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Agents of change? (Hi)stories, perspectives, and everyday practices of Polish border guards

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Citation

Klajn, M. E. (2026, March 25). *Agents of change?: (Hi)stories, perspectives, and everyday practices of Polish border guards*. Retrieved from <https://hdl.handle.net/1887/4299140>

Version: Publisher's Version

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Note: To cite this publication please use the final published version (if applicable).

Chapter 3 - Article II: The Forced Returns of Polish Citizens: Cross-Border Transfers on the Polish– German Border in the Context of the Discretionary Powers of the Border Guards²

3.1. Introduction

Since the significant expansion of the free movement area in Europe in the last two decades, the European privilege of unrestricted travel for citizens of the EU member states, within its specified European borders, could seem somewhat of a given. This perception of the ‘European identity’ facilitating the un-encumbered rights to reside freely anywhere within the EU is, however, quite misleading (Checkel and Katzenstein 2009). In particular, the Schengen area was prevalently misconstrued in the public perception as being ‘border-free’, defined by the unrestrained mobility of people, goods and capital and rarely considered as the stage for many (if any) bordering procedures (Bigo and Guild 2005; Dostál 2018). In fact, the so-called ‘internal borders’ are still marked by a fervour of activities conducted by the various national state agencies created for the purpose of territorial protection. Identity and migration checks, which often strikingly resemble pre-Schengen border checks, special crime-prevention tasks, the trans-national operations of police-type forces, detention, the unrelenting transfers of asylum-seekers and the forced returns of illegalised migrants (also of EU nationals), are only a few among the many responsibilities of the various border-guard formations (Brouwer, van der Woude and van der Leun 2018; Dekkers, van der Woude and Koulish 2019; van der Woude 2019). Dependent on the procedural implementation of the officers of these formations, there is a significant degree of variability in how these activities actually take place, often reflecting the institutional and individual decision-making and use of the discretionary space of the agencies and officers involved.

Deportation, also referred to as expulsion or forced return¹, is the specific procedure at the centre of this paper, serving as an illustration in the discussion of the larger topic of migration and border control. Deportation is, in many ways, a procedure consistent with the framework of ‘crimmigration’ – a merger of criminal and migration law or, in a broader sense, the legal and social criminalisation of migration (Franko 2019; Klaus 2020; Stumpf 2006; van der Woude and van Berlo 2015). A violent and traumatic event for those experiencing it (Golash-Boza and Navarro 2018a; Hasselberg 2016), deportations can take many forms. The media and academics alike have exposed situations in which groups of restrained asylum-seekers are harassed onto planes by border-patrol agents in a violent process of relocating them against their will to remote and politically volatile places (Ellerman 2009; Fekete 2005; Schuster and Majidi 2013). In other cases, deportations function under the guise of ‘readmission procedures’ or even the more benevolent-sounding ‘voluntary returns’, still often involving governmental institutions as well as NGOs to facilitate the removal of unwanted migrants (Kalir 2017; Kalir 2019; Kalir and Wissink 2016). While, for the general population of people legally living and residing within ‘Fortress Europe’ (Follis 2012; van Avermaet 2009), this particular type of harmful legal

² Klajn M. (2021). The Forced Returns of Polish Citizens: Cross-Border Transfers on the Polish–German Border in the Context of the Discretionary Powers of the Border Guards. *Central and Eastern European Migration Review* 10(1): 119–142.

repercussion appears to target only the outsiders who, in some way, deserve it – not ‘us’ Europeans. In reality, over the last decade there has been a noticeable increase in the number of detentions and subsequent deportations of EU nationals within Europe (Bessa and Garcia 2018; Parmar 2011; Ugelvik and Damsa 2018; Vrabiescu 2019, 2020). This paper adds to the research on intra-Schengen border practices and deportations specifically by analysing the intra-Schengen cross-border transfer of EU nationals, and specifically the street-level implementation of an intra-Schengen return order of Polish citizens from Germany to the Polish side of the border. The procedure is not yet a well-discussed topic, even though it occurs regularly and constitutes an important part of border-state agents’ duties. The specific case study of Polish citizens being transferred on the Polish–German border looks at the last stage of the forced return procedure, illustrating how the process varies widely depending on the time, place and person conducting it, thus raising questions about the role and impact of discretion on the process at the institutional, local and street levels (Ellerman 2006; Gundhus 2017). While examining the intra-Schengen cross-border transfer as a form of deportation, this article offers a close-up analysis of a specific stage of the forced return in order to expand our general awareness of the deportation of EU citizens within Europe and asks what the described variations in the procedure imply about the discretionary powers of the Border Guard institution and its officers. Furthermore, the paper aims to contribute to the broader scholarly debate on the street-level discretion of state agents and on policy implementation in general (Musheno and Maynard-Moody 2015; van der Woude, Barker and van der Leun 2017) and its practical role in the concept of deportability (De Genova 2002).

The paper opens with a brief overview of developments in deportation studies before presenting current research on the intersection of the topics of deportation and discretion. Following this is a section outlining the legal and procedural context necessary to define cross-border transfers, subsequently offering an overview of the specific Polish–German case study. Next, the paper presents a two-part methodology, focusing firstly on data collection and secondly on the nature and process of its analysis. The results and analysis are then shared, describing the procedural variations and different levels of discretion as illustrated by the case of the intra-Schengen cross-border transfer. This part is divided into three sections, initially looking at forces impacting on the process at the macro level which are beyond the control at street level and represent the ‘official discretion’, before reflecting on the local as well as the informal organisational norms and expectations (or ‘institutional discretion’). Lastly it focuses on the micro-level decision-making showcasing the different degrees of individual discretion and personal affect which guide the officers’ behaviour (‘individual discretion’). The final part of the paper discusses the theoretical implications of the findings, with special attention paid to the multi-layered punitive nature of forced returns (Golash-Boza and Navarro 2018a; Hasselberg 2016) and the concepts of the implementation gap and ‘deportability’ (De Genova 2002; Leyro and Stageman 2018). The article closes with reflections on the nature of discretion through the prism of responsibility and suggestions for further research.

3.2. Deportation studies: origins, developments, ‘deportability’

Following the terrorist attacks on the World Trade Center in 2001 and in the aftermath of changes in migration and anti-terrorist policy in many countries, the deportation rates in the

twenty-first century have correspondingly skyrocketed on all continents (Kalir 2014; Kanstroom 2007). In the nearly two decades since, much has been written about the topic of deportation and its growing use, giving rise to a body of scholarship now popularly referred to as ‘deportation studies’ (Coutin 2015). Looking for a clear explanation for the trends in growing migration and population control at the national level, some suggested that it is a reaction to states ‘losing control’ in the new era of economic and information globalisation (Bigo 2002; Sassen 1996). The last decade has seen a distinct exacerbation of these trends. Various individual nation states continue to intensify their fight for sole authority over their territory and population, with frequent uses of deportation to assert that authority (De Genova 2018; De Giorgi 2010).² Exposing high costs for the state when implementing the policy, especially in a context of low enforceability or effectiveness (Camarota 2017; Patler and Golash-Boza 2017), researchers suggest various ways in which deportation is utilised by the state: symbolically, legally, economically and socially (Anderson 2010; De Genova 2013). Often it is not even the deportation itself but, rather, the threat of it, combined with a wide implementation gap in deportation procedures, which is the most problematic. De Genova (2002; 2018) puts forward the idea of the ‘deportability’ of large population groups being an actual goal of deportation policy – with the implementation gap serving as a tool to achieve it. Meanwhile, Kalir (2014) describes a fully implementable deportation policy as ‘a state fantasy’, propagated in order to gain political support: while the nationalistic propaganda validates deportation as a migration tool necessary to achieve an ideal and pure nation, in reality no state can (or wants to) fully prevent irregular migration.

The spectacle of deportation, often dramatised and mediatised, also serves the purpose of creating fear and permeating a feeling of precariousness among the illegalised populations (De Genova 2018). This ‘deportability’ can have very clear financial benefits for the ‘host’ country: some more stable and better economically developed states, such as the UK, the USA or Australia, stand to directly benefit from creating large groups of vulnerable, exploitable workers (Cornelius, Tsuda, Martin and Hollifield 2004). The ‘gap’ between the numbers of ‘deportable’ and ‘deported’ is thus suggested to be an intentional and successful method of labour and population control. Cornelius *et al.* (2004) point to the ‘revolving doors’ approach, via which states are able to gain a cheap, replaceable labour pool, forcing many illegalised migrants to accept abhorrent working conditions and a constant fear of deportation and dispossession. This accompanies the regrettable yet progressing social trend of populist ‘othering’, the proliferating socio-cultural demonisation of migrants – now also frequently politicised in order to scapegoat groups within a society (Aas 2014; Aas and Bosworth 2013). The phenomenon of the merging of criminal and migration law, known as ‘crimmigration’ (Stumpf 2006), is additionally impacting on the fairness of migration policy and the treatment of migrants (Franko 2019; van der Woude, Leun and Nijland 2014). Directly visible in the topic of deportation, it is essentially an administrative procedure, yet one implemented with growing saliency and the force expected when dealing with violent criminal offenders (Hong 2017). There is an undeniable interconnectedness between all these trends and developments, showing how the ‘crimmigrant other’ (Aas 2011; Franko 2019), the ‘illegal immigrant’ (Aas and Bosworth 2013; Bosworth and Kaufman 2011) or the ‘deportizen’ (Klaus 2019) are in fact legal, political and social layers of discrimination against the same group of people. The recent work of van

der Woude (forthcoming) explicitly situates the phenomenon of ‘deportability’ and the growing deportation gap in the context of intra-Schengen migration, showing the clear link to the progressive labour exploitation of certain national groups who find themselves in the precarious situation described above.

The impact of deportation studies is undeniable, yet there are certain methodological challenges inherent to researching it. Some valuable and relevant studies, which rely on qualitative data, are clearly problematised by the difficult nature of access (Kalir, Achermann and Rosset 2019), forcing researchers to often describe their findings based on a small sample pool, very specific to their own positionality (Dörrenbächer 2017; Fassin 2011, 2015). Because of this specific subjectivity of the data, rarely have there been systematic or replicable ethnographic studies of forced returns, especially ones representing state agents. On the other hand, much of the scholarly work on deportation relies on large datasets, often published by state agencies (Camarota 2017; Weber 2015). Data like these are nigh-on impossible to check for accuracy and, while quantitative and large data analyses are excellent in revealing correlations, at times they can also hide crucial aspects of what is being evaluated.³

Deportation research is frequently conducted with a focus on the external borders of the EU, the USA or, more generally, the Global North (Ellerman 2009; Pratt 2010; Schuster and Majidi 2013). However, such works do not always fully reflect the diverse forms in which forced returns can take place, especially within the EU or the Schengen area itself. Some new studies show a steady development of the deportation trends of EU citizens within the EU and point to the specific groups or populations, such as the Roma, whose mobility within the Schengen area becomes restricted (Korvensyrjä, Osa and Feliziani 2017; Vrabiescu 2021; Yılmaz and De Genova 2018). However, since the phenomenon of internal EU and Schengen deportations has only recently begun to catch the attention of researchers, the main topic of this article, the intra-Schengen cross-border transfers of EU citizens, has not yet been thoroughly discussed in the scholarly literature.

3.3. Discretionary spaces at various levels of implementing the deportation policy

Any policy lies in the hands of the street-level officer who implements it exhibiting a ‘substantial discretion in the execution of their work’ (Lipsky 2010: 3), while also being the ‘face’ of policy that the public sees as representative of the government. Generally revolving around the core concept of choice (Dworkin 2013), discretion can be defined in a broader sense, reflecting its many levels, as the ‘freedom, power, authority, decision or leeway of an official, organization or individual to decide, discern or determine to make a judgment, choice or decision, about alternative courses of action or inaction’ (Gelsthorpe and Padfield 2003: 3). Motomura (2015) and Maynard-Moody and Musheno’s (2012) work on discretion systematically analyses the topic from a multi-scalar perspective that combines empirical and qualitative data on the street-level implementation of policy in the hands of various police-type agencies with a more theoretical socio-legal analysis of laws and policies, pointing to the multiple layers of the variety of organisations involved as well as the different levels within any specific institution that all play a different role when discussing discretion. This multi-layered comprehensive approach fits well with recent work on discretion by van der Woude (2017),

who makes argument for discretion necessarily being studied in an interdisciplinary nuanced manner, as well as with that of Zacka (2017) and van de Walle and Raaphorst (2019) in their empirical work on complexities of the front-line implementation of state policy.

Academic works discussing the topic of discretion in the context of deportations further reflect the above-mentioned multi-layered nature of discretion, pointing to the interpretive space existing at the prosecutorial, judicial and various organisational levels (macro, mezo and micro) within the implementing policing institutions. Most of the work on discretion and deportation can be found in more normative legal scholarship, focusing on the letter of the law, prosecutorial powers or large-scale economics (Camarota 2017; Pedroza 2019; Wadhia 2015). There is also some research that combines a multi-scalar and an interdisciplinary approach, utilising large statistical datasets together with ethnographically driven qualitative studies and looking into the decision-making by state agents in the context of deportation and the impact of institutions as well as individual identity at micro-level decision-making (Ellerman 2009; Hiemstra 2016; Kalir 2018; Neuman 2005). The exciting new work of scholars such as Borrelli (2019), Brouwer (2020), Dekkers *et al.* (2019), Fabini (2017; 2019), Korvensyrjä, Osa and Jassey (2019) or Vrăbiescu (2020) combines a focus on discretion and on various border practices, including deportation, explicitly using qualitative data collected in recent years during fieldwork on the internal borders of the EU, with the specific emphasis on the national case studies of the Netherlands, Italy, Germany, France and Romania. Their research, all of which focuses on the street-level state agents who implement the migration (including deportation) policy in different national and/or organisational contexts, inevitably points to the complexity and nationally driven specificities of how the procedures play out in the different EU member states. All the academics mentioned above point out, moreover, that the intersection of deportation – or more-general border protection practices – and street-level discretion at the hands of state agents needs to be researched further, considering the various national, legal, social, political and geographical factors.

It should be noted that Poland and its borders present an especially interesting case for deportation studies: the country operates as the ‘Eastern outpost’ for the EU and the Schengen area, having both external and internal Schengen (and EU) borders. Poland recently shifted from being a source of emigration to a country more of transit and destination, marked with some interesting new migration and border-control trends (Coniglio and Brzozowski 2018; Goździak 2014; Klaus 2017a; Lesińska, Okólski, Slany and Solga 2014; Szulecka 2016; White, Grabowska, Kaczmarczyk and Slany 2018). Enjoying the cooperation of various national, local and international agencies that, together, make for an intricate and multi-layered social, economic and political instrument of border protection, politically Poland aims for the status of the state with ‘the most secure borders’ (Fomina and Kucharczyk 2018; Klaus 2017b; Kocan 2014; Mazurek and Barwiński 2009; Szulecka 2019).

This paper uses the case study of Poland in the context of deportation, analysing the implementation of the intra-Schengen cross-border transfers of Polish citizens from Germany as a case study of the procedure for deporting EU citizens within the EU. The study fits into the disciplinary framework outlined by the earlier-mentioned deportation scholars, looking at the

transfer procedure in the nationally specific context of the official, organisational and individual discretion and decision-making of the Border Guards on the Polish–German border.

The following section presents the legal and institutional framework of the procedure, within which the discretionary decisions are made when it comes to its implementation.

3.4. The cross-border transfers of Polish citizens in the specific context of the Polish–German border

The intra-Schengen cross-border transfer: the legal framework

This paper proposes a definition of the intra-Schengen cross-border transfer of EU nationals as the street-level implementation of a forced return (deportation) under the framework of an ‘order to return to the country of origin’, as applied by an EU member state towards a citizen of another EU member state. The term is taken straight from the fieldwork conducted with Polish Border Guards and German Federal Police officers, as used by both agencies. The existing legal framework provides only some guidance in the case of these intra-Schengen cross-border transfers, even though dealing with deportations and the ensuing re-entry bans are routine for many German law firms run by Polish lawyers, offering services to individuals who find themselves affected by the procedure (Matthies 2019; Pazur 2019). These professional services help Poles to navigate German administrative law in situations such as facing a forced return order, checking one’s status in the internal German federal policing system AZR (*Ausländerzentralregister*) and the Schengen Information System (SIS) before entering the country, or contesting a re-entry ban (Cooperative Project ‘Welcome’ 2019; Gęborek 2013; Matthies 2019; Pazur 2019). A sentence for a crime committed by a foreigner in Germany does not necessarily result in deportation but the criteria are not at all transparent (Pazur 2019). The provisions of German law for EU citizens from 30 July 2004 (*Gesetz über die allgemeine Freizügigkeit von Unionsbürgern; Freizügigkeitsgesetz/EU – FreizügG/EU*) state that an EU citizen can be expelled or removed from German territory if his or her presence constitutes a threat to public safety or national security or poses a health risk – which, in fact, does not always mean committing a crime. The law is a pretty direct transposition of the EU Directive (Nr. L 229 S. 35 – *Freizügigkeitsgesetz/EU – FreizügG/EU*). It does not, however, specify what exactly that would entail and which crimes present the specific threat. Curiously, the data show that a significant number of Poles are unaware that they are present on the SIS or AZR and thus their apprehension and subsequent deportation are a huge surprise. Additionally, based on empirical data and a review of the available legal information, it appears common that the administrative measure – the re-entry ban – is decided on by a German court in the absence of the individual in question. This often happens after the individual has already been returned to Poland and thus is often not aware for how long or under what conditions the restrictions apply to them (Gęborek 2013; Pazur 2019).

There is little consistency between such cases as far as the severity of a crime committed that led to deportation and/or a re-entry ban is concerned, nor how a person can proceed in order to have his or her record expunged. In this context, the intra-Schengen cross-border transfer serves as an act of removal of an undesirable migrant – deemed a dangerous criminal or otherwise a threat – from the host state back to the country of origin. By definition a deportation or a forced

return (Anderson *et al.* 2011; Walters 2002), it carries multi-layered social, legal and economic implications for those in the procedure, as discussed in depth later in the paper. Furthermore, even though it is applied as a common administrative procedure, in reality the intra-Schengen cross-border transfer of EU nationals blurs the boundaries between criminal law as seen in the initial offence and sentencing, migration control with the deployment of the deportation procedure and an administrative measure in the form of a re-entry ban. This illustrates the earlier mentioned phenomenon of ‘crimmigration’.

It is important to note that the entire implementation of the order to return a Polish citizen from Germany is guided by several different legal acts and directives. These are the EU’s conditions for its citizens’ residence, the Schengen Borders Code, various bi-lateral agreements between Germany and Poland – and specifically between the two state agencies of the German Federal Police (*Bundespolizei*) and the Polish Border Guard (*Straż Graniczna*) – as well as the national German and Polish laws, acts and policies outlining the rules and conduct for the residence and stay of EU member-state citizens, border protection laws and the specific duties of the aforementioned agencies (*Freizügigkeitsgesetz/EU – FreizügG/EU*, *Poland’s Border Protection Act of 1990 and the Border Guard Act of 1990*). However, the deportation procedure itself it never explicitly specified and, as such, exists in a somewhat grey zone and undefined space between all of these laws and policies, exposing a wide margin of discretion at its various implementation levels.

The process of deportation of Polish citizens from Germany

For this article the deportation in the form of an intra-Schengen cross-border transfer is illustrated specifically by the forced return of Polish citizens from Germany, while also serving as an example of the wider framework within which such transfers can be observed within the EU. This specific transfer of custody takes place between the state agencies of the two neighbouring EU member states of Germany and Poland and excludes all of transfers under the Dublin III regulations, focusing explicitly on the occurrences of Polish citizens who were transferred into the hands of Polish Border Guards by the German Federal Police (*Bundespolizei*) on the Polish–German border.

What triggers the process of the intra-Schengen cross-border transfer of Polish nationals from Germany? Initially, a crime is committed⁴ within the German state by a Polish citizen. As the perpetrator is apprehended, tried and sentenced for the crime committed, he or she enters the criminal justice system of the host state. Once the sentence is served, however, the person released is not necessarily free to re-claim his or her freedom. Depending on the type of crime committed, in addition to other legally undefined factors that can deem a person to be ‘undesirable’ or a threat, he or she can be put in the custody of the German Federal Police agency in charge of removing unwanted individuals from the state territory. In the case of Polish citizens, the German Federal Police transfers them into the hands of the Polish Border Guard at a specified official location near the Polish–German border. After bureaucratic completion of the cross-border transfer process by the Polish Border Guard, a person’s legal status must be confirmed by the Polish Police before they can be released.

After receiving the response from the Police, the individual in the transfer process faces two options: if he or she has any arrest warrants in Poland, they will be transferred yet again, this time into the hands of the Polish Police and/or Correctional Officers – in some cases faced with an order to personally appear at a specific police station for further instruction (depending on the data collected). In the second option, when an individual does not need to serve a prison sentence, he or she is released. However, upon release some individuals have 24 hours to register at their local police command; failing to do so results in administrative punishment and the further potential criminalisation of the individual. Given the just-released person often does not have either money, transportation or a way to contact friends or family, combined with the fact that he or she might need to cover hundreds of miles to arrive at the required place, the person will probably fail to do so and will end up with a criminal record again.

3.5. Methodology of data collection and analysis: identifying discretionary practices in the field

Data collection: fieldwork on the Polish–German Border

In the research on which this article is based the discretion available to and utilised by border officials is studied in the context within which it can be exercised. This paper uses the specific example of the intra-Schengen cross-border transfer of EU nationals (Polish citizens on the Polish–German border) and considers the legal, political, social, cultural, economic, institutional and individual components that connect variations in policy implementation with discretion at the organisational and the individual level. The empirical data were collected during fieldwork conducted with the Polish Border Guard (*Straż Graniczna*) working on intra-Schengen border protection. The fieldwork took place from July to December 2018, following the positive response of the Chief General of the Polish Border Guard to our request. The contract between all the main interested parties enabled a continued, ethnographic-style study of the street-level Polish Border Guards at the intra-Schengen borders to be carried out. The research was conducted in four locations, including the command and three outposts located directly on or in the very near vicinity of the Polish–German border. Our access allowed us mostly to participate (and carry out participant observation) in patrols and also facilitated observations of and interviews with various groups, units and departments of the Polish Border Guard agency, as well as frequent interactions and both official and unofficial interviews with other Polish agencies, such as the Police or the Customs Agency (*KAS*). The research resulted in 900 hours of active observation in the field, as well as 426 semi-open surveys measuring discretion at the street level among the border patrol officers. In addition we held over 50 informal interviews, 12 structured interviews, more than 20 informal focus groups and an overview of various internal agency documents.

In full disclosure, forced returns were not at any point either a major or an exclusive focus of the fieldwork, which mostly concentrated on the street-level patrols at the intra-Schengen borders and the officers' duties. However, the topic of transfers and forced returns resurfaced in various forms throughout the time spent in the field, being discussed in documents and present in statistics, interviews, and any procedures observed, becoming a focal point during the time spent at a location designed specifically to handle the intra-Schengen border transfers on a regular basis. The data specific to that procedure only were collected at two outposts (out

of the total of four fieldwork locations), involving approximate 50+ hours of observations and both formal and informal interviews with a total of 12 Border Guards, as well as three observations of and one informal interview with individuals who themselves were being transferred. Occasional additional references to the procedure throughout the fieldwork also served to build up our knowledge and awareness of the topic. All the data were collected in Polish and translated by the author. Sharing of the raw data in order to assure external translation was not possible due to the confidential nature of the information collected, as well as the formal agreement between the Border Guard institution and the researcher.

Data analysis: qualitative content and thematic analysis

For this paper, all data relevant to the procedure of the intra-Schengen forced-return transfer of EU nationals were extracted and analysed in the conceptual framework of discretion and street-level policy implementation. All the data used for this article have been analysed through a qualitative approach, which means that there is no one clear tactic that can produce a formula or an algorithm for its analysis. However, since all of the methods utilised for this study yield raw results adaptable to the print/textual word, the most natural approach was a systematic qualitative content and thematic analysis (Vaismoradi, Turunen and Bondas 2013). Worried that, in many cases, ‘qualitative content analysis is insufficiently delineated in international literature’ (Assarroudi, Heshmati Nabavi, Armat, Ebadi and Vaismoradi 2018: 42), I have chosen here a systematic content analysis that allows both deductive and inductive analysis – that is, a combination of a text- or data-driven and a concept-driven method – an abductive or complementary approach (Armat, Assarroudi, Rad, Sharifi and Heydari 2018; Graneheim, Lindgren and Lundman 2017; Schreier 2012). Following other scholars who successfully incorporated ethnographic research into a systematic criminological study (Sausdal 2018; Vigh and Sausdal 2014), a combination of analytical schemes was used, additionally utilising the later stages of the ‘16-step method for directed content analysis’, as outlined by Assarroudi *et al.* (2018). All data were converted into text format and then coded, initially in a grounded theory manner and then again embedding specific concepts linked to the themes of circumstances, setting, participants, status, background, communication, behaviour, opinions and stereotypes.⁵ In the initial, grounded-theory and more inductive stage, coding was done with a focus on the discretionary decision-making and variations in the procedure of the intra-Schengen cross-border transfer of EU nationals. For the second stage of the analysis, three groups of codes were designed, each driven by one of the following themes: conditions, interactions and perceptions. In this way, the data were analysed gradually, building from straight-from-text, back-and-forth concepts to more abstract ones, revealing relations and dependencies between and across the themes, as described below.

3.6. Variations in procedure: whose discretion matters?

This section begins by comparing the variation present in the procedure due to macro-level structural and institutional limitations at the two outposts (1 and 2) at which the procedure was observed – representing the ‘official’ discretionary space. The second part reflects on the formal and informal norms at each of the outposts, created at the local organisational (mezo) level (institutional discretion), while the third part looks more closely at the micro-level uses of

discretion by street-level agents and their individual decision-making, often dictated by their personal preferences and perceptions (individual discretion).

The information outlined in the sections below comes directly from the data collected during field- work, including the observation of and interviews with Border Guards, the observation of German Federal Police officers and of the individuals in the transfer procedure (Polish citizens under orders to return to Poland from Germany).

The official institutional discretion at the level of the Border Guard organisation/headquarters

Several factors that shape the procedure of the intra-Schengen cross-border transfer of EU nationals are beyond the influence of individual street-level Border Guards and represent decisions made at the macro organisational level or Border Guard headquarters – or even within the Ministry of Internal Affairs and Administration. Notably, the specific outpost, its architecture and facilities and the surrounding geography in which the procedure takes place all play a significant role when discussing the details of intra-Schengen cross-border transfers. The decisions behind these structural choices are clearly among the factors established at the highest political and institutional echelon, illustrating the varying interpretation of international and national official rules and regulations when it comes to the procedures involved in border control – such as the Schengen Borders Code (EU Regulation 2016/399 of the European Parliament – [Eur-lex.europa.eu](http://eur-lex.europa.eu)), the Border Guard Act of 1990, amended and unified in 2020 (Dz.U. 1990 Nr78 poz. 462 – Sejm.gov.pl) and the Border Protection Act of 1990 (Dz.U. 1990 Nr78 poz. 461 – Sejm.gov.pl).

The two outposts included in this study reveal a wide degree of variance in the interpretation and application of the Schengen Borders Code stipulation in Article 24, which states that all traffic obstacles and border-crossing structures must be removed from the border and cannot pose any restriction on free movement or impose unsafe conditions. According to the Border Guard Act and the Border Protection Act of 1990, the facilities and structures must ensure the appropriate conditions for all procedures – such as interrogation, holding, personal searches etc. However, the comparison between the two outposts reveals how differently these rules are translated into the real conditions that each of the two places offered.

At Outpost 1, even though the Border Guards Outpost Headquarters compound was located within the limits of a Polish city in the border region, the two agencies involved – the Polish Border Guard and the German Federal Police – collaborated to establish a separate place where all cross-border transfers could take place, including readmissions and returns under Dublin III regulations. The place was referred to by Polish agents as the ‘Transfer Point’ (or *Punkt Przekazań*, which was the official name of the structure). The building itself was located almost exactly on the Polish–German border although just slightly on the German side and within the city centre. It was quite easy to find, reach and access by car or on foot.

In a stark contrast, Outpost 2 presented a very different reality due to the simple fact that the structures occupied a former border crossing exactly on the border and right in the middle of a busy highway, without direct access for anyone except for authorised personnel, who can approach it by car. In a noticeable difference to Outpost A, there was very little information

passed from the German Federal Police to Border Guards related to upcoming transfers; on several occasions, patrol cars had to return to the Outpost Headquarters in order to 'process' an unplanned cross-border transfer or pause the 'processing' of an apprehended individual in order to 'receive a transfer'. While waiting to be processed, for most of the duration of the procedure and, afterwards, while waiting for clearance from the police, the detainee was kept in a holding cell. There were instances when getting a response from the police took two or even three days, which meant that a person in the transfer procedure could be kept in the holding cell of the outpost for several days.

Additional differences were very prominent when it came to the holding cells – or space used as such. At Outpost 1, the 'Transfer Point' building was well adapted to holding multiple detainees in a separate area away from those individuals who had already proved to have an outstanding warrant in the Schengen Information System (SIS, revealing infractions of the individual in the use of Schengen visas or the crossing of intra-Schengen borders) or EUROPOL (international European police system listing individuals with international criminal records) and/or be dangerous, as well as separate quarters for families with children – the latter with more comfortable beds, a crib, a playroom and a bathroom behind a divider, thus providing a degree of privacy. Overall, the holding cells fulfilled general European/international norms for such spaces, guaranteeing the physical conditions of sufficient privacy, light and space. Conditions in the holding cells at Outpost 2 were one of its most problematic aspects, since the compound did not include appropriate holding cells. Instead, large interrogation rooms were repurposed to hold detainees, prisoners or other apprehended individuals such as families with children. The rooms were quite large and in the sub-basement, with only a minute amount of natural light coming through the small, barred windows. With one wall being almost entirely covered by a two-way mirror, the only items within the cell were a small foldable bed and a toilet behind a semi-private divider. Additionally, the room was badly ventilated and without temperature control, often making it either very cold or very hot and humid, with a noticeable smell of mildew and sewage.

These structural differences exist due to the macro decisions of the institution. Border Guards have no impact on the choice of either the location of their post or the specifics of where the structure is or how it is designed. The obvious infractions of the Schengen Border Code in the case of Outpost 2 were clearly made at the highest echelons of the organisation, reflecting the decisions directly linked to the political level (according to the respondents, this was due to budget constraints faced at internal Schengen borders as Poland entered the agreement in 2008/2009). These differences, however, impacted remarkably on the manner in which the cross-border transfer procedure was implemented, both in the way in which individuals undergoing the procedure were held and the way in which they were released. For example, Outpost 2 often required Border Guards to unofficially offer the additional transfer of the released individual to a safe location which it would not be possible to reach on foot, while Outpost 1 easily facilitated a safe departure from the facility regardless of the individual's transportation possibilities (whether they had a car or money for a bus ticket etc.).

(In)formal norms at the local outpost and unit level – discretion within the team expectations

Generally, the procedural conduct of Border Guards is dictated by the Border Guard Act of 1990, amended and unified in 2020 (Dz.U. 1990 Nr78 poz. 462 – Sejm.gov.pl). While the Act provides a general outline of the rules, rights and obligations that govern what falls within an officer's duties, most of the procedures – such as the border check, the conducting of a personal search, the placement of a person into holding, the use of primary or secondary enforcement measures and the confiscation of goods or documents etc. – allow for a wide margin of personal decision-making based on the officer's evaluation of the situation. In other words, an officer's personal assessment of the level of threat and what he or she deems an appropriate response, allows for a lesser homogeneity in procedural implementations. However, as observed during fieldwork, the set of strong informal norms permeating the organisation, especially when visible at the local level of a specific outpost or even a unit within it, to a large extent creates the framework of behaviour for the officers.

The norms and expectations of conduct at the two outposts varied greatly and can be especially well illustrated by the interactions of officers with individuals in the transfer procedure. At Outpost 1 these interactions were quite limited and purposefully minimalised, while the culture of Outpost 2 encouraged the creation of longer or more in-depth encounters between the Border Guard and the transferee. At Outpost 1's 'Transfer Point', all transfer procedures were scheduled and as such expected, which allowed the officers to familiarise themselves with the details contained in the procedure, limiting the time the detainees would need to spend in holding and speeding up either their release or their subsequent transfer into the hands of police officers. The quarters shared with the German Federal Police and the close cooperation with the agency further set the standards of speed and efficiency, traits often attributed to their German colleagues by their Polish counterparts, who did not want to fall short in their perceived professionalism (based on the data collected on fieldwork). Additionally the geo-location of the Transfer Point itself entirely relieved the officers of any feeling of responsibility in catering to those released on their departure from the Point, since access to various forms of transportation or communication could be achieved with ease. Because Outpost 1 was less 'successful' in catching illegalised migrants or improper border-crossings, many of that location's statistics relied on the transfer procedures, making them both more significant in number and much more streamlined when compared to those of Outpost 2.

As far as the transfer procedures were concerned, Outpost 2 operated in a much less organised manner. The majority of the transfers observed were not scheduled or at least appeared to surprise the officers working the patrol shift. Since Outpost 2 was a 'busier' location than Outpost 1 as far as the number of smuggling or other illegal cross-border activities were concerned, the Border Guards usually perceived the need to return to the post and accept the custody transfer from the German Federal Police officers as a nuisance and a hindrance to their preferred patrol activities. Because of the specific difficult location (mentioned earlier) in the middle of a busy highway, the unofficial rule for releasing a transferred individual involved dropping him or her off at a safe location, either in the city or at a petrol station or a bus station nearby. While not outlined in any official or legal capacity, this rule was observed throughout all my fieldwork and often described as a juxtaposition to a cautionary tale of an instance when

the rule was not followed. This was shared by the specific Border Guard involved in the event who, at this specific time, decided not to follow the unofficial rules and refused to offer the individual in the transfer procedure a ride to a safe location:

I will never forget that one time. This guy, he was being released. And he is asking me, can I give him a ride to a gas station or a bus stop. (...) I remember, I said, 'I'm not a taxi service' and let him walk away. Later, it was already dark, I was coming back from a mobile patrol and I saw him... That guy, he got hit by a truck. He tried to walk along the highway (...). He died, of course. I still remember seeing his blood, his body on the side of the street... It is really awful to now live with that (BG2f⁶).

The tragedy clearly has its roots in the specific location of the compound yet, at the same time, it illustrates the location-specific need for the norm of extending the additional transportation service to the released individuals awaiting transfer. In this case, the individual preference of an officer to behave a certain way was bound by both structural limitations as well as the organisational culture of the out- post, which is itself connected to the specific location and the architecture, also reflecting the type of cross-border migration flows and potential crimes in that region. The situation described above is a dramatic example of a state agent's decision, even though initially dictated by constructional limitations and ultimately costing someone their life.

Interestingly, one aspect treated consistently in a similar manner at each of the outposts was the officers' preference to patrol the direction of the traffic going towards Poland. As multiple Border Guards (BG1b; BG1e; BG2a; BG2e; BG2f) observed: 'My job is to protect the Polish border, not the German one'. They would often use the description of their duties in the Border Guard Act of 1990 to justify this, even though the accession of Poland into the Schengen Agreement clearly stipulated the importance of protecting the internal border equally, in both directions, in the context of perceived risks and existing dangers. However, in the majority of cases fueled by resentment and the oft-perceived discrimination of Poles by their Western neighbours (McGinnity and Gijsberts 2015, 2018; Rzepnikowska 2019; Sobczyński 2009), individual Border Guards resented having to fulfill an obligation which they perceived not to be in line with national Polish interests. The sentiment was made abundantly clear on many occasions when bluntly defying the Commander's, the Unit Director's or the shift supervisor's direct order to split the patrol time so that the officers watch both traffic directions equally. This was especially obvious when officers accidentally intercepting Poles entering Germany (for example when doing ID checks at petrol stations) revealed that the individual they had stopped, who was clearly on the way to Germany, was actually about to violate a re-entry ban. Indeed, what the collected data revealed is that the Polish–German border is characterised by an inability – and a lack of willingness – to procedurally guarantee full implementation of the German re-entry ban. The triangulation of risk analysis profiles, preferences and perceptions of controlling the 'exit' vs 'entry' traffic by street-level Border Guards and the actual occurrences of identity checks conducted near the border, reveal a significant permeability of the border for Polish and German citizens, especially in the 'exit' direction (leaving Poland and entering Germany). As indicated by the Border Guards, without a systematic and full border control and with the continuous understaffing and lack of resources of the agencies responsible

for intra-Schengen border protection, Polish individuals with a re-entry ban can easily slip through the surveillance and find themselves back on German soil.⁷ The deportations are initially enforced but the re-entry ban is not, which implies a certain bottleneck; what follows is a visible implementation gap. This finding strongly connects with the concept of deportability (De Genova 2002) and the potential for labour exploitation (Cornelius *et al.* 2004; Sumption and Fernandez Reino 2018).

Individual discretion and the impact of street-level Border Guards' personal preferences

There have been many situations in which the choice of the street-level Border Guard made the procedure take on a certain shape since, as mentioned in the previous section, the legal stipulations of the Border Guard Act of 1990 are open enough to facilitate a large margin of discretion in their implementation. On numerous occasions it was clear that the manner in which a certain procedure was realised was largely dictated by the Border Guard's personal preferences and individual inclinations, views and beliefs.

At times the degree to which the individual street-level Border Guard's personal decision could impact on the treatment of a detainee was remarkable, pointing to the problematic nature of their wide discretionary powers. For example, some Border Guards purposefully made the holding conditions harder by either putting multiple detainees together in a single-occupancy room or allowing them to smoke cigarettes continuously without permitting them to open the windows. A few Border Guards found it amusing to restrict access to personal food or drinks or use of the toilet. While, in a couple of cases, street-level officers immediately reacted to the detained individual's health issues, transporting them to hospital and administering appropriate medication, others chose to ignore requests for attention, judging them untrustworthy and the symptoms 'fake'. One memorable instance involved a young female Border Guard, who was bothered by the symptoms of illness exhibited by one of the detained individuals, while the second Border Guard present, an older male and the patrol supervisor, crudely made fun of her 'softness' saying: '(...) you women are so stupid. They [detainees] are clearly lying, just trying to manipulate you' (BG2c).

Another visible difference in how officers approached the transferred individuals was seen in the context of personal belongings. According to some respondents, many Poles who go through the transfer procedure have belongings confiscated by the German Police – bikes, phones, laptops or tablets. If their owners fail to provide proof of purchase, the objects confiscated end up being commandeered by the Regional German Police at the moment of the initial arrest. Additionally, it is a standard operation to require the foreigner to cover the administrative costs of the deportation procedure (Bleiker 2019; Co-operative Project 'Welcome' 2019). Based on data and legal provisions, it proved impossible to determine the exact amount or its limit, with respondents pointing to values varying between €50 and €850. When hearing detainees' stories, the Border Guards either ignored them entirely as fabrications or showed quite far-reaching understanding and sympathy.

The following is a comment from an individual in transfer, after his goods were confiscated. He was facing an order to check into a police station at the place of his residence, at the far northern end of the Polish–German border. His statement relates a great degree of helplessness

which also feeds into the previously mentioned pool of Poles deciding to violate the re-entry ban to Germany:

What am I supposed to do now? They took my bike, my phone, and my money. I can't even call a friend to ask for help. I literally have nothing, and what, am I supposed to walk to my town? It's 300 kilometers! Am I supposed to do it on foot? (...) So I kind of have to break the law now. Either hitchhike, or steal... [‘Or just turn round and go back to Germany, huh?’ was the half-joking response of one of the Border Guards] (NBG2a).

Several Border Guards saw such events as congruent with their own belief in the exploitation that many Poles experience at the hands of the German police. As one Border Guard told me after a detainee claimed to have had all of his possessions seized:

This makes me so angry. It's not like it doesn't happen all the time! This poor guy, they arrested him, ok, but he already served [his time]. Why do they have to treat him like this? It's because he is Polish, you know. They hate us. I've seen this before (BG2e).

Many officers' behaviour was directly linked to the perception they had (or had not) of the detainee being compassion-worthy and reliable, based on their looks, age, gender, background and criminal record and other undisclosed personal indicators. The extent to which they would choose to communicate with the individual was also reliant on that factor, in turn facilitating discretion at the procedural end to either ease or multiply the discomfort of the transferee. Generally, the officers would either choose to humanise and find personable aspects of the detained individual – in turn being more understanding towards them and benevolent when conducting the procedure – or remain reserve and limit empathy by not recognising any shared values, which often resulted in harsher treatment of the person in question.

The data reveal certain age- and gender-related trends in the behaviour of the Border Guards. Older male officers, in particular, often showed a significant degree of empathy with the transferred former prisoners, judging their experiences to be the proof of a vindictive and specifically anti-Polish discrimination by German state agents. In two cases, officers gave the released individuals a small amount of money ‘for food or a bus ticket home’, finding their experiences believable and thus expressing a genuine desire to help. In a similar spirit, some younger male Border Guards were amused, if not impressed, by stories of Poles arrested in Germany for assault on a German national – usually an altercation that took place in a bar, under the influence of a significant amount of alcohol (‘You stuck it to that German (...), didn't you!’ – BG2e). On the other hand, the female officers showed little tolerance of, if not outright contempt towards, individuals charged with multiple assaults. The street-level officers who themselves were mothers perceived detainees with arrest warrants for unpaid alimony and child support as generally less truthful. The perceived lack of trustworthiness would frequently translate into very limited interactions between the detainee and the Border Guard, showing how a personal situation, gender, age and ideology can strongly impact on their attitudes and consequently their conduct towards detainees during the intra-Schengen cross-border transfer. This confirms the findings of other scholars researching street-level discretion, who conclude that the (social) identity of the individual border agent, as well as all different aspects of their

field of decision-making, together affect the officer's discretionary behaviour (Brouwer *et al.* 2018; van der Woude 2019).

3.7. Discussion

As shown above, there are many ways to practice the procedure of cross-border transfer, depending on the various geographical, institutional, local and individual factors. It is important to keep in mind that the process of intra-Schengen cross-border transfers described is anything but easy; in its most proper and benevolent form it still involves the individual being handcuffed and transported as a prisoner into the hands of another agency, where each one goes through a physical (body) search as well as an in- depth examination of his or her personal belongings. In reality what is hiding under the benevolent title of a 'transfer' is actually a procedure that frequently involves physical and emotional violence, uprooting and a multi-layered dispossession (Golash-Boza and Navarro 2018b). While the deportation procedure itself can be quite traumatic, especially considering the significant loss of personal possessions, it is in fact the re-entry ban to Germany which many find to be the most severe aspect of their punishment, taking its toll on all aspects of their lives. The existing legal framework establishes the minimum ban at six months; however, in many cases it is much longer – for some, even permanent (Gęborek 2013; Pazur 2019). The combination of data, supported by the available legal advice on and academic analysis of cases of 'failed' migration⁸ and the returns of formerly emigrating Poles, shows that the subjects in question are often Polish citizens who emigrated many years ago – some as early as the 1990s – and have established work, family and social ties within Germany (Babakova 2018; Lesińska and Okólski 2013). For them, being suddenly 'returned' to a place where their opportunities have proved to be greatly limited, also means facing the trauma of separation from the family and community which they have to leave behind (Brzozowski 2011; Czerniejewska and Goździak 2014). Socio-legal scholars have argued that this multi-level punishment transgresses the proportionality rule, as its severity greatly exceeds the gravity of the initial crime committed (Hong 2017; Stumpf 2009).

3.8. Implications of the findings in the context of deportability

Based on the data collected during my fieldwork, it is obviously quite easy for Poles to cross the Polish– German border without being stopped and controlled. Many individuals with a re-entry ban to Germany attempt (and succeed) in violating it as, in their eyes, it is absolutely worth the risk. When back in Ger- many such individuals do their best to stay out of the criminal justice system, which allows them to function again within their community, even though in a much more precarious state. What is generated via this inability to fully implement the re-entry ban is precisely the creation of a legally and socially vulnerable migrant Polish population, forced to exist in the 'grey zone' of the host German society (Hasselberg 2016; Leyro and Stageman 2018). It is important to put this in the context of Polish citizens constituting a large migrant population in Germany and having usually emigrated specifically for work opportunities, often as low-skilled labourers⁹ (Fanning, Kloc-Nowak and Lesińska 2020; Lesińska and Okólski 2013). The deportability of a large number of working-class migrants is here facilitated by, whether intended or not, the lack of any institutional infrastructure through which to fully implement deportation orders and their additional ramification (re-entry ban).

This finding fits in with the syndrome of ‘revolving doors’ (see Cornelius *et al.* 2004) and the facilitation of the precarious legal state of migrant groups within host states, ensuring their dispensability via deportability (De Genova 2018). Even though it is the street-level agents who are physically present and responsible for protecting the border regions, much of the described legal and institutional bottlenecks of implementation fall within the realms of policy-makers and the highest echelons of institutions, where the decisions are actually made concerning how many agents – and with what priorities and available tools – are deployed in the various regions.

What is quite significant and to an extent ironic is the decision by many Border Guards to not apprehend or stop Polish citizens attempting to enter Germany despite being subject to a re-entry ban; this actually inadvertently contributed to the influx of the precarious and vulnerable population of deportable Polish citizens in Germany – an effect that in fact serves for the benefit of the German state while, on many levels, hurting those Poles who find themselves in that position (Cornelius *et al.* 2004; De Genova 2018).

3.9. Conclusion

It is easy to potentially perceive that it is the street-level bureaucrat whose individual decision provides the most discretionary space when it comes to variations in procedural implementation. However, on closer inspection of the situation, using the intra-Schengen cross-border transfer of Polish citizens from Germany as a case study, there are indeed multiple levels of discretionary space at which various types of important and impactful decisions are being made – from structural, institutional, local and informal to purely personal and individual decisions. Even when allowing for the individual Border Guard’s discretion, what remains is still a staggering range of variation in the execution of the procedure. We can conclude that, due to significant inconsistencies between the different posts, based on the available structures, staffing and tools at the disposal of the officers, as well as the different character of each of the outposts, a procedure must take on different shapes and forms when executed. Without taking away the importance of proper conduct at the street level, much of the variation in the implementation of the cross-border transfer lies with the participating agency at the strategic (outpost, divisional command) and operational (headquarters), rather than at the tactical or ‘street’ level. Individual Border Guards have no agency over where they are stationed. They also have no impact on the tools they are given to work with or the conditions and type of holding cells they have to use. Despite the dramatic example in which one individual officer’s decision resulted in a person’s tragic death, the true culprit or the unsafe location of the outpost where the procedure took place are clearly beyond the control of anyone within the organisation except those at the Border Guard Headquarters, as it would require a change in the outpost location or a much greater degree of homogenisation of internal procedures than is currently the case. Additionally, the data show that the internal institutional pressure for high performance indicators is very salient among lower-level Border Guards and this pressure to ‘succeed’, for the agency, often translates into which types of action and procedure street-level Border Guards will choose to focus on, thus directly impacting on their discretionary decision-making.

Arguably, and as seen in earlier examples, more compassion on the part of street-level officers could improve the treatment of individuals in the procedure overall (Bender and Arrocha 2017). Still, as these authors suggest, it would also require a change in the wider organisational culture, formative to agents' decision-making. At this point, however, this kind of change would demand a shift in responsibility reaching far beyond the official duties of street-level Border Guards. Such a shift would be a problematic exacerbation of the state's inclination to re-distribute accountability from the top (Ministry of Internal Affairs and Administration; Office for Foreigners; Border Guards Headquarters) to the lowest micro level. It additionally reinforces the stereotypical view of the larger-than-actual degree of power and decision-making among Border Guards at the street level. By focusing on these individuals, the higher echelons of the agency manage to relinquish much of their own responsibility for the implementation gap and the variation in procedural execution. The combination of this shift in responsibility with a discourse exaggerating street-level powers facilitates an easy individual scapegoating in cases when things go wrong – something that, according to Border Guard interviewees, already happens frequently. This presents an interesting topic for future study.

Additionally, seeing a distinct procedural and administrative discretion on the part of German institutions and state agents such as AZR, the courts involved in migration proceedings and Federal as well as regional German Police officers, research conducted on the German side of the border would greatly contribute to a fuller picture of the procedure in the context of state-agent discretion.

Notes

¹ The actual term used to describe the procedure often stems from the legal framework and the accepted societal discourse. While a 'deportation', an 'expulsion' or a 'forced return' denote the same contemporary practice, in certain countries such as Poland, the word 'deportation' has a very specific and negative meaning, linked to the history of forced relocations during WWII and under the USSR

regime. In other cases, 'expulsion' is similarly used as a euphemism to avoid the pejorative connotation of the word 'deportation'.

² There have been arguments proving that deportation is simply a continuation of the historical rights of any nation state to control its own population and territory, as deportation serves as the act of ultimate demarcation between the rights of a citizen vs those of a non-citizen (Anderson, Gibney and Paoletti 2011; Gibney and Hansen 2003). Walters (2002: 287) analyses the use of deportation as 'a practice of citizenship', concluding that deportation is an unavoidable and logical consequence of the 'modern regime of citizenship'. After all, legal or permanent residence and, at times, even citizenship, still do not guarantee immunity from expulsion, making all migrants 'eternal guests' of the state (Kanstroom 2007). ³ For example, in recent years Poland has had a very high percentage of implemented forced-return orders (Polish Border Guards Statistics, *Statystyki SG*. <https://www.strazgraniczna.pl/granica/stat-ystyki-sg/>; Office for Foreigners Statistics, <https://udsc.gov.pl/statystyki/>). How is this achieved? A review of internal agency documents in combination with interviews with Border Guards reveals that the forced-return

order is usually given to a foreigner (usually Ukrainian) as he or she is already leaving Poland. Since, at certain Polish borders, exiting the country is as heavily controlled as entry, a border agent who finds anyone who has exceeded the legally permitted stay (even by a single day) issues an already fulfilled forced-return order, scoring another ‘success’ for the agency.

⁴ A crime committed is the most common trigger, even though on some occasions a person can be deemed ‘undesirable’ by the German state based on a significant administrative infraction or other undefined threatening behaviour.

⁵ Since the data collected during fieldwork are restricted for viewing by the research team exclusively, as stipulated by the contract between myself and the Border Guard organisation, some of the specific in-vivo codes of the first stage of analysis cannot be disclosed; however, I can be contacted to share some of the more detailed steps taken during the analysis (m.e.klajn@law.leidenuniv.nl).

⁶ In order to protect the confidentiality of all of the respondents, the individual Border Guards who served as sources for the quotes or other information presented in the article are referred to as ‘BG’ and numbers 1 or 2 to indicate the outpost location, further differentiated by the letters a–f, randomly assigned to each separate individual. The three civilian respondents will be referred to as ‘NBG’ (not Border Guard), number 2 since all of them were encountered at the second location, and letters a–c for individual differentiation.

⁷ Some of the detained individuals have in fact been found to be in violation of the re-entry ban. In several cases where Border Guards stopped individuals with a ban as they were exiting Poland, they would only give a verbal warning: ‘You know you will be breaking the law, if you go back [to Ger- many]. If they catch you, you’ll have to pay a fee and they will deport you’. Asked why they did not stop the individual from entering Germany, they frequently answered: ‘I’m not here to protect Ger- many and its borders’. These are often repeated phrases used by a multitude of our Border Guard respondents, including many individuals beyond the 12 officers cited exclusively for the study of intra-Schengen cross-border transfers in this article.

⁸ While appearing as a strongly arbitrary judgment, ‘failed’ migration is usually defined as the return to Poland of migrants who were unable to establish themselves financially, professionally or socially in the intended country of destination and, while initially their mobility was motivated by a potentially better status than the one available to them in Poland, in the end they failed to achieve it and return to the home country with the realisation that, in the end, their country of origin presents a better opportunity than that not found elsewhere.

⁹ Central Statistical Office of Poland. Główny Urząd Statystyczny (<https://stat.gov.pl/>).

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