being left entirely to the discretion of Border Guard officers. This situation persists despite the principle that comprehensive regulations enshrined in law should generally exclude the possibility of applying a regulation, a lower-level legal act, that concerns the same subject matter as the act.

4.1. The Border Regulation—an attempt to legalize pushbacks

In August 2021, a new provision, § 3(2b), was introduced into the regulation, which was initially designed to limit traffic at border crossings during the COVID-19 pandemic. According to this provision, individuals who do not have legal grounds to remain on Polish territory are to be returned to the state border line, regardless of whether they were detected at a border crossing, or outside the territorial reach of the crossing.

Notably, this brief provision does not specify which authority is authorized to carry out the act of returning the foreigner to the border line. The fact that this responsibility falls to the Border Guard is based solely on an assumption of competence by this formation, rather than any explicit legal basis. Such an assumption should not be permissible in a democratic state governed by the rule of law. According to the principle of legality, enshrined in Article 7 of the Polish Constitution, public authorities may act only based on and within the limits of the law. This means that any activity by a state authority requires legal legitimacy, i.e., a clear legal basis indicating that a specific authority is empowered

to perform a particular action²⁵. The Border Regulation does not provide such legal legitimacy for the Border Guard.

The act of returning someone to the border line under the Border Regulation constitutes an administrative act). It includes all the elements that define such an act:

- It does not involve the execution of an administrative decision or order,
- It has an external nature, meaning it is directed at an external entity in relation to the authority,
- The entity involved is an individual,
- The act is public-law and authoritative,
- It concerns rights and obligations derived from legal provisions.

Therefore, the return to the border line meets the criteria of an act as described in Article 3 § 2(4) of the Act on Proceedings before Administrative Courts and is subject to review by an administrative court.

Since the act of returning someone to the border line is administrative in nature, the Border Guard official executing this act, specifically the commander of the relevant local Border Guard post, operates as a public administration authority. This is not an isolated case—the Act on the Border Guard permits this form of operation by Border Guard authorities. This is consistent with the organizational role and character of the Border Guard. If the commander of a Border Guard post acts as an administrative authority, then the Border Guard officers who directly execute the return to the border line act as employees or representatives of this authority, operating on its behalf and under its authorization.

4.2. Criticism of the Border Regulation

From the very beginning, the Border Regulation faced criticism from NGOs, and international organizations, including the UNHCR²⁶ and the OSCE²⁷. The regulation was identified as conflicting with domestic law, including the Constitution of the Republic of Poland, as well as with international legal standards. The legal inconsistencies highlight-

25 See: W. Sokolewicz, M. Zubik, in: *Konstytucja RP – komentarz* (English: *The Constitution of the Republic of Poland – Commentary*), vol. 1, ed. L. Garlicki, M. Zubik.

26 UNHCR Opinion: <https://www.refworld.org/legal/natlegcomments/unhcr/2021/en/92188>.

27 OSCE Opinion: https://www.osce.org/files/f/documents/3/3/498252_0.pdf.

ed in these critical assessments were soon confirmed by rulings from administrative courts²⁸. The current jurisprudence is well-established, and although these rulings are binding only in the specific cases in which they were issued, they undeniably convey a clearly negative assessment of both regulations. Additionally, the courts have unequivocally stated that § 3(2b) of the Border Regulation cannot be legally invoked by the Border Guard as a basis for pushing back foreigners to the border line²⁹.

Despite the recognized flaws, the court-contested provisions have not been repealed or amended following the change in government in 2023 and continue to be used by the Border Guard. Paragraph 3(2b) of the Border Regulation is still being cited as the legal basis for subsequent pushbacks of foreigners to the border line. It is worth highlighting that this provision continues to be applied even by those Border Guard authorities (i.e., commanders of Border Guard posts) whose actions have already been subjected to critical judicial review.

Moreover, it is important to note that the Border Regulation is not an indispensable component of the national migration law framework; its absence would not render the law non-functional. The existing acts, namely the Act on Foreigners and the Act on Granting Protection to Foreigners within the Territory of the Republic of Poland, comprehensively regulate how the Border Guard should and can handle individuals who have illegally crossed the state border at unauthorized points and are present in Poland without legal grounds, depending on whether they express an intention to seek international protection or not.

4.3. The Border Regulation—summary of administrative court jurisprudence

The final judgments of the Provincial Administrative Court in Białystok have unequivocally demonstrated the flaws in the Border Regulation and the procedure it establishes for returning individuals to the border line. The violations identified by the court included breaches of both international law and standards concerning the protection of human rights, as well as violations of constitutional principles of legality—specifically, the rule of law and the hierarchy of legal sources.

28 Cf. the judgments of the Provincial Administrative Court in Białystok: II SA/Bk 492/22, II SA/Bk 493/22, II SA/Bk 494/22, II SA/Bk 145/23, II SA/Bk 244/23, II SA/Bk 664/23. These judgments are final, and the Border Guard did not pursue a cassation appeal to the Supreme Administrative Court in any of these cases.

29 This position was confirmed by the Provincial Administrative Court in Białystok, among others, in its judgment on 18 January 2024, case number II SA/Bk 664/23. More on this judgment: <https://hfhr.pl/aktualnosci/rozporzadzenie-mswia-jako-podstawa-pushbackow-jest-prawnie-nieskuteczne>.

4.4. Violations of international law and the standards established therein. Violation of the non-refoulement principle

In judgments dated 15 September 2022 (cases II SA/Bk 492/22, II SA/Bk 493/22, and II SA/Bk 494/22), the judgment of 13 April 2023 (case II SA/Bk 145/23), the judgment of 30 May 2023 (case II SA/Bk 244/23), the judgment of 18 January 2024 (case II SA/Bk 664/23), and in judgments II SA/Bk 71/24 and II SA/Bk 72/24, the Provincial Administrative Court in Białystok determined that a state party to the 1951 United Nations Convention Relating to the Status of Refugees (Geneva Convention) is obligated to uphold the principle of non-refoulement wherever its jurisdiction extends, that is, wherever an individual is under the effective control of the state's authorities.

According to the principle of non-refoulement, which originates from Article 33(1) of Geneva Convention, no state shall expel or return (Fr. 'refouler') a refugee in any manner whatsoever to the frontiers of territories where their life or freedom would be threatened on account of their race, religion, nationality, membership of a particular social group or political opinion. This principle is further enshrined in Article 19(2) of the EU Charter of Fundamental Rights, which stipulates that no one shall be removed, expelled, or extradited to a state where there is a serious risk of being subjected to the death penalty, torture, or other inhuman or degrading treatment or punishment. The principle of non-refoulement is also reflected in Article 5 of Directive 2008/115/EC of the European Parliament and Council, regarding common standards and procedures in Member States for returning illegally staying third-country nationals (known as the Return Directive), as well as in Article 9(1) of the Procedural Directive, which requires Member States to allow applicants to remain on their territory until a decision is made regarding their international protection, according to the procedures applicable in the first instance. The obligation to respect the principle of non-refoulement is also incorporated in Regulation (EU) 2016/399 of the European Parliament and of the Council of 9 March 2016, on the Union Code governing the movement of persons across borders (Schengen Borders Code), which serves as the legal foundation for the actions of state authorities, particularly the Border Guard, at the EU's external borders (Article 3(b), Article 4, and Recital 36 of the Schengen Borders Code)³⁰.

The principle of non-refoulement is furthermore enshrined in Article 3, Paragraph 1 of the UN Convention of 10 December 1984, against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punish-

³⁰ The entire regulation is available online: <https://eur-lex.europa.eu/eli/reg/2016/399/oj?locale=pl> (access date: 30.07.2024).

ment. This provision prohibits any state party from expelling, returning, or extraditing a person to another state if there are substantial grounds to believe that they would be at risk of torture. The European Court of Human Rights has derived this principle from Article 3 of the European Convention on Human Rights. This principle, recognized as a significant standard in international law, is also referenced in the Istanbul Protocol—a manual for the effective documentation of torture—developed in 2004 by the Office of the United Nations High Commissioner for Human Rights, and in the Convention on Preventing and Combating Violence Against Women and Domestic Violence (to which Poland is a party) in Article 61.

In each above mentioned reviewed case, the administrative courts in Poland found that returning individuals to the border under the procedure outlined in § 3(2b) of the Border Regulation violated this principle and infringed on Article 33(1) of the Geneva Convention.

The court identified violations of the principle of non-refoulement in the failure of the Border Guard to consider crucial circumstances related to the situation in Belarus and the humanitarian crisis at the Polish-Belarusian border when carrying out expulsions. The Border Guard's failure to examine the situation at the border, particularly ignoring how migrants are treated by Belarusian authorities and military, whether they are subjected to violence, and whether returning them to Belarus would endanger their right to life and expose them to torture or inhumane treatment, constituted a breach of this principle. The court also concluded that the legality of a foreigner's entry into Belarus is irrelevant when assessing a potential violation of this principle.

4.5. Violation of the prohibition of collective expulsion of foreigners

The European Court of Human Rights has not provided a specific definition of pushbacks. However, it has clarified in several rulings what actions by states in the context of border protection and migration control are inconsistent with the Convention. In every case concerning border situations, the Court emphasizes that a state's right to regulate entry and residence on its territory is not absolute and may be subject to limitations, primarily derived from binding international human rights treaties. Under the European Convention on Human Rights and its Protocols, these limitations arise because expelling or denying entry to a foreigner may expose them to treatment that violates the prohibition against torture and inhumane treatment under Article 3 of the ECHR. The Court also strongly emphasizes the prohibition of collective expulsion of foreigners, particularly in cases involving border crossings.

Article 4 of Protocol 4 to the Convention requires due process for each foreigner subject to expulsion. The definition of “collective expulsion” remains uniform and consistent in the Court’s jurisprudence. It refers to any measure forcing foreigners to leave a state’s territory, except where such action is based on a rational and objective analysis of each individual case (cf. the judgment in the case of *Čonka v. Belgium*, § 59)³¹.

In the case of *Hirsi Jamaa and Others v. Italy*, the Court established that “expulsion” also includes refusing entry or returning a foreigner from the border. Thus, both intercepting foreigners at sea and escorting them back to the borders of the state from which they departed (*Hirsi Jamaa and Others v. Italy*, § 180, *Sharifi v. Italy and Greece*, § 212), and refusing entry to foreigners at a border checkpoint (*M.K. and Others v. Poland*, § 200) or forcibly removing them from the territory after irregularly crossing a land border (*N.D. and N.T. v. Spain*, § 124, *Shahzad v. Hungary*, § 48) are considered expulsions subject to scrutiny under Article 4 of Protocol 4. In subsequent judgments, the Court clarified that the number of people being expelled or their shared characteristics, such as nationality, ethnicity, or religion, are irrelevant when determining whether the expulsion is collective. The critical criterion for violating the prohibition of collective expulsion is the absence of individualized assessment of each case, aimed at establishing the actual situation of each person being expelled (*N.D. and N.T. v. Spain*, § 194–195) (*M.K. and Others v. Poland*, § 174).

The Provincial Administrative Court in Białystok consistently noted in its judgments that the Border Guard, during the process of returning a foreigner to the border, failed to examine the individual’s situation, collect evidence, verify facts, or consider the conditions in the Polish-Belarusian border area, such as the foreigner’s health or age. The court had no doubt that such actions by the Border Guard violate the obligation to individually assess each foreigner’s case, with particular attention to the situation in the country to which they are being returned (i.e., Belarus). Consequently, the application of § 3(2b) of the Border Regulation leads to a violation of the prohibition of collective expulsion of foreigners, as contained in Article 4 of Protocol No. 4 to the ECHR.

4.6. Violation of the right to seek international protection

In all cases, administrative courts have consistently affirmed that any declaration by a foreigner—whether oral or written—indicating the intent to seek international protection must be accepted by the Border Guard officer who first interacts with the foreigner. The foreigner making such a declaration should be promptly provided the opportunity to submit a formal application for protection and should be treated as an

31 ECHR judgment: <https://hudoc.echr.coe.int/eng#%7B%22itemid%22:%5B%22001-60026%22%5D%7D>

asylum seeker from the outset, enjoying the right to remain in Poland until their application is resolved. Significantly, the court determined that the procedure of returning individuals to the border line, which does not ensure that a migrating person's application for international protection will be accepted, violates Article 56(2) of the Polish Constitution and Article 18 of the EU Charter of Fundamental Rights.

In this regard, the application of § 3(2b) of the Border Regulation also contravenes EU law which guarantees the right of foreigners to apply for international protection within member states.

Article 6(3) of 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 (OJ E.U.L.2013.180.60, hereinafter: Procedural Directive) allows member states to designate places where a foreigner should submit an application for international protection. Poland has utilized this provision by designating the office of the Border Guard as the appropriate place to submit an application, as stipulated in the Act on Granting Protection to Foreigners on the Territory of the Republic of Poland. However, under Article 6(2) of the Directive, Member States shall ensure that a person who has made an application for international protection has an effective opportunity to lodge it as soon as possible at the designated place. Both legal doctrine and the jurisprudence of the Court of Justice of the European Union (CJEU) clearly distinguish between the act of declaring the intent to apply for protection, which is merely the foreigner's expression of their intention, and the act of formally submitting the application (using the appropriate form at the designated place). This distinction is explicitly reflected in the CJEU's judgment of 17 December 2020, C-808/18, which stated that "while it is true that (...) Article 6(3) of that directive allows Member States to require that applications for international protection be lodged at a designated place, it must be noted that no provision of that directive establishes a similar rule regarding the making of applications for international protection."

The requirement under the Act on Granting Protection to Foreigners in Poland that an application for international protection must be lodged at the relevant authority's office—either the Border Guard commander's headquarters or a Border Guard station—does not imply, nor can it imply, a similar requirement regarding the place where a declaration of intent to apply for such protection must be made.

Recital 27 of the Procedural Directive states that, "nationals and stateless persons who have expressed their wish to apply for international protection are applicants for international protection," and Member States "should register the fact that those persons are applicants for international protection as soon as possible." This means that a for-

foreigner's declaration of intent to submit an application for international protection has legal weight, and the consequence should be that the foreigner is recognized as an applicant in the asylum process, even if the formal application has not yet been lodged. Recital 26 of the Procedural Directive further reinforces this requirement, noting that

With a view to ensuring effective access to the examination procedure (...) officials carrying out the surveillance of land or maritime borders or conducting border checks, should receive relevant information and necessary training on how to recognise and deal with applications for international protection. They should be able to provide third-country nationals or stateless persons who are present in the territory, including at the border, in the territorial waters or in the transit zones of the Member States, and who make an application for international protection, with relevant information as to where and how applications for international protection may be lodged.

A foreigner's right to effectively express the intention to apply for international protection is essential to ensuring "the effective observance of the applicant's rights conditional on that application being registered and being able to be lodged and examined within the periods prescribed by Directive 2013/32" (the aforementioned CJEU judgment C-808/18). Any violation of this right, such as Border Guard officers ignoring a foreigner's declaration of intent to submit such an application, directly undermines the right to apply for international protection guaranteed by Article 18 of the EU Charter of Fundamental Rights.

Recognizing a foreigner who has declared the intent to apply for international protection as an applicant means that, from the moment they express this intent, they should benefit from the protections provided by the principle of non-refoulement.

In all its previous rulings concerning the return of foreigners to the border line, the Provincial Administrative Court in Białystok has consistently emphasized that a declaration of intent to apply for international protection should be accepted by the Border Guard officer who first contacts the foreigner. Furthermore, the foreigner making such a declaration should be promptly given the opportunity to submit a formal application and should be treated as an applicant, with the right to remain on Polish territory. The court is of the opinion that any contrary interpretation would prevent the foreigner from effectively accessing the protections and guarantees outlined in the Procedural Directive and the Act on Granting Protection to Foreigners on the Territory of Poland. It would also violate the right to international protection guaranteed by Article 56(2) of the Constitution and Article 18 of the EU Charter of Fundamental Rights.

4.7. Violations related to the rule of law

The Border Regulation issued beyond statutory authorization

The Provincial Administrative Court in Białystok holds that § 3(2b) of the Border Regulation is inconsistent with Article 16(3)(2) of the Act on the Protection of the State Border, which served as the legal basis for the Minister of Interior and Administration to issue the regulation. According to the court, § 3(2b) of the Border Regulation exceeds the boundaries of the statutory authorization. The court also found that the cited provision of the Regulation is contrary to the applicable laws (the Act on Foreigners and the Act on Granting Protection to Foreigners on the Territory of the Republic of Poland), EU law, and the provisions of binding international agreements to which Poland is a party. Consequently, the court deemed the provision unenforceable.

Article 16(3)(2) of the Act on the Protection of the State Border authorizes the Minister of the Interior exclusively to order, by executive decree, the temporary suspension or limitation of movement at specified border crossings, taking into account the need to ensure state security, public safety, or protection against threats to life or health, as well as the prevention of the spread of animal diseases. The wording of the provision clearly indicates that the scope of the statutory delegation is limited to managing traffic at specified border crossings, such as closing crossings, reducing their capacity, or temporarily modifying the types of permissible traffic. Thus, Article 16(3)(2) of the Act on the Protection of the State Border could not serve as a basis for introducing any regulations concerning the right of foreigners to enter or stay in the territory of Poland. These rights are comprehensively regulated at the legislative level, specifically in the Act on Foreigners and the Act on Granting Protection to Foreigners on the Territory of the Republic of Poland. Moreover, the provision does not authorize the Minister of the Interior and Administration to introduce, by executive decree, any procedure related to the return of foreigners to the border line.

In the court's opinion, the Border Regulation thus violates Article 92(1) of the Polish Constitution, which stipulates that executive decree must be issued based on specific authorization contained in a statute and exclusively for its implementation, within the scope of matters delegated for regulation and in accordance with the guidelines on the content of the act.

The application of the Border Regulation contradicts the principle of legality and the hierarchy of legal sources.

According to the court, the automatic and arbitrary application by the Border Guard of a lower-order provision (a executive decree), which does

not preclude the application of national laws, EU law, binding international agreements, or, above all, the Polish Constitution, constitutes a violation of Article 7 (the principle of the rule of law) and Article 87(1) (the principle of the hierarchy of legal sources) of the Polish Constitution. In the court's view, the Border Guard cannot apply the Border Regulation in place of the applicable laws that comprehensively regulate the same matter as the Regulation. The court clearly states that it is legally ineffective for the Border Guard to rely on § 3(2b) of the Border Regulation as a valid legal basis for the act of returning a foreigner to the border line.

4.8 Amendment of the Act on Foreigners—order to leave the territory of Poland

In October 2021, following the amendment of the Act on Foreigners, a new procedure was introduced in Polish law—alongside the push-back procedure from the Border Regulation—aimed at the expedited repatriation of foreigners from the territory of Poland. According to the newly added Article 303b (in conjunction with Article 303(1)(9a)) of the Act, Border Guard station commanders issue orders for foreigners to leave the territory of Poland if they are apprehended immediately after unlawfully crossing the external border of the EU. The procedure maintains the appearance of a two-instance system: an appeal against the order requiring a foreigner to leave the territory of the Republic of Poland can be filed with the Chief Commander of the Border Guard. However, filing an appeal does not suspend the execution of the decision. Therefore, the appeal mechanism does not meet the requirement of effectiveness.

In practice, the execution of the order to leave the territory of Poland proceeds in exactly the same manner as the act of returning to the border line based on the Border Regulation. In both cases, foreigners are escorted to the border line by Border Guard officers and then forced or persuaded to cross the border into Belarus—again, at an unofficial crossing point.

The procedure described in Article 303b of the Act on Foreigners has also been critically assessed by administrative courts. Moreover, the courts have identified similar legal violations in this procedure as in the case of returning to the border line.

For example, in a judgment on 26 April 2022 (IV SA/Wa 420/22), the Provincial Administrative Court in Warsaw found that the actions taken by the Border Guard before issuing the order to leave Poland, which were limited to preparing a report on the foreigner's crossing of the border, were insufficient to determine all the relevant circumstances of the case. The court stated that the procedure does not fulfil the

principle of *ex officio* in administrative proceedings or the obligation to take all necessary actions to fully clarify the facts of the case. This procedure may also lead to violations of the foreigners' right to obtain international protection and the state's obligations under the principle of non-refoulement.

The Provincial Administrative Court in Warsaw reached similar conclusions in judgments dated 27 April 2022 (IV SA/Wa 471/22), 20 May 2022 (IV SA/Wa 615/22), and 27 May 2022 (IV SA/Wa 772/22). The court noted failures on the part of the Border Guard, including not considering the situation on the Polish-Belarusian border, especially the treatment of migrants by Belarusian authorities and military forces. Examining such information is essential to determine whether issuing and executing an order to leave the territory of Poland in each individual case does not violate the foreigner's right to life and freedom from torture and inhumane treatment (i.e., Articles 2 and 3 of the European Convention on Human Rights). The court concluded that it is irrelevant whether the foreigner entered Belarus legally. What is important is that the crisis at the border exposed foreigners to extreme conditions that violated their dignity and threatened their life or health. The Provincial Administrative Court in Warsaw upheld a similar opinion in its judgement of 5 October 2022, IV SA/Wa 1031/22. In that judgment, the court identified the lack of any investigative procedure and factual findings concerning the subject and object of the case as among the errors committed by the Border Guard. The Border Guard completely neglected to conduct evidence proceedings, including, above all, the evidence from the party's hearing.

In another case concerning an order to leave the territory of Poland, the Provincial Administrative Court in Białystok ruled on a complaint by the Ombudsman regarding the return to Belarus of an unaccompanied minor who had been arbitrarily added by the Border Guard to an order issued against an adult foreigner who was a complete stranger to the minor. In its judgment of 27 October 2022, II SA/Bk 558/22, the court held that the lack of factual findings in the case, which led to the unjustified inclusion of the minor in an order concerning another person, violated the prohibition of collective expulsion of foreigners contained in Article 4 of Protocol No. 4 to the Convention. In this case, not all of the Ombudsman's objections were accepted by the court, and therefore, despite the annulment of the order, the Ombudsman decided to file a cassation complaint with the Supreme Administrative Court. The complaint was dismissed by judgment dated 9 January 2024, II OSK 165/23. However, in this judgment, the Supreme Administrative Court provided a clear stance on the shortcomings of the procedure described in Article 303b of the Act on Foreigners. The Supreme Administrative Court emphasized that any simplified procedure concerning the return of foreigners from Poland should be an exception to the rule

of resolving the essence of a case through an administrative decision. It should also be applied “only in situations where, despite a simplified investigation, the established facts are clear and leave no doubt regarding the manner of entry and purpose of stay of the foreigner.” Moreover, conducting a simplified procedure must not lead to a violation of the principle of non-refoulement. According to the Supreme Administrative Court, the possibility of conducting a simplified procedure does not relieve the authority of the obligation to justify its decision—each order should include a factual and legal justification, especially if an appeal or complaint to an administrative court is permitted (Article 124(2) of the Administrative Procedure Code). This means that the Border Guard authority ruling in a simplified procedure is still obliged to indicate in the issued decision the facts it has established, the evidence it has relied upon, and the reasons why it has dismissed other evidence as unreliable and lacking probative value. The Supreme Administrative Court also made it clear that regardless of the simplified procedure and the form of the decision, issuing an order must always be preceded by an investigation, the scope of which is determined by substantive law provisions.

4.9. Pushback and the risk of disappearance

Pushback and the risk of disappearance: the Border Guard’s practices and their impact on the search for missing persons

The application of § 3(2b) of the Border Regulation in each specific case involves the Border Guard carrying out the action of escorting a foreigner to the border line and forcing them to leave Poland. The Border Guard does not record or even confirm the identity of the individual when turning them back to the border line. Even if officers collect identifying information during this process, such as by checking an identity document (if the foreigner holds one), this data is not processed or entered into any official records or systems.

As a result, there is often no evidence to show that a person who was returned under this regulation was ever in the custody of the Border Guard, was apprehended, or was pushed back to Belarus. If a person who was subjected to this pushback procedure is later reported missing, the Border Guard’s lack of documentation makes it impossible to determine whether any actions were taken concerning that person, and if so, what those actions were. This also means that the Border Guard cannot reliably confirm whether the individual was ever present on Polish territory.

In cases of disappearances, the Border Guard’s practice is therefore a real obstacle to effective search operations. The first step in such operations, typically conducted by the Police, is to inquire whether the

Border Guard has taken any action concerning the missing individual on Polish soil. However, even if the foreigner in question was pushed back to Belarus, the Border Guard's likely response would be that there is no record of the individual in their systems. This does not mean that the person was never in Poland or that they were not pushed back to Belarus; it simply reflects the lack of documentation as the Border Guard does not record data of persons subject to pushback under the Border Regulation.

Thus, any categorical statements by the Border Guard denying involvement with a missing person must be considered unreliable. It is clear that the Border Guard lacks the capacity to verify whether a person, as inquired by the Police, was returned to the border line under § 3(2b) of the Border Regulation.

This lack of evidence stems directly from the Border Guard's practice of not documenting such returns. Therefore, claims by relatives that a missing person was in Poland and was pushed back to Belarus cannot be dismissed solely because of the absence of records.

4.10. Decisions to leave Poland—issues with data reliability

Unlike the undocumented pushback procedure, the process outlined in the Foreigners Act does leave a trace: a decision document in which the foreigner's data is recorded. However, in practice, these records are often inaccurate or incomplete, typically based solely on the foreigner's verbal declarations without any verification by the Border Guard. Accompanying the decision is a brief report regarding the border crossing and, importantly, a photograph of the returned person. Given the potential inaccuracies in the personal data recorded by the Border Guard, this photograph may be the only reliable evidence that a missing person was ever in the Border Guard's custody.

5.

International law and disappearances

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*The present analysis for the purposes of the HFHR report by Grażyna Baranowska is strictly personal and do not in any way reflect the position of the UN Working Group on Enforced Disappearances.

Various areas of international law impose obligations on states regarding missing persons. At the same time, the scope of these obligations depends on the circumstances of the disappearance, such as whether that person disappeared as a result of hostilities, after being deprived of freedom by the state, or at sea. This section will briefly introduce the most relevant international legal frameworks concerning the Polish-Belarusian border, including the definition of a “missing person” under international law (3.2.1), enforced disappearances in the context of migration (3.2.2), and the case law of the European Court of Human Rights (ECHR) on disappearances (3.2.3).

5.1. The concept of a missing person in international law

While international law does not define the term “missing person,” it is frequently used in international humanitarian law, which governs armed conflicts, the protection of their victims, and the conduct of hostilities. Additionally, international human rights law defines the concept of enforced disappearance, a term related to certain types of disappearances.

International humanitarian law contains numerous provisions aimed at preventing disappearances, searching for missing persons, and supporting the families of missing individuals. Although the law does not explicitly define a “missing person,” it applies to individuals who disappear during armed conflict and whose fate is unknown to their relatives, the armed forces (if combatants), or the state of their citizenship or residence (if civilians)³². However, since the disappearances at the Polish-Belarusian border did not occur as a result of armed conflict, international humanitarian law does not apply to them.

The International Committee of the Red Cross (ICRC), however, uses the term “missing person” more broadly, referring to anyone whose whereabouts remain unknown in situations that may require the intervention of an independent authority³³. The ICRC’s long history of involvement in searches for missing persons gives its position particular weight. In 2009, the ICRC adopted the *Guiding Principles/Model Law on the Missing*, which provides the following definition:

Missing person is a person whose whereabouts are unknown to his/her relatives and/or who, on the basis of reliable information, has been reported missing in accordance with the national legislation in connection with an international

³² M. Sassòli, *International Humanitarian Law: Rules, Controversies, and Solutions to Problems Arising in Warfare*, Edward Elgar 2019, p. 339.

³³ ICRC, Q&A: The ICRC’s Engagement on the Missing and Their Families, “International Review of the Red Cross” 2017, Vol. 99, p. 535, 536.

or non-international armed conflict, a situation of internal violence or disturbances, natural catastrophes or any other situation that may require the intervention of a competent State authority³⁴.

This definition, while not explicitly mentioning migrants, includes them by referring to any situation that might require state intervention. In addition, the introduction to the ICRC *Model Law* explicitly states that people can die as a result of migratory movements. The proposed definition and the ICRC's experience in dealing with migrant disappearances can help develop effective measures to prevent disappearances at the Polish-Belarusian border and to search for missing persons.

Some missing persons are victims of “enforced disappearances.” This concept is defined in the International Convention for the Protection of All Persons from Enforced Disappearance (hereinafter: Convention on Enforced Disappearances), which Poland signed in 2013. According to the Convention, enforced disappearance involves the

arrest, detention, abduction or any other form of deprivation of liberty by agents of the State or by persons or groups of persons acting with the authorization, support or acquiescence of the State, followed by a refusal to acknowledge the deprivation of liberty or by concealment of the fate or whereabouts of the disappeared person, which place such a person outside the protection of the law³⁵.

Thus, for a given disappearance to be considered enforced, a total of three elements must be present: first, deprivation of liberty; second, the involvement of the state, or at least its acquiescence; third, denial of the fact of deprivation of liberty or concealment of the fate or whereabouts of the disappeared. Only such disappearances are “enforced disappearances” under international human rights law.

5.2. Enforced disappearances in the context of migration

The term “enforced disappearances” (original Spanish: *desapariciones forzadas*) originated to describe the systematic disappearances orchestrated by South American dictatorships during the 1960s and 70s against political opponents. Over the past decade, enforced disappearances in the context of migration have garnered increasing attention from various United Nations bodies. This issue is particularly addressed by the UN Working Group on Enforced or Involuntary Disap-

³⁴ Article 2(a), *Guiding principles / Model law on the missing*, [icrc.org](https://www.icrc.org). (access date:16.06.2024)

³⁵ Article 2 of the International Convention for the Protection of All Persons from Enforced Disappearance, [ms.gov.pl](https://www.ms.gov.pl).

pearances (hereinafter: The Working Group), established in 1980, and the Committee on Enforced Disappearances (hereinafter: the Committee) which was created under the 2010 International Convention on Enforced Disappearances.

The Working Group routinely develops and releases thematic reports on critical issues. In 2015, the decision was made to initiate a report focusing specifically on enforced disappearances in the context of migration. This report, finalized in 2017 after two years of intensive work and consultations, addresses four key aspects: First, the report notes that migration is often driven by the threat of enforced disappearances. People flee to escape the risk of enforced disappearance or to search for information about their missing relatives—often leading them into migration³⁶. It is important to note that many of the missing individuals at the Polish-Belarusian border come from countries like Syria or Iraq, where enforced disappearances are prevalent. Second, the Working Group’s report underscores that migrants themselves frequently become victims of enforced disappearances when they are detained—often briefly—and then denied access to information about their detention, or when their fate and whereabouts are concealed³⁷. The Working Group particularly highlighted that such practices may occur as a result of pushbacks³⁸. Third, the report identifies several factors contributing to the enforced disappearances of migrants, which include issues also emphasized in this report concerning the Polish-Belarusian border: the failure to investigate disappearances, restrictive migration policies, militarized approaches to border control, and the lack of reliable statistical data³⁹. Fourth, the Working Group outlines the obligations related to the enforced disappearances of migrants. Their analysis begins with a discussion of preventive measures⁴⁰, including those associated with pushbacks. In the context of the Polish-Belarusian border, where a significant number of migrant returns are undocumented, the report highlights two critical points:

The Working Group recalls that all returns of migrants must be formally documented and undertaken in accordance with the law in order to avoid disappearances during those processes, including temporary or short-term disappearances. Likewise, the practice of pushing back or collective expulsion of migrants does not comply with the international obligation of non-refoulement and may lead to enforced disappearances.

36 [A/HRC/36/39/Add.2, Report of the Working Group on Enforced or Involuntary Disappearances on enforced disappearances in the context of migration - Note by the Secretariat, OHCHR 2017, § 7-13.](#)

37 *Ibid.*, § 14-33; especially § 20-45.

38 § 33.

39 § 51-56.

40 § 58-66.

Similarly, all returns of migrants must be formally documented and undertaken in accordance with the law in order to avoid disappearances during those processes, including temporary disappearances. Accordingly, all migrants deprived of liberty must be released in a manner permitting reliable verification that they have actually been released and, further, have been released in conditions in which their physical integrity and ability to fully exercise their rights are assured.

The Working Group also emphasized several key obligations of states concerning enforced disappearances. These include the search for missing migrants, conducting thorough investigations, criminalizing enforced disappearances, protecting and providing reparations to all victims, and cooperating with other states to clarify and prosecute these cases⁴¹.

In 2022, five years after the adoption of the Working Group's report, the Committee on Enforced Disappearances also decided to address enforced disappearances in the context of migration. This was especially noteworthy as the Committee chose to issue a General Comment on the matter. General Comments are authoritative interpretations of the provisions of international conventions, regularly issued by UN human rights committees. These documents are highly influential, developed over several years with extensive consultation, including with state parties to the conventions. The Committee's decision to focus its first General Comment on the issue of migration indicates the critical importance it placed on this subject. The Committee saw a need to provide states with clear guidance on how to interpret the Convention in relation to migration

In the General Comment, the Committee underscored the preventive nature of the Convention on Enforced Disappearances, dedicating a substantial section to prevention strategies. It emphasized that to prevent the detention of migrants from resulting in enforced disappearances, it is crucial that all detained migrants, from the outset of their detention and regardless of its length, are afforded the opportunity to communicate with their relatives, consular officials, legal representatives, or another designated person. The General Comment also referenced Article 17 of the Convention, reiterating the obligation to keep accurate and up-to-date registers of all individuals deprived of their liberty⁴². Additionally, the Committee pointed out that the lack of reliable data and statistics is a significant barrier to both preventing and addressing enforced disappearances of migrants, urging states to

⁴¹ § 67–79.

⁴² General Comment No. 1 on Enforced Disappearances in the context of Migration, OHCHR 2022, § 16–22. (access date: 20.07.2024)

gather and maintain such information. One paragraph of the General Comment is particularly relevant in the context of the Polish-Belarusian border:

The absence of record-keeping throughout the handling of persons in the context of irregular border crossings further increases the risk of their becoming victims of human rights violations, including enforced disappearance. It also renders any accountability impossible, including effective inquiries and investigations. Consequently, States parties must keep records of their handling of persons in the context of irregular border crossings, and footage from border surveillance equipment should be preserved and made accessible to those mandated with overseeing border operations, as well as to authorities in charge of the search for disappeared migrants and the investigations into their disappearances⁴³.

One section of the General Comment is entirely focused on the principle of non-refoulement and the prohibition of pushbacks. It is crucial to note that the Convention on Enforced Disappearances prohibits the expulsion, return, or extradition of individuals to a country where there are substantial grounds to believe they would be at risk of enforced disappearance (Article 16.1). Enforced disappearances have been documented in Belarus.

The General Comment further delves into the specifics of pushback practices. Firstly, it asserts that “Pushbacks, and any other form of collective expulsion that do not allow for an individual assessment, constitute a flagrant violation of article 16 of the Convention.” Second, it points out that “when pushbacks involve the deprivation of liberty of migrants and the concealment of their fate or whereabouts, they amount to enforced disappearance (...), regardless of the duration of the deprivation of liberty.” Third, and finally, it adds that “the seizure and destruction of individuals’ personal belongings, identity documents or mobile phones after their apprehension may lead to enforced disappearance, given that individuals are left without any means to communicate their whereabouts to relatives or prove their identity.”

The General Comment also emphasizes that states should take additional steps to facilitate the reporting of migrant disappearances. This includes raising awareness about existing mechanisms and ensuring the availability of professional interpreters. Furthermore, states should enable the families of missing persons to participate in the search for their relatives, regardless of where they are living⁴⁴.

43 Ibid, § 25

44 § 37–43, in particular § 38 and 42.

Some disappearances in the context of migration undoubtedly qualify as enforced disappearances. This occurs when a person is deprived of their liberty by the state—or at least with its acquiescence—and there is a subsequent refusal to acknowledge the detention or conceal the fate or whereabouts of the missing person. In such cases, state authorities are obligated to prosecute anyone responsible for the enforced disappearance, including those who ordered, incited, attempted, or participated in the act, as well as superiors who failed to prevent it (Article 6). When there are reasonable grounds to believe that an enforced disappearance has occurred, state authorities must initiate an investigation even without a formal complaint (Article 12.2). It is important to recognize that the victims of enforced disappearance include not only the missing individuals but also those who have suffered directly as a result (Article 24.1), such as immediate family members, direct witnesses, or individuals involved in the search for the missing person. All victims have the right to know the truth about the circumstances of the enforced disappearance, the progress and results of the investigation, and the fate of the missing person (Article 24.2). Moreover, states must ensure that all victims of enforced disappearances have access to reparations, including prompt, fair, and adequate compensation (Article 24.4).

The Convention on Enforced Disappearances also provides guidance that is applicable even when a situation does not meet the strict definition of enforced disappearance. It emphasizes prevention, particularly through the proper documentation of detention procedures (Article 17). Additionally, as interpreted by the Committee on Enforced Disappearances, the state is obligated to conduct searches for missing persons and support their families, even if it has not yet been conclusively determined whether an enforced disappearance has occurred⁴⁵.

5.3. Disappearances in jurisprudence of the ECHR⁴⁶

When considering disappearances at the Polish-Belarusian border, it is crucial to examine the ECHR jurisprudence on the matter. Although these rulings have not directly addressed the disappearances of migrants at state borders, the standards set by the ECHR are applicable to border-related incidents.

ECHR jurisprudence on disappearances has been developing since the second half of the 1990s. In particular, the more than 200 judgments on enforced disappearances have advanced the concept of procedural

⁴⁵ UN Committee on Enforced Disappearances, Guiding Principles for the Search for Disappeared Persons, 8 May 2019, UN Doc CED/C/7.

⁴⁶ More on disappearances and the ECHR, cf.: G. Baranowska, *Rights of Families of Disappeared Persons: How International Bodies Address the Needs of Families of Disappeared Persons in Europe*, Cambridge 2021, pp. 37–110.

obligations under the right to life (Article 2 of the European Convention on Human Rights). Whenever there is a suspicion that the right to life has been violated, state authorities are required to conduct a thorough investigation to hold those responsible accountable and to establish the circumstances surrounding the death⁴⁷. These procedural obligations do not end once the remains of a missing person is discovered; they also encompass the identification of perpetrators, ensuring accountability, and clarifying the circumstances of the disappearance⁴⁸.

Importantly, procedural obligations under the right to life may arise even if the state was not directly involved in the disappearance⁴⁹. This implies that state authorities must always conduct an effective investigation when there is suspicion that a disappearance was involuntary, regardless of whether state officials were involved. In a border context, this means that if there is suspicion of a disappearance linked to human trafficking, an effective investigation is mandated. The ECHR jurisprudence also establishes that investigations into deaths resulting from the use of force must be conducted in all cases, regardless of whether the suspected perpetrators are state officials⁵⁰. Furthermore, the Court has held that if there is reasonable suspicion that a person's life is at risk due to the actions of third parties, state authorities are obligated to take protective measures⁵¹.

In the context of disappearances, not only is the missing person considered a victim of human rights violations, but their relatives are also recognized as victims. This concept is explicitly addressed in the Convention on Enforced Disappearances, particularly regarding victims of enforced disappearances. The ECHR has extended this recognition to include the relatives of all missing persons, not just those in cases of enforced disappearances. According to the Court, for the treatment of a missing person's relatives to be considered inhuman, thus violating the European Convention on Human Rights, there must be specific factors that distinguish their suffering from the ordinary distress experienced by the families of victims of severe human rights violations. The Court has identified five elements that contribute to a finding of inhuman treatment:

- closeness of the familial relationship, with special emphasis on parent-child bonds,
- the particular circumstances of the relationship,

47 Orhan v. Turkey, Ipek v. Turkey, Bazorkina v. Russia.

48 Varnava v. Turkey.

49 Tekdag v. Turkey.

50 Tahsin v. Turkey.

51 Mahmut Kaya v. Turkey; Medova v. Russia.

- the degree to which the relatives witnessed the disappearance,
- their involvement in efforts to obtain information about the missing person,
- the state's response and attitude⁵².

Although the ECHR has applied this framework in many cases, there remains some ambiguity regarding how these elements are specifically implemented. It is clear, however, that an ineffective investigation alone is insufficient to establish inhuman treatment of the relatives⁵³.

Additionally, the ECHR has emphasized that inhuman treatment of the families of missing persons is not confined to cases where the state is directly responsible for the disappearance. The Court has found that a violation "may also arise from the authorities' failure to respond to the relatives' requests for information or from other obstacles that leave them with the burden of uncovering the facts, particularly if this reflects a gross, continuous, and heartless disregard for the obligation to ascertain the fate of missing persons."⁵⁴ Thus, for example, the ECHR held that Turkish authorities were responsible for the inhuman treatment of a family whose member was kidnapped by the PKK (Kurdistan Workers' Party)⁵⁵.

This jurisprudence, however, pertains specifically to disappearances and does not extend to all deaths caused by the state⁵⁶. It also implies that relatives must have experienced a period of uncertainty regarding the fate of their missing loved ones. For example, in a case where a missing person was found five days after their disappearance, the ECHR did not find that this met the threshold for inhuman treatment of the relatives⁵⁷. In another case, five months of uncertainty was considered sufficiently long⁵⁸. The manner in which remains are identified, handled, and returned to the family also plays a critical role. In a case where a missing person was found 16 days after disappearing but was not definitively identified until three years later, the ECHR determined that this constituted inhuman treatment of the relatives⁵⁹.

52 *Cakici v. Turkey*, § 98.

53 *Seker v. Turkey*.

54 *Janowiec v. Russia*.

55 *Acis v. Turkey*.

56 *Tanli v. Turkey*.

57 *Ortsuyeva v. Russia*.

58 *Kukayev v. Russia*.

59 *Gongadze v. Ukraine*.



6.

Legal regulations
concerning disappearances.
Legal acts—national legal
system

MARCIN CZACHOR

In Poland, there is no single, comprehensive legal framework that systematically addresses all aspects of disappearances and the search for missing persons. Instead, various legal provisions scattered across several acts address different aspects of this issue:

- The Act of 6 April 1990, on the Police (Journal of Laws 2024, item 145),
- Executive Order No. 48 of the Commander-in-Chief of Police dated 28 June 2018 on the conduct of the police search for a missing person and the procedure in the event of finding a person of undetermined identity or unknown corpses and human remains (Official Gazette of the KGP 2018, item 77 as amended),
- Executive Order No. 70 of the Commander-in-Chief of Police dated 2 December 2019 on the National Police Information System (Official Gazette of the KGP 2019, item 114 as amended),
- Decision No. 147 of the Commander-in-Chief of the Police dated 15 April 2013 on the Search Centre for Missing Persons of the Police Headquarters (Official Gazette of the KGP 2013, item 36).

Searching for missing persons is one of the statutory duties of the Police in Poland. According to Article 14(1)(3) in conjunction with Article 1(2) of the Act of 6 April 1990 on the Police, the Police are responsible for conducting operational, reconnaissance, investigative, and administrative measures to locate persons who, due to an event that has prevented the determination of their whereabouts, must be found to ensure the protection of their life, health, or freedom.

The primary legal instrument governing the search for missing persons is the above-mentioned Executive Order No. 48 of the Commander-in-Chief of Police dated 28 June 2018. It should be noted that this regulation is an internal legal act, applicable only to units that are organizationally subordinate to the Commander-in-Chief. Consequently, it does not impose any obligations on other uniformed services, such as Border Guard officers or soldiers of the Polish Armed Forces. The most important provisions of the Executive Order No. 48 of the KGP from the perspective of the practice of searching for missing persons will be discussed later in this report.

Data related to search activities and missing persons are processed in the Police National Information System (Polish name: Krajowy System Informacyjny Policji, hereinafter: KSIP). The specific procedures for registering reports and processing data in KSIP are outlined in the Executive Order No. 70 of the Commander-in-Chief of Police dated 2 December 2019. Police officers receiving a missing person report are required to immediately register it in KSIP (§ 7(1) of Executive Order

No. 48 of the Commander-in-Chief of Police dated 28 June 2018). Data from KSIP on missing persons is also partially integrated into the Police's online missing persons database, zaginieni.policja.pl.

Decision No. 147 of the Commander-in-Chief of Police dated 15 April 2013, established the Police Headquarters' Missing Persons Search Centre (Polish name: Centrum Poszukiwań Osób Zaginionych Komendy Głównej Policji, hereinafter: CPOZ KGP) within the organizational unit of the Police Headquarters responsible for criminal investigations. The CPOZ KGP is tasked with monitoring and analysing cases of missing persons managed by Police units and providing support in their search efforts, including technical, personnel, and informational-logistical assistance.

In addition to the aforementioned legal acts, the Chief of Police has entered into two cooperation agreements with the ITAKA Foundation – Centre for Missing People (Polish name: Centrum Poszukiwań Ludzi Zaginionych) (on 25 May 2009 and 14 March 2008). These agreements cover joint training activities, educational and preventive initiatives, and the exchange of information regarding missing persons. To facilitate these agreements, the Police, through KSIP, allow the partially automated transmission of photos and images of unidentified bodies to the Foundation, which are then published in the ITAKA Foundation's Missing and Unidentified Persons Database.

It should also be noted that, at the time of writing this report, work is underway on a thorough amendment to the Executive Order No. 48 of the Commander-in-Chief of Police dated 28 June 2018.

6.1. Definitions

The basic definitions of the procedure for searching for missing persons can be found in § 2 (1) of Executive Order No. 48 of the Commander-in-Chief of Police dated 28 June 2018:

- disappearance of a person — the occurrence of an event that makes it impossible to determine the whereabouts of an individual, requiring finding that person or providing assistance to ensure the protection of their life, health or freedom,
- missing person — a person who, as a result of an event that makes it impossible to determine their whereabouts, must be found in order to ensure the protection of their life, health or freedom,
- level of search — the degree that determines the immediacy and extent of search efforts, depending on the identified risk to the life, health or freedom of the missing person. A police officer accepting

a missing person's report must classify it into one of three levels (depending on the circumstances of the disappearance and the characteristics of the missing person, which in turn will determine the scope and intensity of the search operations),

- unidentified remains — remains of an unknown individual found in a condition or circumstances that make it impossible to identify them, including dismembered human body parts, if they allow the collection of biological samples for genetic testing. Stillborn children/fetuses are not classified as unidentified corpses,
- place of disappearance — established and unambiguously confirmed on the basis of information obtained, the place the missing person occupied immediately before disappearance,
- authorized person⁶⁰ — a person who has notified the police of the disappearance of a person or the arbitrary departure of a minor or underage person as specified in item 4 of the Executive Order, clearly indicating the circumstances of the incident,
- immediate family — spouses, ascendant, descendant, siblings, relatives in the same line or degree, a person in the relationship of adoption and his/her spouse, as well as concubine.

In conducting search activities, the police mainly use the following databases:

- Schengen Information System (hereinafter: SIS) — a database in which certain categories of data of persons and objects, searched for and entered into the system by Schengen countries, are processed. Legal basis: Act (Journal of Laws of 2007 No. 165 item 1170) of 24 August 2007 on the participation of the Republic of Poland in the Schengen Information System and the Visa Information System. Based on Article 3 Paragraph 1 Item 6 of the aforementioned Act, access to data in the SIS is granted to the police with regard to “missing persons who, for their own protection or in order to prevent them from posing a threat to public order or public security, should

⁶⁰ Executive Order No. 48 of the Commander-in-Chief of Police dated 28 June 2018 contains a much broader definition of “authorized person” than the one in effect under the now repealed Executive Order No. 124 of the Commander-in-Chief of Police dated 4 June 2012. In the previous state of the law, an “authorized person” was a person who notified the Police of a missing person, namely:

- a) a family member, legal guardian or legal representative of the missing person,
- b) the head of the institution where the missing person or unidentified person was staying for treatment or care,
- c) a representative of the competent consular office, if the missing person is a foreigner,
- d) any other person who, in the report submitted, justifies the suspicion of a crime against the life, health or freedom of the missing person, or clearly indicates the circumstances of the disappearance of the person.

be placed in an appropriate care or treatment facility, in particular as a result of a decision on enforced placement in such a facility, and missing persons who do not require protection”.

- National Police Information System — a set of data sets in which information, including personal data, is processed in connection with the implementation of statutory tasks of the Police. Legal basis: Article 21b of the Police Act of 6 April 1990. The manner of organization of the National Police Information System and the scope of information to be collected is specified in the aforementioned Executive Order No. 70 of the Commander-in-Chief of Police of 2 December 2019,
- DNA database — a dataset containing information on the results of deoxyribonucleic acid analysis. Legal basis: Article 21a et seq. of the Police Act of 6 April 1990. Pursuant to Article 21a Paragraph 2 Item 1 (g) and (i), information, including personal data, is processed in the DNA dataset with respect to human remains of undetermined identity and missing persons,
- International Criminal Police Organization (INTERPOL) database.

6.2. Search operations

The procedure for initiating search activities begins with the filing of a missing person’s report by an authorized person. Notification of a missing person is obliged to accept any police officer on duty. The Police shall undertake a search for a missing person immediately after receiving information that a person is missing.

The missing person’s report form is attached as Annex No. 1 to Executive Order No. 48 of the Commander-in-Chief of Police dated 28 June 2018. A missing person notice can also be submitted by phone, e-mail or traditional mail, however, in this case, a police officer will attempt to immediately contact the reporting person to accept the missing person’s report.

§4 of Executive Order No. 48 of the Commander-in-Chief of Police, dated 28 June 2018, specifies the scope of information that the officer receiving the notice will attempt to ascertain:

- full personal details of the missing person,
- description of appearance with any distinguishing marks,
- description of the clothing last seen worn by the missing person including the distinguishing marks or details of individual items,

LEGAL REGULATIONS CONCERNING DISAPPEARANCES...

- description of the items possessed at the time of the disappearance, including the cell phone number of the missing person,
- place and circumstances of disappearance,
- information about the health of the missing person, including data on physical and mental impairments, addictions, the nature of habits and inclinations, taking into account suicide attempts and other threats to the safety of themselves and others,
- the type, duration, and consequences of previous departures from the residence,
- the probable cause of the disappearance, in the context of family situation, work situation, conflicts, statements, letters left behind,
- addresses of persons and institutions to which the missing person may have headed,
- the type and extent of search activities undertaken to date by family, friends or non-police entities,
- information about the legal guardian of the missing person, in particular, contact information,
- if possible, information on the person authorized to pick up the missing person in case of such necessity,
- the names of the online social network accounts used by the missing person,
- criteria enabling to trigger Child Alert,
- information on bank accounts and payment cards held by the missing person.

If possible, a photograph of the missing person provided by the person reporting the disappearance shall be attached to the missing person's report. If, from the content of the accepted missing person's report or information suggests that there is a real possibility of quickly finding the missing person, in particular in the case of a minor or a person in need of care, or if there is a risk of imminent danger to the life, health or freedom of this person, the duty officer of the police unit shall order search operations to the necessary extent and supervise their conduct.

A police officer may refrain from accepting a missing person's report in the following cases:

- the report was filed more than 5 years after the date of disappearance,
- the person in question has already been registered in the National Police Information System by another police unit,
- the missing person is registered in the SIS or Interpol database.

The police will undertake only the necessary verification activities (documented in the form of a note, without registration in the National Police Information System), if from the content of the accepted missing person's report of a person or the verification made, it appears that this is another report of the disappearance of a person who is of age and not incapacitated after the person, having previously gone missing, did not consent to disclose their current whereabouts to an authorized person by submitting a written statement or the person's whereabouts are known to the reporting party, and the information provided does not indicate new circumstances justifying suspicion of a crime against the life, health, or freedom of the missing person or suspicion of their disappearance.

An authorized person filing a missing person's report shall be issued a statement of the reporting person signed by the head of the police unit or the duty officer of the police unit, which at the same time constitutes an acknowledgment of the acceptance of the missing person's report.

Immediately after receiving a missing person's report, the police unit's officer on duty (or a police officer or police employee designated by them) records both the report and the missing person in the National Police Information System.

The level of the search is determined by the police officer receiving the missing person's report after analysing and evaluating the facts and circumstances stated therein, and then approved by the head of the police unit, or, in their absence, by the officer of the police unit on duty where the missing person's report was filed.

The local jurisdiction of a police unit to conduct a search for a missing person is specified in § 9 of Executive Order No. 48 of the Commander-in-Chief of Police of 28 June 2018. In the context of the disappearance of foreigners in the territory of the Republic of Poland, the most relevant is Paragraph 4, according to which, in the event that it is impossible to determine the place of residence of the missing person and their place of permanent or temporary residence in the territory of the Republic of Poland has not been established, the unit competent to conduct the search operations is the Police unit with jurisdiction over the area where the person disappeared.

The manner and scope of the search operations, depending on the qualification of the missing person for a particular level of search, is specified in detail in § 12–15 of Order No. 48 of the Commander-in-Chief of Police of 28 June 2018.

Search operations shall be documented in the search operations' case file for that missing person, which should contain the data listed in § 25 Paragraph 4.

The search operations are terminated when:

- the missing person or their remains have been found, whereby finding a person shall be understood as establishing direct personal contact with them by a police officer or an officer of other services, and in the case of finding a missing person abroad, establishing direct personal contact with them by a police officer or an employee of the competent diplomatic representation of the Republic of Poland, or obtaining information from foreign authorities about the finding of the missing person,
- the whereabouts of the missing person have been established,
- the missing person has returned to their place of residence,
- the missing person found, who is of age and not incapacitated, has not consented to disclose their present whereabouts to an authorized person and has submitted a written statement in accordance with the model attached as Annex No. 8 to the Executive Order,
- the authorized person who notified the police of the disappearance of a person, cancelled the search due to the establishment of contact with the missing person, and the information gathered in the case does not indicate the need to continue the search operations,
- It was established that the sought-for foreigner had left the territory of the Republic of Poland and the National Police Headquarters office responsible for coordinating international searches was informed.

Activities related to the search for the missing person shall be terminated, and the materials of the performed operations collected in the search operations' case file shall be transferred to the archive in the event that:

- 5 years have elapsed from the date of acceptance of the report of disappearance of an adult,

- 5 years have elapsed from the date the missing minor would have become of age.

The difference between “termination of the search operations for the missing person” and “termination of activities related to the search for the missing person” is that the former includes situations that definitively close the case. Whereas, in the case of “termination of activities”, if new information is obtained about the missing person in respect of whom search activities have been terminated and the search file has been transferred to the archive, a case note is prepared, based on which the filed case is retrieved from the archive and further activities are continued.

6.3. Rights of the person filing a missing person’s report

A person filing a missing person’s report has the right to:

- receive confirmation of acceptance of a missing person’s report. This confirmation is at the same time a commitment on the part of the authorized person to immediately notify the police unit conducting the search operations of obtaining information regarding the whereabouts of the missing person listed in the report, including their return to their place of residence, which is an integral part of the missing person report,
- be informed about the status and progress of the search operations for the missing person by the police officer conducting the search activities (not classified information).

6.5. Analysis of responses to requests for access to public information

Due to the humanitarian crisis on the Polish-Belarusian border, on 2 September 2021, a state of emergency, originally introduced for 30 days, became effective in the border strip with Belarus (based on the Regulations of the President of the Republic of Poland of 2 September 2021 on the introduction of a state of emergency in a part of the Podlaskie Voivodeship and part of the Lubelskie Voivodeship, Journal of Laws. 2021 item 1612). On 30 September 2021, the Polish Sejm agreed to extend the state of emergency for another 30 days. The introduction of the state of emergency entailed a significant restriction of human and civil rights in the area where it was in effect, as it meant, i.e., a prohibition on occupying certain areas and recording certain places and objects using technical means. These restrictions have significantly hampered the work of NGOs involved in monitoring human rights in the area of the state of emergency.

Within the framework of the implemented project, the authors of this report sent requests for access to public information to the Municipal Police Headquarters in Sopot, Voivodeship Police Headquarters in Białystok, Poviát Police Headquarters in Hajnówka, National Police Headquarters in Warsaw, Voivodeship Police Headquarters in Sokółka and District Police Headquarters — Warsaw II in Warsaw with questions about the procedure of missing person notifications after the introduction of the state of emergency in parts of the Podlaskie and Lubelskie Voivodeships (that is, after 2 September 2021). The selection of the police units to which the requests were addressed was based on the knowledge of the authors of the report about missing person's report submitted to these units by the families of the missing (directly or through a proxy).

The first question in the requests for access to public information addressed to the above-mentioned police units was: "In the period from 2 September 2021 to the date of responding to this request, did police officers undertake search activities for foreigners reported missing in the areas of the border zone (according to the Act on State Border Protection) adjacent to the border with the Republic of Belarus?". If the first question was answered in the affirmative, the addressees of the requests were asked to answer a further 17 questions on specific issues related to the processing of the accepted reports (the list of questions included in the requests for access to public information is attached to this report).

Of the above-mentioned police units, only two (the Warsaw Police Headquarters and the Poviát Police Headquarters in Hajnówka) have confirmed the acceptance of reports of missing foreigners in the border area after 2 September 2021. The other requested police units said they had not conducted any search activities during the period indicated:

- The Municipal Police Station in Sopot confirmed that the local unit had received "information about the possible disappearance of foreigners in the border area". However, the missing person was not registered, as it was determined in the course of official activities that the designated persons had not crossed the Polish border;
- The District Police Headquarters — Warsaw II, in response to the request, indicated that from 2 September 2021, to 15 April 2024, it did not conduct any search activities in the border area adjacent to the border with the Republic of Belarus;
- The Poviát Police Headquarters in Sokółka responded that no reports of missing foreigners were received in the period from 2 September 2021. At the same time, the unit reported that "in two cases there were unconfirmed interventions initiated by the establishment

of contact by a representative of the media, who pointed out places where, according to the information possessed, the remains could be located. Search operations did not confirm this information”.

- The Voivodeship Police Headquarters in Białystok reported that “officers of the Department of Search and Identification of Persons of the Voivodeship Police Headquarters in Białystok did not carry out search activities against foreigners missing in the border area during the indicated period”.

The National Police Headquarters in Warsaw registered three disappearances of foreigners in the zone where the state of emergency was imposed between 2 September 2021 and 8 April 2024. Each of these cases was classified in the lowest, Level III search. According to the information provided, the scope of the search operations carried out was in accordance with § 14 of Executive Order No. 48 of the Commander-in-Chief of Police of 28 June 2018, and all three reports were recorded in the National Police Information System on the day of their reporting. The Warsaw Municipal Police Headquarters did not respond to questions about verifying the legality and regularity of the actions of Border Guard officers in driving foreigners back to the border line, as well as about checking the database of hospitals in Podlasie, Guarded Centres for Foreigners in Poland, and descriptions of the remain previously found in Podlasie and not yet identified. It is worth mentioning at this point that the project filed three missing person’s reports with the District Police Station — Warsaw II — in each of these cases the report was not accepted on the grounds that the reported person had not crossed the borders of the Republic of Poland. It is difficult to assess the exact number of cases in which the police refused to accept the report. Despite the fact that these issues must be documented by a police report, the Criminal Bureau of the National Police Headquarters does not have information on the number of cases in which a report of a missing foreigner in a border area was not accepted.

One of the three registered cases was closed due to the determination of the whereabouts of the missing person. The police did not provide any details of the incident, thus it is not known whether the missing person’s whereabouts were established as a result of police search operations or, for example, the missing person making contact with their family.

The Powiat Police Station in Hajnówka recorded four disappearances of foreigners in the zone where the state of emergency was imposed between 2 September 2021 and 15 April 2024. Each of these cases was classified in the lowest, Level III search. This police unit also confirmed that the scope of the search was in accordance with § 14 of Executive Order No. 48 of the Commander-in-Chief of Police of 28 June 2018, and

that reports in the National Police Information System were recorded “immediately after the report, on the same day”. The Poviát Police Station in Hajnówka confirmed that it does not verify the regularity and legality of the actions of Border Guard officers in dropping off foreigners at the border line. According to the information provided in response to the request, the search for missing persons was conducted, among other things, by checking the database of hospitals in Podlasie, Guarded Centres for Foreigners in Poland, and descriptions of bodies previously found in Podlasie and not yet identified. They also worked with the embassies of the countries from which the missing persons came.

Search operations ended with one person being found. Again, the police did not provide any specific information regarding this case.

Both the National Police Headquarters in Warsaw and the Poviát Police Headquarters in Hajnówka refuse to allow authorized persons to view the search operations’ case file for the missing person due to the “operational nature of search activities”.

It is worth noting at this point that the National Police Headquarters in Warsaw, in its response to the request, stated that the Criminal Bureau of the National Police Headquarters does not have information on the number of cases involving situations in which a report of a missing foreigner in a border area was not accepted. Meanwhile, according to § 5 Paragraphs 3, 4 and 7 of Executive Order No. 48 of the Commander-in-Chief of Police of 28 June 2018, the refusal of the acceptance of a missing person’s report must be documented by an official police report, and therefore each police unit should possess such data.

Requests for access to public information were also sent to the District Prosecutor’s Offices in Suwałki, Zamość, and Lublin with questions about proceedings in cases of deaths of foreigners in the area around the border with the Republic of Belarus. According to the answers received, the above-mentioned prosecution units are currently conducting several pre-trial investigations to check the possibility of committing a crime under Article 155 of the Penal Code (manslaughter).

6.4. Conclusions

The responses to requests for access to public information discussed above, combined with information obtained by the authors of this report from the families of missing persons and their representatives, allow us to identify the following problems related to the search procedure for missing foreigners on the Polish-Belarusian border:

- Discretion used by police officers in deciding whether or not to accept a missing person's report. Executive Order No. 48 of the Commander-in-Chief of Police, dated 28 June 2018, specifies the cases in which missing person's reports are not to be accepted. Nonetheless, information obtained from representatives of the families of missing persons shows that most of the reports were not classified as missing person's reports. These decisions were justified on the grounds that the persons had allegedly not crossed the Polish border, and therefore the disappearance, according to the Police, could not have occurred on Polish territory. The fact that the missing persons crossed the border illegally (and therefore the Police could not have knowledge regarding whether the person was in Poland) aside, it should be pointed out that in some cases the representatives presented evidence (geolocations or screenshots sent by the missing persons to their relatives via instant messaging on the day of the disappearance) indicating unambiguously that the persons were in fact in Poland.
- Misclassification of missing person's reports to the lowest of the three levels of search defined in Executive Order No. 48 of the Commander-in-Chief of Police dated 28 June 2018 is common. Misclassification of disappearance results in the Police committing resources that are inadequate to effectively search for missing persons.
- Directly related to the problem signalled in point 1 is the lack of possibility of appeal against the decision not to accept the notice of disappearance. This is because Executive Order No. 48 of the Commander-in-Chief of Police of 28 June 2018 does not provide for any means for appeal (along the lines of a victim's complaint against a decision to refuse to initiate preliminary proceedings under the Code of Criminal Procedure). Note that the National Police Headquarters in Warsaw, in its response to a request for access to public information, confirmed that it does not have data on the number of cases in which a missing person's report was dropped (despite the obligation to document this action in the form of official police reports).
- Police officers conducting search activities do not maintain contact with authorized persons and do not inform them of the activities undertaken and the course of the search. The Poviát Police Headquarters in Hajnówka explicitly admitted that such contacts with authorized persons are not maintained, while the response of the National Police Headquarters in Warsaw amounted to quoting the content of § 11 of Executive Order No. 48 of the Commander-in-Chief of Police of 28 June 2018, without any comment of its own. In turn, information provided to the authors of the report by representatives of the families of missing persons shows that when

attempts were made to contact the police officers conducting the search, they refused to provide any information due to the operational nature of the search operations.

- The Border Guard's modus operandi, enforced by the Border Regulation, makes it difficult for the Police to conduct search operations for missing persons. On the one hand, the purpose of the police's search operations (conducted on the basis of Executive Order No. 48 of the Commander-in-Chief of Police of 28 June 2018) is to find the missing person, for which it is necessary to establish the person's identity. On the other hand, the Border Guard, acting on the basis of § 3 Paragraph 2b of the Regulation of the Minister of Interior and Administration of 13 March 2020 on the temporary suspension or restriction of border traffic at certain border crossings, puts away foreigners illegally crossing the border without determining and recording their personal data. In other words, on the basis of present legislation in force, it is possible that a person being sought for by the police as a missing person will be detained by the Border Guard and escorted to the state border. Since the Border Guard does not establish the identity of such individuals, the police will continue to conduct search operations, engaging their forces and resources.

In the opinion of the authors of this report, cases where unidentified remains are found at the border should not be automatically qualified as "manslaughter", leading to conduct pre-trial investigation toward the possibility of a crime under Article 155 of the Penal Code. It also seems worth considering the possibility that the death of a person was the result of a failure to provide assistance to a person in a position of imminent danger of loss of life or grievous bodily harm, and conducting pre-trial proceedings toward the possibility of committing a crime under Article 162 of the Penal Code. The possibility of such a qualification of the act seems particularly justified in cases in which a person was detained by Border Guard officers in the period immediately before death, or when they had knowledge of a situation in which the deceased person was in danger (for example, in a particular place in the woods in sub-zero temperatures), and yet failed to respond.

7.

Summary and recommendations for change:

KATARZYNA CZARNOTA, GRAŻYNA BARANOWSKA, OLGA NOWICKA,
MARCIN CZACHOR, MARCIN SOŚNIAK

Poland has undoubtedly joined the countries facing the challenge of developing new and long-term mechanisms that would ensure respect for the rights of missing persons and their families. The current work on Poland's migration policy and the announced ratification of the UN Convention on Enforced Disappearances provide a good context for launching activities aimed at countering the effects of the Alexander Lukashenko regime's instrumentalization of migration and the law, as well as introducing systemic changes. Given the new situation Poland is currently facing, and especially with the increasing number of reported disappearances at the border, these measures seem necessary to ensure that Poland and its officers are not responsible for the disappearances, enforced disappearances, and deaths of migrants. The publication which is this report provides a diagnosis of the situation, identifies the main barriers that families face when trying to successfully report a disappearance and bring about the initiation of a search, and at the same time aims to emphasize the need to adhere to universal mechanisms for, i.e., the protection of migrants' rights through intersectional and interministerial action. Following the definition of enforced disappearances, the authors focused on the role of state officials — the Border Guard — as contributing to the occurrence of disappearances, and on the role of the Polish Police which is under a statutory obligation to search for any missing person. We compare the current laws governing missing persons at the border with recommendations for necessary reforms. Nonetheless, we note that following the diagnosis of the problems, it is necessary to take further measures to identify the negative effects of border militarization and instrumentalization of migration. The need of Poland's fulfilment of legal and human rights standards and active prevention of disappearances, including enforced disappearances, should include necessary changes in the practice of state services and bodies, as they currently function inadequately to effectively protect the rights of migrants and prevent the increasing number of disappearances and identification of fatalities.

7.1. Main recommendations for change

The conclusions from the analysis of responses to requests for access to public information discussed above, as well as the problems signalled by representatives of the families of missing persons, allow us to make the following recommendations for changes in the legal regulations on the search for foreigners missing at the Polish-Belarusian border:

1. Introduction in Executive Order No. 48 of the Commander-in-Chief of Police dated 28 June 2018 of:

- the possibility for a person filing a missing person's report to appeal against the officer's decision not to accept the report (along the lines

of the right of a victim — under the Criminal Procedure Code — to file a complaint against the decision not to initiate pre-trial proceedings),

- a provision requiring police officers who refuse to accept a missing person’s report to justify their decision, which justification should include an indication of both the legal and factual basis for such a decision,
- a provision requiring a police officer to maintain contact with an authorized person and provide the necessary information at specific intervals (for example, at least once a month or at least once a quarter). Currently, the officer conducting such a search is required to maintain contact only “to the extent necessary” — a non-specific criterion, the assessment of which depends solely on the arbitrary decision of the particular officer and does not provide sufficient guarantees of respect for the right of the person filing the report to be informed of the status of the search for the missing person;

2. Issuance by the Prosecutor General under Article 13 §1 of the Act of 28 January 2016 — the Public Prosecutors Law of guidelines for conducting pre-trial investigations into the finding of unidentified corpses of foreigners in the border zone, ordering that these investigations be conducted toward the possibility of crimes under Article 155 of the Penal Code and Article 162 of the Penal Code. Currently, in all such cases, the Prosecutor’s Offices adopt the qualification of Article 155 of the Penal Code, which, if it is found that the requirements for classification of crime are not met, can lead to a premature decision to discontinue the preliminary proceedings (while failing to determine whether the crime of failure to provide assistance to a person in a position that poses an imminent danger of loss of life or health was committed);

3. Introducing an amendment to §3 Paragraph 2b of the Regulation of the Minister of Interior and Administration of 13 March 2020 on the temporary suspension or restriction of border traffic at certain border crossings by ordering Border Guard officers to determine the personal data of persons returned to the state border line and provide this information to the Police. This change could help reduce the number of cases handled by the police regarding the search for missing persons, which are eligible for termination due to the finding of a missing person. The current regulation results in a waste of police forces and resources engaged in the search for people who are not missing — this is solely due to the lack of information exchange between the Police and the Border Guard;

4. Changes to the missing person's report form available on the police website: translating it into English; introducing training for police officers on the phenomenon of enforced disappearances and the causes of forced migration using the example of familiarization with the situation in Syria, Iraq, Afghanistan and other countries of origin of migrants;

4. Trainings involving the Missing Persons Search Centre and police organizational units involved in conducting and coordinating search and rescue operations — conducted to raise officers' knowledge of the humanitarian crisis, the impact of the border ordinance on the increase in the number of missing persons, the threat of enforced disappearances, and the activity of search and rescue groups formed by human rights defenders in Podlasie. Authorities conducting search activities should be aware that any information obtained from the Border Guard suggesting that a person does not appear in the Border Guard's information systems or that the Border Guard has not taken any action against such a person may be erroneous. Certainly, such information cannot be the sole basis for ceasing search activities and concluding that the wanted person has not crossed the Polish border.

5. Training of the aforementioned units in proactively taking steps to verify the identity of a deceased person by comparing DNA material using new technologies (online verification) in order to coordinate and proactively take contact with the family of a missing person residing outside Poland;

6. Conducting search operations in accordance with the system of guidelines for the search for missing persons developed by the Committee on Enforced Disappearances (Guiding principles for the search for disappeared persons) — in particular in the following cases: conducting search operations for an individual until their fate has been determined (1), respecting the right to participate in the search (5), taking into account vulnerable migrant groups, including children (9).

7. Immediately repeal the provisions of the Border Regulation, which are incompatible with national and international law, and restore procedures in line with the standards of administrative procedure, which will assume the need to identify border crossers;

8. The need for intersectional, i.e., interministerial actions leading to consultations between ministries on Poland's preparation for ratification of the UN Convention on Enforced Disappearances, so as to effectively improve the situation of migrant women and migrants and prevent and counteract enforced disappearances in Poland;

9. In connection with the ongoing work on the introduction of changes in Polish migration policy, it is necessary to evaluate the identified negative phenomena related to the closing of borders and the failure to provide safe and legal routes that guarantee security and respect for the law — people are choosing more dangerous routes, the activity of smugglers and the threat of human trafficking in border areas is increasing. There is a need to take into account the phenomenon of instrumentalization of the law by Belarus and to counter it in a way that will not involve violations by Polish officials;

10. Ceasing the politicization of migration, understood as the lack of reliable and systemic measures in this area, and confront the situation where new systemic solutions are needed in times of crises. For measures such as funding more fences, drones, tear gas, and condoning violence against migrants and asylum seekers — including detention, withholding access to basic services such as shelter, food or water — and the use of threatening language or hate speech will not stop migrants from coming or attempting to come to Europe;

11. The need to debate the territorial sovereignty of controlling the border and knowing who enters and who leaves. Democratic borders are porous by nature: providing migrants and asylum seekers with legal and secure mobility solutions will ensure such control;

12. The need to focus on regaining control of the country's external border from smugglers by increasing the range of mobility solutions available to the majority of migrants, investing in integration measures — in particular by fostering and developing a strong public discourse on diversity and mobility as foundations of modern European societies;

13. In terms of future labour market risks: opening up labour markets by introducing a visa system that allows people to come in search of work and encourages them to return if they do not find a specific job, which would allow for a much more regulated and controlled official labour market. At the same time, these measures should include sanctions against employers who exploit illegal migrants in the black labour market (e.g., catering, industry). Visa systems would limit the scope of the market for recruiters, smugglers, exploitative employers, and profiteers (vide the so-called visa scandal);

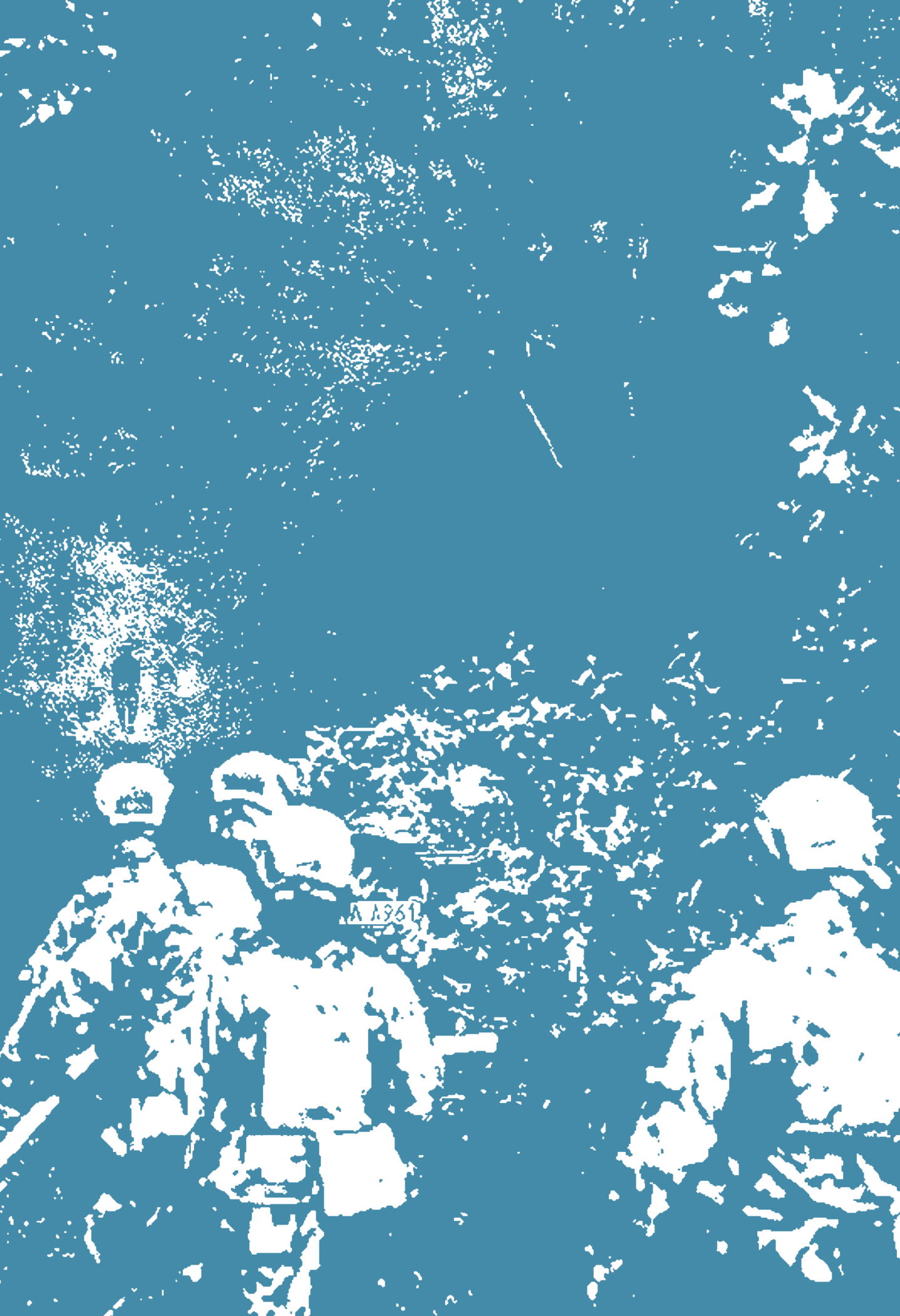
14. The need to decriminalize the provision of humanitarian aid that directly saves the health and lives of those on Polish territory.



8.

Annex.

Access to public
information



I.

Requests for information were sent during the execution of the project in line with the right of access to public information to:

- Department of Search and Identification of Persons, Criminal Investigation Department, Department of Unsolved Crimes, and Operation Technology Department
- The National Police Headquarters Criminal Bureau
- Crime Department, Drug-Related Crime Department, and Human Trafficking Department.



REQUEST FOR ACCESS TO PUBLIC INFORMATION

Dear Sir,

based on Art. 2 section 1 and Art. 10 section 1, Act of 6 September 2001 on Access to public information (i.e. Journal of Laws 2022, Item 902), the Helsinki Foundation for Human Rights kindly requests a reply to the following questions:

1. Within the time frame from 2 September 2021 until the date of response to this request, did Police officers conduct search operations for foreigners reported missing in the border area (according to the Act on state border protection), i.e. the area adjacent to the border with the Republic of Belarus?

The following questions concern reports of disappearances of foreigners in the area adjacent to the border with Belarus from 2 September 2021 until the date of reply.

If the reply to question 1 is in the affirmative:

2. How many missing person reports were received which concerned foreigners?

3. In how many cases were the reports renounced, and for what reasons?

4. How many of the missing person's reports accepted were classified as Level I search as defined by § 2 item 3 a) Executive Order No. 48 of the Commander-in-Chief of Police of 28 June 2018 on the conduct of the police search for a missing person and the procedure in the event of finding a person of undetermined identity or unknown corpses and human remains (Official Gazette of the KGP 2018, item 77 as amended)?

5. How many of the missing persons reports accepted were classified as Level II search as defined by § 2 item 3 b) Executive Order No. 48 of the Commander-in-Chief of Police of 28 June 2018 on the conduct of the police search for a missing person and the procedure in the event of finding a person of undetermined identity or unknown corpses and human remains?

6. How many of the missing person's reports accepted were classified as Level III search as defined by § 2 item 3 c) of the Executive Order No. 48 of the Commander-in-Chief of Police of 28 June 2018 on the conduct of the police search for a missing person and the procedure in the event of finding a person of undetermined identity or unknown corpses and human remains?

7. What was the scope of the search operations undertaken?

8. What was the result of the aforementioned search operations? Were the missing persons successfully found?

9. Was the information on missing foreigners entered into the National Police Information System (KSIP)?

If the reply to question 9 is in the affirmative, please provide the following information: How many days after the report had been received, was the missing person's report registered in the National Police Information System?

10. Did the officers conducting search operations for missing foreigners enter and/or maintain contact with the authorized persons so as to provide them with legally permitted information on the stage and course of the search for the missing person as defined by § 11 of the Executive Order No. 48 of the Commander-in-Chief of Police of 28 June 2018 on the conduct of the police search for a missing person and the procedure in the event of finding a person of undetermined identity or unknown corpses and human remains?

11. In the case when the motion was filed by authorized persons or their representatives to view and/or make photocopies of documents placed in the search folder as defined by § 25 Executive Order No. 48 of the Commander-in-Chief of Police of 28 June 2018 on the conduct of the police search for a missing person and the procedure in the event of finding a person of undetermined identity or unknown corpses and human remains, were these persons allowed to view the search case file (to the extent not covered by a confidentiality clause)?

12. In the case when a motion was filed by members of family of the missing person or their representative to view and/or make photocopies of documents placed in the missing person's case folder as defined by § 25 of the Executive Order No. 48 of the Commander-in-Chief of Police of 28 June 2018 on the conduct of the police search for a missing person and the procedure in the event of finding a person of undetermined identity or unknown corpses and human remains, were these persons allowed to view the search case file (to the extent not covered by a confidentiality clause)?

13. Were the individuals filing a missing person's report about foreigners issued a statement of the reporting person signed by the head of the police unit or the duty officer of the unit, which at the same time constitutes an acknowledgment of the acceptance of the missing person's report, as defined by § 6 of the Executive Order No. 48 of the Commander-in-Chief of Police of 28 June 2018 on the conduct of the police search for a missing person and the procedure in the event of finding a person of undetermined identity or unknown corpses and human remains?

We kindly ask that information be sent to the following e-mail address: refugees@hfhr.pl. We remain at your disposal as to the preferred form of reply.

Should you have any questions, please contact us at refugees@hfhr.pl

II.

Requests for information were sent during the execution of the project in line with the right of access to public information to the following units:

- Police Headquarters in Sopot,
- Powiat Police Headquarters in Białystok,
- Powiat Police Headquarters in Hajnówka,
- Powiat Police Headquarters in Sokółka,
- District Police Headquarters — Warsaw II in Warsaw,
- Voivodeship Police Headquarters in Białystok,
- Police Headquarters in Białowieża.

REQUEST FOR ACCESS TO PUBLIC INFORMATION

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Based on Art. 2 section 1 and Art. 10 Section 1 of the Act of 6 September 2001 on Access to public information (i.e. Journal of Laws 2022, Item 902) the Helsinki Foundation for Human Rights the Helsinki Foundation for Human Rights kindly requests a reply to the following questions:

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5. How many of the missing person's reports accepted were classified as Level II search as defined by § 2 Item 3 a) of the Executive Order No. 48 of the Commander-in-Chief of Police of 28 June 2018 on the conduct of the police search for a missing person and the procedure in the event of finding a person of undetermined identity or unknown corpses and human remains?

6. How many of the missing person's reports accepted were classified as Level III search as defined by § 2 Item 3 c) of the Executive Order No. 48 of the Commander-in-Chief of Police of 28 June 2018 on the conduct of the police search for a missing person and the procedure in the event of finding a person of undetermined identity or unknown corpses and human remains?

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11. In the case when the motion was filed by authorized persons or their representatives to view and/or make photocopies of documents placed in the search case file as defined by § 25 Executive Order No. 48 of the Commander-in-Chief of Police of 28 June 2018 on the conduct of the police search for a missing person and the procedure in the event of finding a person of undetermined identity or unknown corpses and human remains, were these persons allowed to view the search case file (to the extent not covered by a confidentiality clause)?

12. In the case when a motion was filed by members of family of the missing person or their representative to view and/or make photocopies of documents placed in the missing person's case file as defined by § 25 of the Executive Order No. 48 of the Commander-in-Chief of Police of 28 June 2018 on the conduct of the police search for a missing person and the procedure in the event of finding a person of undetermined identity or unknown corpses and human remains, were these persons allowed to view the search case file (to the extent not covered by a confidentiality clause)?

13. Were the individuals filing a missing person's report about foreigners issued a statement of the reporting person signed by the head of the police unit or the duty officer of the unit, which at the same time constitutes an acknowledgment of the acceptance of the missing person's report, as defined by § 6 and § 25 of the Executive Order No. 48 of the Commander-in-Chief of Police of 28 June 2018 on the conduct of the police search for a missing person and the procedure in the event of finding a person of undetermined identity or unknown corpses and human remains?

14. What kind of equipment to conduct search for missing persons do Police Headquarters Białowieża dispose of?

15. In course of the search, did the officers of PH Białowieża verify the regularity and legality of the actions of Border Guards consisting in returning foreigners to the border line and their possible exposure to disappearance?

16. What is the current number of active search operations carried out by PH Białowieża following reports of disap-

pearances of foreigners in the Polish-Belarusian border area?

17. Which institutions did PH Białowieża enter contact and cooperation with, in the case of search operations conducted following the reported disappearances of foreigners?

18. During the search activities concerning missing foreigners carried out by PH Białowieża, were activities conducted such as checking the database of hospitals in

Podlasie, Guarded Centres for Foreigners in Poland, and descriptions of bodies previously found in Podlasie and not yet identified?

We kindly ask that information be sent to the following e-mail address: refugees@hfhr.pl. We remain at your disposal as to the preferred form of reply.

Should you have any questions, please contact us at refugees@hfhr.pl



Situation diagnosis as a tool of advocacy and action towards protection of the rights of disappearance victims and counteracting enforced disappearances in Poland.

The report was prepared in response to the growing problem of disappearances of migrants in Poland. The publication is a result of joint effort undertaken by many people, made possible thanks to actions continually taken by citizen society and defenders of human rights active in the Polish-Belarusian border area. It is important to note the context for the present report for victims of disappearances and enforced disappearances – Poland is currently preparing to ratify the UN Convention of 20 December 2006 for the protection of all persons from enforced disappearances, which shall positively impact the strengthening of the standards of respect for human rights, particularly the protection of missing persons and their family members.

The published report is accompanied by an experience-based diagnosis and analysis of the problem, and a strategy for advocacy and strategic communication devised by HFHR for 2024–2025. These analyses will be used to induce positive change and to monitor the preparations undertaken by the Polish state to adopt the ratification process of the UN Convention for the protection of all persons from enforced disappearances. After several decades, Poland has now become one of immigration countries, and therefore should develop tools suitable to address new challenges and problems.

- Poland is the place of residence of numerous families of enforced disappearance victims (predominantly Ukrainian or Belarusian families). The UN Committee on Enforced Disappearances stresses the need to ensure that all relatives of the missing persons and their representatives, as well as all other parties having legitimate interest, so that they – regardless of their place of residence – receive assistance in gaining immediate access to information and take part in all stages of search or investigation concerning their missing close ones.
- Raising the protection standards is at the same time connected to the possible improvement of the very process of conducting search within Poland and cooperation with international organs. The ratification and cooperation with the UN Committee on Enforced Disappearances will allow for support in the works on local mechanisms of search and investigation conducted, including those in the context of the ongoing humanitarian crisis at the Polish-Belarusian border. As part of the project, a diagnosis was drawn as to the scale of the problem and its main causes – stressing the role of the officers of the Polish state.
- International standards also refer to situations where the states being parties to the Convention are obliged to use all available information and international contacts, make use of new technologies and all of search processes hitherto developed (cf. General Comment on enforced disappearances and migration).
- These standards can enhance the search procedures for missing foreigners and for maintaining contact with their families; the latter is currently regulated on a general level only as defined by Executive Order No. 48 of the Commander-in-Chief of Police of 28 June 2018. In sum, due to the intersectional link between enforced disappearances and the works on Polish migration policies as announced, it should be emphasized here that those policies must be consistent within legal standards.
- Ratification of the Convention and the necessary diagnosis of the scale of disappearances and enforced disappearances in Poland as a phenomenon, as well as the situation of the victims, corresponds with the public announcements on the part of the Ministry of the Interior concerning an increased and systemic involvement of the state in search and rescue operations for migrants in border areas.

Special thanks:

We wish to express our gratitude to all human rights defenders providing humanitarian assistance in the Polish-Belarusian border area.

Special thanks for all actions documenting the situation of missing persons:

Podlasie Volunteer Humanitarian Rescue (POPH),

EGALA Association,

Ocalenie Foundation,

We Are Monitoring Association

Doctors Without Borders (Médecins sans Frontières)



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Reports published in 2024 on the situation at the European Union-Belarus border



*No Safe Passage. Migrants' deaths
at the European Union-Belarusian border.*
Ocalenie Foundation. August 2024.



*We only have one war here: immigration, you.
Pushback policy and armed forces' violence
at the Polish-Belarusian border.*
We Are Monitoring Association Team.
July 2024.



*Death, Despair, and Destitution:
The human costs of the EU's migration
policies.*
Doctors Without Borders(Médecins Sans
Frontières).March 2024.

