

## **2022 Index on Torture.**

### **Poland**

Since summer 2021, the ongoing humanitarian crisis on the Polish-Belarusian border leads to the violation of many fundamental rights of migrants crossing the border - including the right to be free from torture and inhumane treatment. The crisis consists, among other things, in the lack of an adequate response by the Polish state to the increased number of migrants, including those seeking asylum, mainly from the countries of the Middle East and Africa, crossing the border outside of the legal border crossings. Many of them wish to seek international protection although their country of destination is usually Western European countries. The response of the Polish authorities in the vast majority of cases are the summary forced returns of migrants to Belarus (push-backs), while denying them the right to humanitarian aid and the right to enter asylum proceedings. Another response of the Polish authorities was a construction of the 186-kilometre wall, equipped with thermal cameras and motion detectors, to prevent entries from Belarus<sup>1</sup>. The construction was finished in June 2022<sup>2</sup>.

At the peak of the crisis, in October 2021, the Polish Border Guard<sup>3</sup> reported about 500 attempts to cross the border each day. Although the numbers have dropped significantly, there are still dozens of people trying to cross the border each day and the humanitarian crisis continues. Many of them are subjected to push backs and other forms of inhumane treatment. As a result, thousands of people, many of whom belonging to the most vulnerable groups, were left in limbo between two countries with no or limited access to water, food, shelter, or medical help. At least 28 migrants died because of the weather conditions and pushbacks. The last death was confirmed in early December 2022<sup>4</sup>.

### **Pushbacks**

It is well-documented and confirmed in the series of domestic courts' judgements that migrants are removed (pushed-back) by Polish Border Guard to Belarus without consideration of their individual situation and regardless of their will of applying for international protection. Migrants who are pushed back to Belarus face harsh conditions in the forests and swamps located in the border area which is especially dangerous for them during the cold seasons (autumn and winter). The temperatures in that region can drop to even -20 or less degrees Celsius. Many migrants report being subjected to the violence from the hands of the Belarusian uniformed services, some also claim to be ill-treated by the Polish officers.<sup>5</sup>

The forced return of migrants to the territory of Belarus is not only a violation of the provisions related to access to asylum procedures. These activities should also be considered in terms of exposing migrants to loss of life or health and inhumane treatment (Articles 2 and 3 of the European Convention on Human Rights). Summary returns are particularly dangerous when the temperatures in the forest drop and the people transported to the border line are in poor physical condition, with open wounds, injuries, chronic

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<sup>1</sup> Ustawa z dnia 29 października 2021 r. o budowie zabezpieczenia granicy państwowej, Dz. U. 2021, poz. 1992.

<sup>2</sup> <https://www.gov.pl/web/mswia/zakonczenie-budowy-fizycznej-czesci-zapory-na-granicy-polsko-bialoruskiej--wydarzenie-z-udzialem-kierownictwa-mswia>.

<sup>3</sup> [https://twitter.com/Straz\\_Graniczna](https://twitter.com/Straz_Graniczna).

<sup>4</sup> <https://bialystok.wyborcza.pl/bialystok/7,35241,29221626,pogrzeb-kolejnej-smiertelnej-ofiary-kryzysu-na-granicy-polsko.html>.

<sup>5</sup> E.g. [https://hfhr.pl/upload/2022/12/raport\\_gdzie\\_prawo\\_nie\\_siega-hfpc-30062022\\_1.pdf](https://hfhr.pl/upload/2022/12/raport_gdzie_prawo_nie_siega-hfpc-30062022_1.pdf).

diseases or left without the necessary medicines. Returning migrants to the border with Belarus and forcing them to cross the razor fence leads to a violation of their right to dignity, and in extreme cases also the prohibition of torture and inhuman and degrading treatment.

Helsinki Foundation for Human Rights recorded stories of migrants who have been forced to cross razor fences or border rivers, often under extreme weather conditions and without access to humanitarian and medical assistance. Among the methods aimed at forcing migrants to return to Belarus are most often mentioned: threats, being attacked by dogs and threatened with weapons. Cases have also been reported of forcing migrants to cross the border river. One migrant reported that he was forced by Polish Border Guard officers to swim across the Svisloch (Świsłocz) River, despite reporting that he could not swim, and the air temperature that day was below zero degrees Celsius. Memos from humanitarian interventions show that as a result of having to cross the razor fence or swimming across the border river, many people suffered various types of injuries, such as scratches or cuts on the skin, fractures of limbs, as well as extreme frostbites of the body. The health condition of some people was so serious that they required immediate medical intervention.

### **Changes in the Polish law enabling pushbacks**

In August 2021, Polish Ministry of Interior and Administration issued a legislation that allowed the uniformed services to immediately return anyone who crossed the border in the irregular manner (based solely on the oral instruction) and banned their re-entry for six months to three years<sup>6</sup>. Moreover, in October 2021, the Polish Parliament introduced an amendment to the Act on Foreigners<sup>7</sup> according to which Polish Border Guard can issue a decision ordering a foreigner who crossed the border outside of the legal border crossing to leave Poland immediately.

The introduced provisions should be considered incompatible with international and EU standards on the protection of the rights of expelled persons. They do not include the obligation to examine the conditions excluding the possibility of expulsion or return of a foreigner from the territory of the country, such as the risk of torture in the country to which the person is to be sent (Article 3(1) of the Convention against Torture and other cruel, inhuman or degrading treatment or punishment) or a declaration of willingness to submit an application for international protection (Article 9(2) 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). In the course of the proceedings, no reports of interrogations are drawn up, and lodging an appeal does not have a suspensive effect. As a result, issuing decisions on leaving the Republic of Poland and escorting migrants to the border line is associated with a high risk of violation of their fundamental rights.

A similar opinion is held by the national judicial authorities, which are the appeal body against decisions issued by the Border Guard. Voivodship Administrative Courts in cases concerning pushbacks - whether

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<sup>6</sup> Rozporządzenie Ministra Spraw Wewnętrznych i Administracji z dnia 20 sierpnia 2021 r. zmieniające rozporządzenie w sprawie czasowego zawieszenia lub ograniczenia ruchu granicznego na określonych przejściach granicznych, Dz. U. 2021, poz. 1536.

<sup>7</sup> Ustawa z dnia 12 grudnia 2013 r. o cudzoziemcach, Dz. U. 2013, poz. 1650 z późn. zm.

based on the Ministry of Interior's regulation<sup>8</sup> or on the amendment to the Act on Foreigners - point to their non-compliance with, inter alia, international refugee law and the principle of non-refoulement.

The attempt made by the legislator to create a legal basis for the practice of push-backs did not make the push-backs legal. Both international law and EU law require Poland to accept an asylum application from any person who declares their will to apply for international protection and refrain from returning people to the territories of countries where they are in danger. The Polish authorities are also under an absolute obligation to refrain from torture and inhuman or degrading treatment of any person who is on its territory. Meanwhile, taking people to the forest, especially in extreme weather conditions and in dangerous areas, and leaving them there to fate and the Belarusian services may be a form of torture or at least inhumane treatment.

### **Conditions in the detention centers for migrants**

People who are subjected to summary returns are usually arbitrarily detained before being pushed-back to Belarus. They are kept in the police or border guards' cars or taken to the border guards stations for even up to dozen hours without receiving the decision on detention, the protocol of their apprehension nor they are allowed to contact lawyer or their relative.

Most of the migrants who are not pushed-back to Belarus and who manage to enter asylum proceedings, face being placed in one of the immigration detention facilities. Immigration detention is not used as a measure of last resort and is often applied or extended automatically. One of the explicitly defined legal prerequisites for placing a person in immigration detention is the unauthorized crossing of the border, which is the case for people arriving through the "green border" with Belarus. Individual circumstances of that person are too often put aside while deciding on detention. Even individual circumstances such as being a victim of torture, serious physical or mental health problems are not properly assessed, resulting in people belonging to vulnerable groups (including minor children) spending months in detention<sup>9</sup>.

According to the Polish Ombudsman, the accommodation in the detention facilities for asylum seekers in Poland is not in compliance with human rights standards and constitutes inhuman and degrading treatment within the meaning of Article 3 of the ECHR and Article 4 of the Charter. In their report of June 2022, the National Preventive Mechanism expressly referred to the overcrowding of the centres, the poor living conditions, the insufficient medical and psychological assistance and the lack of respect for the detainees' rights, which could, in their opinion, "lead to cruel, inhuman or degrading treatment"<sup>10</sup>.

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<sup>8</sup> <https://bip.brpo.gov.pl/pl/content/wsa-rpo-pushbacki-sprzecznosc-prawo-polskie-miedzynarodowe-uzasadnienie>.

<sup>9</sup> [https://bip.brpo.gov.pl/sites/default/files/2022-02/RPO\\_sad\\_25.1.2022.pdf](https://bip.brpo.gov.pl/sites/default/files/2022-02/RPO_sad_25.1.2022.pdf)

<sup>10</sup> <https://bip.brpo.gov.pl/pl/content/kmpt-cudzoziemcy-strzezone-osrodki-raport>