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**THE OBSERVANCE OF FOREIGNERS’
RIGHTS IN GUARDED CENTRES.
MONITORING REPORT.**

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1. The rights of foreigners placed in guarded centres - a short analysis of regulations.

1.1. Introduction

In April 2008 the European Parliament delegation lead by Patrick Gaubert, MEP, visited some selected Polish guarded centres¹. The participants of the mission also got acquainted with the legal solutions concerning the admission of immigrants and of persons who are seeking refugee status in Poland and they also got familiar with the standpoint and remarks of the government and of NGOs. Then, they prepared some guidelines, emphasising that even though the living conditions in the detention centres are good, the authorities should avoid placing children in detention, even if they remain in parental custody, should find some alternative solution for the issue of detaining families and should absolutely prohibit the detention of pregnant women. Moreover, they have recommended that the government put every effort in ensuring that the legal provisions concerning the detained persons be applied in practice and that the detainees have guaranteed access to permanent and regular medical, psychological and psychiatric care².

On the other hand, the authors of the Caritas report of 2007, which presented the results of a monitoring conducted in guarded centres and deportation detention centres³ point to such problems as e.g.: inability of the detention centre officers to speak foreign languages, which makes communication with the detained foreigners virtually impossible, as well as limited activity and lack of diversity in foreigners' activities (which are usually limited to watching television and listening to the radio)⁴. Moreover, they also emphasise the fact that the social conditions in some centres made in former prisons which have not been renovated for years and which lack basic equipment, make the foreigners feel as if they were criminals deprived of liberty.

In view of the foregoing, some questions arise, such as: Have the conditions in guarded centres improved in the last two or three years? Are the rights of foreigners detained in those centres observed? In order to answer these questions we need first to have a closer look at the provisions of the law which govern issues related to foreigners' stay in detention centres.

Issues related to the procedures to be followed when arresting a foreigner and placing him or her in a guarded centre have been regulated in two legal acts. These are: Art. 101-123 of the Act on Foreigners and Art. 87-89c of the Act on Granting Protection to Foreigners within the Territory of the Republic of Poland (the Act on Granting Protection to Foreigners). According to the first Act arresting a foreigner and the procedure of placing such a foreigner in a guarded centre are subject - in such a scope as it is not governed by the Act - to the provisions of the Polish Code of Criminal Procedure.

¹ They visited the Guarded Centres for Foreigners [*Strzeżony Ośrodek dla Cudzoziemców*] in Lesznowola and in Biała Podlaska, as well as a centre for foreigners who seek refugee status, based in Linin.

² *Projekt sprawozdania Komisji Wolności Obywatelskich, Sprawiedliwości i Spraw Wewnętrznych na temat delegacji do Polski* [A draft statement of the Committee on Civil Liberties, Justice and Home Affairs on the delegation to Poland], p. 22 (of the Polish document), available at the following address: http://www.europarl.europa.eu/meetdocs/2004_2009/documents/dv/732/732439/732439pl.pdf.

³ *Report on detention of asylum seekers and illegally staying third country nationals in Poland*, Caritas, Warsaw 2007.

⁴ *Ibidem*, p. 8-11.

In Poland foreigners who are seeking refugee status may stay in open facilities or closed facilities (guarded centres). Persons who are usually placed in guarded centres are those who cross the border of the Republic of Poland illegally or who remain within the territory of the Republic of Poland illegally. A foreigner is placed in a guarded centre or in a detention centre pursuant to a court decision. The time of detention cannot exceed 48 hours. If, however, bringing the foreigner to the centre or his or her admission are impossible, such a foreigner may be placed in a separated room prepared for the detained in the Border Guard or Police premises until the obstacle is removed. Then, appropriate provisions on the stay in a guarded centre or in a detention centre are applied accordingly.

A foreigner is placed in a guarded centre if: 1) it is indispensable in order to effectively conduct the procedure related to the expulsion of the foreigner from Poland or cancelling his or her settlement permit or a residence permit for a long-term EC resident; 2) there are justified grounds to fear that the foreigner will try to avoid the execution of the decision on expulsion or on cancelling a settlement permit or a residence permit for a long-term EC resident; 3) the foreigner crossed or tried to cross the border illegally, provided they were not immediately brought back to the border. Foreigners are placed in deportation detention centres when any of the above described circumstances occurs as well as when there are grounds for fear that the foreigner will not observe the rules of staying in a detention facility. This means that a foreigner is first placed in a guarded centre and if their stay in the centre turns out or might turn out to be ineffective, then the foreigner is put under arrest. When the court issues a decision on placing a foreigner in a particular detention facility they inform the person indicated by the foreigner of this fact. The court also informs the foreigner directly of all the rights that they have in court proceedings. The information is passed in a language that is understandable to the foreigner.

The decision on placing a foreigner in a closed facility is not issued if this might pose danger to their life or health. It should also not be applied if the foreigner is a minor without a guardian or if their mental and physical condition suggests that they were victims of violence or that they are disabled⁵. This limitation, however, only concerns those persons who are seeking refugee status. In other cases, the only premise which prevents from detaining the foreigner in the centre is a threat to their life or health (Art. 103 of the Act on Foreigners). A foreign minor without a guardian may also be placed in the facility, though the Border Guard may also apply for placing such a minor in an educational care facility. The decision, however, is up to the relevant institution (Art. 101a of the Act on Foreigners).

⁵ As a rule, foreigners who can be admitted to a guarded centre or a deportation detention centre are those who are seeking refugee status or on whose account an application to be granted refugee status has been submitted by another person. A person is put under arrest if it is necessary by virtue of national defence and security or public safety and public order. However, in the case of a minor without a guardian, a disabled person or a victim of violence this regulation is not applied, unless the foreigner's behaviour endangers the safety, health or life of other foreigners staying in the centre or of the centre staff (Art. 88 of the Act on Granting Protection to Foreigners).

Detention of a foreigner may only be executed under a court decision for the period of 30 to 60 days, with the possibility of extending this period by another 90 days - for no longer than up to one year. After the lapse of this year a foreigner must absolutely be released from the centre.

According to the Act on Foreigners, arresting a foreigner and the proceedings on placing such a foreigner in a guarded centre are subject to the provisions of the Polish Code of Criminal Procedure. This means that the rules and standards of arresting a suspect and on applying pre-trial detention are in force. We should not, however, forget about the fact that guarded centres are not prisons and they should not be treated as such by the persons who are responsible for supervising the detained foreigners. We should also remember about the constitutional protection of freedom - under Art. 31, section 1 of the Constitution of the Republic of Poland the freedom of an individual is subject to legal protection and its limitation in the scope of enjoying the constitutional freedoms and rights may only be regulated in legal acts and only if they are necessary in a democratic state for the sake of its security or for the sake of public safety or in order to protect the natural environment, health and public morality or the freedom and rights of other people. These restrictions cannot violate the essence of freedoms and rights (section 3). Then, under Art. 41, section 1 of the Constitution the personal inviolability and freedom are secured for every individual. Depriving a person of liberty or limiting it may only take place under the rules and in a mode as specified in a legal act, and every person who is deprived of liberty ought to be treated in a humanitarian manner (section 4).

1.2. The right to information

When the court issues a decision on placing a foreigner in a detention facility it should, upon their consent - apart from securing the foreigner's property – inform a relevant diplomatic mission or consular post - if it is necessary to establish guardianship for minors who are in their custody, or a social aid unit - if it is necessary to take over guardianship of an infirm or sick person, which was so far carried out by the foreigner. The foreigner should also be informed in a language they understand of activities which have been undertaken and of rulings which have been issued in reference to their case as well as of rights vested in them concerning court proceedings. At the time of admitting such a foreigner to the centre they also need to be informed of their rights and obligations in a language they understand. They also need to be made familiar with regulations of staying in a particular facility. The notion "language they understand" signifies a language which allows communication with a particular foreigner. Hence, it can be any language, not only their mother tongue or the official language of their country of origin⁶. This language, however, must be understandable to the foreigner to such an extent, that they have no problems expressing their thoughts, needs or fears in it and that they can understand exactly what is said to them and required from them without the help of third parties.

⁶ J. Chlebny (Ed.), *Prawo o cudzoziemcach. Komentarz*, C.H. Beck, Warsaw 2006, p 270.

The persons who monitored the centres pointed to the fact that this right is very often a fiction, since due to huge diversity of nationalities and - what naturally follows - of languages, the system of communicating messages to foreigners is not effective⁷. Information related to foreigners' rights is not sufficient. This concerns, in particular, the information on their procedural rights. As a consequence, it is more difficult for the foreigners to use legal remedies and such a situation leads to the infringement of their basic rights. Based on the results of a monitoring which was carried out several years earlier, the authors of the *Caritas* report as well as those of the Helsinki Foundation for Human Rights report draw attention to another, disturbing situation: foreigners are not given any written information on the possibility of being released from the centre or a detention facility. This proves that the situation has not changed to the better in the last few years.

1.3. The right to contact

A foreigner has the right, among other rights, to contact Polish State agencies and diplomatic missions or consular posts of a foreign country - in official and private issues - and with NGOs or international organisations which provide assistance for foreigners. Moreover, a foreigner may handle correspondence and use means of communication at his or her own expense (in case of fortuitous events a foreigner may be allowed to use means of communication or to send correspondence at the centre's expense). A person placed at the centre also has the right to submit requests, complaints and petitions to the facility manager or to the Border Guard or Police authority that supervises the facility⁸. Foreigners also have the right to visits of close persons, which are held in special rooms adopted for this purpose. The visits must be permitted by the Border Guard authority that supervises a given facility or by a person designated by the authority. Upon the consent of appropriate authorities a foreigner may also enjoy other rights than those mentioned above.

Foreigners placed in detention centres have the right to contact organisations which provide assistance - especially legal assistance - via correspondence, phone or in person (Art. 117, section 1, paragraph 2 of the Act on Foreigners). Moreover, if there are pending proceedings on granting refugee status concerning a particular foreigner, that foreigner may contact a representative of the United Nations High Commissioner for Refugees (UNHCR) as well as organisations whose statutory tasks include refugee-related issues (Art. 89 of the Act on Granting Protection to Foreigners within the Territory of the Republic of Poland). The facility manager allows the petitioner or the person on whose behalf they are acting, to contact - via correspondence, phone or in person - the above mentioned organisation representatives. We also need to remember that the manager of a guarded centre may restrict or utterly prohibit the contact of a foreigner with the entities specified above if it is necessary in order to secure public safety and public order in the

⁷ K. Zdybska, *Ocena ogólna wizytowanych placówek*, in: *Prawa cudzoziemców umieszczonych w aresztach w celu wydalenia i strzeżonym ośrodku*, the Helsinki Foundation for Human Rights, Warsaw 2004, pp. 93-94.

⁸ In practice, however, all the detention facilities for foreigners are supervised by the Border Guard.

centre or to comply with the regulations of the facility. The manager's decision is final, but in such a case they are obliged to inform the Head of the Office for Foreigners and the UNHCR of the fact.

1.4. Accommodation conditions

In a guarded centre a foreigner is placed in a room for foreigners and in a deportation detention centre they are placed in an accommodation cell. The area of such a room or cell cannot be less than 3 m² per one adult male or 4 m² per one female or a minor. The room for foreigners and the accommodation cell are provided with a separate place to sleep, appropriate conditions of hygiene, sufficient supply of air, as well as temperature appropriate to the season, and it should also be equipped with lighting appropriate for reading. Foreigners of different sexes are placed separately. However, relatives, upon their written request and conditions permitting, can be put in one room.

A foreigner placed in a guarded centre uses his or her own clothes, underwear and footwear. If they are unsuitable for use or if they cannot be used for hygienic reasons they may receive, for a payment, clothes, underwear or footwear appropriate to the season. If a foreigner cannot purchase these items personally, they ought to be delivered to him or her free of charge. The necessary toiletries are also provided for a foreigner free of charge.

A person remaining in a detention facility is obliged to deposit the following items: identity documents, money and valuables, technical devices for recording and reproducing information, audiovisual and computer equipment and other objects which might pose danger to the order and safety in a guarded centre or a detention centre (if the centre manager or a Border Guard authority that supervises the facility does not allow the foreigner to keep them in their room). In deportation detention centres, according to the effective rules, items which, due to their size or number, violate the order to be observed while remaining in custody should also be deposited, apart from the items listed above.

A foreigner staying in a guarded centre has the right e.g.: to dispose of the deposited items as they please - provided they were not secured under the provisions on administrative execution - to enjoy undisturbed sleep from 10 p.m. to 6 a.m., and on holidays - to 7 a.m. as well as at some other time if it does not collide with the rules and regulations of the facility. They may also use the sanitary equipment and the necessary personal hygiene supplies. They are also entitled to possess items related with religious cults, to pursue religious practice and to enjoy religious services as well as to listen to and to watch religious services transmitted by the mass media, in the rooms or in their place of stay, provided this does not breach the rules and regulations of the facility. They are also allowed to read the press or to buy it for their own money and keep it in their room, as it is in the case of food and personal hygiene supplies which can also be bought for the foreigner's money and kept by them in their room. They are also allowed to buy stationery, books, day-room games and to store them in their room. They are allowed to receive parcels with clothing, footwear and other personal supplies. This also concerns dressing materials and toiletries as well as medi-

cations which can be stored upon doctor's consent, provided that all these items have been checked in the presence of the foreigner.

Apart from the above rights, a foreigner staying in a detention facility is allowed to buy tobacco products and to keep them in their room, to move around the centre in places and at times indicated by the centre manager, to use the library and to use recreation and sport equipment, also in places and at times provided for by the manager in the facility regulations.

The guarded centre manager (or the authority of the Border Guard that supervises the centre) may allow a foreigner to possess audiovisual or computer equipment in their room or cell or some other objects, including those which improve the aesthetics of the room or which reflect the foreigner's cultural interests.

All the deposited items and money are returned to the foreigner when they are released from the guarded centre. At the foreigner's request, all such items may be handed out before their release to a person, institution or organisation authorised by them in writing. The costs of handing out the deposited items are incurred by the foreigner.

1.5. Health protection

A foreigner admitted to a guarded centre undergoes a medical examination and, if required, some sanitary procedures. The doctors who perform the examination and who are responsible for providing medical care in the centre are obliged to keep the medical history of every patient. According to the general rule, a foreigner has the right to medical care and to be placed in a medical care facility if their health condition requires it. A foreigner is provided health services, medications, sanitary supplies as well as food and drinks in line with the general rules specified in the Polish Executive Penal Code, i.e. the rules applied in the case of persons placed in a penal institution or who are in custody on remand. Under the provisions of the Code on providing food for the detainees, the food needs to be adequate to their age, must comply with doctor's orders and with religious and cultural requirements, which is of particular importance to the foreigners⁹. The authors of some of the monitoring reports point to the fact that in practice foreigners are not provided appropriate medical care and the difficulties with performing medical services are very often related to communication problems between the staff and the detainees.

According to Art. 103 of the Act on Foreigners, a foreigner cannot be placed in a detention facility if it might be dangerous to their life or health. Moreover, under Art. 107, section 1, paragraph 2 of this Act a foreigner must be released from a guarded centre or from a deportation detention centre if remaining in such a centre might pose danger to their health or life. The decisions on this matter are issued by a competent district court upon the request of the foreigner or of the authority that supervises the guarded centre (namely the competent Border Guard authority). In this context health should be understood in a broad sense and it should include physical health (e.g. in a situation when placing a foreigner in the facility pre-

⁹ J. Chlebny (Ed.), *Prawo o cudzoziemcach...*, p. 295.

vents their specialist treatment, including hospitalisation) as well as mental health (when isolation could cause some serious emotional or mental damage to the foreigner). In his commentary on the Act, Janusz Borkowski emphasises the fact that these provisions ought to be applied if there is a high probability that some danger might occur resultant from “the foreigner’s health condition but also from the social conditions of their situation”¹⁰. Thus, it seems that the opinion of a psychologist should always be taken into account by the court in issuing a decision on placing a foreigner in an isolated institution or on releasing them from such an institution.

We should also remember that even according to the provisions of the Polish Code of Criminal Procedure it is necessary to annul detention on remand of a person suspected of having committed a crime if continuing the detention would have an “exceptionally grievous effect” upon the detainee or their closest relatives (Art. 259 § 1, paragraphs 1 and 2 of the Polish Code of Criminal Procedure). Such a situation includes a poor health condition. The Supreme Court has made a statement on this matter.¹¹ What we read in the relevant decision is: “the lack of adequate interest on the part of the Court which has applied detention on remand, upon a declaration of the suspect supported by an appropriate document stating that his or her health condition is a contraindication for placing them in a penal institution or in custody may, in consequence, lead to a conclusion that detention on remand was, in such a case, unjust beyond any doubt, according to Art. 552 § 4 of the Polish Code of Criminal Procedure”. It is true that the phrase “exceptionally grievous effect” is not well-defined, but it should be interpreted in line with the European Convention on Human Rights and with the decisions of the European Court of Human Rights, especially in the context of the prohibition of inhuman or degrading treatment expressed in Art 3 of the Convention. For example, in the case of *Kalashnikov against Russia*¹² the Court decided that failing to provide appropriate medical care and living conditions for a complainant who was detained on remand, which had a negative impact upon his or her health and comfort, was a breach of Art. 3 of the European Convention on Human Rights. On the other hand, in the case of *Kaprykowski against Poland*¹³ the Court unanimously adjudicated that the rights of the complainant suffering from epilepsy, who was deprived of adequate medical care while in custody on remand, were violated under Art. 3 of the Convention. Disregarding the fear of a detained person for their health - even if it is objectively unjustified – may also be assumed as cruel treatment under Art. 3 of the Convention for the Protection of Human Rights and Fundamental Freedoms¹⁴. When we consider these decisions, which, in fact, concern situations that are of much greater importance for public safety, the approach we ought to assume should be that if a foreigner placed in a guarded centre does not have access to such medical care as is required for their health condition, they should be released from the centre. Failing to provide adequate medical care may thus be considered as inhuman or degrading treatment.

¹⁰ J. Chlebny (Ed.), *Prawo o cudzoziemcach...*, p. 266.

¹¹ The decision of 4 November 2004, file No.: V KK 133/04.

¹² The decision of 15 July 2002, complaint No.: 47095/99.

¹³ The decision of 3 February 2009, complaint No.: 23052/05.

¹⁴ The decision of the Court of Appeal in Kraków dated 21 February 2001, file No.: II AKz 24/01.

1.6. The right to education

Neither the provisions of the Act on Foreigners nor those of the Act on Granting Protection to Foreigners within the Territory of the Republic of Poland govern the obligation of providing minors with the right to education during their stay in a guarded centre. Perhaps the reason for such a legal situation is the assumption that these persons are only placed in such centres for a short period of time and are soon to be expelled from Poland or, if they receive a negative decision, they will be obligated to leave Poland and thus there is no point in organising education for minors for this short period. However, regardless all this, the duty of attending school concerns all the children, not only the Polish children. Hence, a foreign minor should have the possibility of receiving education, either in a guarded centre or in a nearby school to which they might be taken.

We need to remember that in Art. 70, section 1 the Constitution of the Republic of Poland grants every individual the right to education and specifies that education is compulsory until attaining 18 years of age. The word "every" means that this obligation also covers foreigners who are staying within the territory of our country. Hence, no individual who wishes to learn and who has not attained 18 years of age can be denied his or her right to education and it is the duty of appropriate state institutions to provide adequate conditions for it. Moreover, according to Art. 70, section 4 of the Constitution public authorities are obliged to provide citizens with public and equal access to education. In order to comply with this obligation, they need to create and support the system of individual financial and organisational assistance for school pupils and higher education students. The Convention on the Rights of the Child¹⁵, in Art. 22, also pays particular attention to children who are considered refugees or who are seeking refugee status. According to the instructions included in the Convention, children should be provided with adequate protection envisaged by the provisions of the Convention and one of its aspects is securing their right to education (Art. 28). What is more, according to Art. 15, section 1 of the Act on the Education System¹⁶ persons who have not attained 18 years of age must observe their educational duty. The schooling duty is to be observed by all the children until they graduate from *gimnazjum* [a lower secondary school], who are remaining within the territory of the Republic of Poland, regardless their legal status. Thus, the duty also concerns foreigners - whether their stay in Poland is legal or not.

1.7. The protection of minors and pregnant women

In the case of a minor foreigner staying within the territory of the Republic of Poland without custody, the arresting institution may submit a petition to the court of proper venue for the minor's place of staying on placing them in an educational care facility. A minor staying in a guarded centre without a guardian is placed in a separated part of the facility so that his or her contact with adults staying in the same facility is

¹⁵ Dz. U. [Journal of Laws] of 1991 No. 120, item 526.

¹⁶ Dz. U. [Journal of Laws] of 2004 No. 256, item 2572, as amended;

impossible. In the case of foreigners placed in a guarded centre together with minors who are under their custody, they are placed in one room, if possible.

Pregnant women may, in theory, stay in a guarded centre until the delivery, and in a deportation detention centre – no longer than until the seventh month of pregnancy. The post of the Border Guard that supervises a particular deportation detention centre is obliged to lodge a petition with the court, in sufficient advance, before the lapse of the sixth month of pregnancy, on placing such a woman in a guarded centre. The provision of Art. 121 of the Act on Foreigners which prohibits placing pregnant women in deportation detention centres is a similar regulation to the one applied in reference to penal institutions and remand centres¹⁷. The Act does not, however, envisage the possibility of providing a pregnant woman or a nursing mother with specialist care or of departing from following the regulations in view of her physical or mental condition, which can be applied in reference to women placed in penal institutions or remand centres¹⁸. This, paradoxically, signifies that pregnant women serving their sentence of deprivation of liberty have better care secured by the law than foreign women placed in detention facilities, where the rules should not be more severe than those in prisons.

At this point it is worth to invoke the decision of the European Court of Human Rights in the case of *Muskhadzhiyeva and others against Belgium*¹⁹, according to which placing children in deportation detention centres is considered inhuman treatment. In the above case Aina Muskhadzhiyeva together with her four children filed an application in Belgium to be granted refugee status. She was refused the permission to stay within the territory of Belgium and was obligated to leave the country. The whole family was placed in a closed deportation centre. The court refused to release them even though the children were exhibiting some disturbing mental and psycho-traumatic symptoms which provided grounds for releasing them from the facility in order to avoid posing danger to their mental health. Once she was sent back to Poland she filed a complaint to the European Court of Human Rights in which she pointed, among other issues, to the living conditions in the guarded centre where she was kept for over a month with her children, which is a violation of Art. 3 of the European Convention on Human Rights. The Court agreed with her adjudicating the breach of Art. 3 of the European Convention on Human Rights in reference to the children. According to the decision of the Court the mentioned guarded centre was not suited for children and it did not guarantee to satisfy their needs. Moreover, the court emphasised the fact that the exceptional sensitivity of a child is a superior value and the status of a child is of more importance than the status of a foreigner who is staying within the territory of a country illegally. We may then state that placing a child in Polish centres which are not adjusted for this purpose constitutes a breach of international regulations, especially in situa-

¹⁷ § 27 section 2 of the Ordinance of the Minister of Justice of 25 August 2003 on the organisational regulations on executing the punishment of deprivation of liberty (Dz. U. [Journal of Laws] of 2003 No. 152, item 1493) reads: "A pregnant woman shall be moved to the Department of Gynaecology and Obstetrics in a penal institution or a remand centre two months before the expected date of delivery".

¹⁸ J. Chlebny (Ed.), *Prawo o cudzoziemcach...*, p. 299.

¹⁹ The decision of 10 January 2010, complaint No.: 41442/07.

tions when the detained children are subjected to stress, suffer from depression or other mental disturbances. In such a situation the centre they are kept in ought to be a friendly place for them, especially that the children are not guilty of their parents crossing the border illegally or staying illegally within the territory of the Republic of Poland.

1.8. Conclusion

When a foreigner is being placed in a guarded centre or a deportation detention centre, competent authorities may only apply the measures which restrict the basic human and citizen rights if it is justified by a procedural necessity and - which is more important - when such restriction complies with the principle of minimising negative effects of its application for the suspect (defendant) and his or her closest relatives. This is similar to the rules of applying coercive measures and restriction of personal freedom under the criminal law²⁰. As the above presented provisions governing the issues of arresting and placing a foreigner in a guarded centre show, foreigners are conferred a particular set of rights for the time of staying in detention facilities. They have the right to information and to contact e.g. NGOs or international organisations which provide assistance, especially legal assistance. They must also be provided with appropriate accommodation conditions and medical care, and minors and pregnant women must be covered by particular protection. Unfortunately, as we could see, some regulations governing the stay of foreigners in guarded centres seem to be constructed in such a manner, as if they concerned criminals sentenced to prison. Some of them are even less favourable than those which are effective in relation to prisoners. But we must not forget that guarded centres and even deportation detention centres are not prisons and hence the foreigners should have more freedom in exercising the rights that they would enjoy if they were at liberty.

Moreover, the truth is that legal provisions are just one aspect of the case and the other one is the practical application and observance of these provisions. As it has been shown in the monitoring reports from the last few years, the law is, in fact, observed at times - but sometimes it is not. There is no doubt that a lot depends upon the manager of a given facility and his or her sensitivity and willingness to cooperate with foreigners. There are situations in which certain rights will be vested in the foreigners if a Border Guard representative consents to it, e.g. having audiovisual or computer equipment or other objects in the room. Regardless, however, of the regulations providing particular rights and the will of officials to observe certain rights in practice, every foreigner placed in a detention facility ought to be treated with respect and dignity.

²⁰ Ł. Cora, *Funkcje zatrzymania właściwego i tymczasowego aresztowania*, „Państwo i Prawo” 2009 No. 1, p. 60.

2. The results of the monitoring of Guarded Centres for Foreigners in Poland

2.1. The assumptions and scope of the monitoring

The monitoring of *Ośrodki dla Cudzoziemców* (OSCs) [Guarded Centres for Foreigners (further referred to as OSC)] was conducted by the Association for Legal Intervention in cooperation with the International Humanitarian Initiative Foundation in August and September 2010 as part of the "Watch 24" project financed by the Open Society Institute Foundation.

The scope of the project was to verify whether the legal solutions on arresting and detaining immigrants (including those who seek refugee status in Poland) in closed facilities, which were adopted by the State, are actually applied in practice and whether the effective provisions governing some issues should not be modified in situations when it is obvious that they cannot be efficiently implemented. Another objective was also to establish whether the basic rights and freedoms guaranteed to foreigners by the legislator can be observed during their stay in guarded centres and to what extent. Attention was also put to how the regime of staying in a guarded centre differs from the prison regime which was prepared for people who are deprived of liberty as a result of committing a crime and who were sentenced to imprisonment by a valid court judgment. Thus, the monitoring did not cover all the aspects of the foreigners' stay in guarded centres. It mainly concerned issues which are directly related to the observance of basic rights and freedoms of the detained foreigners.

First, we examined the execution of the foreigner's **right to receive information** conveyed in a clear way and in a language that they understand. A foreigner should be provided access to information concerning the activities undertaken in his or her case and all the instructions issued in reference to the foreigner during his or her stay in the centre, including information on the possibilities of applying for the annulment of this detention measure, namely being placed in a guarded centre. What was also of interest to us was the issue of instructing a foreigner on the rights they have and obligations that are incumbent on them as well as making them familiar with the regulations governing their stay at the facility (especially at the time of admissions to the centre).

The next field of our interest was **the right to contact with the outside world**, including the contact with Polish State authorities and diplomatic missions or consular posts of a foreign country - in personal and official issues - and with NGOs or international organisations which provide assistance for foreigners. We also paid attention to the regulations which concern the contact of the detainees with the outside world and the very possibility of such a contact – we checked the rules of handling correspondence and the possibilities of using means of communication (phone, fax), and to what extent visits are allowed and how they are carried out.

The third issue we examined concerned the **conditions of accommodation** of the detainees and the regime applicable in the centre, related to such areas of life as: the range of activities available for the foreigners and the opportunities to spend time in a constructive way, the attitude of the staff and the applica-

tion of direct coercive measures. We were also interested in whether there is a separate regime of staying in the centre prepared for the most sensitive individuals, namely children and pregnant women.

Another important question we examined was the execution of the **right to the protection of health** of the foreigners staying in guarded centres, including access to specialist medical examinations and psychological care. Finally, we tried to establish whether the centres make allowances for the provisions of Art. 70, section 1 of the Constitution of the Republic of Poland which vests the **right to education** in every individual and the provisions of Art. 15, section 1 of the Act on the Education System²¹ according to which every person who has not attained 18 years of age must fulfil the educational duty and all the children staying in the territory of the Republic of Poland have to fulfil the schooling duty until the time of graduating from *gimnazjum*, independent of their legal status, including foreign children who are staying in Poland illegally.

A part of the monitoring consisted in visiting all the guarded centres for foreigners that are currently operational. According to the law they are subordinate to *Straż Graniczna* (SG) [the Border Guard] (further referred to as SG). In 2010 there were six such centres: in Lesznowola, Krosno Odrzańskie, Białystok, Kętrzyn, Biała Podlaska and in Przemyśl. The inspector was a lawyer from the Association for Legal Intervention who, in the centres in Kętrzyn and in Białystok, was assisted by a psychologist from the International Humanitarian Initiative Foundation²². The psychologist also conducted a survey on the condition of medical and mental care in the centre in Przemyśl.

During each visit the inspectors tried to see the following parts of the facility: administration rooms, accommodation areas, day-rooms, the exercise yard and the playground, kitchens and dining rooms, accommodation rooms, bathrooms, drying rooms, showers, laundries, guard-houses and waiting rooms located by the guard-house at the facility entrance. The information on the functioning of the centre was obtained from conversations with the officers, medical staff and the foreigners. The inspectors also carried out independent observation. All the visits were conducted on the basis of a unified questionnaire which included instructions concerning the places to be visited as well as the scenario of interviews to be carried out with officers and foreigners.

The conducted visits provided information on the problems that each facility struggles with. Some problems concerned only a particular centre, others were shared by many of them and they were mainly due to the generally adopted systemic solutions. In the report conclusions were presented collectively. Some examples of good practices were also noted down.

²¹ Dz. U. [Journal of Laws] of 2004 No. 256, item 2572, as amended;

²² The inspectors who participated in the visits were: Dawid Cegiełka and Maria Książak.

2.2. The right to information

The foreigners' right to information is generally properly executed. In all the facilities, the Border Guard officers that we talked to confirmed that the officer arresting a foreigner informs him or her of the possibility of filing a complaint against the arrest (this takes place prior to putting the foreigner in a guarded centre). The foreigners are also instructed on their right to file an application for release in connection with the probability that they meet all the requirements to be considered a refugee or to receive subsidiary protection. A foreigner is usually told by the officers that he or she has the right to file an appeal against the decision on the refusal to release him or her from detention in situations as described above or a complaint against the decision to extend the time of detaining them in a guarded centre (the instruction and the conclusions of decisions are translated into a language that is understandable to the foreigner. This, however, does not concern their justification which makes forming an appeal quite difficult). The interviewed foreigners did not file complaints concerning lack of information related to the above described procedures of appeal. In Lesznów, a person from Vietnam emphasised the fact that on admission they were not informed of the possibility of using the assistance of a psychologist.

The arresting officer informs the foreigner verbally of the possibility of contacting the persons who are to be informed of the detention. On admission to the centre the detained person receives information on the possibility of filing a written request to be placed in one room together with their closest person (according to the rules, families are placed in one room even without filing such a request, unless there is a conflict between family members²³). All this information is passed to the foreigners in writing in a language they understand (the typical language are: Russian, Georgian, Vietnamese, French and others - in Przemyśl seventeen languages are used altogether). A foreigner confirms getting familiar with the information with a signature. A good practice applied in Kętrzyn is organising an informative meeting, every time, on the day following the admission of a foreigner. This is organised for the newcomers by the educational section of the SG and the aim of the meeting is to explain to the foreigners the rights and obligations of persons detained in the centre. During the meeting the officers inform the foreigners of their rights and obligations and they answer questions related to their stay in the facility. Moreover, the manager of this centre²⁴ has duty hours once a week and if the foreigners feel the need to ask any questions, the manager is at their disposal. He provides them with information and explains all doubts connected with their stay in the OSC.

²³ It is worth to note, however, that there are situations when a part of a family is staying in a detention facility and the other part is placed in a centre for foreigners which is subordinate to *Urząd do Spraw Cudzoziemców* [the Office for Foreigners]. It is justified if there is violence in the family, but in other situations it is hard to find grounds for it. There has been a case conducted by the Association for Legal Intervention where the mother together with her minor children was placed in a closed facility and the father was at liberty.

²⁴ The term "*kierownik OSC*" [OSC manager] is used by the legislator in the Foreigners Act and in the Act on Granting Protection to Foreigners within the Territory of the Republic of Poland. The Border Guard use the terms "*naczelnik*" [head, chief] - "*kierownik ośrodka*" [facility manager] for the heads of the facilities. The term we have chosen to apply in this paper is the one used in the legal acts - "*kierownik*" [manager].

During their stay in the centres the foreigners are informed verbally of possibilities of filing complaints, requests and applications. The interviewed foreigners - apart from three persons of Chechnya origin from the centre in Przemyśl - confirmed that they knew of the fact and they used this possibility. On admission to the centre the foreigners are shown the rules and regulations of the detention facility. In Białystok all the doubts related to the regulations are explained by the educational section. In Lesznowola, Krosno Odrzańskie, Biała Podlaska, Kętrzyn and Białystok the regulations are always available (they are hanging on notice boards - these are usually excerpts translated into the most common languages spoken by the foreigners, namely: Russian, Georgian, Vietnamese). In the centre in Przemyśl the regulations have been translated into as many as 17 languages. Unfortunately we have received some disturbing signals concerning their availability. The foreigners complain that the time they are given to get familiar with these documents is strictly limited. Then, the document is taken away. The regulations are not available any more, they are not put on the notice board. Three of the foreigners - who were participants of an act of applying coercive measures - said that the officers use the fact of the detainees not knowing the regulations. They prohibit or order certain behaviour (the interviewees did not, however, define the type of behaviour) by saying that it is required by the regulations. The situation is similar if it comes to punishments. The complaining foreigners claimed that they were denied access to the regulations and that the officers told them to get the information from the other detainees who have been staying in the facility for a longer period of time or to trust the officers who have the best knowledge of the regulations, at least in their own opinion.

Information on NGOs is available in a written form in all the facilities. The contact details of *Centrum Pomocy Prawnej im. Haliny Nieć* [the Halina Nieć Legal Aid Centre], the International Organisation for Migration (IOM) and of the Office of the United Nations High Commissioner for Refugees (UNHCR) are usually hung on notice boards or on the walls at the entrance to the accommodation area or in the corridors. They are provided in Polish.

It is hard to establish how many officers speak foreign languages. According to the information received from the SG officers in Lesznowola, most of them speak only Polish, and only a few can speak English or Russian. Moreover, it has been established that the first contact person who was on duty on the day of the monitoring visit (who was not an SG officer) does not speak any other language than Polish. In Krosno Odrzańskie, again, only some of the officers can speak English or Russian. In Przemyśl, according to what we were told by the person who was delegated by the facility manager to talk to the monitoring inspectors, most of the officers working on the blocks can communicate in Ukrainian and/or Russian and one of the civil workers speaks Urdu and Hindi. In order to communicate, the officers and the foreigners use a "mixture" of Polish and Russian on a very basic level. In Kętrzyn some of the officers are able to speak English. A few speak Russian and German, one of them can communicate in Italian. An important fact is, however,

that in that centre most of the detainees are Russian-speakers²⁵. Residential officers speak a hardly understandable “mixture” of Polish and Russian on a very basic level. In Biała Podlaska the officers declared they knew English, Russian and Ukrainian. At the OSC in Białystok, apart from persons who can speak English and Russian, there is an officer who speaks French. Due to the above described situation, the foreigners from Lesznowola complained that they could not communicate with the officers. In the other facilities detainees admitted that they “were able to communicate”. At this point it is worth to note that groups of foreigners staying in the centres are very much diverse. It is true that most of them are Russian-speakers, but there are also some representatives of other cultures, e.g. the Vietnamese (it is the dominant group in the Lesznowola OSC) or citizens of African countries.

Unfortunately, most of the centres do not provide access to the services of a professional interpreter on admission or when visiting a specialist doctor or a psychologist (Krosno Odrzańskie, Lesznowola, Kętrzyn, Białystok, Przemyśl). In such situations the foreigners are assisted by an officer who is able to communicate in a language understandable to them. In Biała Podlaska the psychologist speaks Russian. If there is no possibility of communicating with a foreigner in such matters as e.g. medical treatment, or the necessity to visit a psychiatrist, the centre, upon the request of a doctor or a psychologist, tries to organise the assistance of an interpreter. In Przemyśl the SG can only provide the assistance of a professional interpreter for visiting a psychologist. In other situations the foreigners are assisted by an officer who is able to communicate in a language understandable to them (though there are problems in communication with the Vietnamese).

The Kętrzyn centre is very much different in this respect. Whenever it is possible, the SG try to make sure that the interpreter who was present at the time of arresting the foreigner is also present at the time of admitting them to the centre²⁶. When Russian-speaking foreigners are admitted to the centre they are always assisted by an SG officer who has a university degree in the Russian language and who acts as an interpreter. Once a month, regularly, there are informative meetings organised for the foreigners, which are conducted in Russian, and the officer with the degree in Russian participates in them. Another situation that was mentioned during the interviews was when nobody from the centre staff nor the officers were able to communicate with a group of foreigners of African origin and the SG hired an interpreter at their expense. During an appointment with a specialist doctor, instead of an interpreter a foreigner is assisted by an officer who knows a language understandable to them. Unfortunately, a similar solution was also adopted in Lesznowola for appointments with a psychologist. The psychologist in that centre speaks very good English and Italian but at present most of the detainees are Russian-speakers. An important aspect of such a solution is that if an officer acts as an interpreter during an appointment with a doctor, and in particular with a psychologist, the foreigner feels embarrassed and the appointment is not as effective as it might be.

²⁵ At the time of the monitoring there were 65 foreigners in the OSC in Kętrzyn, most of them Russian-speakers.

²⁶ We need to note that our knowledge is based on what the SG officers said during interviews since the foreigners did not want to talk about anything related with their arrest.

In such a situation visiting a doctor or a psychologist becomes pointless. When we take the legal right to the foreigner's privacy into account and when we think of the efficiency of the offered assistance, in such cases we ought to try to make sure that a neutral interpreter is present.

In daily matters the basic knowledge of language seems sufficient to communicate effectively with the detainees (though, as it has been described above, this basic knowledge is not common among the staff of such centres). When, on the other hand, we talk about the moment of admitting a foreigner to the facility, when they are given all the information concerning their situation, the rights they have and the regulations they need to observe in the centre, the presence of a person who is fluent in a language understandable to the foreigner becomes indispensable. It is also of crucial importance in the case of appointments with a doctor or a psychologist when the lack of a common language prevents the foreigner from expressing his or her thoughts and telling about their problems or needs. In such a case the specialist examining this patient cannot form any diagnosis nor give instructions. Moreover, when we think of the moment of admitting a foreigner to the centre, the presence of an SG officer who can speak a language understandable to the arrested person seems quite natural. But when it comes to an appointment with a doctor or a psychologist, the assisting interpreter should definitely be a neutral person, somebody who can gain the foreigner's trust. Hence the conclusion that this function should not be performed by the officers.

2.3. The right to contact with the outside world

Rules concerning the contact with the outside world are similar in all the inspected facilities. Even though these rules are strictly defined officers may, however, interpret them in a mild or a more severe way in particular situations.

On admission to the facility all the mobile phones with the function of recording sound and images are taken away from the foreigners and deposited, which is required due to safety regulations²⁷. In most centres the foreigners can use other mobile phones (those without the function of recording sound and images) at specified times: in Przemyśl they can use them three times a day between breakfast and lunch and then after lunch until dinner time and also after dinner until 9 p.m., in Krosno Odrzańskie they can use them between 10 a.m. and noon, in Kętrzyn, Białystok and in Lesznowola they can use them in their free time i.e. between the meals and not at the time of roll-calls. For the rest of the time phones are kept in a deposit. Only in Biała Podlaska are there no restrictions as to the time of using private phones. We need to stress that this is a good practice which is worth recommending, especially that there is no rational justification for preventing the foreigners from using their private phones (since public phones are generally available).

²⁷ The officers claimed this is to prevent the detainees from registering securities, schemes, building plans etc. but also to prevent them from recording the images of the officers' faces who are perceived as the persons who "busted" them.

There are also the phones of a public operator that are readily available in all the facilities in the residential area. No prior consent is required to use them - the only restrictions arise from the rules of social coexistence and respecting the night time. If there is large discrepancy between the time zone of the foreigner's country of origin and Poland, it is possible to depart from applying these rules. The detainees have to buy phone cards for their own money and pay for the connection according to the operator's tariff. Their phone conversations are not controlled. They answer the coming calls themselves - there are no restrictions in this matter.

Every person who lacks financial resources has the right to 5 minutes of phone conversation with their family every day, at the expense of the SG. However, several detainees from Przemyśl claimed that they have been denied this right. In other centres there were no complaints in this respect. Moreover, as a rule the foreigner may contact the International Organisation for Migration, the Voivode (government representative in the region) or the Office for Foreigners to talk about his or her case, free of charge. In other situations, when the detainees use the generally-available phone, the charges, according to the operator's tariff, are collected from the deposit. Most often the centres allow foreigners to contact the outside world by using SG phones free of charge in case of emergency and provided that the foreigner does not have any financial means at the time. The foreigners, apart those from the OSC in Przemyśl, confirmed that they had such a possibility.

A foreigner may also use a fax machine through the agency of the SG. This can be done in two ways, depending on the solution adopted by a given facility. The first solution is that the fax can be sent from an SG phone (Lesznowola, Krosno Odrzańskie, Biała Podlaska, Kętrzyn) which only requires an oral consent of the manager. From the point of view of the detainees this option seems to be the most practical. The other way is sending the fax through *Poczta Polska* [the Polish Post]. Then the charges, according to the operator's tariff²⁸ are incurred by the detainee. If a foreigner wants to use this option he or she must first submit a written request to the facility manager. Then, appropriate amount of money is collected from the foreigner's deposit and the fax is sent via the post office. Finally, the foreigner receives his or her documents back. In the case of the latter solution there are some limitations concerning the days of the week on which it is possible to send a fax, e.g. in Przemyśl this can only be done on Mondays, Wednesdays and Fridays - the officers send faxes only until noon. A foreigner may deliver materials to be sent by post until 3:30 p.m. unless the term for filing an appeal, a complaint or performing any other judicial act or act of administration might expire - then it is possible to depart from these rules. The adopted solutions do not promote the execution of foreigners' rights and they seem to be groundless. Since the Przemyśl centre is the only one that has implemented such restrictions, it seems clear that there are no contraindications for applying different rules in this respect. What is more, in Kętrzyn, e.g., all the faxes that are sent within the territory of Poland are free of charge. In other centres the detainees can send faxes free of charge in official matters

²⁸ The charges are: PLN 1.10 for the first page and PLN 0.49 for the transfer.

and when contacting organisations which deal with refugees' matters. This possibility, however, concerns only refugees, other foreigners cannot use it. Such differences in rights concerning the contact with the outside world between the persons who are seeking international protection and all the other immigrants is utterly incomprehensible, since there seem to be no grounds for such discrepancies.

In the centres there is a possibility of receiving and sending correspondence and parcels. Detainees are instructed verbally on the rights and limitations in this respect on admission. Sending correspondence is subject to payment, though it happens that in difficult situations (the expiry of a term to apply a measure of appeal, lack of financial resources) officers cover the costs of sending the parcel from their own resources or the SG pays for it. In Krosno Odrzańskie, Białystok, Kętrzyn and Biała Podlaska letters addressed to the court and to public offices are sent free of charge. In non-official matters, if a foreigner possesses some financial resources an appropriate amount of money is taken from the deposit after the foreigner has placed his or her order. In such cases charges are collected according to the tariff of the Polish Post. When a foreigner wants to send correspondence, they must present the contents of the envelope for inspection. However, the content of the letter itself is only inspected in the centre in Przemyśl. In other facilities such a practice is not applied. The contents of the coming correspondence are also controlled. An officer, in the presence of the foreigner, opens the parcel or envelope, checks it, and if it does not contain any prohibited substances - it is delivered to the foreigner. This activity is then described in a memo.

Detainees can contact NGOs via phone, fax or a letter. If an NGO representative contacts a foreigner, their correspondence is delivered to the foreigner after it has been registered. It has happened that in a situation when a foreigner was unable to contact an NGO, at the foreigner's request, one of the officers from the facility contacted an indicated NGO worker. Such cases occurred in Kętrzyn. In Biała Podlaska the contact is made through the officers of the educational section, in Lesznowola and Krosno Odrzańskie - through the duty officer. In Białystok and Przemyśl, according to what we were told by the officers delegated to attend to us, there have been no instances of foreigners asking the officers to contact an indicated staff member of some NGO on their behalf. Contact details of some selected organisations which give legal advice free of charge are available on notice boards in all the facilities, though they are often provided in Polish. The information is usually in the form of printouts of contact details of these organisations prepared by the officers.

The foreigners complain about poor effects of attempting to contact NGO representatives via phone or fax. They definitely prefer to meet with them in person. This is possible in several centres - in Biała Podlaska a lawyer from Caritas or from *Fundacja Instytut na Rzecz Państwa Prawa* [The Rule of Law Institute Foundation] has office hours twice a week, in Krosno Odrzańskie, once every quarter of the year, there are office hours of a worker of the Halina Nieć Legal Aid Centre. The representatives of this organisation also have office hours in Lesznowola once a month. Then, the centre in Białystok is visited by a

Caritas lawyer twice a month. This form of assistance and low frequency of visits is mainly due to the limited financial and staff resources of NGOs.

During their stay in the centre the detained foreigners only have the possibility of contacting the workers of NGOs. They are very much dissatisfied about the fact. It is also good to inform them of the possibility of asking advice from private law firms (for which they will have to pay, but some of the foreigners could afford it), and to give them contact details to persons who provide advocacy assistance for a fee. An interesting thing is that there are no telephone directories available for the foreigners in the centres. None of the facilities is also equipped with computers with access to the Internet that the foreigners might use.

Detainees have the right to visits. This right, according to the foreigners that we interviewed, is executed properly. There are slight differences in the way this right is observed in particular facilities. If a detainee wishes to get a permission for a visit they need to fill in a form in which they must provide their personal data and the data of their guests. No more than two adults can come to see a foreigner during one visit. The number of children who participate in a visit is not limited. Only the centre in Przemyśl is an exception. It has adopted very strict regulations in this matter: a particular foreigner has the right to no more than one visit per two weeks. The visits are only possible on particular days of the week, namely: Mondays, Wednesdays, Saturdays and Sundays, and at particular times: 10 a.m.-11 a.m., 11 a.m.-noon and 2 p.m.-3 p.m. The visits are watched through a two-way mirror by an officer, they are also subject to monitoring. This also concerns the meetings with a lawyer or an attorney. According to regulations the visit lasts 60 minutes and is never prolonged. Though, in Kętrzyn, Lesznowola and Białystok it sometimes happens that the manager agrees that more adults participate in the visit and that it lasts longer²⁹. There are also no restrictions concerning the days on which visits are allowed. During a visit an officer is standing behind a window pane. This also concerns the meetings with a lawyer or an attorney which are supervised. Appointments with a psychologist employed by the SG take place in a doctor's office and they are not supervised³⁰. In Krosno Odrzańskie visits are conducted on particular days and they are always supervised. In other facilities visits are also supervised by officers who are obliged to keep the subjects within sight. Things are different in Białystok where visits are only supervised by means of CCTV (just vision, no sound). In Lesznowola visits take place in the day-room and the officer is standing outside the door. A visit is not possible if it is denied by the arresting person³¹ and if the guest arrives to the centre under the influence of alcohol.

²⁹ This is of particular importance if the children are staying in the centre with one of the parents and the other parent is at liberty. In such a situation the time of a parent meeting with his or her children should not be restricted in any case. Parents ought to have the possibility of seeing their children every day, and if it is not possible, less frequent visits should be allowed to last even several hours.

³⁰ However, meetings with a psychologist working for an NGO, as a rule, take place in the visiting room and they are supervised by an SG worker. It is only upon a written request to undergo an examination in a separate room that the foreigner has the possibility of talking with such a psychologist without being watched and without witnesses.

³¹ This signifies a person who has arrested the foreigner or who has brought the foreigner to the facility, which does not include the officers who do their duty in OSCs.

Moreover, in Przemyśl consents to visits are refused if there are too many requests for them made at one time.

2.4. Accommodation conditions

In order to adjust the border protection in Poland to the requirements of the Schengen Agreement, new guarded centre were built at the external border of the European Union - in Białystok, Kętrzyn, Biała Podlaska and Przemyśl. The Border Guard have also taken over control of the centre in Lesznowola, which was previously subordinate to *Mazowiecka Wojewódzka Komenda Policji w Radomiu* [the Mazovian Voivodeship Police Headquarters in Radom] and they have adopted a former deportation detention centre in Krosno Odrzańskie (with room for 66 people) to the needs of a guarded centre. The Guarded Centre for Foreigners with the Deportation Detention Centre in Biała Podlaska was commissioned at the beginning of 2008. It has 176 places, including 152 in the guarded centre. The centre in Białystok was made in the building of former imperial barracks which underwent major renovation and it now has 160 places for the foreigners. In the modified SG barracks in Przemyśl 138 places have been prepared for the needs of the centre and in Kętrzyn there is room for 150 detainees. The centres, apart from those in Lesznowola and Krosno Odrzańskie are new, clean and well-maintained, they have football grounds, exercise yards and playgrounds for children. In Przemyśl the space for children is very neglected - the first thing to notice is a sandbox with high-growing weeds. There is also no area covered (at least partially) from the sun, so it is difficult to go for a walk in appropriate conditions when it is very hot or when it rains. The Lesznowola centre seems to be very much underfunded, which is confirmed by the officers. There is no playground there, nor a day-room, and the football ground is damaged. On the day of our visit the block for males was closed because it was being renovated.

All the centres are enclosed with a high fence with barbed wire and there are bars in the windows³². The atmosphere of confinement and imprisonment is particularly strong in Krosno Odrzańskie, which is due to the previous destination of the building - there are still the big, heavy prison doors with the typical door bolts, the small exercise yard is surrounded by a high concrete wall – typical for prison. Even though the officers do their best and try to have a friendly attitude (which has been emphasised by the foreigners asked spontaneously about it), children do not feel at ease in such a centre, which in fact resembles a prison to a large degree. Since the centres are very well guarded and monitored and since there is virtually no possibility of leaving the centre lawlessly, we should consider the possible grounds for removing the provisions on the window bars from the legal acts. We should bear in mind that the people we deal with are not prisoners but they are detained foreigners who have not committed any crime. Many of them are refugees or persons who went through trauma and suffered a lot in their country of origin.

³² It is worth to note that in other EU countries in such centres there are no bars in the windows. In Poland, however, the obligation of installing such bars is imposed by the law, which is too much based on the provisions governing the prison system.

On admission to the centre a foreigner must deposit his or her documents, money, valuables, dangerous items (with sharp edges, made of glass), devices for recording and reproducing information (including the already mentioned mobile phones with such functions) and audio/video equipment which is considered valuable. All the other items which cannot be used to infringe the regulations and which do not pose danger to other foreigners may be kept by the detainees in their rooms. However, too great a number of objects which would clutter up the room is unacceptable; large-size objects are also deposited. The foreigners are free to dispose of their deposited money as they please.

In order to do shopping a foreigner must make a list of the items he or she wishes to buy and give it to the depositary. Shopping is done once (Lesznowola, Kętrzyn) or several times a week, depending on the centre. One day before shopping a foreigner fills in a shopping form which they can get from the duty officer. It is forbidden to order alcohol and dangerous items. Detainees are also not allowed to possess glass containers - after putting the contents to another vessel, glass containers and cans must be returned. The amount of money spent on the shopping is taken from the foreigner's deposit on the basis of the receipt. The fact is confirmed by the foreigner's signature.

In the centres there are separate blocks for males and for females as well as family wards. Women with children and families are placed in the family ward. The male block in Lesznowola is closed due to renovation works, hence the centre does not admit single men. In Kętrzyn the male block has not been operational yet, since it does not meet the requirements imposed by appropriate regulations - there are no window bars and no separate fence for the exercise yard.

In Biała Podlaska men and women who are not closest persons can contact by means of a phone or by correspondence. In Krosno Odrzańskie and in Białystok men and women may meet in the exercise yard and during common activities, in Lesznowola they can meet after receiving an individual permission from the facility manager. In Przemyśl, on the other hand, there is no possibility of any contact between men and women who are not relatives - no matter at what time and in what way. This leads to a situation where people who are not closest relatives but are still close to each other, e.g. an engaged couple without children or cousins, remain separated. This can last even up to 12 months. (Here we should point to the fact that the definition of a close relative may differ in other cultures from the Polish definition - according to some foreigners a person we call a remote relative would be a close relative to them). It is hard to find some practical and legal grounds for applying such rules, and it is even harder to call them humanitarian.

Rooms in the centres are allocated according to the rule of putting families together, and then the rule of putting ethnic and national groups together. Room-mates are chosen in such a way which minimises the risk of a conflict between them. On female blocks, where there are family wards, the centre staff sometimes depart from the "family" rule if a foreigner requests so (e.g. when a wife does not want to stay in one room with her husband who uses violence against her).

In Przemyśl there are two rooms with separate bathrooms on the male block prepared for minors without guardians. The minors have contact with adults since they share a corridor leading to their rooms with the male block. Moreover, they have meals together with adults. In Krosno Odrzańskie there is a separate room on the female block for minors without a guardian. We need to remember that under Art. 115, section 3 of the Act on Foreigners a minor without a guardian ought to be placed in a separated part of the facility so that their contact with adult detainees is impossible. In the described cases these provisions are not observed. We should also consider a situation in which there is only one minor in the OSC. In this case observing the provision on isolating him or her from other foreigners would lead to the minor's seclusion and would deprive them of the possibility of contacting other people (other than the SG workers), which could be a traumatic experience for a young person who is "protected" by law. In Przemyśl the SG officers recalled that some time earlier there was only one minor staying in the centre for a year and, as they put it themselves, "had they not strained the law, the boy would have gone mad". If the number of all minors without a guardian in the whole country is small it is worth considering an option of placing them all in one centre so that their isolation from adults does not signify complete isolation and deprivation of any contact with other people. In Kętrzyn, Białystok, Biała Podlaska and Lesznowola there are no minors without a guardian which is due, as it has been explained to us, to the lack of appropriately adapted rooms.

An important thing to mention is that there is a practice of appointing SG officers (from the Department for Foreigners) as statutory representatives of minors without guardians. In such a situation the representative of a minor e.g. in an expulsion case will be a person who also represents the service which supports the petition to expel the minor and which executes the very expulsion, thus it constitutes an obvious and blatant conflict of interests.

Accommodation rooms in the visited centres remain open during the day and at night. The foreigners are free to move about within a separate ward. Moreover, in their free time they may use the library, play day-room games and use sport and recreation equipment. In Kętrzyn, apart from a small collection of books of the educational section, the foreigners can choose books from the lists of the SG Department. In Krosno Odrzańskie, as opposed to other centres, there are only books in Polish in the library. In Kętrzyn there is even also a small gym. In order to use it a foreigner has to report the fact to a guard. The guard then informs the shift manager of the number of persons willing to use the gym and then the detainees are taken by the guard to the gym. There is no fixed time limit for using the gym. Sports equipment is provided for the time of walks. Some equipment, such as table soccer or table tennis is available all the time in the day-room. Chess and table tennis balls are handed out by officers in duty rooms.

In every centre foreigners have access to a day-room where they can spend free time on playing games (without any time limit) or on watching TV or DVD films. They have also access to satellite television

and to TV channels in other languages than Polish. The foreigners are not allowed to have any audio/video equipment in their rooms which, in our opinion, is a too restrictive solution and quite incomprehensible.

Moreover, there are didactic and educational sections in the centres, which organise some special classes for children and the youth³³. According to what we heard from the foreigners, no classes were held at the Przemyśl centre on the day of our visit. An SG officer explained to us that the didactic section in that centre was composed of three persons. On the day of the visit one of them was on maternity leave and another one was absent because of some trainings. The didactic and educational sections in the centres teach children Polish and the basic knowledge about Poland, they teach art and organise games in the day-room for them. In the centre in Białystok the parents would like their children to have access to a real school and to real education. It seems, based on the information we have collected, that in guarded centres for foreigners there is no possibility of classes being conducted by persons from outside the centre - an exception is the centre in Biała Podlaska where the children are taught by teachers from nearby schools. In some centres, apart from classes for children, the didactic and educational sections also organise classes for adults (they usually cover Polish language and knowledge about Poland), though the foreigners do not always use the option.

The regime to be observed by adults in guarded centres is no different from the one that must be observed by children, apart from one thing: children have access to special courses. They also have access to playgrounds. In Przemyśl, however, the playground is very neglected (there are half-meter high weeds growing in the sandbox) and in Lesznowola there is virtually no playing area (we were told that the playing equipment was "temporarily dismantled"). Children can only use the infrastructure outside the building during walks, the time of which is the same as for the adults, namely once or twice a day, depending on the centre. This means that their time for open-air activities is strictly limited. A minor who finds it quite inconvenient to remain in a confined space, in closed premises, is treated like a person who has been sentenced by a valid judgment for committing a crime and they are only provided a poor substitute of freedom for 60 minutes a day. On some days, e.g. when it rains, the foreigners do not go for walks at all. This also concerns children. In Krosno Odrzańskie or in Kętrzyn children can go for a walk more often than adults, but on the day of the monitoring visit there were no children staying at the former of these centres. The Convention on the Rights of the Child³⁴ contains a catalogue of rights and freedoms including civil rights, social, cultural, political rights and it also covers, by definition, some aspects of economic rights (a child should study, not work). Among the personal rights included in the Convention we will find the rights to development and to

³³ The classes are conducted according to the Core Curriculum of Pre-school Education for Nursery Schools, Nursery Units at Schools and Other Forms of Pre-school Education (Dz. U. [Journal of Laws] of 15 January 2009, No. 4, item 17) and according to the Ordinance of the Minister of National Education of 1 February 2007 on the Framework Programme for Teaching Polish to Refugees (Dz. U. [Journal of Laws] of 2007, No. 35, item 221), making allowance for cultural differences.

³⁴ *Convention on the Rights of the Child* – an international convention adopted by the General Assembly of the United Nations on 20 November 1989, ratified by Poland on 7 July 1991. (Dz. U. [Journal of Laws] of 1991 No. 120, item 526).

freedom. Some of the social and cultural rights are: the right to health protection, the right to rest and to free time or the right to free and compulsory education. It is worth to note that in the present legal and actual state in Poland, when we talk about placing children in guarded centres, the above rights are not fully guaranteed.

2.5. Health protection³⁵

Following the general rule, a foreigner who stays at a guarded centre has the right to benefit from free medical assistance, but he or she cannot choose a doctor. There can be an exception to this rule when there are two doctors in a centre, as it is for example in Lesznowola, or when the foreigner is ready to pay for the treatment.

At the OSC in Przemyśl, there is a doctor employed on a full-time basis who consults foreigners every day from 7:30 a.m. - 3:30 p.m. (except for Saturdays and Sundays). She specialises in paediatrics and in internal medicine. This doctor declares the ability to speak Ukrainian, Russian and English. The nurses at the centre are on duty on a daily basis until 7:00 p.m. (except for Saturdays and Sundays), but it was not possible to determine what foreign languages they spoke. At this centre, no foreigner has been recorded to request payable medical assistance. When needed, upon the doctor's referral, a convoy is being organised to hospitals in Przemyśl. In emergency cases during hospital treatment or during preparation for medical procedures, interpreter's support is missing; in such situations they call an SG employee who speaks a language understandable to the foreigner. SG officers, however, do not have translated versions of documents for the foreigners to comprehend, which is also the case of informed consent forms required before undergoing treatment (during our monitoring we came across a case of a foreigner who admitted that he was not aware of what medical procedure he had agreed to undergo). On 13th May 2010, one of the detainees was transported to a hospital, where she delivered a baby. Yet, we have not found any information to confirm that she was later on visited at the centre by a midwife.

Centres in Kętrzyn, Krosno Odrzańskie and in Białystok face a particularly difficult situation. In Krosno Odrzańskie, the foreigners remain under the Border Guard doctor's care (who speaks fluent Russian). They call him only when needed, because he also provides medical care for approximately 500 officers. In the remaining two centres, there are no regular consultation or duty hours established for the foreigners either and the SG doctor consults the detainees according to their needs. At each of these centres the nurses can only speak Polish. Considering the availability of medical care for the foreigners, such a system does not seem to be the right solution. When medical personnel bears so much responsibility and when they have to care for both SG employees and for the foreigners, a question may arise: who will be consulted by the doctor first – an officer or a detainee? When specialist treatment is

³⁵ The part of the present chapter which concerns access to psychological assistance, was elaborated by Maria Książak from the International Humanitarian Initiative Foundation.

required, a foreigner is transported to the local hospital upon his or her doctor's referral. Medical procedures that are performed in the hospital are not being assisted by any interpreter, and all the documents for the foreigner to sign are in Polish (including those which concern their informed consent to treatment).

At the OSC in Lesznowola there are two doctors on regular duty (a man and a woman). Their specialties are paediatrics and family medicine. Each of them consults their patients once a week for four hours, so there are two consultation days per week. On working days, there are nurses (a medical rescuer and a midwife) available in the centre - they can speak communicative Russian. The health condition of the detainees is monitored on a regular basis by the medical personnel, who also keep vaccination records. When a foreigner needs to consult a specialist doctor, he or she is directed to one of the following hospitals: in Grójec, in Radom or even in Warsaw. When requested by the foreigner, interpreter's support is arranged (in one of the cases, upon the manager's consent, there was an officially sworn interpreter present during medical procedures).

In Biała Podlaska, there is a doctor employed on a full-time basis who can speak English and Russian. He specialises in family medicine and when required, he also provides paediatric consultation. What is more, there are also nurses available in the centre for the whole week, and they can communicate in Russian, English, German and in the sign language. When a foreigner needs to consult a specialist doctor, he or she is directed to the hospital in Biała Podlaska. The appointments are assisted by an interpreter, and the informed consent forms are translated into a language that the foreigner can understand. The medical care system at OSC in Biała Podlaska deserves appreciation, and it should constitute an example for the other centres to follow.

Concerning the major psychological problems faced by the foreigners who are placed in guarded centres, what seems to be the most worrying is how their mental health is affected by being placed in a closed institution. This impact is particularly significant in the case of children, pregnant women, mothers separated from their minor children, minors without guardians, the disabled or people who previously suffered the trauma of war, inhumane treatment or tortures. It seems to be a huge misunderstanding that the notion of threat to life or health (which according to Art. 107, section 1, paragraph 2 of the Act on Foreigners constitutes statutory grounds for releasing a foreigner from a guarded centre) in practice is not recognised as a threat posed to the life and mental health of those who stay in the centres.

Another issue to worry about is the total absence of any mechanism to identify people from the abovementioned foreigner groups with special needs. In their case, prison-like conditions, in which they are detained (bars in the windows, barbed wire, high prison brick-wall fencing, and the specific regime of such a closed institution as it has been described above) combined with restricted access to therapy or education, violate their basic rights in a most evident way. Moreover, these conditions may become the source of trauma. The SG officers, who motion for a foreigner to be placed in a guarded centre, are not trained to

identify people, who must not be exposed to such a regime. The lack of such knowledge also concerns judges who decide on placing a person in a centre or releasing them from it. They do not have any specialised psychological tests performed for them to check this matter before issuing their decision.

It seems that in Poland there are no procedures to identify foreigners with special needs to secure their access to the kind of help they require. The procedure by which a new person is admitted to a guarded centre comprises usually of a health check, which is done by an SG doctor alone. There is no practice of having psychological or psychiatric consultations performed to obtain an expert's opinion on potential contraindications concerning detention due to age, specific family circumstances³⁶ or the mental condition of the examined person. When such people are placed in the centre, all they are left with is a long and often ineffective procedure, whose purpose is to obtain a release decision from the centre in court proceedings. Additionally, the availability of any such assistance is really limited – the access to NGOs usually goes as far as legal advice (which is difficult to obtain anyway), and it does not extend as far as intervention or psychological consultation. As long as there is no identification system implemented in Poland, by means of which people and families with special needs could be detected before it is decided whether to place them in a guarded centre or not, it should seem reasonable for NGOs to provide the detainees with not only occasional counselling on foreigner's rights that follow from an asylum procedure or an appealing procedure, but also with specialised consultancy and psychological evaluation. This should be targeted at advisory service concerning life in confinement, but in some cases also at helping to obtain the release decision for those people, for whom staying in a guarded centre would be particularly destructive due to their health condition or the health condition of their minor children. The abovementioned problems can be illustrated with particular examples.

In OSC in Przemyśl, there stayed a family who was seeking refugee status - it was a father with two children, aged 3 and 6. Their mother had been released a few months earlier. Then, she was transported first to a hospital in Rzeszów, and later she was placed in a refugee centre in Warsaw (due to a very serious health condition causing the need to continue further invasive diagnostics and treatment in the hospitals of the capital city). Due to the role of a father in the Chechen culture, this man had never exercised continuous care over the little children, nor had he performed any of the daily nursing activities. It needs to be mentioned that the younger child suffered from developmental delay (as confirmed by a medical certificate on disability issued in the Russian Federation), and it had remained under continuous care of a neurological clinic until the arrival to Poland. This child required special care, and most of all - the sense of security. Diagnostic tests and the history taken by a psychologist revealed that the father himself suffered from post-traumatic stress disorder (PTSD), sleeping disorder and depression. The health condition of his two children

³⁶ This should include separating a family and/or separating a parent from a minor child as the consequence of one of them being placed in a closed institution.

showed disturbingly strong symptoms of stress caused by being separated from their mother and placed in a closed institution. What is more, the mother was later visited by a psychologist and a psychiatrist from the Central Clinical Hospital of the Ministry of the Interior and Administration who diagnosed her. These visits revealed that not only did she suffer from a serious somatic condition, but also from depression caused by being separated from her family and her endless worry about the health of her children. The petition that was sent to the District Court in Przemyśl requesting the children and the father to be immediately released due to their poor mental state, was rejected despite detailed diagnostics and opinions provided by a psychologist on every member of the family. Only after a few months later did the Regional Court in Warsaw issue the decision on releasing the children and their father from the centre, thus making it possible for the family to reunite.

It is worth mentioning, however, that having been released from the guarded centre, the father and the two little children received neither the tickets to travel to Warsaw, nor any money to buy them. The money deposit that the father had at his disposal on the day of being released was PLN 11. As a consequence, the three of them were caught and asked to leave the train halfway to Warsaw. It took the family two days to accomplish their journey, which was very tiresome for the children. The guarded centre informed us that the SG was not obliged to compensate for the travelling costs to people released from an OSC. The Office for Foreigners on the other hand could not compensate for the costs incurred by people who had not yet applied for social aid.

It would be impossible to track all the cases of separating mothers from their children³⁷. Children's parents, who were interviewed during the monitoring, the staff of educational sections, some doctors and SG employees informed us that for many children it was a very difficult and extremely stressful experience to stay in a guarded centre. The children are restless, they exhibit symptoms of increasing stress which includes day and night wetting. They cry frequently; they wake up screaming in the night unable to calm down; and they tend to be aggressive towards their peers.

³⁷ Before the monitoring was started, the International Humanitarian Initiative Foundation also got engaged in a case of a woman who was sent back together with her children from Germany. She had escaped to that country, hiding from her husband's family that tried to kidnap her children (despite the verdict pronounced by a Russian court, according to which the mother alone was to take care of them.) The woman was provided with a secure apartment in Germany. After it was decided to send her back to Poland (by force of the Dublin II Resolution), it turned out that there were no secure apartments available for women in her situation in Poland. Therefore, the woman and her children were kept in the SG facility in Krosno, as there was no other place in the whole Republic of Poland for her family to live in safety.

Another situation revealed during the monitoring conducted at the family block in the Przemyśl OSC concerned a mother with two small children who were sent back from Norway. Her husband, i.e. the children's father, received refugee status there, but the family was not brought together anyway, and the mother together with her children was placed in a closed institution.

The condition of a six-year-old girl from Georgia, who was evaluated by a psychologist during the monitoring at the OSC in Przemyśl, was very serious. She was extremely hyperactive, disobedient, aggressive towards other children, and she showed symptoms of the onset of psychosis: she would often react with an intense and long laughter, which was inadequate to the situation; some other times she would cry, unable to control herself. She also wetted herself during the day and at night; she often cried; she had nightmares; she would often scream *"I don't want to be here, I want to get out"*; she would jump up on furniture and jerk the window bars. Despite having reported that the child started wetting herself, her mother did not receive any nappies. It was not feasible to keep up with washing continuously wet clothes of the girl, which most probably led to the urinary tract infection with high fever. This infection was soon accompanied by other problems, such as dental infection, pharyngitis and conjunctivitis. The girl suffered from acute teeth pain for many days, but she did not receive appropriate medical aid concerning dental treatment. Although she was taken to a dentist, she was too afraid to open her mouth and to undergo treatment. The situation was comprehensively analysed and described, and the District Court in Przemyśl received a psychologist's expertise and a request to release the child and her mother from the guarded centre was filed. The court, however, decided to prolong their stay at the detention facility.

Another examined woman was staying in the centre in Biała Podlaska. She was diagnosed with PTSD. She suffered from panic attacks that occurred every morning, and she could not breathe when she woke up seeing the bars in her window. Only after a few months since the intervention was she released from the centre with her husband and children, and she was granted tolerated residence permit. Her two children had to repeat the grade since they had no access to education during their stay at the centre.

The above described cases prove that placing children or victims of traumatic events in guarded centres causes them to groundlessly suffer distress. In all the visited centres the foreigners could theoretically access a psychologist. In every case, however, the psychologist was an SG employee, which lowered the foreigners' trust significantly. Moreover, the person was employed to carry out recruitment, trainings and to work with the SG officers and taking care of the foreigners turned out to be just one more duty added to a long list of their responsibilities (it may be worth mentioning that the additional task did not come along with any salary increase). None of the psychologists employed at the SG centres has been properly prepared to fulfil such a role, nor have they taken appropriate trainings to work with people of a different cultural background or with victims of military conflicts. Psychologists' work is also hindered by the fact that most of them cannot speak the language of the foreigners fluently, which means that virtually every conversation or consultation requires the presence of an interpreter. The interpreters who are involved in this work are often SG employees too, which is against psychologist's professional rules of ethics and confidentiality. None of the interpreters who assist during conversations or psychological consultations has been trained to provide interpretation to medical services or to translate the process of psychological consulta-

tions and therapy. The abovementioned limitations result in a situation where psychological support offered to the foreigners in guarded centres in practice narrows down to occasional and emergency interventions.

Foreigners, who are placed in the centres by the court for a specified period of time consider their detention to be a kind of punishment for committed offences (which are usually crossing the border or staying in Poland illegally). Therefore they do not understand, why this punishment should be prolonged. This makes them feel frustrated. Being confined for too long in a deportation facility constitutes the key reason for discontent, and sometimes riots or hunger strikes.

What causes another problem is the generally followed practice of how to issue and communicate the decision on prolonging a person's stay at the guarded centre by additional three months. More often than not this takes place on the very last day, and often in the last minutes preceding the due release from the centre. Such a practice causes extreme stress in the foreigners, and it generates significant psychological problems. People on that day have everything already packed and they are ready to leave. So are their children. After it is communicated to them that their stay has been prolonged, first they need to cope with this decision themselves and then they need to tell their children about it in an appropriate way. The results of the work done by the International Humanitarian Initiative Foundation show that psychologists frequently had to provide intervention consultations on the phone for people who found themselves in a severe mental crisis caused by being informed about the prolongation of their stay in the centre on the last day preceding the release date as established by the court. Most people would cry or scream, two had suicidal thoughts. Everybody found it difficult to accept the decision that they had to stay in the centre and it was very hard for them to find strength and give this difficult information to their families and children. For example, at the OSC in Przemyśl, there was a foreigner who received information that his stay in this centre was prolonged. This information was communicated to him right before he was due to be released. He became so emotionally aroused and aggressive, that the officers had to apply direct coercive measures against him. As a consequence, he was later moved from the guarded centre to a deportation detention facility.

This practice definitely needs to be changed. If it is necessary to prolong a foreigner's detention, first there should be a petition filed to the court with the request to prolong a person's detention, and the notification concerning the court's judgment should be served to the foreigner at least a few days before the detention term indicted in the previous court decision expires, in order not to give the foreigner false hope for the release. It is recommended that this information be communicated to the foreigners in the language they can understand. This should be done by an SG employee assisted by a psychologist (or by the SG psychologist alone). The most appropriate practice would be to convey such a decision to the whole family at once, and not just to one person, who later additionally has to cope with the difficult task of informing the other family members.

2.6. Education

Article 15, section 1 of the Act on the Education System³⁸ imposes an educational duty upon persons who have not attained 18 years of age. The duty is composed of two elements: the schooling duty, which lasts until graduating from *gimnazjum* [lower secondary school], i.e. until terminating institutionalised education in the primary school and lower secondary school (Art. 15, section 5 of the Act) and the obligation to learn after graduating from *gimnazjum* and until attaining 18 years of age. This obligation may be performed in various ways: by going to a post-*gimnazjum* school or another educational facility or through participating in other courses or undergoing vocational training (Art. 16, section 5a of the Act). The provisions of the Act also specify the term of “schooling duty” which starts at the beginning of the school year in the calendar year in which a child attains 7 years of age (Art. 15, section 2 of the Act) and it lasts until they graduate from *gimnazjum*, no longer, however, than until they attain 18 years of age.

We need to stress that all children at this age staying within the territory of the Republic of Poland are subject to schooling duty, no matter what their legal status is, including foreign children, whether they are staying in Poland legally or not. This arises mainly from Art. 70, section 1 of the Constitution of the Republic of Poland which grants every individual the right to education and specifies that education is compulsory until attaining 18 years of age. The word “every” also signifies a non-Polish citizen who is staying within the territory of our country. The right to education means that no individual who wishes to learn and who has not attained 18 years of age can be denied his or her right to education and it is the duty of appropriate State authorities to provide adequate conditions for it. Hence, not knowing Polish or being placed in a guarded centre cannot be used as reasons for denying this right.

In the meantime, after having conducted the monitoring we have no doubt that the right to education is virtually not exercised at all at guarded centres. Both, foreign parents whose children often have to spend 12 months in detention and the SG officers openly admit that as far as the education of children and the youth is concerned, the Polish State does not fulfil its obligations. The activity of educational sections which function in every facility cannot, obviously, make up for the lack of school education. In almost all the facilities these are the section officers who conduct voluntary classes for children and adults (knowledge about Poland and language courses). In five out of six centres persons who, under the provisions of the law, have the right to education or the right to learn have no possibility to exercise these rights. No school courses are organised there. The facilities are in no way prepared to provide children and the youth with a possibility to enjoy their right to education as it is stipulated in the Act on the Education System and so far, no possibility of organising classes for the detained children in public schools has been considered.

Only the OSC in Biała Podlaska has made an agreement with a local school. Teachers from outside the institution have the right to enter the premises of the centre, as from September 2010 the persons who

³⁸ The Act of 7 September 1991 on the Education System (Dz. U. [Journal of Laws] of 2004 No. 256, item 2572, as amended).

are responsible for educating the foreigners are no longer the educational section workers, but teachers from three schools representing three levels of education (the primary school, *gimnazjum* - the lower secondary school, and *liceum* - an upper secondary school)³⁹. This positive example cannot, however, change the general image we get of all the other centres which is quite negative and should encourage the authorities to create such legal solutions which will guarantee full access to education to foreign children, in compliance with the Constitution of the Republic of Poland and the Act on the Education System. For now, the situation proves incompetence of the State in such an important area as observing the rights of the child. This state of things does not depend on the managers of the centres we visited, but it must be remedied at the level of legal acts.

3. Conclusion and recommendations

In concluding the results of the conducted monitoring it is worth to refer to the results of similar surveys that had been carried out by other organisations⁴⁰. Unfortunately, it seems that a great number of requirements that have been presented for years by NGOs have not yet been implemented. This concerns the problems of communication between the foreigners and centre staff due to their poor knowledge of foreign languages and as a result of the detainees not being adequately informed of the rights they have and the possibilities of applying to be released from the closed institution. Just like ourselves, the authors of the other reports pointed to the 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. Some other issues that have been raised concern the ban on placing minors and pregnant women in detention facilities as well as providing all the detainees with appropriate medical assistance, including psychological care. In fact, all these problems are still up to date.

The question of depriving foreigners of liberty if they have not committed any crime is particularly delicate and it requires elaborating a very well-considered and well-functioning system minimising the inconvenience related to staying in confinement. The conducted monitoring shows that major changes in the functioning of guarded centres for foreigners are quite urgent, in particular in the scope of placing minors in them - and this refers to minors without a guardian but also to those who are under custody of their statutory guardians.

A big challenge to be dealt with is the problem of **communication**. The most crucial issue is to **improve the language competence of the Border Guard officers** so that they can communicate with the de-

³⁹ We need to indicate that the new system was implemented in September 2010. The monitoring visit took place on 2 September 2010 so it was impossible to tell whether the system functions well in practice, what the foreigners think of this solution and whether it complies with the provisions on access to education. But we must appreciate the efforts of the Biała Podlaska OSC staff who are the first and so far the only ones who are trying to meet the needs of the children and fulfill the statutory requirements. Still, it seems that the target solution ought to be allowing the children to learn in the open education system together with Polish children.

⁴⁰ *Projekt sprawozdania Komisji Wolności Obywatelskich...*, p. 22; *Report on detention of asylum seekers...*, p. 7 et seq.; K. Zdybska, *Ocena ogólna wizytowanych placówek...*, p. 93 et seq.

tainees 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. What is also important is that the interpreter who assists during medical appointments is not an SG officer. The rules and regulations of the facility should also be translated into languages which are understandable to the foreigners. They should always be available to the detainees.

As far as the contact with the outside world is concerned, the currently applied **prison regime of staying** in the guarded centre ought to be **mitigated**. There is, in fact, no justification for restricting the foreigners' freedom to use their mobile phone (those without the function of recording image and sound) if they have permanent access to a public pay phone which is not wiretapped. The foreigners should also have easier access to a fax machine and should have the possibility of using the Internet. The information policy concerning the possibilities of using legal assistance of private law firms should also be extended and the detainees who are not seeking refugee status should also have more opportunities to contact NGOs.

The legislator treats the detainees of a guarded centre in a similar manner as prisoners are treated. The daily regime of a guarded centre - walks, communication with the outside world, access to medical care - is very similar to the prison regime. In the meanwhile, the legal situation of these two groups of people is utterly different, which should be reflected in the rights vested in them while in detention. We must emphasise once more that the foreigners have not been placed in detention facilities as a punishment but only for the sake of protection through controlling their place of stay. For this reason, all the inconveniences arising from isolation ought to be minimised.

What is more, we need to point to the fact that the legislator has introduced two types of detention facilities for foreigners: the deportation detention centre and the guarded centre. 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. If we consider the fact that we are dealing with people who have not committed any crime and, as a rule, do not pose danger to State security, 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.

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. All these changes should have a positive impact upon the foreigners' stay in the centre and it should minimise the traumatic experiences related to detention. Such conditions should also

improve relations between the detainees as well as the relation between them and the guards. There also ought to be more classes and other activities in the premises of the centre organised by NGOs and other institutions which operate outside the SG structure - especially that such programmes are even carried out in prisons.

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 full-time 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. In choosing a doctor the criterion of knowing basic foreign languages (Russian and English) ought to be taken into account. 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 post-traumatic stress disorder. It would be perfect if they could, in addition, speak foreign languages. In other cases the foreigners should always have access to an interpreter. Obviously, the psychologists as well as the interpreters ought to be prepared to cooperate during team interventions in aid of patients of a different cultural background who have gone through a lot of trauma. It is crucial that neither the psychologists nor the assisting interpreters are Border Guard officers. As long as there is no ban on placing minors in guarded centres, there is also a need of psychologists who have experience in working with children.

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. Under Art. 107, section 1, paragraph 2 of the Act on Foreigners the decision to release a foreigner from a guarded centre or a deportation detention centre is issued following an application filed by the foreigner or an authority that supervises the guarded centre if further stay of that foreigner in a detention facility might be dangerous to their health or life. Some exceptional situations include those when an authorised guarded centre manager applies to a competent court for releasing a particular foreigner due to their disturbing health condition. Another incomprehensible thing is that courts seem to delay the proceedings when the application has been filed by a foreigner, even if they do it on behalf of their child whose poor health condition is confirmed by an opinion of an independent doctor or psychologist. This needs to be changed as soon as possible.

As it has already been indicated, **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 in the most important legal Acts, including the Polish Constitution (as it has been discussed above). The results of our monitoring in this scope are definitely negative. They show that the Polish State

is not able to cope with the task in reference to foreigners staying in guarded centres. This is why we should seriously consider whether there are grounds for placing children and their parents or statutory guardians in guarded centres, since the Polish State is unable to secure the basic, constitutional rights of the children concerning their access to education. It seems that the British solution is worth applying - in Britain minors are not placed in guarded centres for foreigners⁴¹.

A **general ban on placing children in guarded centres** should also be considered for other reasons. 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. And no matter how hard we try to minimise the effects of this fact, the child is still deprived of liberty. This is contrary to international commitments adopted by Poland on signing the Convention on the Rights of the Child. At present none of the centres is in the least bit suited for children. This concerns both, the rigour and the conditions in these facilities.

What is absolutely necessary and needs to be done immediately - as long as the law is not amended in such a scope as recommended by us - is enrolling the children from the centres in local schools. There are no reasons why they cannot go there on the same terms as the children who are staying in open centres for foreigners. If a school is located far it is the duty of the Border Guard to organise some transportation from the centre to the school.

As compared to other centres, the Guarded Centre in Przemyśl has been assessed at the lowest level. In this centre, regardless the legal regulations, the most severe rigour is observed. Even though the centre had the regulations translated into 17 languages, it is the one in which communication between the detainees as well as the contact of foreigners deprived of liberty with the outside world are the most difficult. It is also the facility from which there have been some alarming signals of inappropriate reactions of the authorities to poor health condition of the foreigners. Thus, it is recommended that *Komenda Główna Straży Granicznej* [the National Border Guard Headquarters] conduct an internal inspection in that facility in order to verify whether there are grounds for applying such harsh rules in that centre, which distinguishes the facility in a negative way from all the other centres.

We hope that our demands will contribute to introducing changes which will, most of all, secure the observance of basic rights of the foreigners. The solutions that we have suggested should help rationalising the systemic regulations and should provoke a change in the way that the situation of the deprived of liberty foreigners is perceived, and it should contribute to introducing changes that will truly improve their situation. At present the most crucial issue is to introduce a ban on placing children in guarded centres. This inhumane practice cannot be reconciled with the rules that ought to be observed by a state of law for which the good of the child should be of uttermost importance.

⁴¹<http://www.homeoffice.gov.uk/media-centre/news/family-returns>
<http://www.guardian.co.uk/politics/2010/dec/16/nick-clegg-shameful-detention-children-end>
http://www.refugeecouncil.org.uk/news/archive/press/2010/december/16122010_end_child_detention_may




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