

Criminalizing Solidarity. Report on Anti-Repression Efforts





Ochrymy Podlewkowie

Suszczy Brzek

Planta

Krynica Bernacki Most

Minkówka

Grodzisk

Zabłotczyca

Narewka

Mikłaszewo

Skupowo

Stózek

687

Gruszyca

Guszczewina

Swinoroje

159

Zawodzieckie

Nowosady

Sorocza Nózka

P u s z c z a

BIAŁ

Kryniewo

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Gród 196

pliny

B i a ł o w i e s k a

Eutownia

HAJNOWKA

Budy

Teremiski

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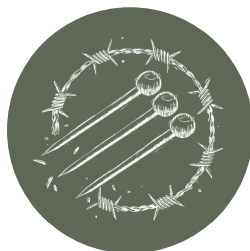


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ABOUT THE AUTHORS:



Artur Kula – advocate at the KMA Law Firm, involved in activism at the Poland-Belarus border area since October 2021, where he represents the activists in court proceedings. PhD. Chairman of the Human Rights Section of the District Bar Council in Warsaw. Member of the Human Rights Commission of the Polish Bar Council.



Kolektyw Szpila (Szpila Collective) – feminist anti-repression collective founded in the spring of 2020. Its mission is to provide legal assistance and support to those experiencing repression from the state and the police due to activism and political engagement. Szpila runs an anti-repression helpline (+48 722 196 139) for those in need of urgent assistance, and collaborates with a network of lawyers and psychologists so as to be able to provide them with comprehensive support. Although based mainly in Warsaw, their offer covers the entire Polish territory, particularly the area adjacent to the border with Belarus. Szpila takes part in public events aimed at raising awareness of human rights issues and fostering social cohesion and solidarity.

More information on the collective's activity:
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The authors describe the mechanisms of **criminalizing** migration, and repression used against those providing support to migrants in the Polish-Belarusian border area starting 2021. By analyzing both the local context and the changing legal framework of the European Union, the authors show how actions taken by the state – including the introduction of new provisions, state officers' interventions, and criminal proceedings – contribute to **criminalization of solidarity**. The report opens with a discussion of legal bases for criminalizing migration and humanitarian aid in the context of the so-called Facilitation Directive which may intensify the repressive measures applied at the borders of the EU. The following chapters present judicial decisions of Polish courts, cases of repression against those supporting migrants, and the activity of anti-repression groups. These are complemented by an analysis of how these processes impact the community and the public, exposing their multi-faceted character as a cluster of legal, media-driven, economic, and political aspects.

Key findings:

- **Starting 2021**, we have noted a systemic restriction of access to asylum in Poland and the practice of **pushbacks** which have resulted in at least 97 **confirmed deaths** of migrants (data gathered by the We Are Monitoring Association¹).
- People and organizations providing humanitarian aid have been subjected or exposed to **intimidation, surveillance, tracking/following**, and **physical repression** and indicted in **criminal and offense/misdemeanor cases**
- Several rulings of **Polish courts** have acquitted individuals providing aid, pronouncing their actions to be **acts in a state of necessity** and constitute **legal forms of protecting human life and health**
- Authorities have used i. a. **voivodes' ordinances** as grounds for penalization, although courts have pronounced these acts **unconstitutional and legally ineffective**.
- The report points to an increasing **militarization of the border**, comprising i. a. the presence of the army, hindering migrants' access to paramedics, medical aid, legal assistance and asylum procedures, as well as making it impossible to independently document the situation in the border area.
- The proposed new **EU facilitation directive** in its current form – contrary to declarations – may contribute to further **criminalization of humanitarian aid** and **surveillance of activism**.
- The notion of facilitation of entry and stay in the territory of the European Union functions within the EU documents as **vague and intentionally broad**, which can result in malpractice and penalization of acts which comply with the Geneva Convention.

In the report's main conclusion – **criminalizing humanitarian aid not only violates the migrants' rights, but undermines the foundations of civil society and rule of law**. This is a systemic phenomenon and should be seen as a threat to the observance of human rights in Poland and the European Union as a whole. The border crisis is a phenomenon which requires a balance between humanitarian principles and securitization.

1 Regularly updated data available on the We Are Monitoring website: <https://wearemonitoring.org.pl/en/home/?cn-reloaded=1> (accessed 30 Apr 2025).

The present report is published nearly four years after the beginning of the humanitarian crisis at the Poland-Belarus border. The authors discuss examples of criminalization strategies used by Polish authorities who implemented more changes legally restricting migration (including suspension of the right to asylum) as this report was being finalized.



Katarzyna Czarnota

1. Systemic criminalization of migration and humanitarian aid. General introduction



1.1. The border as a disciplining machine: architecture of criminalization and exclusion at the Poland-Belarus border

Criminalization is a multi-faceted and structural political strategy whose objective, in simple terms, is to **link migration to crime, illegality, and penalization, thus introducing the need to administer punishment**². Systemic criminalization of migration is part of a broader architecture of repression – designed and implemented in legal, operational, and symbolic spheres, and aimed at reconfiguring the border as a security mechanism in which migration is framed in a regime of illegality and subject to penalizing procedures. Criminalizing functions here not only as a legal category, but as technology of power – used to link human movement to crime³, erasing the status of a migrating person as an entity requiring protection. Since 2021 the activity of Polish government and services/forces at the Polish-Belarus border has focused predominantly on **the prevention of crossings and prohibiting migrants from entering the Polish territory**⁴. The development of a physical border barrier, installation of surveillance systems, and the presence of the army are illustrative of a shift in the management model applied to the Polish border – from the usual immigration control based on administrative procedures and legal obligations, towards a strategy of prevention of migration. The new approach is centered on constructing physical barriers, fostering a narrative of threat (via securitization discourse) and reducing the migration, a multi-faceted phenomenon, to a simplified image of “illegal immigrants” – most often portrayed as dangerous men constituting

2 Cf. V. Mitsigelas, *The Criminalisation of Migration in Europe. Challenges for Human Rights and the Rule of Law*. Springer 2015.

K. Franko, *The Crimmigrant Other. Migration and Penal Power*. Routledge 2020.

A. Furman, ed. A.R. Ackerman, R. Furman, *The Criminalisation of Immigration. Context and Consequences*. Carolina Academic Press 2014.

N. Kogovsek Salamon, *Causes and Consequences of Migrant Criminalisation. Perspectives on Law and Justice*. Springer 2020.

3 Europol and the Global Initiative Against Transnational Organized Crime note that the crack-down in border controls leads to increased cost of illegal manners of crossing, as smugglers/traffickers are forced to use more advanced methods such as falsified documents, transportation by trucks, or corrupting the Border Guard officers.

4 Operation East Shield involves i.a. further increased spending on the militarization of the border. Supplementary works planned within the East Shield include an extensive defense infrastructure capable of “preventing crossings”, among others.

an alleged weapon of a hybrid war waged by Belarus and Russia. Formatted this way, the discourse does not allow for expert debate on the characteristics and causes of migration in the context of geopolitical changes. The area adjacent to the border is transformed into a complex infrastructure of selection and deterrence, where architecture, technology, and discourse work together to erase the migrants' subjectivity. The border works as a filtration device – not only in the human dimension, but also that of the law, visibility, and the right to be protected.

Despite the fact that Polish domestic law generally treats individual cases of crossing the border via an unofficial point **as an offense/misdemeanor (i. e., not a crime)** and does not apply provisions of criminal law⁵ to control migration (unlike the United States, for instance), the recent years saw an important shift: **criminal proceedings have been initiated against those providing humanitarian aid** to migrants (regardless of the migration status of the latter); rescue interventions are considered in terms of potential crime.

In the area adjacent to the border with Belarus, independent human rights organizations have officially recorded 97 deaths⁶ among those attempting to cross the Polish border (data retrieved from both Polish and Belarusian side). The impact of pushbacks on the growing number of casualties (injuries and deaths) and disappearances was described in the Helsinki Foundation for Human Rights most recent report⁷. A vast body of documented cases indicate that the work of service officers contributes, if indirectly, to deaths among those crossing the border, and worsen their physical and psychological condition – which, as confirmed by the recent report issued by Doctors Without Borders

5 The Polish law is quite nuanced in this respect. If one or two people cross the border – or one person is aided or abetted by another – their actions are treated as a misdemeanor/offense (Art. 49a of the Code of Petty Offenses). However, if the person or people crossing the border use violence, threat or deception, or work in accompliceship with with other persons, their actions qualify as crime. The condition is the involvement of at least three people in a given situation – e. g. one person crossing the border while two are helping; or two crossing while one is helping (Art. 264 § 2 of the Penal Code). Cf. Helsinki Foundation for Human Rights Report of June 2022, *The Lawless Zone – 12 months of the Polish-Belarusian border crisis*: <https://hfhr.pl/en/publications/the-lawless-zone-12-months-of-the-polish-belarusian-border-crisis> (accessed 30 Dec 2024).

6 As of 01 Feb 2025. Up-to-date statistics concerning the humanitarian crisis have been published by the We Are Monitoring Association working at the Poland-Belarus border since the onset of the crisis. Website: <https://wearemonitoring.org.pl/en/home/> (accessed 29 Apr 2025).

7 More information about the case (in Polish) available on the Helsinki Foundation for Human Rights website: <https://hfhr.pl/aktualnosci/dziennikarze-brutalnie-zatrzymani-pod-michalowem-skladaja-zazalenia-na-zatrzymanie-i> (accessed 06 Mar 2025).

(MSF)⁸, often requires urgent medical and/or humanitarian intervention. Yet, those providing assistance have faced charges under the Code of Petty Offenses and the Penal Code. The civil society responded to the crisis with grassroots organization – establishing new humanitarian organizations and forming informal search-and-rescue teams – thereby presenting an alternative against the advancing militarization of the border⁹.

By analyzing geolocation data, testimonies of pushbacks, and video footage documenting violations, observers are able to follow the trajectories of human movement and points of contact with service officers – forming a body of material evidence of systemic violence at the border.

1.2. Criminalization of humanitarian aid

Starting in 2021, the access to possible initiation of the procedure to apply for international protection in Poland has been drastically restricted. Applications submitted by those crossing the border in an irregular manner are often left unaddressed while the system does not provide effective remedies. Operations of service officers, including pushbacks, are frequently conducted without documentation, which creates an evidentiary gap and precludes later assessment as to the legality of these actions. Migrants are pushed into the border zone on the side of Belarus – a highly militarized area known as the *sistema*¹⁰ where surveillance and violence have become instrumental in architecture of deterrence. A structural analysis of its territory reveals its

8 Doctors Without Borders (MSF), *Trapped between Borders. The life-threatening consequences of increased militarization and violence at the Poland-Belarus border*, February 2025, <https://www.aerzte-ohne-grenzen.de/sites/default/files/2025-02/2025-msf-poland-belarus-trapped-between-borders.pdf> (accessed 06 Apr 2025).

9 Militarization of borders does not eliminate but transforms and intensifies smuggling/trafficking. Migrants are more dependent on smugglers, routes are increasingly dangerous, and organized crime strengthens its position. No access to systemic medical aid is a growth factor for deaths and disappearances. Similar points have been raised by i.a. Amnesty International, *The Human Rights Risks of External Migration Policies* (2021); Transnational Institute, *The EU-IOM border regime in the Balkans* (2023). These reports point to migrants' increased dependency from smugglers, intensification of organized crime, and significant risk to life resulting from restricted access to safe routes of migration and to medical aid.

10 The so-called *sistema* is an extensive system of fences, barriers, and border infrastructure on the Belarusian side – initially erected in the USSR era, modernized and maintained by the authorities after Belarus gained independence. The system comprises not only fences, but also a strip of cleared and controlled territory, advanced monitoring systems, a network of patrolling roads, checkpoints, and watchtowers. Although the Poland-Belarus border is 418 kilometers long, the *sistema* often runs along the Belarusian side, within a distance of a dozen meters to ca. 1500 m from the border line.

function as a space designed for exclusion: no aid infrastructure and total lack of procedure transparency serve the production of invisibility and disintegration of human rights.

In March 2025, the Polish government announced the decision to temporarily suspend accepting applications for international protection on selected sections of the border with Belarus, motivated by a “threat to national security”. In practice, this decision suspends one of the fundamental rights guaranteed by the Geneva Convention and EU laws. The border – both physical and legal – is thus remodeled into a selection and filtration tool which eliminates the possibility to apply for asylum in that it reorganizes the mere access to the territory and to procedures.

In response to the violence and brutality used by service officers when conducting interventions, the migrants’ poor physical and psychological condition, and blocked access to necessary legal and medical assistance, representatives of civil society have developed alternative ways of operating. These include documenting the breaches and abuses and creating search and rescue networks¹¹ whose aim is to save the lives and provide basic/minimal support amid structural cut-off from institutional assistance.

As early as in 2021 the Polish authorities began classifying humanitarian activity in terms of potential “facilitation of illegal migration”, which indirectly led to court proceedings initiated against persons and organizations providing aid. Law enforcement agencies rarely investigate cases of human rights violations at the border, which results in a new regime of impunity and fosters public acceptance of violence.

In this context, the law works not to protect, but to discipline. Assistance and aid are suspicious, and humanitarian activism is pushed into a sphere of surveillance, tracking/following, and penalization. Criminalization applies not only to migration, but also to acts of solidarity, medical aid, and ethical citizenship. The legal axiom has been reversed: in the past, failure to react to a person in danger was punishable – today, attempts to provide aid are prosecuted.

11 Helsinki Foundation for Human Rights, *Disappearances on the Polish-Belarusian border. Pushbacks as a factor in enforced disappearances*, 2024. More on the search-and-rescue teams operating in Podlasie: <https://hfhr.pl/publikacje/raport-zaginieni-na-granicy-polsko-bialoruskiej> (accessed 6 Jan 2025).

1.3. Critical analysis of the proposed Facilitation Directive: the architecture of European law as an exclusion tool

The proposed Facilitation Directive¹² published by the European Commission in November 2023 formally declares protection for humanitarian activity, but in practice opens the possibility of penalizing assistance provided to migrating persons. The key term of facilitation remains imprecise which may allow the member states to prosecute aid and assistance – including life-saving interventions, sharing information, and transportation and medical aid¹³.

Experts in the field of direct assistance provided to people in forced migration crossing borders in an irregular manner, as well as agencies monitoring the situation at state borders – i. a. the Border Monitoring Violence Network (BMVN), Platform for International Cooperation on Undocumented Migrants (PICUM), and Statewatch, as well as the European Parliamentary Research Service (EPRS) and the SOLIDAR

12 In November 2023, the European Commission put forward a new *Proposal for a DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL laying down minimum rules to prevent and counter the facilitation of unauthorised entry, transit and stay in the Union, and replacing Council Directive 2002/90/EC and Council Framework Decision 2002/946 JHA* COM(2023) 755 final, Brussels, 28 Nov 2023, <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:52023PC0755> (accessed 30 Apr 2025).

13 The proposed transfer of the humanitarian clause from the normative section to the preamble, weakens its legal force and validity and makes it dependent on arbitrary interpretation.

Foundation¹⁴ – have raised a considerable body of criticism. These organizations note that the proposed directive in its current form, as submitted by the European Commission, provides the EU member states with legal instruments to further criminalize those forced to migrate, civil society grassroots organization, journalists, and other actors documenting and monitoring violations of human rights at the EU external borders. The project also allows for the use of invasive investigation methods against those providing aid – with no guarantee of proportionality. The legal border is redesigned into an instrument of selection – both people and acts of solidarity are subjected to procedures of surveillance and punishment. What we see is the human rights protection principle being abandoned in favor of a penal-securitarian logic reframing acts of solidarity into potential crimes.

Contrary to declarations, the project significantly deviates from standards defined by the UN Protocol against smuggling people across borders¹⁵. The differences concern various aspects, starting from the lack of clear protection measures provided for those in forced and/or irregular migration, omission of binding humanitarian aspect, ending with criteria establishing a very general definition of the act considered as a crime. This lack of consistency and the discrepancies pointed out by the non-governmental parties prove that the directive is in fact incapable of ensuring effective protection for migrants and those assisting them (including members of migrating groups, humanitarian

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- 14 Platform for International Cooperation on Undocumented Migrants (PICUM), *How the New EU Facilitation Directive Furthers the Criminalisation of Migrants and Human Rights Defenders* – report analyzing how the new directive can result in criminalizing humanitarian action (e.g. providing shelter, food, legal and medical assistance). PICUM
 Border Violence Monitoring Network (BVMN), *The new proposed Facilitation Directive increases the risk of criminalisation of people on the move and those working with them* – article emphasizing how the proposed provisions may lead to perceiving migrants and individuals/organizations supporting them as perpetrators of crimes. BVMN
 SOLIDAR, *EU: Stop criminalising migration in the Facilitator's Package law* – appeal drawing attention to the threat of criminalization for actions taken by civil society organizations and human right defenders in connection with the proposed directive. solidar.org
 Meijers Committee, *Meijers Committee comment on the EU Facilitators Package* – commentary analyzing the risk of criminalizing humanitarian aid in the light of the new directive and the differences in interpretation of regulations among the EU member states. Meijers Commission
 Vues d'Europe, *The European Commission's fight against people smugglers: a risk of criminalisation for exiles and NGOs* – article discussing how the new directive project may lead to criminalizing the activity of non-governmental organizations supporting migrants. Vues d'Europe
- 15 The Protocol against the Smuggling of Migrants by Land, Sea, and Air, supplementing the UN Convention against Transnational Organized Crime, adopted by the General Assembly on 15 Nov 2000 (Journal of Laws from 2005, No. 18, item 162).

aid workers, activists, as well as citizens of European Union member states who spontaneously organize and form assistance teams in border areas). Deviation from the rules set out in the UN protocol creates a situation where the proposed new directive preventing facilitation of border crossings essentially consolidating the alarming trend, i. e. escalating criminalization of both migration and human rights defenders' activity¹⁶.

The wording of the proposed facilitation directive – in both the European Commission and the European Council proposals – declares protection of humanitarian activity, but do not guarantee it in a binding manner. The humanitarian clause was included solely in the preamble to the document, and not in its normative section, which means that its application remains with the individual states.

As a consequence, humanitarian aid – even life-saving – can be freely interpreted and prosecuted. Instead of clear protection, we receive a mechanism of uncertainty: a “conditional humanitarianism”, vulnerable to instrumentalization. The architecture of this regulation exhibits a deliberate ambivalence: the law does not protect but suspends the possibility of protection. As a result, it becomes a tool of legal risk management for acts of solidarity.

1.4. Surveillance, vague definitions, and threat to human rights on the European level

The proposed facilitation directive assumes an expansion of possible use of invasive investigation techniques – such as wiretapping, electronic surveillance, or monitoring bank accounts – against those suspected of “facilitating illegal migration”. Although the document declares accordance with the Geneva Convention, it does not guarantee effective protection for migrants and those providing assistance to migrants.

16 The facilitation directive in its current wording comprises provisions (Art. 1 Sec. 2 of the Directive) directly pointing to the optional possibility to refrain from punishment (via change of law or practice) for the facilitation of entry or transit in the EU territory, taken for humanitarian reasons. However, the proposed new solutions abandon this solution and transfer the humanitarian clause from its dispositive part to the part comprising its motives. This solution in itself should be assessed as weakening the impact of the humanitarian clause.

The key problem is the imprecise notion of facilitation which – unlike the clearly defined “smuggling” in the UN protocol – may include activities of strictly humanitarian nature: sharing information, transportation, or providing shelter. As a consequence, assistance may be qualified as a crime regardless of its motives.

Within the new border logic, technology, law, and suspicion come together to create an architecture of surveillance in which any gesture of solidarity may be registered and interpreted as a threat. The border no longer distinguishes between a smuggler/trafficker and a medic, and activist and a caretaker – as it creates a uniform field of prosecution. Such transformation has real effects as it discourages citizens from providing aid and limits the activity of organizations, paralyzing public reactions.

Additionally, the project allows for penalization of “public instigation” of irregular entry, also via Internet. Such provisions may violate Art. 11 of the Charter of Fundamental Rights of the European Union and pose threat to freedom of speech. According to the European Parliamentary Research Service’s opinion of March 2025, the project in its current form threatens to criminalize humanitarian action and excessively restricts civic space.

The stake in this debate is not only how crime is defined, but the very architecture of future borders – where the law, infrastructure, and surveillance act as tools to filter out unwanted forms of presence and solidarity.



Artur Kula

2. Humanitarian crisis in the Poland- Belarus border area – introduction into local context



Criminalizing migration and aid should be viewed in a transnational and comparative perspective, particularly in the context of legislation and judicial decisions of the European Union or the directive discussed above. Along with the spacial plane, the relevant time intervals should be considered; though the symbolic beginning of the humanitarian crisis in Europe is marked by 2015, for Central and Eastern Europe, the year 2021 was of more significance. When analyzing the Polish case, we should also address the hypothesis that the country saw a turning point on December 13th, 2023, with the appointment of Donald Tusk's government. The new authorities like to define themselves in opposition to the previous governance of the Prawo i Sprawiedliwość party (Law and Justice, 2015-2023), and one of the markers of change was to be the respect for human rights and restoration of the rule of law. Nonetheless, according to the information gathered by organizations monitoring the crisis in the Poland-Belarus border area, the change in government did not result in improved standards for human rights or the rule of law¹⁷. A future test for the current authorities will be their further decisions regarding the criminalization of stay in the border area, as well as their position during the ongoing criminal proceedings against activists.

Going beyond the issue of criminalization, we should stress the importance of the recently introduced suspension of the right to apply for international protection within Polish territory¹⁸. The proposed Act raised criticism both from the United Nations High Commissioner for Refugees (UNHCR)¹⁹ and the Commissioner for Human Rights, as well as associations of legal professionals (National Bar Council, National Bar of Attorneys) or non-governmental organizations, including the Helsinki Foundation for Human Rights²⁰. Considering the conflict of the proposed Act with standards set forth in the Constitution of the Republic of Poland as well as norms of international law, the former should be assessed as violating the rule of law.

17 We Are Monitoring, *I said "I want to stay in Poland" but they pushed me back. 12 months of the new government on the Polish-Belarusian border*, report of 13 December 2024; <https://wearemonitoring.org.pl/wp-content/uploads/2025/02/WAM-Report-12-months-of-the-new-government.pdf> (accessed 30 Dec 2024).

18 Cf. Legislation process for the Draft law amending the Act on Granting Protection to Foreigners in the territory of the Republic of Poland: <https://www.sejm.gov.pl/sejm10.nsf/PrzebiegProc.xsp?nr=924> (accessed 30 Dec 2024).

19 Cf. UNHCR Comments and Observations on the draft law amending the Act on Granting Protection to Foreigners in the territory of the Republic of Poland: <https://www.refworld.org/legal/natlegcomments/unhcr/2024/en/149257> (accessed 30 Dec 2024).

20 Opinions on the Draft law amending the Act on Granting Protection to Foreigners in the territory of the Republic of Poland: <https://www.sejm.gov.pl/sejm10.nsf/druk.xsp?nr=924> (accessed 30 Dec 2024).

The project announces the implementation of the right for the Council of Ministers to introduce a “temporary restriction of the right to apply for international protection”. Although this restriction does provide for exceptions, respecting these would be fully dependent on uncontrollable decisions taken by Border Guard officers. The Helsinki Foundation for Human Rights assessed the proposed provisions to be inconsistent with the Constitution as well as with international law standards, and contrary to EU law – both with the applicable law and pending to become effective with the EU Pact on Migration and Asylum; these provisions repeat the pattern of illegal pushbacks and exacerbate the risk of violations to the prohibition of collective expulsion of foreigners resulting from international law²¹. The new legal framework may cause situations where the Border Guard officers will freely violate the non-refoulement principle, which in practice means pushing back all foreigners encountered. Their arbitrary decisions will not be manageable. This may lead to an aggravation of conflict between all parties involved in the crisis at the Poland-Belarus border, and thereby increase brutality of the service forces.

Criticism voiced by the aforementioned institutions and organizations – stating i.a. that “The project is a proposal that violates legal norms binding for the Republic of Poland, as well as fundamental human rights, such as the prohibition of torture, the right to family life, or the right to health” (the National Bar Council’s opinion) – were disregarded by the Sejm Deputies: more than 90% voted in favor of the project on the 21st of February 2025. A similar position was presented by the Senate of Poland; on March 13th, 2025, the Senate passed the act suspending the right to apply for international protection with no amendments. Nearly 88% of senators voted this way. Very importantly, they disregarded the statement issued by the Legislative Office at the Chancellery of the Senate who concluded that “due to the adopted concept of a normative solution of the migration crisis based on solutions that violate international obligations and raise serious constitutional concerns, the reviewed act in its operative part cannot be changed by amendments at the stage of the Senate legislative proceedings in a way which would lead to a removal of the objections presented”²². Conclusively, on March 26th, 2025, the President RP signed the Act. Further in this report, the authors present and comment on the judicial decisions

21 Cf. Helsinki Foundation for Human Rights, *Opinion on the Draft law amending the Act on Granting Protection to Foreigners in the territory of the Republic of Poland*, 16 Dec 2024: <https://hfhr.pl/upload/2024/12/opinia-ustawa-migracyjna-grudzien-2024.pdf> (accessed 30 Dec 2024).

22 Cf. Legislative Office of the Chancellery of the Senate’s opinion on the Draft law amending the Act on Granting Protection to Foreigners in the territory of the Republic of Poland, 6 March 2025: <https://www.senat.gov.pl/download/gfx/senat/pl/senatekspertyzy/7305/plik/272o.pdf> (accessed 31 Mar 2025).

of Polish courts while expounding the context in which the Anti-Repression Team working at the Poland-Belarus border operates.



Jarosław Jagura

3. Judicial decisions of courts in cases relating to repression and criminalization of humanitarian aid



3.1. Foreword

Within the last three years, Polish courts took several judicial decisions in court cases relating to the repression experienced by those providing humanitarian aid at the Poland-Belarus border area²³. These judgments indicate (and document) the state apparatus' scale of operations which the volunteers, workers of humanitarian organizations, and residents of Podlasie had to face. On the one hand, criminal and misdemeanor cases were opened against these persons (albeit according to the information available to HFHR and Kolektyw Szpila as of the date of this report, no final and binding criminal conviction was pronounced against those involved in providing humanitarian aid). On the other hand, thanks to the legal support provided by the HFHR and Szpila, some activists have decided to initiate proceedings in response to the repression they experienced from the authorities, including filing complaints about detention and claims for compensation for wrongful arrest/detention. Legal assistance was provided directly by member of the anti-repression team and by lawyers based in Warsaw and Podlasie who at the request of HFHR and Kolektyw Szpila represented the persons providing humanitarian aid. Note that part of the proceedings – including those relating to events of 2021 – are still ongoing, and in some cases complaints were submitted to the European Court human rights w Strasbourg. Below, the most important court rulings are discussed.

3.2. Misdemeanor cases

On numerous occasions in 2023, the Border Guard issued penalty notices and/or submitted infraction complaints so as to punish those providing humanitarian aid for misdemeanor. This was a form of criminalization of the humanitarian aid provided to people on the move.

On December 31st, 2022, the ban on staying within 200 meters distance from the Poland-Belarus border line introduced by the Voivode's Regulation no. 4/2022 of 31 August 2022 based on Art. 8 Para. 1 of the Act of 29 October 2021 on the Construction of State Border Protection, ceased to be binding. Regardless of this fact, the Border Guard made use of other regulations so as to punish the residents of Podlasie and individuals who approached the state border with the intention of providing assistance.

23 Cf. Helsinki Foundation for Human Rights' report on border monitoring of June 2022: <https://hfhr.pl/en/publications/the-lawless-zone--12-months-of-the-polish-belarusian-border-crisis> (accessed 30 Dec 2024).

Individuals providing aid were accused of:

- misdemeanor under Art. 54 of the Code of Petty Offenses in relation to Ordinance No. 7/2021 issued by Voivode of Podlasie on 1 September 2021 (Podlaskie Voivodeship Official Gazette Item 3269), which introduced a ban on staying within the entire length of the border road strip border with Belarus within the Podlaskie Voivodeship (further referred to as “Voivode’s Regulation No. 7/2021”). The border road strip is 15 meters wide and directly adjacent to the state border;
- misdemeanor under Art. 54 of the Code of Petty Offenses in relation to Voivode’s Order Regulation No. 1/2023 of 16 February 2023 (Podlaskie Voivodeship Official Gazette Item 934) which introduced a ban on throwing or passing objects, and receiving objects thrown or passed across the state border with Belarus (further referred to as “Voivode’s Order Regulation 1/2023”).

From June 2023 to June 2024 a total of 18 verdicts (sentences or decisions) were reached by courts of first instance and 2 rulings of appellate courts involving 42 defendants²⁴. In part of the proceedings, defendants faced both charges (i.e. entering the border road strip and transferring objects across the state border). All cases during which legal support was provided by the Helsinki Foundation for Human Rights and Kolektyw Szpila, concluded with favorable rulings. These individuals were acquitted or their cases were dismissed (the list of decisions is annexed to the present report), or penalty notices were withdrawn.

In this context, the courts’ considerations regarding actions taken to protect the lives and health of migrants are extremely important, because they significantly strengthen the argument proving that providing assistance to those who found themselves in a forced situation amid the humanitarian crisis in the Poland-Belarus border area, is legal.

The first such sentence was pronounced by the Regional Court in Bielsk Podlaski VII Criminal Division located in Hajnówka (sentence of 12 Oct 2023, file ref. no. VII W 215/23). In this case, four people were accused of violating the prohibition to enter the border road strip and the ban on transferring objects across the state border line, because they approached the border and passed food packages, water, and warm clothing across the border barrier. The court found that the aforementioned Voivode’s regulations cannot be basis for civil liability for the

²⁴ Some of these people were part of several proceedings, which is why the total number of people comprises not those who were indicted, but rather the number of defendants in court proceedings.

infraction referred to in Art. 54 of the Code of Petty Offenses and conclusively acquitted the defendants. This provision of the Code of Petty Offenses makes punishable the violation of order regulations which regulate behavior in public places. The court found that Voivode's ordinances are not order regulations regulating behaviors in public places, and therefore their infraction is not punishable. The court also took notice of the motivation behind humanitarian aid:

„(...) the court found that the defendants acted in a state of necessity.

According to art. 16 § 1 of the Code of Petty Offenses, anyone whose actions are carried out in order to avert immediate danger threatening any legally protected interest, if the danger cannot otherwise be avoided and the interest sacrificed is not significantly greater than the interest being saved, is not deemed to have committed an offense.

There was no doubt that the group of foreigners (23 people, including 5 children) located on the Belarusian side of the border wall had found themselves in a forced situation, posing threat to their lives and health (in a wooded, secluded area, exposed to cold, without food and medication and warm clothing). Actions carried out by the accused persons, that is, providing humanitarian aid across the border fence (delivering water, hot soup, clothes, and other things crucial for survival in the forest), taken amid humanitarian crisis at the Poland-Belarus border must be assessed as action taken in a state of necessity. The aforementioned interest, within the circumstances described, could not have been saved otherwise than by physically entering the border road strip and physically transferring the aforementioned objects onto the other side of the fence. It is a well-known fact widely addressed by the media, that migrants could not count on the help of Belarusian authorities (quite the contrary). They found themselves in a difficult and forced situation. Therefore, the defendants' infraction of provisions under the Regulation of the Voivode (interest sacrificed) was not significantly greater than the interest saved (human life and health). In these conditions, the defendants' actions must be assessed as required and necessary action, undeserving of punishment”.

Another important judicial decision is the sentence of the Regional Court in Bielsk Podlaski VIII Criminal Division located in Siemiatycze of 9 November 2023, file ref. no. VIII W 292/23 where defendants were accused of violating the ban on staying in the border road strip and ban on transferring items across the state border. Again, the court found that applying Art. 54 of the Code of Petty Offenses was unacceptable in the circumstances. Additionally, due to the fact that in this case defendants were also accused of having violated the ban on transferring items across the state border, the court established that the barrier between the states of Poland and Belarus is not aligned precisely along

the border line, but was erected on the Polish side, namely, in the distance of 1-2 meters from the border. The defendants transferred the items across the barrier and put them just behind the barrier, that is, still within the strip of land which belongs to the territory of the Republic of Poland, which is why assistance provided in this manner does not violate the ban on transferring objects across the state border line. This judgment was one of the first official statements from state authorities to acknowledge that the barrier is not precisely aligned with the state border, and Polish territory extends beyond the barrier, a fact of significant consequence for the migrants' legal situation.

Consider also the sentence of the Regional Court in Bielsk Podlaski VII Criminal Division located in Hajnówka of 11 December 2023, file ref. no. VII W 78/23, pronounced in the case where defendants were accused of violating the prohibition to enter the border road strip. The court stressed the need to establish – in cases relating to Art. 54 of the Code of Petty Offenses – whether the order regulations which penalize the given action are constitutional and established in compliance with constitutional principles for establishing main statutes. The Court found that Voivode's Regulation No. 7/2021 did not meet these criteria. In the court's opinion, the ordinance which constitutes the basis for the infraction complaint exceeded statutory authorization, as the ban introduced by the Voivode covered the entire length of the border road strip, which was inconsistent with the Art. 9 Sec. 3 of the Act of State Border Protection: this provision permits the Voivode to introduce the ban on "selected sections of the border road strip", whereas the Voivode introduced the ban on "the entire length of the border road strip". Moreover, the court noted that restrictions to civil rights and liberties may be introduced only by way of legislation, a condition which the Voivode's Regulation did not fulfill.

The validity of regional courts' sentences was confirmed by the District Court in Białystok. The sentence of the District Court in Białystok of 20 May 2024, file ref. no. VIII Ka 131/24 confirms that it is not acceptable to punish, under Art. 54 of the Petty Offense Code, violations of the ban on staying in the border road strip. The court found that the Voivode's Regulation No. 7/2021 is unconstitutional as it interferes with constitutional freedom of movement within the territory of the Republic of Poland, and such restrictions may only be established by way of legislation. The court found that the restriction "cannot be applied to the extent to which the legal act issued by the Voivode applies to this freedom [of movement – ed.], because the authority exceeded statutory authorization. In this respect, as of date indicated in the charges, the restriction could not provide basis for civil liability for infraction under Art. 54 of the Code of Petty Offenses, since it is lacking statutory authorization".

In addition, in its decision of 6 June 2024, file ref. no. VIII Kz 360/24, the District Court in Białystok not only stressed the fact that infractions of the ban on staying on the border road strip cannot be sanctioned, but also considered the motivation of those providing humanitarian aid, and pronounced them to be acting in a state of necessity:

“Based on the evidence material gathered, it was established that the items left behind the border fence meet the criteria of direct humanitarian aid. The defendants were motivated by compassion and willingness to provide assistance to people in difficult and life-threatening conditions. Therefore, there is no doubt that the actions taken by the accused were aimed at protecting the lives and health of the foreigners’. Leaving aside the issues discussed so far, concerning the legislative correctness of the regulation in question, the conclusion should be that in this case the interest saved, i. e. life and health, was significantly greater than the interest sacrificed”.

3.3. Ordinances introducing the ban on transferring object across the border

The following separate discussion concerns the Voivode’s Order Regulation No. 1/2023 of 16 Feb 2023, which introduced the ban on throwing, passing, and receiving the thrown or handed items across state border with Belarus, and was used to criminalize humanitarian aid.

Voivode’s Order Regulation No. 1/2023 was issued based on Art. 60 of the Act of 23 Jan 2009 on Voivode and Governmental Administration in Voivodeship. This law states that within the scope not regulated by generally applicable law, the voivode may issue order regulations when this is deemed necessary for the protection of human life, health, or possessions, and to ensure public order and safety. Appeals against the Order Regulation were lodged with administrative courts by the Commissioner for Human Rights.

As a consequence, the Provincial Administrative Court in Białystok in its sentence of 13 July 2023 (file ref. no. II SA/Bk 365/23) found that the Order Regulation No. 1/2023 was issued in significant breach of the law. According to the Białystok court, there were no grounds permitting the Voivode to issue such act, since in reality the matter to which the Regulation pertained is regulated by other legal acts, for instance by parts of the Penal Code providing for liability for organizing unlawful crossing of the border or accessory to illegal border crossing. In addition, the legal system comprises other legal bases for issuing acts

regulating e.g. stay in the border area (a propos, note that during the proceedings before the Provincial Court, the Voivode's representative argued that issuing the Ordinance was necessary because proving accessory or attempt to commit either a crime or an offense is difficult or even impossible for the relevant service forces). Moreover, as argued by the Voivode during the proceedings in court, the Order Regulation No. 1/2023 was issued in relation to the situation at the Poland-Belarus border – which the Court found to indicate that there were no grounds for the Ordinance to be “indispensable”, since it was issued 18 months after the onset of the crisis in the Poland-Belarus border area. The Court also noted that the Order Regulation No. 1/2023 additionally violates the principle of legal specificity (in that the territory where the introduced ban is to become effective is not precisely defined, and by making use of an imprecise notion of “item” whose transfer across the border is to be prohibited). The Court in Białystok noted that the Order Regulation No. 1/2023 is not an order regulation of the kind which can be sanctioned based on Art. 54 of the Code of Petty Offenses.

As a result, the Court in Białystok found the Voivode's Order Regulation No. 1/2023 to have been issued with abuse of delegated legislative powers and violates the principles of legality, referred to in Art. 7 of the Constitution, and pronounced it invalid (the ruling is appealable).

Although the sentence of the Białystok court is not yet final, the circumstances which account for the deficiency of the Order Regulation No. 1/2023, discussed in the statement of reasons, have frequently been assessed separately by courts in their rulings in misdemeanor cases. It should be noted here that as stipulated by the Constitution of the Republic of Poland, judges are subject only to the Constitution and statutes, which justified the common courts' authorization for their own assessment of the Order Regulation No. 1/2023.

3.4. Cases of complaints against detention/arrest and compensation claims for clearly wrongful arrest/detention

Initiating criminal or misdemeanor proceedings against those involved in providing humanitarian aid are not the sole form of repression which these individuals have had to face. Humanitarian aid workers, volunteers, residents of the border area, as well as those documenting the humanitarian crisis at the Poland-Belarus border are also exposed and subjected to aggressive or brutal treatment from service officers,

sometimes combined with e.g. short-term arrest. With the legal support provided by the HFHR and Kolektyw Szpila, some of these people took the decision to initiate proceedings in response to repression, filing complaints against detention and compensation and redress claims for the clearly wrongful detention (false arrest). One of the key challenges in these cases was to convince the courts of the fact that even if the service officers did not refer to the incident as “detention” and did not apply procedures applicable for detention, in reality the situations where the persons’ freedom/liberty was in effect restricted for a period of time, should be treated as “detention/arrest” as provided for by the Code of Criminal Procedure or the Petty Offenses Procedure Code. Not all cases concluded to this effect. One example is the case of brutal detention of two press photographers on November 16th, 2021, outside the military base in Wiejki: the Regional Court in Białystok did not substantively examine the filed complaints against detention (despite the requests for expediting filed by the representatives), referring it to prosecution instead as complaints regarding the manner in which the proceedings were conducted (case discussed below). Although a uniform trend in judicial decisions is not clearly distinguishable, we do note that in 2023 and 2024 cases of formal refusal to examine complaints and claims were no longer noted (this does not mean of course, that all cases concluded with favorable rulings). It is also impossible to indicate a uniform manner of operation either for service officers involved in the arrests (i.e. the army, Border Guard, Police) or prosecutors in these proceedings. In some of these proceedings, these entities were completely passive, but in other cases, the prosecutors found the claim to compensation to be justified, for instance, or the entities did not agree with the rulings in favor of the activists, and lodged appeal (this applies to compensation proceedings as the proceedings relating to examination of complaints against detention are single-instance). In addition, there were also cases where the prosecutors’ position differed from that of the authority carrying out the detention. Below, the most important favorable court rulings in these cases are discussed.

One instance is the decision of the Regional Court in Bielsk Podlaski VII Criminal Division located in Hajnówka of 24 October 2022, file ref. no. VII Kp 336/21, where the court had no doubt as to the fact that the short-term detention/arrest (ca. 40-50 minute long) of three people in the forest, by soldiers of the Territorial Defense Force, was a procedural act of detention from the very moment when the soldiers gave the claimants clear instructions expressing an effective restriction to self-ownership (they were ordered to leave the forest and wait for the Border Guard to arrive, with no possibility to walk away). The incident took place November 30th, 2021, among the detained were two journalists. No accusations or charges were brought against the detained persons, and no protocol was drawn up. The court found the detention to be unjustified and wrongful. Moreover, the Appellate Court in

Białystok, in separate proceedings, in its sentence of 22 January 2025, file ref. no. II AKa 176/24, awarded compensation of PLN 2,000 for each of the detained persons (the District Court in Białystok initially awarded a higher sum as compensation – PLN 5,000).

Similar conclusions were reached by the Regional Court in Bielsk Podlaski VII Criminal Division located in Hajnówka in its decision of 24 October 2022, file ref. no. VII Kp 351/21 relating to the arrest of two people by Territorial Defence Force soldiers, carried out in an unjustified, wrongful, and considerably disproportionate manner (the claimant were surrounded and ordered to lie on the ground and/or to kneel down). Also in this case the Court found that the detention took place under Code of Criminal Procedure, although these people were not presented with accusations/charges, no protocol was drawn up, and other formalities were not met which should have taken place involving those arrested. The lack of these procedures was deemed by the court to decisively determine the detention to be wrongful. In separate proceedings in this case, compensation was awarded for those detained with a final and binding sentence.

Similar considerations were presented by the Regional Court in Biała Podlaska II Criminal Division in its decision of 18 March 2022, file ref. no. Kp 92/22 relating to the detention of one person by Border Guard officers. In this case, the Court concluded that this detention was procedural as it did meet the material criteria of such act, regardless of the content of the documentation held by the Border Guard or the fact whether the service officers understood the nature of their actions. Initially the person – together with a group of others – was detained by the service officers outside in one of the villages near the border for about three hours, after which the group was obligated to follow the service officers' vehicle to a Border Guard station. The court found that from the very beginning of the incident, the person in question was subjected to short-term arrest and deprived of self-ownership, which accounts for procedural detention by the Border Guard, despite the fact that no protocol was drawn. As a consequence, the Court found the detention to be illegal, wrongful and unjustified. Moreover, another verdict was reached in the case relating to this detention on 15 Dec 2022 sentence of the District Court in Poznań III Criminal Division, file ref. no. III Ko 689/22, awarding compensation for this person due to clearly wrongful detention (final and binding sentence). The District Court in Poznań confirmed beyond doubt that detention referred to in the Petty Offenses Procedure Code indeed took place. Similar conclusion was reached by the District Court Warszawa-Praga in Warsaw in its sentence of 3 Feb 2023, file ref. no. V Ko 343/22 and the District Court in Lublin in its sentence of 10 Mar 2023, file ref. no. IV Ko 706/22: these rulings concerned other people arrested during the same incident. They were

also awarded compensation for the clearly wrongful detention, in a final and binding sentence.

On June 6th, 2023, the District Court in Warsaw awarded compensation for the clearly wrongful arrest of activists and two journalists associated with the Emergency Response Point (PIK) of the Club of Catholic Intelligentsia (file ref. no. XVIII Ko 5/23, appealable sentence). The case concerned the events of December 2021 which resulted in a police raid on the Club of Catholic Intelligentsia base working in the Poland-Belarus border area. Several dozen service officers entered the house and conducted a search that lasted until 6 AM, interrogating those detained. They also confiscated i.a. mobile communication devices, including telephones and computers – both private and those used every day to run the Response Point. The Police based their intervention on their groundless suspicion that the point run by the volunteers is a smuggler base. The persons were detained for ca. 14 hours. In June 2022, prosecutors discontinued the case proceedings, pointing to lack of data circumstantiating possible crime referred to in Art. 264 § 3 of the Penal Code (i.e. organizing illegal border crossing). Subsequently, the Regional Court in Białystok on 17 February of 2023 found that the arrests of the four people were illegal, wrongful, and unjustified. According to the District Court in Warsaw, there is no doubt that in December 2021 people were in fact detained, even if the service officers held no documentation nor protocol regarding these operations. The position presented by the attorney to the Municipal Police Chief in Białystok who argued that no arrest took place because the people were allowed to use the toilet, was deemed to be an aberration. The court concluded that the position taken by the Police is inconsistent with the standards of rule of law. Furthermore, the Court stressed the fact that when the service officers arrested the Emergency Response Point workers, there was no justification as to the suspicion of committing a crime.

In another case, the District Court w Białystok awarded compensation to Weronika, one of the volunteers at the Club of Catholic Intelligentsia, who was arrested in March 2022 on charges of accessory to illegal crossing of the border (z art. 18 § 3 of the Penal Code in con. with Art. 264 § 3 of the Penal Code in con. with Art. 13 § 1 of the Penal Code). In this case, the prosecutors filed for temporary arrest, however neither the Regional Court in Sokółka nor the District Court in Białystok allowed the request.

The volunteer filed a complaint regarding the arrest, but the Regional Court in Sokółka in its decision of 20 July 2022, file ref. no. II Kp 85/22, found the detention to be justified, legal, and rightful. A different conclusion was reached by the District Court in Białystok in its sentence of 27 Nov 2023, file ref. no. III Ko 142/23, where the court found the arrest of the KIK volunteer to be clearly wrongful, and awarded compensation

(final and binding sentence). When deciding on the sum of the awarded compensation, the District Court considered the nature of the volunteer's actions and the fact that she was providing humanitarian aid. The court stated:

“Regarding the present case, we must not disregard the purpose of X. 's stay in the area where she was detained. The claimant was providing basic aid (medication) to refugees in need. Regardless of the fact, that their stay in the territory of the Republic of Poland was not legal, the situation in which they found themselves required these actions to be taken in order to protect their lives and health. It is a well-known fact that due to political relations between the Republic of Poland and the Republic of Belarus, migrants from other countries who attempted to illegally enter European Union, crossing the Poland-Belarus border, have found themselves in a deadlock situation posing a threat to their health, and sometimes even life. Humanitarian values and most importantly the principles expressed in Art. 37 and Art. 38 of the Constitution of the Republic of Poland required action to be taken by the Polish State to protect the life and health of any person within its territory. This obligation remains unchanged by the provisions of the Act on Foreigners or the Act on granting protection to foreigners within the territory of the Republic of Poland. In certain regards, X. relieved the adequate agencies of the state, and for these actions she experienced undeserved repression which certainly contributed to the damages incurred.”

Regional Court in Bielsk Podlaski VII Criminal Division located in Hajnówka found the detention of two persons while providing humanitarian aid to refugees in September of 2023 (decision of 19 Sep 2024, file ref. no. VII Kp 278/23) by soldiers, to be unjustified and wrongful. Humanitarian aid workers were detained for ca. two hours, their hands tied with cable tie wraps.

Assessing the justification for the actions taken by the military officers, the court stated:

“The fact that those conducting the detention procedure in no way considered the matter resulting from Art. 244 of the Code of Criminal Procedure [regulating applicability of arrest – ed.] is directly expressed in the testimony given by the witness, Y. [one of the soldiers – ed.], who explicitly stated: “we had assumed that any person who's with the migrants and does not have an ID with them, that's someone who helps the migrants cross the border”. In this state of affairs, it was completely unjustified (in view of explanations provided by the detained persons that their sole purpose was to provide humanitarian aid to the migrants), to proceed with arrest without thorough verification of their version of events. Such assessment is based on the actions which the Border Guard Officers took against the detained persons; having verified their personal

data and received information on the reasons for their stay in the forest, the BG officers freed the detained persons.

(...)

The factual circumstances in this case do not present reasons justifying the purpose of handcuffing the detained with plastic bands, and then directing them at gunpoint towards a meeting point with the Border Guard surrounded by a dozen soldiers. The detained persons' behavior was calm, they were not aggressive, spoke fluent Polish, and voluntarily complied with the soldiers' instructions."

Stating the reasons for the unjustifiable nature of those operations, the Court stated:

"There is no doubt about the fact that the detention was indeed wrongful. It is important to note that in accordance with the aforementioned regulations, exercising powers of Border Guard officers by soldiers is to take place according to the rules and in the manner set out for Border Guard officers. The legal act regulating this matter is the Regulation of the Council of Ministers of 4 Feb 2020 on exercising selected powers of Border Guard officers (Journal of Laws 2020 Item 187). First and foremost, the soldiers did introduce themselves to the claimants, did not state their ranks, names, military units where they perform military service, or the legal basis for their operations; their faces and army emblems remained concealed. The only sign of their adherence to the Polish military were Polish flag emblems on the shoulders of their uniforms. Such actions most certainly constituted a blatant violation of § 2 section 1 of the aforementioned regulation. An extremely important aspect is the failure to draw up a protocol to the arrest, inform the claimants of the reasons, and instruct them on their vested rights, not to mention presenting them with an adequate written form in this respect (Art. 9 Sec. 1 of the Ordinance, Art. 244 § 2 and of the Code of Criminal Procedure)."

Another important ruling is that pronounced by the District Court w Białystok relating to the brutal detention of two press photographers on the 16th of November 2021 by armed soldiers at the entrance to a military encampment in Wiejki²⁵. The reporters documenting events in the border area were arrested and searched, and subjected to physical coercion (handcuffs). Their vehicle and electronic devices were searched, which violated source protection. The District Court in Białystok in its sentence of 23 September 2024, file ref. no. III Ko

25 More on this case on the HFHR website (article in Polish of 25 Nov 2021): <https://hfhr.pl/aktualnosci/dziennikarze-brutalnie-zatrzymani-pod-michalowem-skladaja-zazalenia-na-zatrzymanie-i> (accessed 31 Mar 2025).

531/22, found the journalists' arrest to be clearly wrongful and awarded compensation of PLN 15,000 for each reporter. In the Court's opinion, they were subjected to inhuman treatment as stipulated by Art. 3 of the European Convention on Human Rights Protection, since the soldiers were deliberately inflicting harm and threatening to "accidentally" use firearms. The Appellate Court in Białystok however, in its sentence of 31 March 2025, file ref. no. AKa 10/25, while confirming the findings of the District Court as a matter of principle and likewise pronouncing the military officers' actions to be unjustified, lowered the sum of the compensation awarded to PLN 10,000 for each of the two reporters.

The sentence pronounced by the District Court w Białystok is the first official statement from any state authority – although the incident took place three years ago – confirming that the press photographers experienced unlawful treatment on the part of the services. During this time, several attempts were taken to initiate other proceedings which would require a reassessment of the legality of the military officers' actions, the authorities, however, never found any irregularity. The Provincial Public Prosecutor's Office in Białystok – Military Prosecutor – refused to initiate proceedings in this case twice. At present, proceedings initiated by a subsidiary indictment against the group of soldiers involved in the arrest of the two press journalists, facing charges relating to crimes under Art. 231 § 1 of the Penal Code in con. with Art. 189 § 1 of the Penal Code in con. with Art. 43 of Press Law are ongoing before the Military District Court in Warsaw. Relating to the case of detention of the two press photographers, proceedings have been initiated before the European Court of Human Rights (complaints no. 30614/22 and 30848/22).

An important sentence was also pronounced by the District Court in Białystok of 18 March 2025, file ref. no. III Ko 212/24, by which compensation and redress was awarded to three persons providing humanitarian aid for the clearly wrongful detention (appealable sentence). The team was stopped near the border road strip in the spring of 2023 i.a. due to suspicion of having caused damage to the barrier, although no charges were ever pressed against them (the case concerning violation of the ban on staying in the border road strip was discontinued, as were the proceedings relating to the alleged damage caused). As established by the court, means of coercion were used against the volunteers (F), they were handcuffed and subjected to physical violence – two of them were hit by the officers, and inappropriate comments were addressed. Consequently, they were forcibly pushed into a vehicle and transported to one of the BG stations, and on the next day transported to another station, where they were ultimately discharged. For the whole duration of the incident, the detained persons were not granted contact with a lawyer, translator (one of them did not speak Polish), and not given full meals. The court also found that the service officers who took part in

the arrest deliberately withheld certain facts when questioned in the case, such as the physical violence and inappropriate comments, so as to present themselves in a better light and avoid the possible consequences of their actions. Note that earlier the Regional Court in Bielsk Podlaski VII Division located in Hajnówka assessed the detention/arrest and found it to be legal, justified, and rightful (decision in case under file ref. VII Kp 185/23; a complaint was filed to the ECHR in relation to this case and is currently awaiting examination).

3.5. Ongoing criminal proceedings against those providing humanitarian aid

As mentioned in the introductory part, according to the information available to HFHR and Kolektyw Szpila, so far no final and binding criminal conviction has been pronounced in Poland against any person involved in providing humanitarian aid in the Poland-Belarus border area. However, proceedings where defendants face such charges are ongoing.

The HFHR and Kolektyw Szpila are currently providing legal support in two criminal proceedings:

1. court proceedings conducted by the District Public Prosecutor's Office in Siedlce against i.a. one person accused of directing an organized criminal group whose aim was to organize illegal crossings of the border;
2. court proceedings conducted by the Regional Public Prosecutor's Office in Hajnówka against five people providing humanitarian aid facing charges of facilitating stay on the territory of the Republic of Poland to persons who unlawfully crossed the border with Belarus – under Art. 264a § 1 of the Penal Code. In this case the indictment was referred to the Regional Court in Bielsk Podlaski VII Crime Division located in Hajnówka, which is why the case is discussed below (the case is being examined under file ref. no. VII K 120/24).

The District Public Prosecutor's Office in Hajnówka instituted an indictment against five people who provided humanitarian assistance to a family from Iraq and a citizen of Egypt in the Poland-Belarus border area. The case began in March of 2022 when the people providing assistance were arrested and accused of organizing illegal crossing of the Poland-Belarus border. The prosecutors requested temporary arrest,

however, neither the Regional Court in Bielsk Podlaski VII Crime Division located in Hajnówka nor the District Court in Białystok agreed to their imprisonment for the duration of the court proceedings.

Two years into the proceedings, the prosecutors changed the wording of the charges presented to the persons providing humanitarian aid. Ultimately one person was accused of having delivered food and clothing to people who have crossed the Poland-Belarus border and providing foreigners with information useful in case of their arrest by the Polish enforcement agencies; this person is also accused of providing foreigners with shelter and respite. The remaining four people were accused of having transported a family of migrants towards the country's interior. Note that in reality transportation was to take place within a distance of less than twenty kilometers from the border.

According to the prosecutors, actions taken by those providing support met the criteria of the crime referred to in Art. 264a § 1 of the Penal Code, i. e., facilitating unlawful stay within the territory of the Republic of Poland. The prosecutors' claim is that they were motivated by personal benefit or gain – albeit not for themselves, but for those they assisted. This crime is punishable by imprisonment up to five years.

It is important to note here that the Article 264a of the Penal Code stipulates that such crime can be committed solely for “personal benefit or gain”. Enabling or facilitating unlawful stay, with no intention to achieve the goal of personal benefit or gain, is not prohibited by law. This might mean benefit or profit for the perpetrator of the crime or for another person; however, the interpretation that this third party is to be the migrant who receives humanitarian aid, is hardly acceptable. In such case any act of providing assistance to a migrating person would be a crime and thus the wording of this provision would be devoid of sense.

The defendants have made the following remarks on the case:

“I found it hard to believe that I am facing charges, I never thought that there is a legal provision which states that providing another person with food, drink, clothes and medication is punishable by law. If I had heard this before, I wouldn't have believed it. And yet now here I am awaiting trial and perhaps even a sentence because I helped people, because I wanted to drive a family with children out of the forest. The Polish state has put me on trial for that and to me it seems like all of us here are the scapegoat while the Polish forces have already spent several billion zloty on the so-called border protection, but are still unable to dismantle the smuggler rings or remedy the humanitarian crisis” – says one of the defendants (F), resident of Podlasie.

“Our case is part of a broader policy whose aim is to deter those who have decided to fight for a better life through migration, and those providing them with humanitarian aid. Similarly to other countries of the European Union, Poland also criminalizes supporting people on the move. If we accept the fact that basic support necessary for those who are offered only violence by the states of Poland and Belarus is penalized, then we should seriously reconsider where we are, as a society, on the map of political ideologies” – says one of the defendants.

HFHR declared participation in the proceedings as a civil society organization, as did Association for Legal Intervention, the National Bar Council, and the Free Courts Foundation. The first main court session took place in January 2025 and its third session is appointed for May 14th, 2025.

3.6. Reflections for the future

In June of 2024, part of the territory adjacent to Belarus was yet again covered by the temporary ban on entering and staying within a specified zone adjacent to the border. The ban was introduced under Art. 12a of the Act on State Border Protection²⁶. Currently this matter is regulated by the Ordinance of the Ministry of Interior and Administration of 9 Sep 2024 on the introduction of a temporary ban on staying in a specified area adjacent to the state border with the Republic of Belarus (Journal of Laws item 1345). In light of the Act, violating the ban on staying in the prohibited zone is connected with liability for an offense/misdemeanor (punished by arrest or fine up to PLN 5,000). The prohibition has raised objection and criticism from organizations of civil society, both those providing humanitarian assistance and monitoring the humanitarian crisis in the Poland-Belarus border area, which pointed out the fact that legal solutions allowing to introduce such prohibition are inconsistent with the Constitution of the Republic of Poland, among others²⁷. The anti-repression team has already been notified of the first cases where the service forces wish to punish those providing aid in the border area for their violations of the Ordinance of the Ministry of Interior and Administration. Considering the fact that those providing aid firmly declare further involvement in continuing

26 Cf. Act of 12 October 1990 on State Border Protection (Journal of Laws of 2025, item 184).

27 Cf. Statement issued by civil society organizations on the prohibited zone adjacent to the Poland-Belarus border (in Polish): <https://www.amnesty.org.pl/stanowisko-organizacji-spoecznych-ws-strefy-zakazu-przebywania-przy-granicy-z-bialorusia/> (accessed 30 Dec 2024).

their activities, numerous similar cases are likely to be expected in the future.

The months between spring and autumn of 2024 saw an intensified witch-hunt targeting those providing humanitarian aid in the border area. Within the public debate, they are being accused of facilitating or organizing illegal crossings of the border, of being agents of foreign powers or acting to the detriment of the Polish state. Such accusations are also formed by representatives of the current government or prominent politicians²⁸. This situation implies that individuals and organizations providing aid may be subjected to further repression on the part of services/forces in the future.

Importantly, during this time government representatives and/or prominent politicians have made numerous public statements which endorsed the activity of service/forces in the border area, including taking decisive action for the sake of border protection, justifying the use of violence and violation of procedures²⁹. These statements may be perceived as inciting violence and calling for impunity for the service officers operating in the border area. From those providing humanitarian aid, we are already receiving signals testifying to increased aggression and brutality from the service forces. Moreover, the Act of 26 July 2024 on changing selected laws to improve operations of the Armed Forces of the Republic of Poland, the Police, and the Border Guard, in case of threat to state security (Journal of Laws item 1248) was passed, a law which expands on the rules governing the use of means of physical coercion and firearms by soldiers, the BG service officers, and the Police in circumstances relating to protection of the state border. This law provides for an exemption from criminal liability for officers who break the rules of how means of physical coercion or firearms are to be used, but do so to protect the state border. In these circumstances, continued

28 Cf. comments made by politicians quoted in the following articles published in both local and national press (June 2024, in Polish): <https://podlaski.info/2024/06/20/ale-wstyd-kosiniak-kamysz-prosi-aktywistow-zeby-laskawie-nie-pomagali-nielegalnym-migrantom/>, <https://wiadomosci.gazeta.pl/wiadomosci/7,114884,31077404,szef-mon-z-apelem-ws-granicy-z-bialorusia-zaprzestanie-takich.html>, <https://bialystok.wyborcza.pl/bialystok/7,35241,31103169,grozba-linczow-na-granicy-polsko-bialoruskiej-coraz-wiecej.html> (accessed 12 Jul 2025).

29 RMF24, *Kosiniak-Kamysz o zarzutach dla żołnierzy: bulwersujące, to naruszenie morale armii*, 7 May 2024, <https://www.rmfm24.pl/fakty/polska/news-kosiniak-kamysz-o-zarzutach-dla-zolnierzy-bulwersujace-to-na-nId,7557920> (accessed 12 Jul 2025).
PAP (Polish Press Agency), *Żołnierze zatrzymani na granicy. Kontrowersje wokół postępowania*, 7 May 2024, <https://www.pap.pl/aktualnosci/zolnierze-zatrzymani-na-granicy-kontrowersje-ws-postepowania-zw> (accessed 12 Jul 2025).

legal support will be required for those providing humanitarian aid as they experience repression.

A recent phenomenon is the formation of various groups whose aim is to support the service officers in search of refugees in the forest near the border, as well as prevention of humanitarian aid³⁰.

30 Cf. Maciej Chołodowski, *Chcę wymierzyć „sprawiedliwość” na granicy polsko-białoruskiej. Coraz więcej ataków na organizacje pomocowe*. Gazeta.pl Białystok, 29 Jun 2024, <https://bialystok.wyborcza.pl/bialystok/7,35241,31103169,grozba-linczow-na-granicy-polsko-bialoruskiej-coraz-wiecej.html> (accessed 12 Jul 2025).

4. Individual perspectives of those experiencing repression. The profile of anti-repression assistance



This part of the report was prepared on the sole basis of information and first-hand accounts from persons providing humanitarian aid at the border with Belarus. To gather this data, the anti-repression team interviewed ten people working and/or living in Podlasie. For the sake of their safety, their accounts were anonymized. We would like to thank these people for their trust and willingness to share their experiences.

4.1. Forms of repression

Those providing humanitarian aid at the border with Belarus testify to a variety of forms of repression used against them; these can be grouped into physical, psychological, and operational violations and infractions on the part of security forces. The most often mentioned are abuse of power by service officers which includes both direct violations (e.g. stalling during controls for no apparent reason, use of physical means of coercion such as handcuffing with cable ties, forcing activists to remain seated or lying for the whole duration of the intervention, attempts to forcibly remove phones when recording the service officers' interventions), and forms of intimidation (surveillance of place of residence, stalking/harassment at work, using drones to create an atmosphere of manhunt, verbal intimidation). Not only activists, but also the broader local communities emphasizes the economic and psychological consequences of prolonged, even several hour-long document checks or detainment at checkpoints, which adds to the sense of harassment, obstructs professional work, and ultimately, of course, is intended to discourage activists from continuing.

“Abuse of power or coercion (like handcuffing) are taking place non-stop, used against people on the move. We are less often treated this way, although there are situations where we are being informally interrogated in the forest, or the service officers attempt to do that at least. In my experience, if I consistently refuse to answer their questions, they drop it after some time, but will often try to scare us, implying that if I don't want to talk that must surely mean that I have something to hide or I did something wrong. It doesn't impress me at all anymore, but many people find it to be a very stressful situation”.

When asked about the forms of repression experienced, one volunteer enumerated “driving slowly outside our house, taking video footage of the house, shining strong lights, stopping and ID checks during our walks in the area” and described situations to be an everyday reality of living in Podlasie.

Another activist mentions:

“The very fact that we live in the border area exposes us to various kinds of repression. It’s hard sometimes to tell apart the repressions applied to us-activists from those aimed at us-residents of Podlasie. Just like in 2021, officers now drive around with their registration plates covered and hide their faces, they can be aggressive, rude, demand documents without any legal basis or stating their own names. Between 2021 and 2023 service officers harassed us where we live – they would pass near our house 7-10 times a day (although the road through the village is a dead end), taking down registration numbers of all vehicles on property and outside the property, throw reflector light in our yard. Things have calmed down lately, but we keep in mind they might be back anytime.”

Psychological forms of repression increasingly often take the form of intimidation, e. g. when service officers publicly (using social media, for instance) and casually (during interventions on site) accuse the volunteers of organizing illegal crossings and collecting remuneration from smuggler rings. Border Guard officers or military servicemen increasingly often – with absolutely no public reaction from their commanders – resort to publishing images of persons providing humanitarian aid taken from cameras used by the officers to record their interventions. In some cases, such footage is shared with right-wing profiles on social media. This is aimed at inciting fear in those providing aid and discourage them from further involvement, and posting their photographs might have serious consequences for their safety, especially considering the ever growing activity of the so-called “civil patrols” harassing migrants and defenders of their rights.

“I was subjected to psychological violence, they attempted to intimidate me with accusations of smuggling or facilitating illegal stay, or threats to use means of physical coercion if I do not walk away or leave a given space (e.g. BG station) when I demanded contact with, or information about, those I represented”.

One form of repression still applied are threats to use means of physical coercion; situations where humanitarian activists are being aimed at with firearms also still take place. These people note that one tactic regularly used by service officers during checks is to threaten them with a series of criminal proceedings of unspecified character. This further contributes to the feeling of uncertainty and stress caused by the threat of criminalization of humanitarian activity.

The anti-repression team emphasizes the role of the so-called “soft oppression” – subtler forms of everyday actions such as incessant controls and monitoring which are gradually treated as the “norm”. This raises

their concern also in the context of the progressive normalization of abuses.

“It’s most often the so-called ‘small things’ that some of us get used to, as it is part of our everyday life and sometimes we don’t notice that anymore, which to me is an alarming process per se – normalizing the ever-present control, this kind of acceptance. I am highly irritated when I catch myself no longer noticing these ‘soft’ forms of oppression such as the incessant checks, asking multiple questions about where and why we’re driving/walking, or where we’re staying in Podlasie, opening the car trunk to look, the comments from the service officers or the information they pass via shortwave radio, like: ‘a group of activists approaching’, ‘four activists with migrants’, ‘you cannot walk there, if you have to be there you must go left, not right’, ‘halt, don’t move, your IDs, I don’t have to give you my name, we’re protecting the border here’ – recounts one of the humanitarian aid workers (F). “On the several occasions when I experienced violence, I knew that this was not actually due to my activism but because I was taken for a person on the move – a kick from an BG officer when we were hiding out in the woods, masked soldiers running towards us with their guns cocked, screaming ‘Down! On the ground!’ – the officers looked scared and apologized when seeing white people speaking Polish. To me this is at times even more bitter that if I was actually the target of their aggression, because it’s proof of the inequality, the racism, and all that the people on the move are subjected to just because they are ‘alien’ – especially when we are not there next to them.”

The accounts of those providing humanitarian aid testify to unequal treatment and racial profiling: service officers tend to be less aggressive towards white-skinned activists, while volunteers from countries other than Poland are subjected to brutality, insults, racism, and more acute repression overall (including greater risk of detention while providing humanitarian aid).

4.2. Service officers’ behavior

Humanitarian workers and volunteers describe the actions and behaviors of service officers as often inconsistent with procedures, including lack of identification, insults, intimidation, and excessive use of verbal and physical violence. The most problematic are usually interactions with the army who exhibit behaviors described as the most aggressive and unpredictable. Soldiers and their commanders usually keep their identity undisclosed while taking action against activists and NGO workers, drive vehicles with registration plates covered, remain masked, and resort to vulgar, intimidating methods and violence when interacting with activists and refugees. The risk of brutal intervention, such as forcibly separating activists from those they support, is par-

ticularly high w in the cases of interventions prior to signing Power of Attorney documents allowing for administrative representation for those seeking protection.

“Interaction with the service forces often involves insults and intimidation. Last year, I was once in a situation where together with a friend I was stopped by the army while helping a group of Sudanese people. We were handcuffed with cable ties, though without any information on being detained. In general, there were only insults and intimidation.” – says one of the volunteers.

The anti-repression team lodged a complaint in this case, and the court found the detention of humanitarian workers to be legal, but wrongful and unjustified.

Another activist adds:

“The army almost never sticks to the procedures – they try to check our IDs without identifying themselves first. I have never met a soldier who would wear the required distinction (name and unit) on their uniform or who would be willing to give us this information on our request. What’s more, the soldiers are almost always masked and usually drive vehicles with registration plates covered. Their behavior is very often offensive and aggressive, at least verbally. They are the least predictable among the service forces. If it happens that the service officers find us together with the people on the move, in the forest, before the people are able to sign the Power of Attorney documents allowing us to represent them in the asylum procedure, it’s with the soldiers who pose the most risk of not letting us continue, of separating us from the people whom we’re trying to help, to then take them back to Belarus. They will yell, threaten, throw insults, they are brutal with the people on the move even in our presence, we never know if and when they cross the line of physical aggression – both towards them and towards us.”

The Border Guard is described as more predictable and more often adhering to procedures. Nevertheless, on some occasions BG officers abused their power, particularly in contact with the migrants (violently handcuffing them with cable ties or handcuffs, conducting search, transporting in the car’s trunk). When interacting with people who know their rights, they give up on intimidation attempts, but there are still times where they pass judgmental remarks and insulting or insinuating comments.

“Some of them are overly aggressive while conducting search, handcuffing the people on the move before pushing them into the vehicle (the mere fact that they are being handcuffed and/or transported in car trunks, I believe is an abuse of power which should not take place only

because a person is asking for international protection – but this concerns the people on the move).

“When interacting with us – recently, starting in June [of 2024 – ed.] perhaps, they have again been abusing their powers more, trying to informally interrogating us on site about our ways of operating while insinuating that we facilitate illegal crossing of the border, and that we do it in exchange for money. As for blocking our actions as representatives (not admitting us to be present during procedures, which often results in the people we represent being pushed back from the station) – I see this as failure to comply with their obligations towards the representatives.”

The Police is described as relatively least oppressive, in some cases helpful, especially in situations involving conflict between those providing humanitarian aid and the military or the Border Guard. However, there are cases of abuse of power, such as road checks and ID checks prolonged for no apparent reason.

4.3. Impact of repression on psychological-well being and mental health

Repression has a long-lasting effect on the well-being of humanitarian aid workers and volunteers, manifesting, among other things, in a loss of sense of security and trust towards services/forces, as well as in constant psychological tension. Part of these people experience constant subconscious anxiety and stress, which provokes increased alertness and vigilance to any sign of presence of officers around them. Even outside their area of activity (e. g. Podlasie), interactions with officers or even signs of their presence (uniforms, vehicles) automatically causes reactions of fear. In other activists, repression generates anger and frustration. Although these persons do not feel afraid in a conscious manner, their bodies react to the situation of everyday exposure to uncertainty and control.

“The repressions only make me angry. I am not afraid of the service forces, although one time recently when the dog started barking in the middle of the night, then a moment later we heard the main door slam, and then a car driving away, I got the idea in my head that someone must have stole my laptop off the table. This was not the case, but then after I had this dream that police entered the house and I had a weak password on my laptop. And that the only way I could change it was to a completely trivial one... So even if I don’t consciously feel afraid, my brain keeps producing these stories.”

“It’s very unnerving. Their sense of impunity is horrible and often evokes this fear in me about our chances of continuing our mission, and about the risks inherent to the very fact that I live in Podlasie.”

“I haven’t experience anything really hardcore myself. It is always stressful to be interrogated, although one can get used to anything. I certainly feel this kind of permanent stress “in the background” which keeps me vigilant non-stop and alert to any sign indicating the service officers’ potential presence nearby. As long as I don’t see them, I’m scared – unconsciously, I guess – that they can arrive any minute, that I might be taken by surprise because I don’t know when and where they may pop up; will they shoot – the people on the move or us – out of fear, out of stupidity or the feeling of impunity, will they be aggressive, will they prevent us from helping the people on the move. When they’ve already arrived, I feel more relaxed, as I know my rights and I know how to talk to them – how to be assertive without escalating. But this anxiety deep down, the permanent stress, the fear of them taking me by surprise is very strong and hard to control. It doesn’t go away even if I travel outside of Podlasie – I subconsciously react to uniforms, service vehicles, the noise made by helicopters etc.”

4.4. The impact of repression on interactions with other people

Repression has significantly impacted the social relations of those involved in humanitarian work at the border. Due to external pressure and tension, some of them distance themselves from former friends and surround themselves only with persons able to comprehend the context of humanitarian activism, losing socialization, contacts, and support beyond those circles. At the same time, the constant feeling of stress and danger, albeit minimal, may generate misunderstandings or conflict inside groups or organizations working together for the people on the move.

From their surroundings and neighbors, those providing aid often face lack of understanding and negative opinions, which produces rumors and rejection on the part of some members of the local communities. Repression also impacts their close ones – particularly children who are exposed to contact with service officers and peer pressure. Within the family however, many people have experienced support which allows them to cope with the difficulties caused both by the service forces and by social ostracism.

“The situation has created a distance and a sense of lack of understanding with some people. We’ve subordinated our lives to the events on the

border. We surround ourselves with people from our social bubble and we don't really have other social interactions".

"For sure, the stress caused by repression or the risk of repression from service forces, among other things, is one factor destabilizing the relations within the support groups. On the one hand, the sense of danger is consolidating, it provokes gestures of solidarity, but then also we do have different thresholds of when we feel insecure, different assessment of what might be potentially dangerous, different visions on how to react in various situations of potential threat".

"My children have repeatedly experienced interaction with service officers, in their schools and preschool they were forced to paint thank you cards for the army. Many distant neighbors turned against us, they tell all kinds of made-up stories about what we're doing".

4.5. The impact of repressive measures on work situation and financial costs

Some of the people indicated that repression took considerable toll on their work situation and finances. For several people involved in humanitarian aid in the border area, being part of operations conducted at police stations or BG stations, the need to prepare defense or presence in court during proceedings, meant having to regularly change work-related plans and devoting the time normally spent working, on issues related to protection and defense of their rights. One interviewee admitted that repression and the need to intensify their commitment in humanitarian work resulted in leaving employment.

Additional expenses include the cost of travel and the time devoted to court proceedings in the numerous misdemeanor cases – even though all of these cases were dismissed or concluded with acquittal, they all required much time and financial expense from the activists.

4.6. Impact of repression on the willingness to continue engaging

For the majority of those who agreed to be interviewed, repression failed to impact their willingness to continue providing assistance, although repression evokes mixed emotions spanning from frustration through anger, which often translates to additional motivation. These persons feel the need to continue with their activity, all the more so if they perceive repressive measures as attempts at discouraging them

from taking action, a tactic to which they do not want to yield. The sense of solidarity within the group as well as access to legal support help them maintain commitment against all odds.

For some, however, the pressure resulting from the threat of criminalization of humanitarian aid might prove demotivating. There have been cases where people withdrew from activism – in one of those people, the fear of interaction with service forces prompted them to give up humanitarian activity on-site.

“So far, the repression – although in my case I would rather call it harassment – which I’ve experienced provoke anger in me rather than fear or discouragement. And this anger motivates me to take action. I feel I cannot give up, since this is exactly what they want, so I shall not give them the satisfaction. I get an immense feeling of safety and confidence knowing that I won’t be left to face this alone no matter what, that I can rely on the legal assistance, but also on solidarity from the people that I work with.”

“The legal assistance never fails. Both as for suggestions and answers to the emerging countless questions and doubts as to how to interpret certain laws, what to do or what not to do in a given situation, which actions of service officers can/should be qualified as abuse of power, and as for preparations for particular case proceedings, including making sure a representative is present. Mutual support amid the group involved in providing aid, sharing our experiences, and last but not least, laughing together and joking about the potential threat – that, too, is an invaluable way of adapting to repression and psychological coping.”

„[The experience of repression] hasn’t had any negative impact on my involvement, but one of the members of my team did basically withdraw from providing humanitarian aid in the forest, out of fear of repression and interactions with services/forces”

“I have received tremendous support. Kolektyw Szpila who are able and ready to support us 24/7, 7 days a week, have been most helpful. Training workshops organized by Szpila, the multiple hours of conversations, but also the immense support they provide, are invaluable. I also get help from others, for example those tried with me. We support one another.”

4.7. Future prospects – can the problem of repression be reduced?

Those involved in providing humanitarian aid do not see prospects for the situation to improve and repression to be reduced. The dominant belief is that the acceptance of brutality on the part of the forces and the lack of liability for their actions may lead to an escalation of violence. Expectations for a shift in approach following the change of government proved illusory – the narrative treating organizations working in the border area as accomplices to smugglers/traffickers has been ever more prevalent, which raises concern of further criminalization of humanitarian aid.

The shared belief is also that both the state policies and those of the European Union, are focused on strengthening borders and restricting support for refugees, which amplifies the risk of repression against those providing assistance. These persons fear further marginalization and hostility on the part of the general public, factors which may hinder their work and increase acquiescence to repression.

“I don’t expect things to change for the better. It’s clear that both the former opposition and the former regime, make every effort against the people on the move, they allow for violence i allow for the repression targeting us. I feel that both Polish and EU policies are getting increasingly centered around strengthening the Fortress Europe, and that’s not something that bodes well for us. Of course I do fear that repression is going to tighten, and that more and more among us will start dropping out because of that, that we will be fewer, that it’s going to be harder for us to continue”.

“For a moment, I held onto the illusion that once the government changes, the only thing that might improve at the Polish-Belarusian border is the different approach towards those providing humanitarian aid, and decriminalizing aid. Now I have no such illusions in this respect. What happened was a very swift return to the narrative present at the onset of the crisis, according to which activists are smugglers or smuggler accomplices – either for material gain, or because they are stupid or naive enough to become their “useful idiots”. For several months now, we have been informally interrogated by the BG about our “wages” and “bonuses” we supposedly get for every protection application accepted, and accused of in fact helping people to illegally cross the border when we help them access the asylum procedure. Some of us have already been called in for interrogations, officially as witnesses, but again – just like years before – more and more often we feel that we’re being de facto suspected or even accused.”

4.8. Summary

Repression against those involved in humanitarian aid on the Poland-Belarus border is an everyday experience which takes various forms – starting from intimidation, the service officers' lack of identification, through blocking aid activity altogether. These operations of the service forces not only violate procedures, but also spread an atmosphere of impunity and raise concerns for the legal and physical safety of those providing aid.

The emotional burden caused by potential or experienced repression negatively influence the comfort and psychological well-being. In some cases, these situations lead to social isolation, limiting contacts outside the activist circles, and tension and conflict. In addition to these, repression has tangible financial and work-related consequences.

The future prospects are not optimistic: those providing humanitarian aid predict further intensification of repression. Although they are unwilling to give up activism, they feel increasing fatigue and fear a further tightening of policies against refugees and their supporters. The government change which might have brought hope for possible improvement, did not end in any real improvement – acceptance for the abuse of power and violence on the part of the service forces still prevails.

4.9. Description of anti-repression work

The work of the anti-repression group formed by Kolektyw Szpila and the Helsinki Foundation for Human Rights are based on several key endeavors: the 24/7 anti-repression helpline, providing legal aid (including participation in interrogation at police and/or Border Guard stations, the Internal Security Agency, or by prosecutors), developing defense during criminal and misdemeanor cases, organizing training relating to repression strategies and fundamental rights in the context of interaction with service officers, expert consultations for solidarity campaigns supporting those repressed, and emotional and psychological support via emergency response.

Since the alarm phone helpline (September 2021) was started, at least one person or organization has used this form of support every day. A considerable part of the interventions undertaken concerns being summoned to questioning at Police or Border Guard stations as well as formal written statements and pleadings. In these cases, the anti-repression team puts the person in need of support with a lawyer and provides them with most important legal information.

Many inquiries concern specific questions and doubts regarding procedures, e.g. what to expect during questioning; what to do when an advice not was not collected or home address was changed; can a defendant leave the country while the proceedings are ongoing; can one be summoned by telephone, what to do in case of an identification check run for no apparent reason; how to verify if there are any ongoing proceedings against a given person; how to register a public gathering, etc.

Though less often than in 2021 and 2022, night interventions still take place where teams of humanitarian aid workers and volunteers working on site are subjected to checks and controls which last many hours. In these cases, the anti-repression team provides key information on their rights when interacting with service officers, and monitors the activists' situation so as to be able to react if they are detained.

Occasionally, people call the anti-repression helpline because they experience difficult emotions due to their humanitarian activism. Sometimes these exchanges concern anxiety before an interrogation or court proceedings, or a direct result of the violence experienced by a given person, or difficulty adapting to conditions where humanitarian aid is being criminalized. The person answering the phone is capable of providing psychological support (in terms of emergency response) and suggest and refer the person to a psychologist or psycho-traumatologist when needed.

The anti-repression group was founded in collaboration between two entities: Kolektyw Szpila and the Helsinki Foundation for Human Rights. Its main objective is to provide legal assistance for anyone facing repression due to community involvement or activism in providing humanitarian aid at the Poland-Belarus border. Legal aid and anti-repression assistance reaches both residents of Podlasie, volunteers or humanitarian aid workers coming to spend limited periods of time there, as well as defenders of rights of refugees in other parts of Poland. Assistance is available both to individuals and to organizations facing the risk of criminalization.

The working strategy thus created for the anti-repression team is built on many years of experience in legal work whose two key elements are: (1) understanding the needs of different target groups and (2) understanding the strategies of repression employed by the authorities. These two points have shaped the team's activity, so that – to use the words of those humanitarian aid in Podlasie – the anti-repression support is both trusted by the receivers, and highly efficient in its results.

Individuals and organizations working on the border with Belarus differ in their levels of experience, knowledge, skills, and their political views. The common denominator is their involvement in humanitarian

aid. The task of the legal team from its very beginnings was to build a relationship of trust with each of these persons or groups that would encourage each of them to use the legal assistance. The legal team built the relationship of trust via an array of activities: workshops, meetings, participation in events where the message was adapted to the participants' needs in an attempt to successfully bridge the inequalities observed and include them in building anti-repression strategies as a process. Moreover, one of key principles in the anti-repression team's work is to respect and acknowledge the agency and decision-making of the repressed persons, without ever imposing a defense strategy. It has been crucial to acknowledge the political views and values held by the beneficiaries of our support, act in full transparency as to what is suggested in their cases and why, and respect their individual decisions.

Understanding repressive strategies used by the authorities has helped the anti-repression team suggest defense strategies adjusted to the strategies of repression currently employed – a different set of solutions was suggested in misdemeanor cases whose calculated effect is to tire out and unnerve those providing humanitarian aid, than in high-profile criminal cases involving accusations of organizing an illegal crossing of the border or facilitating stay. Moreover, in their work, the team makes sure to combine legal and procedural strategies with political strategies which may potentially contribute to reduce the criminalization of humanitarian aid.



Katarzyna Czarnota

5. Monitoring criminalization of humanitarian activism in a societal perspective. Supplementary material



Between January 2024 and February 2025, five monitoring visits were carried out so as to conduct ten in-depth interviews with representatives of civil society providing medical and humanitarian aid along the Poland-Belarus border. Interviews with workers of humanitarian organizations and volunteers were held in Hajnówka, Białowieża, and Białystok; three were conducted online. Each interview lasted 40-60 minutes.

This chapter complements the scope of problems hitherto discussed, helping place the criminalization processes within a broader context of changes due to the intensified border regime.

5.1. Militarization of the border area – more powers for service forces, restrictions for human rights organizations

The Polish government entrusted officers of the Border Guard, Armed Forces, and the Police with the task of protecting the state border. Since 2021, these services/forces have held a key role in not only in countering migration, but also shaping the public discourse on the situation in the Poland-Belarus border area.

The fact that soldiers stationing in the area of Podlaskie Voivodeship were granted the powers of Border Guard officers, as well as the progressive militarization and criminalization of activity in the border area, are justified with national security reasons.

Documents and decisions providing grounds for additional permissions granted to the army – such as the right to run ID checks on civilians, stop vehicles, use unmarked civilian and military vehicles (with registration plates concealed or removed) – were never officially published, but classified under confidentiality clause. The general public was informed of their existence solely via press statements issued by the Polish Army and the Ministry of National Defense.

“The service officers do not show their IDs, they keep driving with their registration plates covered, we are unable to identify who [that is]. (...) [T]hey were taking photos the boys [migrants], as soon as we noticed that we shielded them.

Their behavior is simply inhumane, knowing, that these people suffer and are scared, and that they were probably running away from them min-

utes before. Sometimes they are visibly angry that it's us who reached the people and not them. And that's what scares me a bit, if this anger explodes too hard and something goes wrong". – Humanitarian aid worker (F), resident of Podlasie. August 2024.

In June of 2024, following the death of a soldier who died while on duty in the area referred to as "the strip", i. e. 15-meter wide road adjacent to the border barrier with Belarus³¹, a legal act was introduced which exempts soldiers of the Polish Army and officers of the Border Guard and the Police from criminal liability – for the use of means of physical coercion, including firearms, outside of procedures (if their actions are motivated by the protection of the state border).³²

"I was in this situation where I went out there to help, but the group [of migrants] moved and they probably must have met some Border Guards. So I heard them being chased and I heard shots. If we happened to be somewhere closer... maybe they're shooting in the air, I don't know about that, but the mere fact that they do shoot, provokes this kind of fear and anxiety. (...) So it is quite stressful, but we will not be getting bulletproof vest against [that]. – Humanitarian aid worker (F), resident of Podlasie. August 2024.

Several interviewees declared fear of possible threat of violence from the service officers. Some of them stated that the region of Podlasie has turned into a military zone in which no one feels safe.

"This used to be a beautiful and peaceful place. We were on good terms with the border guards. Today this place is no longer safe for anyone – neither for the locals nor the migrants, nor for the officers who have to follow orders. Instead of figuring out how to counter violence, the authorities introduced it here and made it common. In these conditions, a tragedy is waiting to happen on all sides". – Humanitarian aid worker (F), resident of Podlasie. October 2024.

31 In March of 2025, the Helsinki Foundation for Human Rights published another negative opinion on the proposed ordinance of the Ministry of the Interior and Administration introducing a temporary ban on staying in the area adjacent to the border with the Republic of Belarus. The Ordinance was assessed to be unconstitutional due to faulty statutory delegation and a violation of fundamental rights and liberties, such as freedom of movement (Art. 52 of the Constitution) and the principle stating that restrictions to rights may only be introduced by way of an act/legislation (Art. 31 Section 3 of the Constitution). Cf. <https://hfhr.pl/aktualnosci/opinia-HFHR-przedluzenie-zakazu-przebywania-w-strefie-nad-granicznej> (accessed 4 Apr 2025).

32 Helsinki Foundation for Human Rights, Negative opinion on the new rules for use of firearms at border, <https://hfhr.pl/en/news/new-rules-for-use-of-firearms-at-border> (accessed 2 Apr 2025).

Starting in 2021, further limitations were applied to civil society activism in the border area – i.a. restricted access and stay in the area adjacent to the border (applying to NGOs, journalists, tourists, Polish citizens who are not registered residents of Podlasie, among others).

The access to the temporarily banned zone can only be obtained via formal application submitted with the chief of the relevant Border Guard station – along with the stated purpose, date and hour of visit. Inspections, visits and delegations (of e. g. reporters, decision-makers, international actors) are strictly planned and assisted by the Border Guard and/or army.

Non-governmental organizations which were formed in response to the border crisis and thus have been providing aid in Podlasie since 2021, were not granted permission to run rescue missions in the entire border area (as of February 2025). Every person interviewed indicated that during rescue interventions they feel as if they were criminals.

“I never thought I would be forced to hide from officers out there in the forest just because I am bringing food, water, and bandages for a family with children who have been eating leaves off trees for several days.” – Humanitarian aid worker (M), October 2024.

Doctors Without Borders (Médecins Sans Frontières, MSF) is the only international organization allowed to actively provide medical aid. However, even the MSF have not been granted authorization to work along the entire length of the border. Access to people in need of help is renegotiated on an ongoing basis – depending on the reported interventions. In other words, if the MSF team receives a call to administer medical aid to migrants, the team is obligated to work in agreement with the Border Guard so as to reach the migrants’ location and provide the necessary assistance. Limited capacity to move freely, and dependency from Border Guard’s decisions significantly hinder the teams’ ability to carry out effective and self-substantial work. As pointed out by Judyta Kuc, Head of Mission Support and Advocacy for the Doctors Without Borders’ mission in Poland:

“In our statements as MSF we have repeatedly stressed the fact that we do not have full access to the buffer zone. First and foremost, our presence at the border should not be used as an argument not to let other organizations enter. To claim that a small team of medics can provide the necessary assistance to everyone in need within the buffer zone is false. Independent humanitarian aid and access for organizations and activists are absolutely vital, because medical assistance is only one part of the support that is needed. It must go hand in hand with humanitarian aid: warm clothing, food, water, and other basic necessities. These need to be provided in parallel with the assistance delivered by our teams.” (...)

In individual cases, the MSF medics are also allowed to assist persons in direct proximity of the border fence, yet still within the narrow strip of Polish territory between the barrier and the actual state border line. Interventions within the so-called “strip” usually consist in providing basic medical aid and distributing medication. Nonetheless, the lack of access to medical assistance for those in need is much more extensive in scale.

“The border fence entraps those most vulnerable to violence or deterioration of health, and even death. Our operational data show that actually the women and children which make up 60% of all calls for help from the east side of the border barrier, are consistently blocked by border infrastructure and service officers.” – Judyta Kuc, Head of Mission Support and Advocacy, MSF. February 2025.

5.2. Closing the zone to improve pursuit of “illegal” migrants

Within the logic followed by service officers and decision-makers, the border zone should remain closed, so that the soldiers and Border Guard officers could engage in unobstructed and more efficient chase and capture of persons who have crossed the border in an irregular manner.

“The buffer zone is terribly dangerous, full of violence, the authorities call it ‘efficiency’”. – Humanitarian aid worker (M), resident of Podlasie. September 2024.

“If stopping everyone ‘as they come’ is to account for a guarantee of security these days, then it must be said that Poland has become just as authoritarian as Belarus”. – Humanitarian aid worker (M), resident of Podlasie. October 2024.

Expansion of the temporary banned zone – within the security forces’ optics – is to increase effectiveness of tracking dogs and manhunt³³. In these terms, efficiency is measured by the number of those stopped and pushed back, and the objective of such pursuit is to capture and

33 RMF24, *Kosiniak-Kamysz o zarzutach dla żołnierzy: bulwersujące, to naruszenie morale armii*, 7 May 2024, <https://www.rmfm24.pl/fakty/polska/news-kosiniak-kamysz-o-zarzutach-dla-zolnierzy-bulwersujace-to-na.nId.7557920> (accessed 12 Jul 2025). PAP (Polish Press Agency), *Żołnierze zatrzymani na granicy. Kontrowersje wokół postępowania*, 7 May 2024, <https://www.pap.pl/aktualnosci/zolnierze-zatrzymani-na-granicy-kontrowersje-ws-postepowania-zw> (accessed 12 Jul 2025).

The Cycle of Violence Between Borders

This image is a simplified depiction of the Poland-Belarus border dynamics.

Stranded in the Forbidden Zone

- 1** People seeking protection in Europe spend, on average, 3 weeks stranded in the forest, facing injuries from violence and medical conditions related to the environment.

Crossing the Border Fence

- 2** One-third of MSF patients reported injuries and fractures from climbing or falling from the fence. Vulnerable individuals (e.g. pregnant women, children, people with chronic diseases or disabilities) face additional barriers to crossing.

Movement in the Buffer Zone

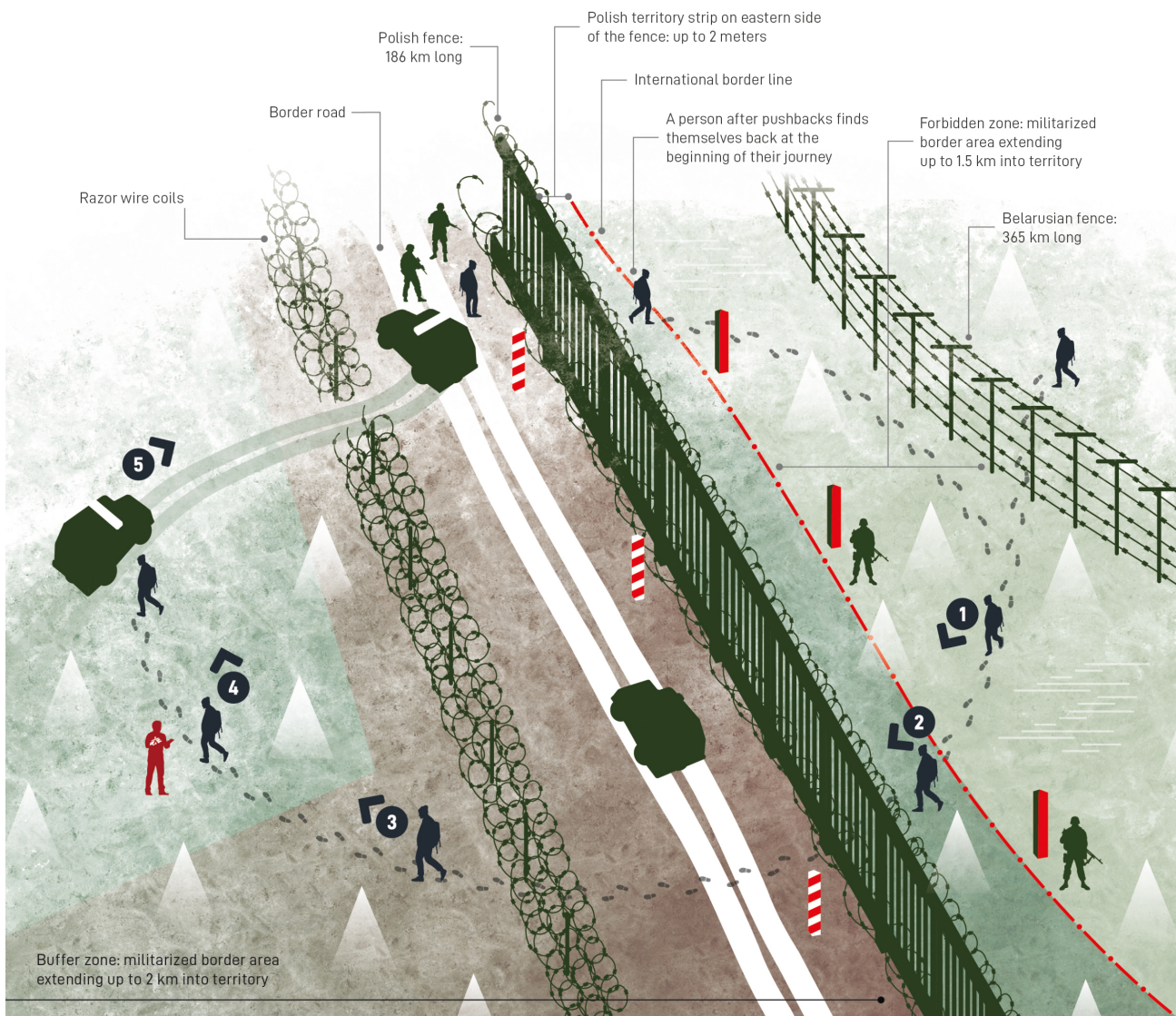
- 3** Exposure to violence increases due to limited civil society monitoring and humanitarian access, with reports of humiliating treatment, tear gassing, beatings, rubber bullets, and the destruction of personal belongings.

Exposure to Pushbacks

- 4** People who manage to cross the border often are forced to hide from authorities, fearing forced return to the eastern side of the fence.

Suffering Pushbacks

- 5** In 2024, pushback reports among MSF patients significantly increased, with nearly half of all patients reporting being pushed back, 72% of them at least twice.



Graphic sourced from the Médecins Sans Frontières report “Trapped Between Borders: Life-Threatening Consequences of Increased Militarization and Violence at the Polish-Belarusian Border.” Graphic by Aleksandra Karolina Makuch.

forcibly expel. The requirement to verify every migrant's individual situation is seen as an impediment to efficient operation. In this choice of strategy, the individuals or groups stopped when crossing the border ("effective pursuit") are often followed by their forced returns to the territory of Belarus³⁴.

5.3. The gray zone as a result of criminalizing migration – smuggling, visa trading, and exclusion of groups in a state of necessity from protection

In absence of legal and safe migration routes is the so-called gray zone for the facilitating activity – including smuggling operations, visa trading, and informal access to food – keeps consistently expanding. Although this activity is concentrated within the border zones, the organization process begins much earlier, often outside the Polish territory. The fewer legal possibilities to cross the border available, the more extensive the activity of smugglers who see the militarized border area as a new, lucrative service market.

There are no reliable statistics or data concerning human smuggling/trafficking and the activity of smuggler rings. This is due to the fact that the security forces' operations are not focused on identification and protection of people in the state of necessity, or real countering of smuggling/trafficking rings through not only identifying its structures, but prevention. Effective counteraction would require to implement mechanisms allowing for safe and controllable migration routes, access to procedures and protection, identification of persons crossing the border and a different approach to civil society initiatives. The border policy in its current logic is reduced to fighting migration and penalizing humanitarian aid, treated as a threat to border security.

34 When pushbacks are carried out with no verification or documentation, this significantly increases the risk of torture, inhuman or degrading treatment, as well as disappearances and deaths of those returned. The non-refoulement principle – a fundamental norm of international law prohibiting expulsion, returning or deporting people to countries where they are at risk of persecution, torture, inhuman treatment, or serious violations of human rights – is sometimes opposed by arguments of territorial integrity and national security.

At the same time, representatives of civil society continue consistently monitoring the situation and documenting the changes in practices implemented at the border:

“Instigators from Belarus who throw stones from the other side dress up as migrants, but they have army boots. Smugglers seen across the fence can also be told apart right away. This is also clearly visible (...), and there’s lots of smugglers. More and more since the spring of 2022... These people are prisoners in their hands, and everyone knows that the Belarusian forces have to be paid off by each smuggler who enters the Sistiema.”
– Humanitarian aid worker (F), resident of Podlasie. May 2024.

Preventing access to the procedure of applying for protection a priori is based on the claim that people crossing the border are instigators acting on the orders of service forces of Belarus and Russia:

“The whole narrative is that these people come here to do us all sorts of harm. It is important to show how many people stay, how many go to work, for example as close as in Białowieża, a fact which I myself admire a lot – because that same girl who has studied and worked here, and is now in further training in Hajnówka, was stopped by the Border Guard multiple times. She had crossed the border herself.” – Humanitarian aid worker (F), resident of Podlasie. September 2024.

In the border crisis context, crossing the border in an unauthorized point may not – as a matter of principle – be an act prohibited under penalty, should it take place in a forced situation or with no alternative. This applies in particular to situations where the migrants act in imminent danger to their lives and health, such as extreme exposure (hypothermia), lack of access to water and food, violence inflicted by the Belarusian service officers, or inability to either return to their country of origin or towards the interior of Belarus.

Persons in a state of necessity are exempt from protection of individual rights – both due to prioritization of security in state border policy, and the lack of functioning mechanisms to verify their situation. As emphasized by Doctors Without Borders, as much as one third of their patients receiving care at the border are women and children. These statistics should be compared with the overall number of attempts at crossing the border; however, such pairing proves impossible as the Border Guard, due to their lack of identification procedures, does not have full information as to who and when crossed the border, and who was returned to the Belarusian side.

Considering the factors discussed, it has remained impossible to gather and thoroughly verify all relevant data.

5.4. Migration as a crime to be countered. The barrier as a criminalization tool

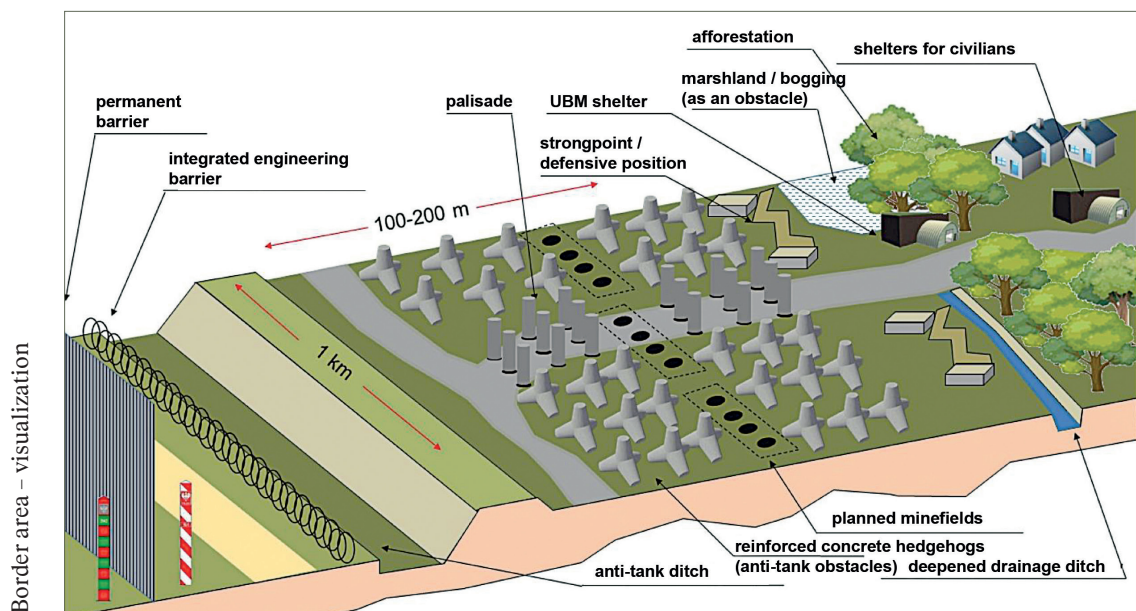
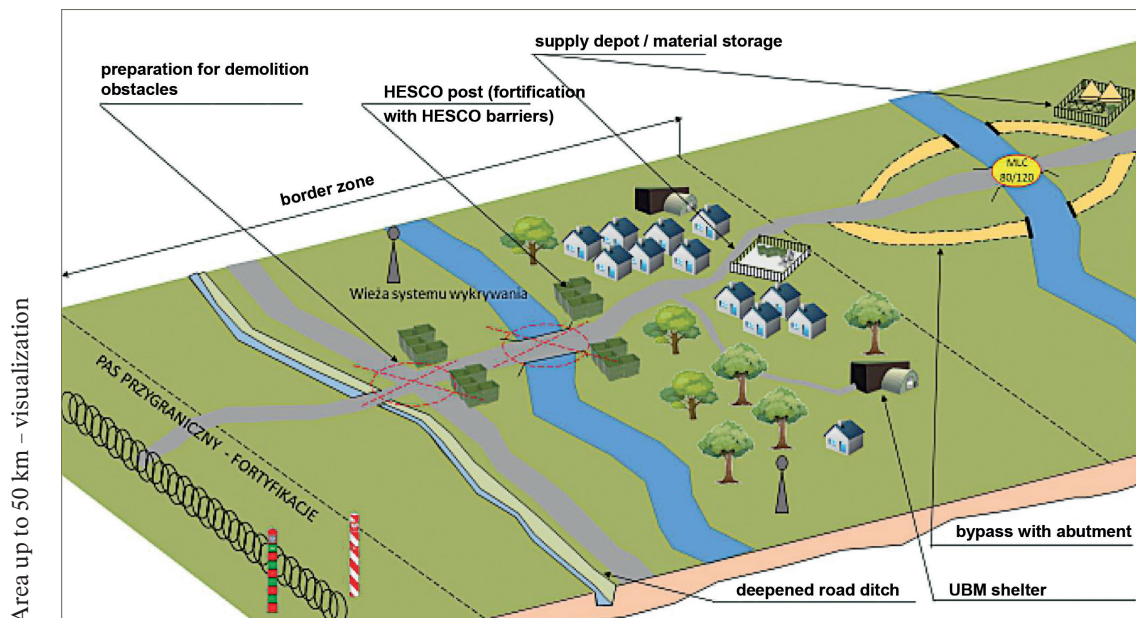
In August of 2021, Polish soldiers received their first orders to install barbed wire along the border line so as to prevent people from crossing, followed by the decision to build a metal barrier along the border. Subsequent stages of construction have shown these measures to be fallible and not completely effective in preventing crossings, which entailed the need for additional modernization. Fortifications and additional elements are installed directly on the 2,5-meter high barrier structure (including additional coils of barbed wire, a system of support pillars, monitoring and thermovision cameras, and a monitoring and rapid response system), as well as around it (camera poles and cable, among others). In line with the ambitions of the “Tarcza Wschód” (East Shield) project, further stages of militarization involve developing more parts of infrastructure with the use of naturally occurring geographical factors (including rivers and swamps) as defense elements. The project prioritizes securitization, excluding the humanitarian aspect and the rights of migrating persons entirely.

The consequences of existing militarization of the border have been described by the MSF in their report, among others:

“The border fence prevents the most vulnerable from accessing protection and assistance – One third of patients sustained injuries from climbing or falling from the border fence, in 2024 mainly from razor wire deep cuts. The border fence is preventing vulnerable individuals, particularly women and minors (60 per cent of those requesting assistance), from accessing needed protection and medical care. They remain stranded on the eastern side of the fence at risk of violence and declining health”³⁵.

The changes in the law and the East Side project fit into a broader pattern of processes criminalizing migration and humanitarian aid. Considering the scale of the planned investment, further restrictions of access to the border zone can be expected, together with intensified repression against those who decide to continue providing humanitarian aid to people who manage to cross to the Polish side, despite the circumstances.

35 The report *Trapped between Borders* is available on the Doctors Without Borders website: <https://www.aerzte-ohne-grenzen.de/sites/default/files/2025-02/2025-msf-poland-belarus-trapped-between-borders.pdf>.



Caption: Ministry of National Defence, Eastern Shield: Presentation of the General Staff of the Polish Armed Forces(slides 12 and 13), accessed: 26.06.2025, https://tarczawschod.wp.mil.pl/u/59/0f/590f9be9-9609-4a9a-ab5d-fb5371503b5a/tarcza_wschod_prezentacja_sgwp_27052024.pdf

5.5. Criminalization of humanitarian aid and disappearances and deaths: a spatial-legal analysis

Contrary to the literal wording of the Article 162 of the Penal Code which penalizes the failure to assist any person in imminent danger to life or health, in the zone adjacent to the Poland-Belarus border we see a systemic distortion of this norm via instrumental use of criminal law against those assisting migrants. Humanitarian aid is informally subject to criminalization – not with the use of explicit prohibitive law, but via operational practice of services and forces which produce an atmosphere of intimidation and legal uncertainty.

The gathered testimonies and evidence material (footage and recordings, GPS locations, medical documentation) are indicative of a double legal regime in which the same course of action – i. e. providing assistance – can be treated both as a legal duty and reason for repression. This situation creates a legal paradox: migrants in need of urgent medical assistance are being de facto cut off from aid, while those ready to provide aid are penalized, hindered, or detained.

Spatial reconstructions document cases in which migrants with open wounds, broken limbs, or in a state of hypothermia, had spent multiple days in forest areas – within a distance no bigger than a few hundred meters from service patrols and from public roads – without access to basic medical care. Field research exposes the fact that pushback mechanisms are prioritized over the logic of saving lives. The service officers' response time, the trajectories of human movement, and the refusals to intervene are documented by the rescue teams and the NGOs as material evidence of failure to provide aid.

The border area is thus militarized and fragmented into zones of visibility (monitored with the use of technology) and invisibility areas (the silent presence of the migrants), which transforms the terrain into a death zone – an area where the suspension of the right to protect human life becomes an element of operational practice.

“Individuals stuck in the Forbidden Zone suffer from medical conditions resulting from protracted exposure to hostile conditions and complete lack of medical assistance. Most patients seen by MSF following their crossing into Poland report having been trapped in this wild area for an average of three weeks, with limited access to water, food and shelter.

Prolonged exposure to cold and wet conditions, coupled with stress and being on the constant move, leads to complications such as infections,

long-term pain or even disability. Since November 2022, half of MSF patients suffered cold-related injuries such as hypothermia, frostbite, and trench foot, primarily due to the low temperatures and high humidity levels in the marshlands and forests of the border area.”³⁶.

Workers and volunteers of search-and-rescue teams working in the border area are forced to legitimize the fact that help is necessary in each individual case – i.e. arguing with the Border Guard officers and the soldiers of the Polish Army the necessity of saving the life and/or protecting the health of a given person. Providing assistance ceases to be a shared humanitarian obligation, instead becoming subject to negotiation with the security forces.

“In some cases we had to consider if a given person is ‘sufficiently’ sick or injured, enough for us to be granted access with our rescue actions. I remember one such case in the winter, where during the intervention together with the MSF paramedic we feared if they let us assist a person in hypothermia who might not have made it through the night – because it was impossible to tell or confirm beforehand how deep the state of hypothermia was. This creates the impression as if it was allowed to save the life of a refugee only as a last resort.” – Volunteer (F) providing humanitarian aid. February 2025.

In 2023, within the Border Guard structures, a number of search and rescue teams were formed. Although the name suggests a wide scope of emergency aid, in practice their activities were limited mainly to providing basic medical assistance. Available data point to a lack of uniform procedures of coordination and to omission of rescue interventions – including situations where there were grounds for immediate action. Such deficit of operational integrity paired with selective reaction on the part of the security forces provoke a structural inefficiency of mechanisms of human life protection in the border area³⁷.

“Basic first aid is often insufficient here at the border. Our teams have occasionally met members of the uniformed services who were desig-

36 Doctors Without Borders (MSF), Trapped between Borders. The life-threatening consequences of increased militarization and violence at the Poland-Belarus border, February 2025, <https://www.aerzte-ohne-grenzen.de/sites/default/files/2025-02/2025-msf-poland-belarus-trapped-between-borders.pdf> (accessed 06 Apr 2025).

37 More information can be found in the Helsinki Foundation for Human Rights 2021-2024 report *Disappearances on the Polish-Belarusian border. Pushbacks as a factor in enforced disappearances*. Its authors analyze the scale and causes of forced disappearances of migrants on the Poland-Belarus border (accessed 6 Jan 2025). Available online: <https://hfhr.pl/publikacje/raport-zaginieni-na-granicy-polsko-bialoruskiej> (accessed 12 Jul 2025).

nated to deliver first aid. Sadly, these persons were unable to operate the most basic devices to measure glucose levels, assist a person with asthma or other chronic illnesses present among the migrants. The knowledge and skills seemed inadequate for them to be able to provide aid on site. Many people had to be referred, transferred to medical facilities, but we have no knowledge as to how many people were pushed back after receiving basic emergency medical assistance.” – Judyta Kuc, Head of Mission Support and Advocacy, MSF. February 2025.

“We do not know how these teams function. This looks like not so much search and rescue but providing someone with assistance to keep them alive, only to then push them back to the other side again. There is no separate number to report a missing person to the Border Guard. (...) Besides, even if you do report them, these people are in fact being kicked out. In May of 2024 and in the spring?? they even pushed back a girl from a hospital, in pajamas, a Polish hospital bracelet on her wrist”. – Humanitarian aid worker (M), resident of Podlasie. September 2024.

In 2024, the Podlaski Border Guard Unit appointed a human rights protection supervisor whose role includes cooperation with humanitarian organizations (i.a. IOM, the Polish Red Cross, ELEOS). The Border Guard units claim to be equipped with first aid and emergency backpacks, food, and support material. Reception centers are equipped with information materials on “voluntary returns and reintegration” prepared by Frontex and the IOM.

At the same time however, a system of pushbacks operates where those stopped are sent back across the border barrier with no identification, verification procedure, or risk assessment. The so-called buffer zone has become an area where laws are suspended: officially partly within the jurisdiction of Poland, in reality exempt from protection.

Dane z monitoring (May-June 2024) document the presence of women and children with injuries and without access to medical aid. Aid provided by the BG – e. g. distribution of food packages delivered by the Polish Red Cross – was selective and restricted despite the fact that large groups were present. Observers have indicated a logic of deterrence: the more limited the assistance, the lesser the “migration pressure”.

It is solely the non-governmental organizations who register the disappearances, deaths, and the scale of violence in the buffer zone. **The border becomes material infrastructure of selection, separation, and refusal – nontransparent but efficient in eliminating the presence of migrants from legal and humanitarian spaces.**

“The Polish authorities restrict our access to the buffer zone, which precludes medical assistance from reaching persons in need. An atmosphere of hostility prevails at the border, and the authorities’ approach to migration is too rigorous and disproportionate. The narrative about migrants and providing them with help needs to be changed so as to stop this situation from deteriorating further. It is important to consider the situation near the border barrier and ensure access to humanitarian aid and protective procedures for people in direct proximity of the border barrier.” – Judyta Kuc, Head of Mission Support and Advocacy, MSF. February 2025.

In conclusion, conditions created at the Poland-Belarus border are indicative of systemic restrictions of access to aid and selective management of humanitarian support. These practices not only escalate the risk of danger to life, but also consolidate the legal space of exclusion and procedural invisibility. Transparency should be restored; it is necessary to provide full access to assistance for those within the border zone.

5.6. Architecture of criminalization and overlapping spatial and legal regimes

A close analysis of the dynamics of changes in the Poland-Belarus border area reveals a complex system of communicating vessels – overlapping and mutually reinforcing layers of criminalization which impact not only the migrants, but also individuals and structures providing humanitarian support. The process is not linear but dispersed – it takes place simultaneously with the normative, institutional, and operational sphere, transforming the border into a testing ground for repressive solutions.

Empirical data gathered and the analyses, both legal and conducted on site, helped identify the principal vectors of criminalization:

- The legal sphere: we have registered a progressive development of administrative and legislative instruments aimed at tightening of the border regime. Penalizing irregular crossing of the borders as well as restricting access to asylum procedures – both in official entry points and outside, is particularly visible. This set of laws work as a filtration device, selectively allowing access to protection and procedures according to compliance with formal framework imposed.

- Criminalization of aid: structural restrictions have been imposed on persons and organizations providing humanitarian aid – starting from formal and procedural hindrance, starting from refused entry to the banned zone, through cases of intimidation, detention/arrest, and indictment. Such practices not only lower the capacity for emergency response, but their function is also to deter – creating an environment of legal uncertainty and potential criminal liability.
- Mechanisms of forced return (pushback): the border zone infrastructure serves as a machine of decentralized coercion which allows for physical expulsion of people outside the territory of the Republic of Poland without registering these incidents, risk assessment, or individual verification of protection needs. Pushbacks are documented in remote areas far from border crossing points, in zones of restricted access and external control. Lack of operational documentation gives room for impunity and invisible administrative violence, resulting in disappearances, injuries, and in extreme cases – death.

The institutional plane – redistribution of operative authority and closing of civil spaces

We have been observing a redirection of full responsibility for migration control onto executive actors: the Border Guard and Armed Forces whose powers have been systematically expanded. In parallel, the scope of operation for the civil society – including aid organizations – has been significantly restricted via authorization procedures, zones of exclusion, and threat rhetoric.

Temporary banned zones, established through administration procedures, function as operational spaces serving classified purposes – their main task is to immediately localize, stop, and push back those who have crossed the border. These operations are also applied to individuals in a state of necessity.

Along the border, penitentiary detention centers are being created, where access to psychological, legal, or humanitarian aid is significantly limited – both by the conditions inside and external formal restrictions.

Cross-border cooperation of countries within the framework of deportation policy and pushback systems, supported by instruments such as the proposed Directive on facilitating migration and the Migration Pact, formalizes the mechanisms of shared responsibility for the refusal of protection.

The political plane – instrumentalizing migration and legitimizing exceptionality

The political narrative makes consistent use of migration as a tool of social mobilization. The pre-election periods see an intensified threat rhetoric in which the migrant serves as a figure of destabilization, alien influence, or threat to national security.

In this model, the departure from obligations arising from international law – especially concerning refugee protection – is presented as a necessary compromise for the sake of border protection, territorial integrity, and public order.

The socio-cultural plane – production of internal enemy

The civic spaces have seen a process in which migrants are symbolically coded as alien and dangerous. The dominant narrative identifies migrants with the hybrid activity of authoritarian regimes (Belarus, Russia), which leads to an automatism which associates migration with terrorism, organized crime, or sabotage.

This coincides with a notable and growing social acceptance of, and indifference to violence, disappearances, or deaths of migrants – justified by security reasons. Lack of systemic response from decision-makers to documented cases of violations of human rights leads to normalization of violence as a tool of border management.

The economic plane – systemic consolidation of dependency and exploitation

Visa policies and labor market regulations create a model of managing migration based on asymmetry: on the one hand, they enable acquisition of low-cost workforce, on the other – systemically restrict the migrants' labor rights.

Migrants deprived of access to public services (healthcare and protection, education, social benefits), remain dependent on informal forms of employment, often brokered by agencies operating in a realm of semi-legality. These practices result in a hidden form of unfree labor, exacerbating economic marginalization and reproducing structural inequality.

The media plane – production of an imagery of threat and erasing context

Media discourse portrays migration as an extreme phenomenon: in terms of an invasion, crisis, or a weapon of hybrid war. People relocating in response to violence, climate catastrophe, or no possibility to apply for protection, are portrayed as instrumental to policies of aggressive parties.

The media narrative is selective in presenting cases of crimes involving migrants, thus reinforcing the monochromatic image of the “alien” – a young man associated with external forces.

Lack of concern for the root causes of forced migration – such as war, persecution or systemic administrative blockage (e.g. no possibility of applying for asylum) – leads to an erasure of the actual context of relocation, and dehumanizes those who migrate. Migration is reduced to a legal offense, devoid of analyses of its causes, effects, and socio-political relations.

All of the planes hitherto discussed (legal, institutional, political, socio-cultural, economic, and media plane) works to create an apparatus which consolidates the perception of migration in terms of threat and crime. This results in legitimization of repressive measures against refugees, which results in the criminalization of migration being normalized as an instrument of state policy.

At the Poland-Belarus border between 2021 and February of 2025, subsequent stages of this process can be identified which contribute to the systemic treatment of migrants as a threat to society, subjected to control via instruments of criminal law and operational practices of security forces.

5.7. Stages of escalation in criminalizing migration

Criminalization is done in stages – through shifts in discourse, law, operation practices of the services/forces and continually pushing the boundaries of what is considered permitted, for the sake of security. The result of this evolution is the permanent transformation of borders into an apparatus of control where the migrants are increasingly subjected to repressive measures, and humanitarian aid is a risky, semi-legal activity.

These are subsequent stages of escalation that were identified in observation, research, and documentation between 2021 and 2025:

Political and media-spread threat narrative

- Constructing an image of the migrant as a threat to national security, economy, and social order.
- Reinforcing stereotypes via political rhetoric and its reproduction by the media.

- Restricting journalists' access to the border zone, precluding independent verification of the reports and accounts of service officers.
- Linking migration with crime, terrorism, or societal destabilization, while ignoring geopolitical and humanitarian causes of migration.

Tightening of migration law provisions

- Penalizing border crossing, also in case of forced or irregular crossing.
- Preventing access to protection procedures both at border crossing points and outside.
- Amendments of laws enabling accelerated deportation, legalizing pushbacks and circumventing standards of international law.

Applying instruments of criminal law to migrants and their allies

- Repression against solidarity and humanitarian actions – including initiating legal proceedings against volunteers and NGO workers.
- No effective protective measures and remedies in cases of violence, illegal expulsion, or pushback across the border.

Normalizing and legitimizing repression

- Public acceptance of austere migration policies – justified as serving “border protection”.
- Tolerating violations of human rights on the pretense of protection of state integrity.
- Treating migrants – including vulnerable individuals – as a uniform mass deprived of rights and subjectivity.

Conclusion:

As a result of these tendencies, a system is formed in which those who migrate are not treated as individuals in need of protection, but as a problem to be eliminated with the use of legal, administrative, and military measures. Criminalizing migration is not an incidental phenomenon – rather, it is the effect of a coordinated transformation of the border into an apparatus of risk management, where marginaliza-

tion, exclusion, and violence turn into methods to systemically manage human movement.

Each of these stages contributes to the creation of a system which treats migrants not as individuals requiring support, but a problem to solve with repressive measures. The process of criminalizing migration is a phenomenon coexists with border militarization and the consistent erosion of human rights. Note that criminalizing measures are not a guarantee of security/safety, provoking violations of human rights and reinforcing the atmosphere of fear among the general public. Legalizing pushbacks can be interpreted as a key element in criminalizing migration which as a process is not inherently linked to crime but to the search for protection.

The present challenges faced by all actors operating in the border area should center around understanding security in terms primarily of ensuring protection – to Polish citizens, service officers, as well as humanitarian organization workers. It may seem, therefore, that the greatest challenge is for the Polish decision-makers to recognize the fact that the narrative according to which the border is crossed only by instigators, does not correspond with reality. New solutions are needed to protect the victims from the perpetrators of violence and human rights violations.

Within the structures of border repression analyzed in this report, spatial and operational relations between the zones covered by the temporary ban on staying, systems of movement detection, and push-back points hold an important function. The border area has become a training ground, an experiment in security in which infrastructures of control — both technical and legal — are used as a tool to discipline not only migrants, but also civil society.

What we see is **a cluster of phenomena**: a systemic dislocation of responsibility, fragmentation of surveillance together with an expansion of legal architecture allowing for the use of violence amid procedural impunity.

The identified forms of criminalization are to be seen not as separate cases, but rather as a **result of coordinated actions of state actors** – implemented and justified by a rhetoric of threat. The border becomes the place where **policies materialize**: human rights are subjected to negotiation, and the chances of providing support are dependent of arbitrary interpretation of provisions within the current power dynamics.



Artur Kula

6. Conclusion



6.1. The courts' judicial decisions

1. Analysis of judicial decisions of Polish courts clearly points to unanimous jurisprudence which deems humanitarian aid to be legal while repression against activists is assessed as wrongful beyond doubt.
2. State and local authorities continually introduce new legal solutions whose aim is to criminalize humanitarian aid. So far all of these attempts have led to new jurisprudence in favor of activists.
3. A persistent problem is the witch-hunt targeting those providing humanitarian aid in the border area. Accusations are formed by representatives of both the current and the former government. Footage created by service officers is being published online with the intention of spreading hate and prejudice against activists as well as shaming them.

6.2. Repressive measures

1. Those involved in humanitarian assistance see no prospects for improvement of their situation and reduction of repression. The prevailing belief is that the acceptance of violence on the part of the forces and the lack of responsibility for their actions can lead to an escalation of violence. Expectations for a change of approach following the change in government proved to be illusory – a rhetoric treating organizations working in the border area as complicit with smugglers is used more and more frequently – which fuels fears of further criminalization of humanitarian aid, perhaps of an intensified scope.
2. Another dominant belief is that policies of both the Polish state and the European Union are aimed at strengthening the borders and limiting support for refugees, which additionally increases the risk of repression against those providing support. The latter express fear of further marginalization and public sentiment of hostility, factors which may hinder their work and spread permissiveness of repression.

6.3. Anti-repression work

1. One of the key experiences of activism in the Poland-Belarus border area is the efficient operation of an anti-repression group which provides comprehensive support to activists. Although the

legal aspect is often dominant, it is not exclusive, and its effectiveness is tied with psychological or social aspects.

2. Understanding the repressive strategies used by the authorities has helped the anti-repression group suggest defense strategies adjusted to strategies of repression currently employed – different solutions were suggested for misdemeanor cases whose calculated effect is to tire out and unnerve those providing humanitarian aid, than in high-profile criminal cases relating to organizing an illegal crossing of the border or facilitating stay. Moreover, in their work, the team makes sure to combine legal and procedural strategies with political strategies which may potentially contribute in reducing the criminalization of humanitarian aid.

ANNEX:

Below is the list of rulings in misdemeanor cases (relating to entering the border strip and transferring (throwing) items across the state border) in which legal support was provided by the HFHR and Kolektyw Szpila. All of the rulings are final and binding:

1. Sentence of the Regional Court in Bielsk Podlaski VII Criminal Division located in Hajnówka of 12 October 2023, file ref. no. VII W 215/23 – charges: entering the border road strip, transferring objects across the border line – outcome: acquittal – defendants: 4 people;
2. Decision of the Regional Court in Bielsk Podlaski VII Criminal Division located in Hajnówka of 30 October 2023, file ref. no. VII Ko 309/23 – entering the border road strip, transferring objects across the border line – penalty notice withdrawn – 1 person;
3. Decision of the Regional Court in Bielsk Podlaski VII Criminal Division located in Hajnówka of 24 October 2023, file ref. no. VII Ko 290/23 – entering the border road strip – penalty notice withdrawn – 1 person;
4. Decision of the Regional Court in Bielsk Podlaski VII Criminal Division located in Hajnówka of 30 October 2023, file ref. no. VII Ko 292/23 – entering the border road strip – penalty notice withdrawn – 1 person;
5. Decision of the Regional Court in Bielsk Podlaski VII Criminal Division located in Hajnówka of 2 October 2023, file ref. no. VII Ko 310/23 – entering the border road strip – penalty notice withdrawn – 1 person;
6. Decision of the Regional Court in Bielsk Podlaski VII Criminal Division located in Hajnówka of 2 November 2023, file ref. no. VII Ko 310/23 – transferring objects across the border line – penalty notice withdrawn – 1 person;
7. Sentence of the Regional Court in Bielsk Podlaski VIII Criminal Division located in Siemiatycze of 9 November 2023, file ref. no. VIII W 292/23 – entering the border road strip, transferring objects across the border line – acquittal – 4 people;
8. Sentence of the Regional Court in Bielsk Podlaski VIII Criminal Division located in Siemiatycze of 29 November 2023, file ref. no. VIII W 325/23 – entering the border road strip – acquittal – 1 person;

9. Sentence of the Regional Court w Bielsk Podlaski VII Criminal Division located in Hajnówka of 11 December 2023, file ref. no. VII W 78/23 – entering the border road strip – acquittal – 3 people;
10. Decision of the Regional Court in Sokółka – entering the border road strip – discontinuation of proceedings – 2 people;
11. Sentence of the Regional Court w Białystok III Criminal Division of 21 December 2023, file ref. no. III W 1058/23 – entering the border road strip – acquittal – 4 people;
12. Sentence of the Regional Court in Bielsk Podlaski VIII Criminal Division located in Siemiatycze of 18 January 2024, file ref. no. VIII W 323/23 – entering the border road strip – acquittal – 1 person;
13. Sentence of the Regional Court in Bielsk Podlaski VIII Criminal Division located in Siemiatycze of 23 January 2024, file ref. no. VIII W 231/23 – entering the border road strip – acquittal – 3 people;
14. Decision of the Regional Court in Bielsk Podlaski VII Criminal Division located in Hajnówka of 30 January 2024, file ref. no. VII W 27123 – entering the border road strip – discontinuation of proceedings – 3 people;
15. Sentence of the Regional Court in Bielsk Podlaski VII Criminal Division located in Hajnówka of 21 February 2024, file ref. no. VII W 130/23 – entering the border road strip, transferring objects across the border line – acquittal – 2 people;
16. Sentence of the Regional Court in Bielsk Podlaski VII Criminal Division located in Hajnówka of 27 February 2024, file ref. no. VII W 157/23 – entering the border road strip – acquittal – 4 people;
17. Sentence of the Regional Court in Bielsk Podlaski VII Criminal Division located in Hajnówka of 18 March 2024, file ref. no. VII W 161/23 – entering the border road strip, transferring objects across the border line – acquittal – 5 people;
18. Decision of the Regional Court in Bielsk Podlaski VII Criminal Division located in Hajnówka of 22 April 2024, file ref. no. VII W 16/24 – entering the border road strip – discontinuation of proceedings – 1 person.

CONCLUSION

Appellate court rulings:

1. Sentence of the District Court w Białystok of 20 May 2024, file ref. no. VIII Ka 131/24 – sentence upholding the acquitting judgment of the Regional Court in Białystok III Criminal Division of 21 December 2023, file ref. no. III W 1058/23;
2. Decision of the District Court in Białystok of 6 June 2024, file ref. no. VIII Kz 360/24 – decision upholding the decision of the Regional Court in Bielsk Podlaski VII Criminal Division located in Hajnówka of 30 Jan 2024, file ref. no. VII W 271/23.

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Reports published in 2025 on the situation at the European Union border with Belarus:



Trapped between Borders. The life-threatening consequences of increased militarization and violence at the Poland-Belarus border.

Doctors Without Borders (Médecins Sans Frontières)
January 2025



Pushed, beaten, left to die. European Pushback Report 2024.

Hungarian Helsinki Committee, We Are Monitoring Association (Poland), Center for Peace Studies, Lebanese Center for Human Rights (CLDH), Sienos Grupė (Lithuania), Centre for Legal Aid – Voice in Bulgaria (CLA), Foundation Mission Wings (Bulgaria), I Want to Help Refugees/Gribu palīdzēt bēgļiem (Latvia).
February 2025



Report from the Poland-Belarus border.

We Are Monitoring, Grupa Granica
February 2025



Brutal Barriers. Pushbacks, violence and the violation of human rights on the Poland–Belarus border.

Egala, Oxfam
March 2025

