

**INFORMATION FROM THE ASSOCIATION FOR LEGAL INTERVENTION
REGARDING THE SEVENTH PERIODIC REPORT ON POLAND BY THE COMMITTEE
AGAINST TORTURE**

Information of the Association for Legal Intervention on the replies provided by the Government of Poland to the list of issues (CAT/C/POL/QPR/7) raised by the Committee against Torture with regard to the seventh periodic report of Poland.

INTRODUCTION

Association for Legal Intervention (SIP) is a Polish non-government organization established in 2005 with the view to combating social exclusion and protecting and advancing the rights of foreigners, including asylum-seekers and refugees. SIP participates in legal proceedings in order to secure public interest either through representing individual applicants or through preparing third-party interventions to courts. SIP has considerable experience in intervening in domestic court proceedings and representing applicants before the European Court of Human Rights. As of now, SIP is one of the most experienced and professional non-governmental organizations operating in the field of migration and asylum law in Poland.

Association for Legal Intervention is a member of the following networks:

- *The Platform for International Cooperation on Undocumented Migrants (PICUM)*
- *The International Detention Coalition (IDC)*
- *European Grassroots Antiracist Movement (EGAM)*
- *The European Network on Statelessness (ENS)*

In order to provide information on the most recent developments in Poland in relation to the rights of foreigners, SIP would like to make the following comments relating to the content of respective answers provided by the Government of Poland.

The information was prepared by: Małgorzata Jaźwińska, Aleksandra Pulchny, Magdalena Sadowska, Katarzyna Słubik.

COMMENTS TO THE REPLIES OF THE GOVERNMENT OF POLAND

Comments to the reply to question 2

Free-of-charge legal assistance to foreigners

Free-of-charge legal assistance was introduced for asylum seekers at the administrative appeal stage. No free legal assistance was introduced for other migrants, especially those facing deportation. Currently there are no legislative plans to extend the scope of free of charge legal assistance.

Comments to the reply to questions 7

The State Party has indeed introduced legislative instruments to support vulnerable persons, including victims of torture, in the asylum procedure. However, the safeguards are not sufficient, as the screening of asylum seekers takes place during a short conversation with a psychologist before an asylum interview. In practice neither medical examination nor thorough psychological evaluation are conducted. Also, many applicants refuse to meet with a psychologist as they associate psychological support with stigma or are not properly informed that without the examination they cannot be recognized as vulnerable. As a consequence, many victims of torture are not recognized as vulnerable persons in the procedure. Due to the lack of medical examination throughout the asylum procedure¹, signs of bodily injury go unnoticed by the authorities, even if these are still visible at the time of the submission of an asylum claim.

The State Party has not introduced any legislative measures to enhance the protection of rejected asylum seekers or refugees deprived of their protection status against refoulement. The recent case of forcible expulsion of Azamat Bayduyev, in August 2018, who, upon his return to Russia, was apprehended by the police and placed in detention where he was (with high probability) subjected to torture, is a clear sign of the provisions not being effective². Furthermore, in a draft bill being proceeded currently by the Parliament, the government proposes to expunge Article 331 (1) of the Act on Foreigners³ which guarantees that no return will be executed until the administrative court recognizes foreigner`s motion for the suspension of return due to the submission of the complaint to court. This provision makes it possible for the administrative court to recognize foreigner`s

¹ Office for Foreigners` reply to the FOI request of 25 March 2019

² See more on Azamat Bayduyev`s case: <https://amnesty.org.pl/rosja-wymuszone-zaginiecie-czeczenskigo-uchodzcy-po-deportacji-z-polski/>

³ See Association for Legal Intervention`s analysis online: <https://interwencjaprawna.pl/en/proposed-amendments-to-the-asylum-law-in-poland-sip-comments-on-the-controversial-proposal/>. Legislative process of the draft law: <https://legislacja.rcl.gov.pl/projekt/12294700/katalog/12410552#12410552>.

complaint in his/her return procedure. Once the new law enters into force, foreigners will have no access to the judicial review of their return decisions.

Comments to the reply to question 8

In the opinion of the Association for Legal Intervention, the reply provided by the Polish government with regard to the Committee's question no. 8 does not provide an exhaustive answer to the issues raised.

Detention of victims of violence

Association for Legal Intervention has observed that **victims of violence are still being placed in guarded (detention) centers**. The fact that public authorities processing their asylum claim acknowledge the fact of violence they were subjected to, often does not automatically lead to the release of a given asylum-seeker. Association for Legal Intervention lodged three compensation claims against unlawful detention of asylum-seekers who were victims of violence. Those cases are still pending in national courts. The latter rarely ask experts to analyze whether a foreigner was a victim of violence⁴. E.g. Association for Legal Intervention currently represents a foreigner who had undergone physical and psychological violence in his home country. He still suffers from PTSD as a result of the trauma. In spite of this, he was placed in a detention center (*areszt dla cudzoziemców*). We filed an application with the European Court of Human Rights on behalf of that foreigner and an interim measure prohibiting his deportation was granted (application no. 9323/19).

Unlawful placement of foreigners in guarded centers and lack of proper measures making it possible to identify victims of violence is highlighted in the reports of the National Preventive Mechanism.

The problem is further aggravated by unlawful internal regulations of the Border Guards which make it possible to detain victims of violence if their treatment would be possible in detention⁵.

The proposed amendments to the Act on granting protection to foreigners narrows the definition of vulnerable persons who cannot be placed in detention centers. According to the current legislation no victim of violence can be detained. Proposed changes limit the scope only to victims of tortures, inhuman and degrading treatment and punishment. Proposed amendments would not take into

⁴ M. Jaźwińska, *Detencja cudzoziemców ofiar przemocy*, [In:] O. Dobrowolska, O. Hilik, M. Jaźwińska, P. Mickiewicz, A. Pulchny, M. Sadowska, K. Słubik, *SIP w działaniu. Prawa cudzoziemców w Polsce w 2018 r.*, available at: https://interwencjaprawna.pl/wp-content/uploads/2019/05/raport_sip_w_dzialaniu_2019R.pdf

⁵ *Ibidem*.

account particular needs of people who seek international protection in Poland and would lead to the increase of migration detention of vulnerable groups⁶.

Detention of children

Accompanied and unaccompanied children alike are still being placed in detention centers in Poland. In 2018, the number of children placed in guarded centers for foreigners was 304, including 20 unaccompanied minors. Around 20% of all detained foreigners were under 18 years of age. The average duration of their detention varied in each detention center. In the detention center in Kętrzyn it was 124 days, in Biała Podlaska – 92 days and in Przemyśl – 76 days. The average duration of child detention in each such center was the same or longer than the average duration of detention of adults.

Even though the law obliges courts to take the best interest of the child into account, this is rarely the case. Courts rarely consider what is in a child’s best interests and do not take that into consideration when ruling on detention. Usually, only the situation of the parents is reviewed. If the notion of “the best interest of a child” is mentioned in judicial decisions, it is most typically raised as a reason to detain the child and not separate them from families⁷.

Courts rarely ask experts to analyze what impact detention would have on the well-being of detained children. It often leads to a considerable deterioration of their psychological well-being⁸. Currently there are two cases pending before the European Court of Human Rights alleging a violation of child rights as part of immigration-related detention in Poland (application no. 11247/18 and 79752/16).

Hearing in person

In the State Party’s report in paragraph 66 it was stated that “The Court shall always hear the person.” However, foreigners are allowed a personal hearing only as part of the procedure for placing them in a guarded (detention) center. When their detention is to be prolonged by the court, they are rarely heard in person by the court. The issue of inability to fully participate in one’s judicial review of a detention decision was raised in a case now pending before the European Court of Human

⁶ Comments of the Association for Legal Intervention to a draft act on amending the act on granting protection to foreigners in Poland and on amending certain other acts of 4 February 2019, available at: <https://interwencjaprawna.pl/wp-content/uploads/2019/02/uwagi-do-projektu-ustawy-o-udzielaniu-cudzoziemcom-ochrony.pdf>, p. 10.

⁷ M. Górczyńska, D. Witko, *Research on the applicability of the best interests of the child principle as the primary consideration in detention decisions as well as the alternatives to detention*, UNHCR, 2017.

⁸ O. Dobrowolska, O. Hilik, et.al., *SIP w działaniu. Prawa cudzoziemców w Polsce w 2018 r.*, Warsaw 2019, available at: https://interwencjaprawna.pl/wpcontent/uploads/2019/05/raport_sip_w_dzialaniu_2019R.pdf

Rights (application no. 79752/16). In another application to the ECHR it was alleged that the foreigner did not receive a copy of the motion to prolong their stay in a guarded center for foreigners and was not heard in person (application no. 11247/18).

Deportation

Polish law does not fully respect the principle of *non-refoulement*. Deportation decisions issued against foreigners who were deemed a threat to national safety or public order are immediately enforceable. Consequently, a foreigner can be deported before their appeal is heard. In one such case, a foreigner represented by the Association for Legal Intervention was granted an interim measure by the European Court of Human Rights prohibiting his deportation (application no. 9323/19). The case is still pending.

All deportation decisions can be enforced before they have been reviewed by an administrative court. The practice of administrative courts has changed recently, they are more reluctant to suspend the execution of deportation decisions despite having the power to do so. As a result of this shift, often the only way to guarantee that the principle of *non-refoulement* is respected is to apply for an interim measure to the European Court of Human Rights⁹.

The principle of *non-refoulement* is regularly violated at Polish borders. There are numerous cases of foreigners who have been repeatedly denied entry at the Polish-Belarusian and Polish-Ukrainian borders despite them clearly invoking their right to seek asylum. There are currently several applications to the European Court of Human Rights alleging that this right has been violated¹⁰.

Comments on the reply to question 9

Association for Legal Intervention observes a worrying practice of refusing international protection to victims of police violence in their country of origin. Administrative authorities sometimes claim that inflicting physical violence in order to obtain a testimony or information is a criminal offence and not a reason to grant international protection.

There was a recent Supreme Administrative Court ruling stating that the violence inflicted by the police officer can amount to inhuman or degrading treatment and if such a violence was inflicted, the

⁹ M. Jaźwińska, *Wstrzymywanie wykonania decyzji o zobowiązaniu do powrotu*, [in:] O. Dobrowolska, O. Hilik, et.al, *SIP w działaniu. Prawa cudzoziemców w Polsce w 2018 r.*, Warsaw 2019, available at: https://interwencjaprawna.pl/wp-content/uploads/2019/05/raport_sip_w_dzialaniu_2019R.pdf

¹⁰ J. Białas, M. Górczyńska, D. Witko, *Dostęp do procedur azylowych na zewnętrznych granicach Polski*, Helsinki Foundation for Human Rights, Warsaw 2019, available at: <http://www.hfhr.pl/wpcontent/uploads/2019/04/Dost%C4%99p-do-procedury-azylowej-v2.pdf>

authorities must analyze whether there are justified reasons to believe that the situation would not repeat if returned (Supreme Administrative Court, II OSK 306/19). Unfortunately, it is still not a uniform practice.

In cases of alleged dangerous foreigners, the risk of violation of human rights is not always diligently analyzed by competent authorities. Association of Legal Intervention represents one of such applicant before the European Court of Human Rights (application no. 9323/19).

Comments on the reply to question 11

Situation of women – victims of gender-based violence (GBV) seeking international protection in Poland

The fear of persecution or risk of serious gender-based harm is one of the most frequent causes of submitting asylum applications by women. At the same time, there are no detailed guidelines for Polish authorities (the Office for Foreigners, the Refugee Board) that would take gender-related matters into consideration when assessing applications for international protection.

During the submission of an asylum claim, the applications are filled out by Border Guard officer based on the explanations given by an applicant.¹¹ The application is filled out in Polish. During the procedure the applicant should provide all important information which is relevant to the asylum procedure. This also includes circumstances indicating that the applicant was a victim of persecution or serious gender-based harm.¹² It should be noted that no psychologist is present during these proceedings. A considerable number of female clients of the Association for Legal Intervention indicated that during the submission process other people were present in the room (including other foreigners) along with the Border Guard officer. In some cases clients were too uncomfortable to disclose all circumstances relating to their particular violence-related experiences (especially as regards sexual violence).

Adaptation of the proceedings to the needs of the applicant belonging to a vulnerable group is rarely practiced. Lawyers of the Association for Legal Intervention are not aware of any questioning in 2018 being conducted in the place of residence of the foreigner or in a correspondence procedure.

Regarding the Polish government's stance that: „When the foreigner, including a minor, cannot obtain help in the country of origin due to violence used against him/her, he/she is covered by one of

¹¹ Article 24(1) of the Act on Granting Protection to Foreigners in Poland.

¹² Article 26(3)(10) of the Act on Granting Protection to Foreigners in Poland.

forms of international protection”¹³, it should be indicated that administrative authorities grant international protection based on prerequisites of gender-based violence only in isolated incidents. In numerous procedures on granting international protection in which female applicants refer to a fear of persecution or risk of serious gender-based harm if sent back to their country of origin, referring to past gender-based harm, the authorities undermine the credibility of their statements.¹⁴ There are cases when protection is denied due to hypothetical possibility to access protection in a country of origin or internal flight alternative¹⁵.

Situation of female refugees who experienced GBV in Poland

Female asylum seekers and refugees who are experiencing GBV in Poland have the same rights regarding medical and psychological assistance as Polish citizens. However, Polish system for countering GBV violence is not properly adjusted to the needs of these women who are a particularly vulnerable social group.

Migrant women living in Poland often do not report domestic violence on account of culture-related consideration coupled with pressure from their community urging them not to report such occurrences.¹⁶ There is also a second group of reasons why migrant women fail to report violence - those pertain to the failings and gaps of the Polish system for receiving refugees and the system for supporting victims of violence.¹⁷ One example of the Polish system not meeting the needs of migrant women is the short period of time for which the perpetrator of violence is kept away from the victim - only 24 hours does make it possible for the Police to detain the perpetrator but if criminal proceedings are not initiated within 24 hours, he is to be released from the detention facility within said 24 hours.¹⁸ Migrant women who have been granted the right to stay and live in Poland have the option to move to a state funded shelter, Crisis Intervention Centre (Ośrodek Interwencji Kryzysowej) under the same rules as apply to Polish citizens but there is often no room for them at such centres and they do not meet the needs of such women, e.g. the employees of such centres do

¹³ Seventh periodic report submitted by Poland, para. 61, p. 15

¹⁴ Decision of the Head of the Office for Foreigners of 8 May 2018, case ref. DPU.420.83.2017

¹⁵ M. Sadowska, *Kobiety – ofiary przemocy ze względu na płeć*, [in:] O. Dobrowolska, O. Hilik, et.al, *SIP w działaniu. Prawa cudzoziemców w Polsce w 2018 r.*, Warsaw 2019, available at: https://interwencjaprawna.pl/wp-content/uploads/2019/05/raport_sip_w_dzialaniu_2019R.pdf

¹⁶ W. Klaus, *Ochrona i wsparcie dla migrantek doświadczających przemocy ze strony osób bliskich w Polsce*, [w:] *Bezpieczny dom? Przemoc fizyczna i symboliczna wobec uchodźczyń i uchodźców*, s. 293, available at: <https://interwencjaprawna.pl/publikacje/>

¹⁷ *Ibidem*

¹⁸ K. Słubik, *Ochrona migrantek przed przemocą w Polsce i wybranych krajach Unii Europejskiej*, [w:] *Bezpieczny dom? Przemoc fizyczna i symboliczna wobec uchodźczyń i uchodźców*, p. 100. Available at: <https://interwencjaprawna.pl/publikacje/>

not speak foreign languages, have not received training regarding cultural differences what is more, one may not stay at such a centre for more than 6 months.

To sum up: if a migrant women is in Poland and has no family or friends who could provide her with a temporary place of residence, keeping the perpetrator away from her for a mere 24 hours constitutes not more than an illusory form of state protection and support.

What is more, criminal proceedings are very often not initiated due to the victim withdrawing their statements as a result of pressure from her community or family or fear of being forced to return to their country of origin. Polish law does not give a possibility to legalise the stay of a foreigner solely on the basis of domestic violence. At the same time, as lawyers of the Association have often seen in practice, Polish administrative bodies refuse to award international protection to victims of domestic violence on account of the fact that, according to them, it is a criminal offence and not a political one and thus the victim has the option to apply for protection and assistance to the relevant bodies in their home country¹⁹.

Contact person:

Małgorzata Jaźwińska

Association for Legal Intervention

Siedmiogrodzka st. 5/51, 01-204 Warsaw, Poland

m.jazwinska@interwencjaprawna.pl

<http://www.interwencjaprawna.pl>

Ewa Grzegorzółka

CZŁONKINI ZARZĄDU
Stowarzyszenia Interwencji Prawnej

Ewa Grzegorzółka

Member of the Board

Aleksandra Chrzanowska

CZŁONKINI ZARZĄDU
Stowarzyszenia Interwencji Prawnej

Aleksandra Chrzanowska

Member of the Board

¹⁹ Decision of the Head of the Office for Forreigners of 30 April 2018 r., ref no .DPU.420.1746.2017.