

STATEMENT
UPR Pre-session on Poland
Geneva, 29.08.2022
Delivered by: Association for Legal Intervention

1- Presentation of the Organisation

This statement is delivered on behalf of the Association for Legal Intervention (Stowarzyszenie Interwencji Prawnej, SIP), a national human rights civil society organization based in Warsaw, Poland. Our mission is to ensure social cohesion by promoting equality of all people before the law, with particular focus on the rights of migrants, refugees and asylum seekers. SIP has participated in UPR processes at the national level since 2011.

2- National consultations for the drafting of the national report

In June 2022, the Ministry of Foreign Affairs organized one, one-hour meeting where civil society organisations, could shortly present the main human rights challenges they observe in Poland. The national report was not provided to the civil society for consultation.

3- Plan of the Statement

This statement addresses the following issues: (1) immigration detention in Poland, and (2) the lack of respect for the principle of non-refoulement at the Polish borders.

4- Statement

I. Immigration Detention

A. Follow-up to the last review

In the previous Universal Periodic Review, Kyrgyzstan and Argentina urged Poland to put an end to immigration detention of children. Those recommendations have not been implemented by the Polish government.

While the previous Universal Periodic Review addressed only a problem of detaining children; however, the human rights challenges arising from the deprivation of liberty of asylum seekers and returnees in Poland are much more far-reaching. In particular, detention conditions are of concern as they often amount to inhuman or degrading treatment.

B. New developments since the last review

Polish law still allows for a deprivation of liberty of all accompanied minors (pending asylum and return proceedings) and unaccompanied minors above 15 years old (pending return proceedings). In practice, also asylum-seeking unaccompanied minors are detained. In 2020, 101 migrant minors (including 22 unaccompanied) were deprived of liberty in Poland; in 2021 the number rose to 567 (81 unaccompanied).

Since 2018, the ECtHR have been repeatedly reproaching Poland for detaining families with children without a rigorous examination of alternative measures or the best interest of a child. Despite that, the practice has not changed. In Poland, children continue to be deprived of liberty automatically, absent of a rigorous scrutiny of their individual situation and needs, or of the psychophysical consequences of detention. Child's best interest is often not taken into account. It is also not investigated (at all or sufficiently) whether a detention is a measure of last resort or whether alternatives to detention should be applied.

Moreover, children are not being detained for as short a period as possible. Cases of detention of minors lasting several months or even over a year are often reported. During this protracted detention, minors do not have sufficient access to education. The didactic and educational activities in the guarded centres do not cover a minimal scope of the compulsory curriculum. The Polish government is not willing to address this problem.

Conditions in Polish detention centres are not suitable for children and – increasingly – also for adults. Those conditions, especially since 2021, breach international human rights standards, in particular, by providing for only 2 m² per detainee. Moreover, some asylum seekers and returnees, including children, are placed in containers – without appropriate access to sanitary facilities – or in schools' gyms – without any privacy. Furthermore, they struggle to access health care, even in the event of pregnancy or bone fractures. Psychological assistance is insufficient: only one or two psychologists work in detention centres hosting hundreds of migrant detainees. Despite that, access to those centres for external psychologists is hindered. The insufficient access to medical and psychological assistance predominantly affects vulnerable persons, including children and victims of violence. While the law prohibits detaining victims of violence, in practice they are regularly deprived of liberty due to the faulty and ineffective identification mechanism applied by the Border Guard.

C. Recommendations

In order to address the problems arising from immigration detention in Poland, we make the following recommendations to the Government of Poland:

- a. Prohibit the detention of all children, both accompanied and unaccompanied, and ensure that this prohibition is respected in practice.
- b. Ensure that immigration detention is implemented in humane and appropriate conditions, in particular by guaranteeing that detainees have sufficient personal space and are not placed in containers and they have access to: adequate health care, legal advice, information and assistance, adequate food, outdoor spaces as well as means of communication with the outside world.
- c. Guarantee that victims of violence are not placed in detention.

II. Principle of non-refoulement at the Polish borders

A. Follow-up to the first review

In the previous Universal Periodic Review, Greece recommended that Poland should take measures towards respecting fully the principle of non-refoulement. Belarus urged Poland to take into account its international obligations concerning asylum seekers. Nevertheless, in Poland, the respect for the principle of non-refoulement has significantly diminished since 2015.

B. New developments since the last review

Since the refugee crisis of 2015-2016, at the Polish borders, asylum seekers have been recurrently receiving decisions on a refusal of entry and being immediately sent back to Belarus or Ukraine despite their pleadings for asylum in Poland. The ECtHR reproached Poland for those practices in four recent judgments, finding that Article 3 ECHR has been violated by denying the applicants access to the asylum procedure in Poland and, in consequence, exposing them to a risk of inhuman and degrading treatment and torture in Chechnya and Syria.

In August 2021, the situation at the Polish-Belarusian border deteriorated. Numerous asylum seekers and migrants were repeatedly forced by Belarussian officers to enter Poland in an unauthorized manner and immediately pushed back by Polish forces. Brutality was reported, but Polish authorities refused to conduct a proper investigation. Moreover, asylum requests were intentionally ignored by Polish officers. In consequence, some foreigners were stranded at the border for days, weeks or even months, without an appropriate access to water, food, shelter, and medical care. Some families were separated. Winter conditions and the announcement of the emergency state, that excluded media, NGOs and medical staff from the area surrounding the border, only aggravated the ongoing humanitarian crisis. At least 21 persons died.

Responding to the humanitarian crisis at the Polish-Belarusian border, only in 2021, the ECtHR granted interim measures in 48 cases, ordering Poland to provide migrants with food, water, clothing, adequate medical care and, if possible, temporary shelter. In some cases, the court indicated as well that applicants should not be removed from Poland or that they should have access to a lawyer. Some of those court's orders were not observed.

The Polish government did not yield to the civil society and international organisations and bodies' calls to stop human rights violations at the Polish-Belarusian border. Instead, it tried to justify pushbacks by introducing amendments to Polish law that clearly disrespect the principle of non-refoulement. This national law is now applied in practice on a regular basis, entailing violations of international and EU law by Poland.

C. Recommendations

In order to address the problems arising from the lack of respect for the principle of non-refoulement in Poland, we make the following recommendations to the Government of Poland:

Respect the principle of non-refoulement in law and practice, in particular by ceasing pushbacks at the Polish border; immediately initiating asylum proceedings upon asylum seekers' request; investigating the officers' brutality at the border; and repealing national legislation disrespecting the principle of non-refoulement.