Helsinki Foundation’s for Human Rights (Poland) – submission to the UN Special Rapporteur on the Human Rights of Migrants concerning his report on the issue immigration detention.

I. Information about Helsinki Foundation for Human Rights (HFHR)

Helsinki Foundation for Human Rights (based in Warsaw, Poland) was founded in 1989 by the members of the Helsinki Committee in Poland. HFHR mission is to promote the development of a culture based on the respect of freedom and human rights in Poland and abroad.

One of the programmes of the HFHR is the Legal Assistance to Refugees and Migrants Programme established in 1992. The Program's fundamental activity is to provide cost-free legal advice and assistance to aliens turning to the Foundation and to undertake litigation actions. The scope of the Program's activity also includes monitoring of the observance of the Constitution of the Republic of Poland, the provisions of the Geneva Convention of 1951 regarding Refugee Status, the European Convention on Human Rights and Fundamental Liberties and Polish legislation by Polish authorities in cases of foreigners. Lawyers working in the Programme prepare opinions to draft legal acts regarding aliens and perform informational and training activities on migrants and refugees rights.

II. Legal basis of detention of migrants in Poland

Provisions of detention of migrants in Poland are placed in Act on Aliens of 13 June 2003, Chapter 9: “The proceedings in case of detention of an alien, placing an alien in the guarded centre or in the arrest for the purpose of expulsion”\(^1\).

Art. 102
1. An alien shall be placed in the guarded centre, if:

\(^1\) Translation taken from the website of the Office for Foreigners
http://www.udsc.gov.pl/files/old_file/44e9bddd07d1b8_1-44043372d9359_cudzoziemcy.pdf
The translation of the Act on Aliens published at Office for Foreigners website generally is outdated but provisions on detention hasn’t changed since translation was made.
1) it is necessary to ensure the effectiveness of the proceedings on expulsion or on withdrawal of the permit to settle or of the long-term resident's EC resident permit;
2) there is a well-founded fear that an alien will attempt to evade the execution of the decision on expulsion or on withdrawal of the permit to settle or of the long-term resident’s EC resident permit.
3) he / she crossed or has attempted to cross the border contrary to the laws, if he / she was not been escorted to the border immediately.

2. An alien shall be placed in the arrest for the purpose on expulsion, if any of the circumstances referred to in sec. 1 have arisen and there is a fear that an alien will not observe the rules in force in the guarded centre.

Art. 103
The ruling on placing an alien in the guarded centre or in arrest for the purpose of expulsion shall not be rendered if it may cause a serious threat to his/her life or health.

Art. 104
1. An alien shall be placed in the guarded centre or in the arrest for the purpose of expulsion on the basis of virtue of the court ruling.
2. The ruling referred to in sec. 1 shall be rendered at the request of the voivod, the agency of the Border Guard or the Police by the district court competent with respect to the seat of the authority, which has made the request.

Art. 106
1. While rendering the ruling on placing an alien in the guarded centre or in the arrest for the purpose of expulsion, the court shall specify the period of detention or arrest not exceeding 90 days.
2. The period of stay in the guarded centre or in the arrest for the purpose of expulsion may be prolonged for a specified period necessary to execute the decision on expulsion, if that decision was not executed due to the alien’s fault. The period of stay in the guarded centre or in the arrest for the purpose of expulsion may not exceed one year.
3. The district court competent with respect to the location of the guarded centre or the arrest for the purpose of expulsion, where the alien has been placed, shall render the ruling on prolongation of the period of an alien’s stay in the guarded centre or in the arrest for the purpose of expulsion. That ruling shall be rendered at the request of the authority obliged to escort the alien to the border of the Republic of Poland, the border or an airport or a sea port of the country to which he/she has to be expelled.
4. The ruling referred to in sec. 3 may be complaint against to the competent regional court within the time limit of 7 days from the date of delivery of that ruling. The court shall examine the complaint without delay.

There is worth mention that migrant children (both with families and unaccompanied) can be detained in Poland.

III. Information about migrants detention in Poland

Presented document contains compilation of reports on migrant detention in Poland. There are reports prepared by Polish NGOs as well as international organizations.

Presented information is not dealing with detention of asylum-seekers in Poland which has different legal basis.
1. Special needs and protection concerns of vulnerable groups of migrants (including children, women, families and migrants with mental health issues).

- According to data provided to the HFHR by the Border Guards concerning the number of families with children and the number of children living in guarded centres in Poland in January-October 2011, in the Guarded Centre in Kętrzyn were 30 families with 61 children, in the Guarded Centre in Białystok were 7 families with 20 children, in the Guarded Centre in Biała Podlaska were 10 families with 24 children, in the Guarded Centre in Przemyśl were 10 families with 25 children, in the Guarded Centre in Lesznówola were 11 families with 26 children.\(^2\)


According to the report, children’s rights instruments and national child protection policies in Poland are applicable to migrant children, including children in the return procedure. Polish legislation refers explicitly to the Convention on the Rights of the Child in relation to the return of children outlining that unaccompanied children can only be returned when the care provided in the receiving country, whether from carers or institutions, would not violate the rights of children as set out in the CRC.

- *Universal Periodic Review of Poland. Joint submission by a coalition of human rights NGOs.* 28 November 2011\(^4\)

According to the submission, in detention centres for aliens in Poland there are insufficient legal guarantees during the detention period – including lack of access to free legal assistance, even for minors. Facilities in detention centres are very similar to prisons (sometimes even worse), and most of them do not provide educational programmes for minors, nor is the possibility of enrolling minors in local public schools being considered. The right to education that is guaranteed both by the Convention on the Rights of the Child and the Polish Constitution is violated.

The provision of healthcare and psychological and psychiatric support to aliens placed in guarded centres cannot be considered adequate. The centres do not provide access to the services of a professional interpreter when the person visits a doctor or psychologist. Access to a psychologist or psychiatrist is furthermore rare and unsatisfactory: the psychologists have no knowledge of foreign languages, nor are they trained to work with people of a different cultural background, victims of military conflicts, or persons suffering from PTSD.

- *Legal Intervention Association report. The observance of foreigners’ rights in guarded centres. Monitoring report.* October 2011\(^5\)

Securing the right to education in a broad sense is an obligation of the State not only in reference to its citizens but to all the people who remain within its territory, which is reflected

\(^2\) Letter of the Border Guard to the Helsinki Foundation for Human Rights dated on 5 September 2011 (no. 1338/IV/MK/11)


\(^4\) Available at: http://interwencjaprawna.pl/docs/UPR%20_integrated%20report%20final.pdf

in the most important legal Acts, including the Polish Constitution. The results of monitoring conducted by the Legal Intervention Association in this scope are definitely negative. They show that the Polish State is unable to secure the basic, constitutional rights of the children concerning their access to education.

The report argue that general ban on placing children in guarded centres should be considered. This is probably the only situation in which the Polish State deprives children - who have not done anything to justify such an act - of liberty. A minor can spend even 12 months in a closed institution.

- Report to the Polish Government on the visit to Poland carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 26 November to 8 December 2009. 12 July 2011

As a matter of principle, the CPT has reservations regarding the detention of unaccompanied minors in detention centres for foreigners. Under Polish legislation, unaccompanied minors who have not applied for asylum may be detained in a guarded centre (provided that they are kept in a separate unit where no contacts with adult detainees are possible); accompanied minors may be held together with their parents in a guarded centre.

In the CPT’s view, the detention of children is rarely justified and can certainly not be motivated solely by the absence of residence status. More generally, every effort should be made to avoid resorting to the deprivation of liberty of minors in detention centres for foreigners.


According to the report, detention of migrant children, in particular those accompanied by parents or legal guardians, is common in Poland. The best interests of the child are not taken into consideration in a sufficient manner when placing a family with children in a guarded center for foreigners or prolonging their stay. The Polish Act on Aliens also does not stipulate that the best interests of the child should be considered by the court when ruling on the subject of detention. Immigration status of the family and securing the issuing and execution of the expulsion order predominates over the welfare of migrant children. The report indicates that the greatest concern as far as conditions of detention of children are concerned is their access to education. The report indicates that although the majority of guarded centers organize classes for children, with the exception of Biała Podlaska and Lesznowola Guarded Centers classes are conducted by educational’s section employees, not by professional teachers. The majority of classes are organized without age division of children which hampers the educational process. There is also no uniform program allowing for standardization of education provided in guarded centers. Therefore the Halina Nieć Legal Aid Center recommends introducing by the Ministry of Education specific guidelines on education of children in guarded centers for foreigners.

---

6 Available at: http://www.cpt.coe.int/documents/pol/2011-20-inf-eng.htm#_Toc298153908
7 Available at: http://pomocprawna.org/images/stories/pomoc_uchodcom/report_detention_HNLAC.pdf
2. Alternatives on detention

Provisions on alternatives to detention are provided by the Act on Aliens.

Art. 90 of the Act states that the decision on expulsion may oblige an alien to stay in the indicated place until the execution of the decision and may oblige his / her to report to the authority indicated in the decision at specified intervals of time.

Art. 101a of the Act states that the authority which stopped a minor alien staying on the territory of the Republic of Poland without care may make a request to the court competent with respect to the place of stopping a minor for placing this minor in the in the custodian–educational centre.

There are not available data on alternatives on detention in Poland, anyway from the experience of the HFHR there is very low number of such decisions and detention is used routinely.

3. Different detention regimes

- **Legal Intervention Association report**: The observance of foreigners’ rights in guarded centres. Monitoring report. October 2011

In Poland two types of detention facilities for foreigners are introduced: the deportation detention centre and the guarded centre. According to the report they were to differ from each other, by their nature, in the applied regimes and rights vested in the detainees. But in practice the differences are very small. Considering the fact that people who have not committed any crime and, as a rule, do not pose danger to State security are placed in these institutions, such restrictions as limited time for walks or no possibility of contact between unrelated men and women seem to have no rational justification. Window bars and other architectural solutions usually applied in prisons should also be limited as the centres are very well protected and escaping from them, due to external securities (high walls, CCTV, etc.) would be extremely difficult.

4. Detention conditions and application of legal safeguards

- **Report to the Polish Government on the visit to Poland carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 26 November to 8 December 2009. 12 July 2011**

In the report’s chapter “Detention of foreign nationals under aliens legislation” it is pointed out that as a matter of principle, the CPT has reservations regarding the detention of unaccompanied minors in detention centres for foreigners. CPT pointed out that every effort should be made to avoid resorting to the deprivation of the liberty of minors in detention centres for foreigners. The CPT also recommends that the Polish authorities take the necessary steps to ensure that in all guarded centres/deportation arrest centres:

- nursing cover by a qualified nurse is provided, not only during the week but also at weekends;
- a psychologist is present on a regular basis;
- newly-admitted detainees are systematically screened for transmissible diseases (including tuberculosis);
- whenever doctors are unable to communicate with detainees during medical examinations/consultations due to language problems, the persons concerned should benefit from the services of a qualified interpreter;
- medical confidentiality is observed in the same way as in the outside community; in particular, all medical examinations should be conducted out of the hearing and – unless the doctor concerned requests otherwise in a particular case – out of the sight of police officers; detainees’ files should not be accessible to non-medical staff, but should rather be the responsibility of the doctor.

The CPT encouraged the Polish authorities to provide specialised training to all Border Guard officers working in direct contact with immigration detainees. It would also be desirable for designated officers to receive language training in the most frequently spoken foreign languages. According to the report, it would be desirable for foreign nationals to receive a written translation in their own language of the conclusions of decisions regarding their detention/expulsion, as well as of information on the modalities and deadlines for appealing against such decisions.

- **Legal Intervention Association report:** *The observance of foreigners’ rights in guarded centres. Monitoring report*

According to the report a big challenge to be dealt with is the problem of communication between detained migrants and Border Guards. The most crucial issue is to improve the language competence of the Border Guard officers so that they can communicate with the detainees at least in the basic languages (Russian and English). Moreover, the foreigners ought to be provided permanent access to interpreters - mainly at the time of admitting them to the centre and informing them of the rules they must observe and rights that are vested in them, as well as during appointments with a doctor and, in particular, with a psychologist.

There is limited activity of foreigners and little diversity in possible ways of spending free time, as well as bad state of the premises in which the detainees are located and lack of equipment. The offer of free time activities provided for the foreigners should also be extended - they ought to be able to take part in some cultural and educational meetings, entertainments, they should be able to contact unrelated people, including people of the opposite sex, rooms should be always open and access to walks should be unlimited.

As far as the question of health care is concerned, the fundamental problem remains communication. As it has already been mentioned, professional interpreter ought to be hired to assist during appointments with specialists. It is also necessary to employ doctors (in those centres in which there is no fulltime employed doctor) to provide medical care for the detained. The doctors should have fixed duty hours in the centres during which they should be to the disposal of the foreigners only.

The key issue is to provide appropriate psychological assistance in the centres. Psychologists should be trained at working with people of a different cultural background and should be able to work with the victims of traumatic experiences, tortures, and suffering from PTSD. It would be perfect if they could, in addition, speak foreign languages. In other cases the foreigners should always have access to an interpreter.
It is probable that since there is no adequate medical and psychological care provided at the centres, especially as far as diagnostics are concerned, it happens very seldom that a foreigner is released from a detention facility due to a poor health condition, which constitutes a serious breach of one of the most basic rights vested in the foreigners.

5. Justification and reason for detention

HFHR experience shows that detention of irregular migrants is applied as a regular measure, not as measure of last resort. Usually justifications of the court rulings on placing an asylum seeker in detention are insufficient and do not clarify, why detention was applied in a particular case.8

- Fundamental Rights Agency report: Detention of third country nationals in return procedures. December 20109

According to the survey mentioned in the report, the District Court in Warsaw (first instance) upheld the deprivation of liberty requested by the administration in 202 out of 208 cases decided between 1 January and 26 June 2009, whereas out of the 15 cases reviewed by the Regional Court in Warsaw (second instance) between 1 January and 23 June 2009, detention was continued in all cases but one, due to the pregnancy of the irregular immigrant.

On behalf of the Board of the Helsinki Foundation for Human Rights:

Danuta Przywara

President of the Board of the Helsinki Foundation for Human Rights

Contact details:

Helsinki Foundation for Human Rights
Legal Assistance to Refugees and Migrants Programme
ul. Zgoda 11, 00-018 Warsaw, Poland
phone + 48 22 556 44 66
fax + 48 22 556 44 51
www.hfhr.org.pl