

Warsaw, 11th of July 2019

REPORT

**to the Committee on the Elimination of Racial Discrimination
regarding the 22nd, 23rd and 24th periodic reports of Poland**

**submitted by
the Association for Legal Intervention**

INTRODUCTION

Association for Legal Intervention (SIP) is a Polish non-governmental 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 implementation of the provisions of the International Convention on the Elimination of All Form of Racial Discrimination, SIP would like to make the following comments relating to the report provided by the Government of Poland.

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As regards the Committee's recommendation to provide the Commissioner for Human Rights with the human and financial resources allowing them to combat discrimination in the public and private sectors alike.

The Commissioner for Human Rights is to protect human rights within the country and prevent the use of torture as part of KMPT, the national mechanism for the prevention of torture, in addition to acting as an independent body in matters related to equal treatment, and an independent monitoring body discussed in Article 33(2) of the Convention on the Rights of Persons with Disabilities. Providing the Commissioner with proper funding is, in the opinion of the Association for Legal Intervention, crucial for ensuring their independence, lack of bias, and, even more importantly, the efficiency of their actions.

It should be pointed out that the annual budget for the Commissioner's activity has been reduced over the course of recent years. For example, in 2014-2017, funds applied for amounted to PLN 41 549 000 (2014), PLN 41 989 000 (2015), PLN 45 566 000 (2016), and PLN 41 039 000 (2017) while funds actually granted amounted, respectively, to: PLN 39 171 000 (2014), PLN 38 602 000 (2015), PLN 35 619 000 (2016), and PLN 37 182 000 (2017)¹. What is more, as parliamentary work on said budget progressed, MPs sometimes commented on such reductions, claiming that the activity of the Commissioner aimed at countering discrimination was ineffective.

Funds for financing the activity of CHR were cut significantly in 2016, when the relevant budget was brought to its level from 2011. In subsequent years, the budget was slightly increased as part of asset expenditure; this was, however, the result of modernisation of one of the buildings occupied by the Office of the Commissioner for Human Rights. In the years 2016 and 2017, current expenses of the office were similar to their level from 2011. The Commissioner for Human Rights emphasized that such a reduction of said budget has led to a situation where the Office is incapable of effectively fulfilling its duties².

It should further be pointed out that fixing the wages coupled with such a reduction of the current expenditure budget for the Commissioner for Human Rights has made it impossible to carry out wage adjustment which, in turn, has led to many highly competent experts and legal officers leaving the office in the reporting period in question. The main reason for quitting cited, was low wages and heavy workload resulting from particular teams being understaffed³.

In the opinion of the Association for Legal Intervention, data regarding the financial resources and human resources of the Office of the Commissioner for Human Rights do not reflect the actual situation

¹ Information about the budget of the CHR is available at: <http://www.bip.brpo.gov.pl/pl/category/budzet>

² An address of the CHR to the Commission for State Budget and Public Finances
https://www.senat.gov.pl/gfx/senat/userfiles/public/k9/dokumenty/konsultacje_ustawy/1068/rpo.pdf

³ Information about draft budget
<https://www.rpo.gov.pl/pl/content/senat-pracuje-nad-budzetem-panstwa-informacja-o-projekcie-budzetu-dotyczacej-RPO>

due to the fact that matters pertaining to financial needs reported by the Commissioner and the issue of whether or not it is possible to fulfil statutory duties using the funds available, were not addressed.

As regards the recommendation to continue with the trainings programmes for prosecutors, police officers and judges about racially motivated offences

Despite the introduction of systemic and procedural safeguards reported by the Polish government, migrants and persons of foreign background encounter several barriers in accessing justice as victim of hate crimes, especially at the stage of reporting a crime and qualifying an act as racially motivated hate crime. Within the frames of a project “Equal and Safe” implemented by the Association for Legal Intervention between 2014 and 2016⁴, we have monitored 5 cases (out of 20) where the Police initially refused to accept a crime report from a foreigner and agreed to accept it only after SIP’s intervention. Also, in 5 cases the Police or the Prosecutor ignored the racial motive of the perpetrator and prosecuted the case as an ordinary crime. There are also several other barriers to reporting a hate crime: distrust towards the Police, language barrier and lack of knowledge of legal provisions⁵.

Despite the evidence that hate crime persists in Poland, high level government officials downplay the number and significance of attacks⁶. Also it can be observed, that racially motivated crimes became a highly politicized issue. E.g. in June 2016 the government has withdrawn a training handbook on hate crimes for policemen, after one of the conservative MPs (Andrzej Andruszkiewicz) noticed that it indicates that a symbol of “phalanx”, used by the Polish radical nationalists groups, could be perceived as hate speech. The official argument for the withdrawal of the handbook was that it “incites to hatred against right-wing supporters”⁷

The very fact that “the total number (absolute number and the percentage) of the indictments and applications directed to courts for proceeding to judgement without a proceeding under Article 335(1) of

⁴ More information on the „Equal and Safe” project: <https://interwencjaprawna.pl/projekty/zrealizowane/rowni-bezpieczni/>

⁵ Karolina Brzezińska and Katarzyna Słubik, “Poradnictwo prawne dla osób pokrzywdzonych – doświadczenia i Rekomendacje [Legal Counseling for Victims -Experiences and Recommendations],” in *Przestępstwa Motywowane Uprzedzeniami –Dylematy, Wyzwania, Strategie. Dwa Lata Działania Koalicji Przeciwko Przestępstwom Motywowanym Uprzedzeniami [Bias Crimes - Dilemmas, Challenges, Strategies. Two Years of Work of the Coalition Against Bias Crimes]*, ed. Michał Pawłęga and Piotr Godzisz, Stowarzyszenie Interwencji Prawnej i Stowarzyszenie Lambda-Warszawa, 2016. http://lambdawarszawa.org/lambda_warszawa/co-robimy/publikacje/wydawnictwa/

⁶ Examples of governmental officials downplaying the significance of hate crimes can be found in: P. Godzisz, M. Wąsik, *Hate Crime in Poland 2012-2016*, Lambda Warsaw, Association for Legal Intervention and The Diversity Workshop, Warsaw 2016, <https://interwencjaprawna.pl/wp-content/uploads/Hate-Crime-in-Poland-2012-2016.pdf>

⁷ See more: <https://www.tvn24.pl/wiadomosci-z-kraju,3/policjanci-bez-naukowego-wsparcia-ministerstwo-wycofalo-podrecznik,652240.html>

the Code of Criminal Procedure and conditional discontinuance of proceedings increased” cannot be translated as a positive sign of racial attacks being on the decrease.

When it comes to the numbers and sentences for the 3 types of racially motivated offences in the Polish criminal code (i.e. Article 119 § 1, 256 and 257⁸) we see the following trends:

- In 2017, 22%, and, in 2016, 31% of cases of crimes falling under Article 256 and 257 were dismissed by the court;
- Only in 8 cases in 2016 (out of 145) and 5 cases in 2017 (out of 120) did the court sentence the perpetrator to isolation and the duration of such imprisonment was 1 year only in one of those cases, while other sentences ranged from 3 months to 1 year.
- As far as Article 119 of the Polish Criminal Code is concerned, the tendencies are similar when it comes to the year 2016. Only in 6 (out of 72) cases did the court sentence the perpetrator to imprisonment, but only in 1 case the length of the penalty was between 1 and 2 years. In all other cases, it was less than 1 year. The situation changed in 2017, though, when imprisonment was ruled for in 29 cases (out of 116) imprisonment. However, its duration did not change – in 3 cases between 1 and 2 years, in the rest of them 1 year or less than that.

All data presented above (they are the latest data available to the general public) proves that the number of court rulings in hate crime cases in Poland is relatively low, and that courts are not particularly harsh on the perpetrators.

According to data of Polish Police, the number of hate crimes (falling under Articles 256 and 257 of the Polish Criminal Code, as data regarding Article 119 § 1 are not publicly available)⁹ for the year 2016 reflects, to some extent, the numbers from years 2013-2014. Consequently, the increase in the number of registered hate crimes is hardly visible in official data. Of course, we could be dealing with the phenomenon of hidden number here. In spite of this, it is impossible to agree with the Polish government that the level of trust put by the people in the police had increased between the years 2014 and 2016. In the period from 2010 to 2016, it remained on the same level (according to data provided by the police¹⁰). However, when it comes to representatives of the most vulnerable groups that could suffer from hate crimes, the trend is different. According to information received from clients of the Association for Legal

⁸ All data presented below were gathered from statistical data from the Polish Ministry of Justice, available from its website: <https://isws.ms.gov.pl/pl/baza-statystyczna/opracowania-wieloletnie/download,2853,43.html> [retrieved on: 27.06.2019].

⁹ Data from the website of the Polish Police: <http://statystyka.policja.pl/st/kodeks-karny/przestepstwa-przeciwko-13/63613,Publiczne-propagowanie-faszyzmu-nawolywanie-do-nienawisci-art-256.html> and <http://statystyka.policja.pl/st/kodeks-karny/przestepstwa-przeciwko-13/63614,Publiczne-zniewazenie-lub-naruszenie-nietykalnosci-z-powodow-narodowosciowych-ar.html> [retrieved on: 27.06.2019].

¹⁰ <http://www.policja.pl/pol/aktualnosci/122393,Wiekszosc-Polakow-deklaruje-swoje-zaufanie-do-Policji.html>

Intervention, immigrants and Muslims among them, since 2015 they have been feeling less protected by the police and they became even more reluctant to report any hate crime cases to the police.

Data regarding prosecution related to hate crimes are not available to the general public, so it is impossible to comment on them, even more so due to the fact that the report published by the Polish government cites no exact data.

It is also worth mentioning that in November 2016 the Human Rights Department in the Ministry of Internal Affairs was liquidated. It was the sole governmental agency which monitored hate crimes in Poland, developed a training methodology for the Police and had trained over 87 000 policemen on hate crimes¹¹. No other agency has taken over the tasks of the Department as of July 2019.

As regards the recommendation to improve programmes aimed at raising the level of public awareness and programmes promoting international dialogue, tolerance, history, and the culture of ethnic and national minorities.

In spite of the many initiatives aimed at raising public awareness, developing tolerance, and countering hate speech indicated in the report published by Polish authorities, there has been an increase of disconcerting attitudes of Polish citizens towards foreigners in the period to which the report pertains. The underlying causes of this phenomenon may be found in the way migrants and refugees are discussed by politicians.

Ever since the refugee crisis whose climax was in 2015, foreigners, including economic migrants and people forced to leave their country, have become the object of public debate evoking strong emotions. They were made an important point of political campaigns as part of the parliamentary elections in 2015. The refugee crisis has been compared to a natural disaster or a spreading disease. Such fear-based narration put emphasis on the alleged threat to sovereignty and violence, including sexual violence caused by foreigners. A prominent politician even went as far as to point out disease-related threats "connected with" the inflow of refugees: "There have, after all, already been cases of very dangerous diseases which we have long not seen in Europe: cholera on the Greek island, dysentery in Vienna, and some mention other, even more severe, diseases. There are also some geographical differences to consider, too – various parasites and protozoans which pose no threat to such people may

¹¹ See more: <https://oko.press/pis-celowo-rozmontowal-system-zwalczania-przestepstw-nienawisci-ruchow-neofaszystowskich/>

be dangerous here.” The same politician also rose safety-related concerns: “This is all about our day-to-day safety. There is no reason for us to drastically reduce the standard of life for Poles¹²,”

All comments made by politicians have had a great impact on the attitude of the general public towards refugees and, in a way, constituted approval of attacks on them. It should be borne in mind that such words were spoken by people with a degree of authority. And if a figure of authority says that refugees pose a threat, the society treated them as such. This has led to an increase of violence due to racism and xenophobia.

As regards the recommendation to refrain from detaining asylum-seeking minors and remove obstacles making it more difficult for people from other countries to exercise economic, social, and cultural rights and the recommendation to intensify efforts aimed at implementing laws and a Convention for combating direct and indirect racial discrimination affecting such people, particularly in terms of education, accommodation, and employment.

I. Detention of children

Accompanied and unaccompanied children alike are still being placed in detention centers in Poland. In the reporting period, around 20-25% of all detained foreigners annually were under 18 years of age¹³. The average duration of their detention varied in each detention center, but a total average length of child detention exceeds 80 days¹⁴. 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 families¹⁵.

Courts rarely request an expert opinion to analyze what impact detention would have on the well-being of an individual child. It often leads to a considerable deterioration of their psychological well-being while in detention¹⁶. 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).

¹² See more: OKO.press, <https://oko.press/chodzi-o-zwykle-codzienne-bezpieczenstwo-polakow-kaczynski-mowi-o-uchodzcach-narusza-bezpieczenstwo-obcych-ktorzy-juz-polsce-sa/>

¹³ 2016- 26 % of detainees were minors, 2017- 24 % of detainees were minors. Source: Border Guards

¹⁴ Source: Border Guards

¹⁵ 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.

¹⁶ 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

A very worrying sign is that in a recent governmental migration policy draft, which was made public in July 2019, the Ministry of Internal Affairs recommends the enhancement of the potential of detention centers through the development of their infrastructure¹⁷.

II. Discrimination in terms of employment

The Association for Legal Intervention would like to draw attention to the fictitious nature of protection of migrant employees against being exploited by Polish employers. There is a great number of foreigners reporting exploitation at the hands of Polish employers but the current legal system makes it virtually impossible for them to level any claims against them because if their employment relationship with their current employer is terminated, they lose the basis for their stay in Poland¹⁸. Consequently, few people discriminated against at work are willing to level a claim against their current employer due to the risk of losing their job and, as a result of this, their right to stay in Poland.

The National Labour Inspectorate is of little help for foreigners as it focuses on verifying the legality of their work in Poland rather than on protecting migrant employees against being exploited by Polish employers. Polish authorities have realised that it is necessary to limit the involvement of the National Labour Inspectorate in activity aimed at verifying the legality of foreigner stay in Poland and to intensify activities consisting in verification of adherence to Labour Law where immigrants are employed. This striving was expressed in their plan to implement a document entitled *Polish Migration Policy – the current situation and planned activities* [„Polityka migracyjna Polski – stan obecny i postulowane działania”]¹⁹. Even though the Polish Migration Policy – the first document to outline the main directions of Polish migration-related policy - was dismissed by the government in 2016, the attitude of the authorities to that issue should nevertheless be noted.

Such a legal structure demonstrates the weakness of Polish law in this area. In formal terms, the legislator guarantees employees first and foremost the right to level claims due to any infringements of the non-discrimination at work principle; in practice, however, foreigners often cannot level such claims and seek to enforce them in view of the possible negative consequences for themselves. The situation is similar for people working under civil law agreements.

III. Proceedings for granting the right to stay and/or work in Poland

¹⁷ See: Polish Migration Policy

¹⁸ Article 121 in conjunction with Article 101 of the Act on Foreigners.

¹⁹ Implementation plan for *Polish Migration Policy – the current situation and planned activities*, point 2.3.4, pp. 48-49, http://www.migration-info.de/sites/migration-info.de/files/documents/strategiedokument_polnische_migrationspolitik.pdf

The Association for Legal Intervention believes that issues faced by foreigners as part of proceedings for granting them the right of fixed-term residence and/or work in Poland form another obstacle hindering the exercise of economic rights .

The number of foreigners applying for the right of residence in Poland has been on the increase for several years now. According to data published by the Head of the Office for Foreigners, the number of foreigners holding residence permits has increased by more than 150 thousand since 2014²⁰. In spite of such a considerable increase of the number of people applying for the right to reside and/or work in Poland, the authorities have taken no effective steps aimed at ensuring proper handling of applications filed by such foreigners. There being so many applications submitted to Voivodeship Offices, they cannot handle the relevant proceedings in line with the standards outlined in regulations pertaining to administrative proceedings, particularly as regards deadlines.

Drawn-out proceedings do have an impact on whether or not foreigners are able to make use of rights guaranteed to them because it is very often the case that foreigners are not allowed to legally work in Poland while their proceedings are pending. As a result of this, foreigners have no means of earning a living while they wait for a permit to be issued for them or are forced to start work in violation of the law, which increases the risk of them being discriminated against or facing other infringements of employee rights.

IV. Informational notices regarding legalisation procedures

As far as legalisation procedures are concerned, there is one more issue which raises doubts related to combating racial discrimination: the problem of informing foreigners of their rights and obligations as part of applying for a residence permit.

The body handling administrative proceedings related to, for example, awarding the foreigner the right of fixed-term residence, the right of permanent residence, or the right of a long-term EU resident is obliged to inform a given foreigner, in writing and in a language which they can understand, about the mode of such proceedings and their rights and obligations²¹. The legal instrument proposed by the Polish legislator has the form of a guarantee, i.e.: it is intended to supplement the obligation of administrative bodies to ensure that no party to administrative proceedings has to bear the negative consequences of not knowing the law.

In spite of this and in spite of the relevant obligation being shaped as it is, the authorities only have informational notices regarding legalisation procedures only in several languages: Polish, English,

²⁰ <https://udsc.gov.pl/300-tys-cudzoziemcow-z-pozwoleniami-na-pobyt-w-polsce>

Data regarding migration to Poland can be found at: <https://migracje.gov.pl>

²¹ Article 7(1) of the Act on Foreigners.

French, Russian, and Ukrainian²². In practice, this means that foreigners who do not speak one of the above-indicated languages have no equal access to services rendered by migration staff, which – due to them being consequently unaware of their rights and obligations - may lead to negative residence-related consequences. The Association for Legal Intervention believes this amounts to direct discrimination.

V. Education in guarded centres for foreigners

Data published by the Polish government as part of its report regarding the right of underage foreigners to education in guarded centres for foreigners do not correspond to data gathered by the Association for Legal Intervention from publicly available sources.

In said report, Polish authorities indicate that the number of school hours per week varies from 20 to 26, depending on the level of education. However, according to publicly available information acquired by the Association for Legal Intervention, the number of lessons in the Guarded Centre for Foreigners in Biała Podlaska is, regardless of the level of education, 12 (one lesson = 45 minutes), i.e. it is almost two times lesser than at the Guarded Centre for Foreigners in Kętrzyn where it is 27 school hours per week²³.

Similarly, public information gathered by the Association for Legal Intervention indicates that children are divided into three groups in guarded centres for foreigners, depending on their level of education (graded 1-3, graded 4-8, and high school)²⁴ while Polish authorities claim in their report that there is a division of children into four groups in place, based on the level of their knowledge. How much access foreign children have to education is unreasonably based on the centre they end up in.

Information which the Association for Legal Intervention obtained from foreigners themselves indicates that the level of education provided at such centres often does not match the level of knowledge of children and their proficiency with Polish. The Association for Legal Intervention believes that a stay in a guarded centre may decrease the educational opportunities of foreign children.

VI. Accommodation

No aspects of combating accommodation-related discrimination were mentioned by Polish authorities in the report so we would like to point out several issues connected with access to accommodation which the Association encounters.

²² A list of cautionary notices available at the website of the Head of the Office for Foreigners – a 2nd instance body as far as matters related to legalising one's stay in Poland are concerned: <https://udsc.gov.pl/cudzoziemcy/obywatele-panstw-trzecich/pouczenie-dla-cudzoziemca-o-zasadach-postepowania-prawach-i-obowiazkach/>

²³ Reply from the Border Guard Headquarters of 24 January 2018 [sic!] to a request of the Association for Legal Intervention dated 15 January 2019 r. for access to public information.

²⁴ Ibidem.

Research carried out by the Association for Legal Intervention indicates that as far as access to residential premises for foreigners is concerned, discrimination is a serious problem²⁵. Many foreigners to whom international protection has been awarded are at risk of homelessness or actually experience homelessness. The underlying causes of this are strong negative stereotypes about and aversion to foreigners. Those often make it more difficult for them to find accommodation on the open market. In addition to that, the provisions of the law effectively make it impossible for foreigners to apply for a social or council flat from municipal resources. According to research carried out by the Institute of Public Affairs, only 20% of refugees occupy secure and appropriate premises²⁶. Similar conclusions can be drawn from the monitoring of refugee residential conditions whose results were published by the Association in 2015²⁷. Several such conclusions are presented below:

- "Refugees in Poland live in constant fear of having no roof over their heads. Problems related to not being able to find or keep accommodation very often make them decide to leave Poland and seek international protection in another EU state,
- Refugees usually live in substandard conditions which are an affront to their human dignity and which have a very considerable negative influence on their integration potential. There is mould on the walls of their flats, it is damp there, significant repairs, sometimes even major renovation, are urgently required, and essential pieces of furniture are missing – mostly a separate bed for every resident. Their flats are usually also overcrowded,
- Refugees typically have to move house many times and the conditions in subsequent flats do not improve; on the contrary, they deteriorate. The necessity to move house often follows from a worsening of their financial standing (as a result of being granted the right to stay in Poland for humanitarian reasons or due to their Individualised Integration Programme coming to an end or due to losing their job) or from the owner of the flat deciding to use it for other purposes.

²⁵ K. Wencel, *Dyskryminacja cudzoziemców w dostępie do usług mieszkaniowych w Polsce. Między teorią a praktyką*, [Discrimination of foreigners with regard to access to accommodation in Poland: between theory and practice] [in:] W. Klaus (ed.), *Różni, ale równi. Prawo a równe traktowanie cudzoziemców w Polsce* [Different yet equal. The law and equal treatment of foreigners in Poland], Stowarzyszenie Interwencji Prawnej, Warszawa 2013, <http://interwencjaprawna.pl/wp-content/uploads/rozni-ale-rowni.pdf>

²⁶ K. Wysińska, *Gdzie jest mój dom? Bezdomność i dostęp do mieszkań wśród ubiegających się o status uchodźcy, uchodźców i osób z przyznaną ochroną międzynarodową w Polsce* [Where do I live? Homelessness and access to accommodation among people applying for the refugee status, refugees, and people to whom international protection has been granted in Poland], A report prepared for the Regional Representative of the UN High Commissioner for Refugees (UNHCR) pertaining to Central Europe, Warszawa 2013, s. 11-12, <http://www.unhcr-centraleurope.org/pl/pdf/co-robimy/promowanie-integracji/bezdomnosc-uchodzcow-w-polsce-2012.html>.

²⁷ A. Chrzanowska, I. Czerniejewska, *Mieszkamy tutaj, bo nie mamy innego wyjścia... Raport z monitoringu warunków mieszkaniowych uchodźców w Polsce*. [We live here for not having any choice... Report regarding residential conditions of refugees in Poland] Analyses, reports, and expert opinions no. 2/2015, Stowarzyszenie Interwencji Prawnej, Warszawa 2015, <https://interwencjaprawna.pl/docs/ARE-215-monitoring-warunkow-mieszaniowych-uchodzcow.pdf>

- Refugees find it difficult to find accommodation on the open market not only because they have limited resources but also due to Poles being prejudiced against them and not willing to lease a flat to them.
- Finding accommodation for a family with many children poses a huge challenge. Refugees cannot afford large flats and the owners of smaller ones do not agree to so many people living in them.
- The situation of single mothers is particularly difficult. They face extreme poverty in view of not being able to find a place for themselves on the job market (they have nobody to look after their small children).
- Access to council flats for foreigners has been improving in recent years (...) but it is still very difficult. Procedures for awarding such accommodation are very complicated and unclear. (...).
- Conditions in flats granted from the resourced of the province/city are not much better and sometimes even worse than in flats leased on the open market. While the rent is relatively low, the fact that there is no central heating and that the flat needs to be heated with electricity results in high upkeep.”²⁸

If a person is to integrate with the society, they have to have a secure and appropriate roof over their head – this is a necessary condition and this is why the authorities should carry out intensive activities in the field of access to accommodation for foreigners in Poland.

As regards the recommendation of the Commission for the Ratification of International Agreements

In the opinion of the Association for Legal Intervention, if more comprehensive protection against discrimination is to be ensured, it would be advisable for Poland to ratify not only the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families but also the Third Optional Protocol on a communications procedure and the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights.

If those documents are ratified, all people who have been discriminated against as regards their rights under the Convention on the Rights of the Child or the International Covenant on Economic, Social and Cultural Rights will be able to make use of procedure for filing complaints within the structures of the UN.

²⁸ Ibidem, pp. 53-54.

As regards the recommendation to consult and extend the dialogue with civil society organisations, particularly ones striving to protect human rights, especially as far as countering racial discrimination is concerned.

Polish authorities presented the implementation of this recommendation of the Committee in very general terms. Even though a draft of their report was indeed presented to NGOs for opinion, the Association has some doubt as to whether or not the Polish government has really taken their suggestions into account.

We would like to point out that the Association for Legal Intervention has made a number of comments regarding the draft report in November 2017. The Polish government did not take any standpoint with regard to those and they were not reflected in the final version of its report submitted to the Committee. We therefore believe that asking us to give our opinion about the report was a mere formality and that we had no real impact on said report.

The Association would like to make the Committee aware of the problems faced by NGOs striving to ensure that the rights of foreigners are respected and combating discrimination and hate crimes.

In particular, Polish authorities withheld competitions using EU funds granted to our country for those purposes (the Asylum, Migration, and Integration Fund) in 2016 which has led to there being no funding for social organisations promoting the integration of migrants and has caused problems related to having to limit or stop activities benefitting migrants. The consequences of the Ministry of Internal Affairs and Administration stopping its co-funding of NGOs with the use of funds from the EU were presented in the following publication: "Fundusze europejskie i ich rola we wspieraniu integracji cudzoziemców w Polsce"²⁹. The most important ones include: reduced legal assistance and integration for foreigners, limited possibility of monitoring whether or not foreigner rights are respected and fewer strategic litigation opportunities in cases having a major impact on the protection of such rights, no continuity and stability of integration-related activities carried out by social organisations and local governments, and the dissolution of competent teams whose members included lawyers, attorneys, psychologists, integration counsellors, translators, etc.

Due to there being no such funding, many organisations have lost their financial liquidity and, consequently, had to downsize which led to them losing competent experts specialising in laws regarding foreigners.

²⁹W. Klaus, E. Ostaszewska-Żuk, M. Szczepanik, *Fundusze europejskie i ich rola we wspieraniu integracji cudzoziemców w Polsce* [EU funds and their role in facilitating the integration of foreigners in Poland], https://interwencjaprawna.pl/wp-content/uploads/2017/09/raport_po-FAMI_net.pdf

The implementation of the provisions of the Article 5 – the right to security of person and protection by the State against violence or bodily harm, whether inflicted by government officials or any individual group or institution³⁰.

I. Limitations in accessing the asylum procedure

Despite the amendments introduced to the Act on granting protection to foreigners within the territory of the Republic of Poland, introducing procedural guaranties to people with specific needs, since 2015 the Association for Legal Intervention has noticed very serious limitations in accessing the asylum procedure, especially at the Terespol border crossing.

The vast majority of applications for international protection are submitted at the rail border crossing in Terespol, on the Polish-Belarusian border (in the years 2015-2016 they accounted for 70% of all the applications). This state of affairs has persisted since the late 1990s.

The year 2015 marked the beginning of increased difficulties with the reception of asylum applications by the Polish Border Guard at this very border crossing. Border guards seemed to turn a deaf ear to requests for asylum, which, together with a visa, is a prerequisite for legal border crossing. Hence the large numbers of people who were refused entry to Poland on the grounds of incomplete documents: in 2015 on the Belarusian border 3.399 refusals were issued to Russian citizens, in 2016 the number increased to 74.391, the prime reason behind the refusals being the lack of document granting entry. Many refugees made multiple attempts to submit the application – with one reported record holder covering the distance from Brest to Terespol over 60 times. A lot of them finally succeeded in entering Poland after their application was eventually received, which only confirms that they should have been admitted in the first place³¹. The conversations with the foreigners camping in the Belarusian Brest (a lot of them, lacking any livelihood, ‘live’ at the railway station) waiting to be admitted to enter Poland revealed that they were entitled to apply for international protection – their stories of persecution in the country of origin bore enough probability to justify the reception of asylum application for further review by a relevant body (in the case of Poland, the Office for Foreigners)³².

³⁰ Based on W. Klaus, *Closing gates to refugees. The causes and effects of the ‘2015 migration crisis’ on border management in Hungary and Poland*, “The Yearbook of the Institute of East-Central Europe” 2017, vol. 15(3), s. 41-64.

³¹ A. Chrzanowska et al., *At the border. Report on monitoring of access to the procedure for granting international protection at border crossings in Terespol, Medyka, and Warszawa-Okęcie Airport*, Warsaw: Association for Legal Intervention, 2016, pp. 35-45, <http://interwencjaprawna.pl/en/files/at-the-border.pdf> [2017-08-11].

³² M. Górczyńska, M. Szczepanik, *A road to nowhere. The account of a monitoring visit at the Brześć-Terespol border crossing between Poland and Belarus*, Warsaw: Helsinki Foundation for Human Rights, 2016, pp. 10-13, <http://www.hfhr.pl/wp-content/uploads/2016/11/A-road-to-nowhere.-The-account-of-a-monitoring-visit-at-the-Brze%C5%9B%C4%87-Terespol-border-crossing-point-FINAL.pdf> [2017-08-11].

In 2016, Mariusz Błaszczak, then Minister of Interior, commented it in the following words: We will not succumb to pressure from those who wish to precipitate a migration crisis. Our policy is demonstrably different. The Polish border is sealed off completely. There is no war in Chechnya, unlike several years ago. (...) I perceive it as an attempt to create a new migration route for influx of Muslims into Europe. (...) As long as I'm the minister of interior, as long as Law and Justice is in power, we will not expose Poland to a terrorist risk³³.

The year 2017 saw even more restrictions in receiving asylum applications in Terespol. Their number dropped by 78 % in comparison with the year 2016. Only 627 applications were received covering 1.903 individuals (in 2016 there were 2.827 applications for 8.305 people), which means that only 2-3 families were allowed to enter Poland daily. Altogether, in the whole country, there was a 56 % drop in the number of received asylum applications³⁴. The situation resembles that what is happening in Hungary – although no official restrictions were issued with regard to the number of accepted applications, they are clearly administered.

The refusal to receive asylum applications and daily expulsions of big groups of foreigners prompted Polish and Belarusian human rights activists to take the matter to the ECtHR. In June 2017, the Court applied Rule 39 of the Rules of Court with regard to six Chechen families who had been unsuccessfully trying to reach Poland or submit the asylum application and ordered against sending them back to Belarus. All subsequent cases followed a similar pattern henceforth – on the day of issuing Rule 39 by the ECtHR applicants were sent back to Belarus, despite the decision of the Court being delivered in no time (within 4 hours of the application being submitted) and before the departure of the return train to Brest, which usually carries the expelled refugees.

In the end, Polish authorities concurred with the Court's decision to permit entry to Poland with regard to only two cases. In four cases the government decided to ignore the Court's decision and the refugees have never been allowed to enter Poland. To counteract these practices, the ECtHR in the subsequent decisions under Rule 39 (or when prolonging the ones issued earlier) amended the wording of the requirement directed at the Polish authorities. In the first notes it ordered 'that the applicants should not be removed'³⁵ before the date appointed by the Court. In the later ones it added an additional

³³ <https://www.tvn24.pl/wiadomosci-z-kraju,3/szef-mswia-mariusz-blaszczak-o-czeczach-na-polskiej-granicy,672450.html>

³⁴ *Biuletyn statystyczny Straży Granicznej za 2017 r.*, p. 8, <http://strazgraniczna.pl/download/1/21256/Biuletynza2017rok.pdf> [2019-07-01].

³⁵ All quotations taken from original documents disclosed to the author by organisations working for refugees' protection. To prevent disclosing personal data, the quotations have no references to specific persons or cases.

recommendation: 'When present at the Polish border checkpoint – the applicants' motion for asylum should be received and registered by the Board Guard and forwarded for examination by the competent

authorities (the Head of the Office for Foreigners). Pending the examination of the asylum application, the applicants should not be sent back to Belarus'. The Polish authorities are yet to change their practices.

The response of the Polish government to the request of the ECtHR followed two patterns. On the one hand, efforts were made to prove that the foreigner was not on the Polish territory (although they clearly were at the Polish railway station in Terespol, which is well over one kilometre away from the physical border on the river Bug): 'the obligation of not expulsion or removal of a person from the state to another can be realized only in a person entered and is present on the territory of the obliged state'. What is more, the Polish government claimed that the applicants did not at all declare at the border any desire to apply for asylum (despite some of them holding a completed asylum application) and quoted only economic reasons for their arrival. In such circumstances the government warned the Court not to be fooled by migrants, since 'the interim measure procedure is being abused in order to extort from the Polish Border Guard officers a decision permitting entry to Poland, despite lack of justification for such entry'.

The situation related above is the first case in the history of the country of the Polish authorities ignoring the interim measure. Even the Hungarian government complied with the ECtHR recommendations in similar cases³⁶. The court proceeds Polish cases exceptionally fast. In August 2017 alone three complaints relating to Rule 39 have been communicated to the Polish government³⁷.

Number of foreigners, who apply for international protection and who were granted any form of international protection in Poland 2012-2017.

	2012	2013	2014	2015	2016	2017
No of asylum seekers	10753	14981	6621	12325	12319	5078
No of people who received any form of international protection	519	723	732	637	390	559

Source: Office for Foreigners (<https://udsc.gov.pl/statystyki/raporty-okresowe/zestawienia-roczne/>)

II. Free of charge legal assistance

³⁶ Hungary: *Turbulent 50 days...*, op. cit.

³⁷ M.K. v. Poland (40503/17) <http://hudoc.echr.coe.int/eng?i=001-176229>; M.K. and Others v. Poland (43643/17) <http://hudoc.echr.coe.int/eng?i=001-176472>; M.A. and Others v. Poland (nr42902/17) <http://hudoc.echr.coe.int/eng?i=001-176484> [2017-08-24].

Polish government indicates in point 113 of the Report that the amendment of the Act on granting protection to foreigners within the territory of the Republic of Poland introduced an information and legal advice system for the applicants that is free of charge. The Association for Legal Intervention would like to draw attention to the fact that foreigners applying for international protection are entitled to free-of-

charge legal assistance only as part of appeal procedure before the Council for Foreigners (Article 69a of the Act on Granting Protection to Foreigners). This means that there are no guarantees regarding access to free-of-charge legal assistance when submitting one's application for international protection or as part of proceedings before first instance bodies.

The implementation of the provisions of the Article 5 – economic, social, and cultural rights

I. Individualised Programme for Integration

Foreigners who have been granted the refugee status or complementary protection in Poland and members of their families residing in Poland under a temporary residence permit granted as part of the family reunification programme are covered with an Individualised Programme for Integration (IPI)³⁸. The Association is of the opinion that effective integration is a condition which needs to be met before citizens of other countries are effectively able to make use of economic, social, and cultural rights. This is why we would like to share our opinion about the functioning of said programme.

The Individualised Programme for Integration is, sadly, not tailored to the individual needs of particular foreigners. The Programme very often consists in merely disbursing benefits to foreigners without any social work with them. Many foreigners covered by IPI find it difficult to find employment and accommodation. Few of them may hope for a council or social flat and the amount of money they receive as part of IPI is insufficient to meet their basic needs, including, first and foremost, their need to find a flat they could afford on the open market.

The fact that the period during which integration-related assistance is provided is too short is a separate issue. 12 months are not enough to find a place for oneself in a new reality and to start making a living in a society which still perceives foreigners as intruders. It should also be pointed out that there are no statutory regulations regarding preliminary integration of foreigners which means that state bodies are *de facto* not obliged to carry out such activities at all.

Additionally, there is no state programme in Poland for foreigners who are not involuntary migrants whose objective would be to support them in their striving towards integration with the Polish society. There being no integration-related support from Polish authorities, citizens of other countries may find it difficult to exercise their economic, social, and cultural rights.

³⁸ Article 91 et seq. of the Act on Social Aid of 12 March 2004 (consolidated text: Journal of Laws of 2018, item 1508)

What is more, it should also be pointed out that the Act on Foreigners which became effective as of 1st May 2014 introduced a new type of residence to Polish law – residence permit for humanitarian considerations³⁹. People to whom Poland extends this type of protection are not covered by IPI, even though – just like foreigners with the refugee status or those to whom complementary protection has been granted - they are involuntary migrants. Their right to social aid is limited solely to assistance in the form of a shelter, necessary clothing, and a specific-purpose allowance. We believe that depriving foreigners allowed to reside in Poland for humanitarian reasons of some of their rights is unreasonable. In the Association’s opinion, people allowed to reside in Poland due to humanitarian considerations should have full access to social benefits, including the right to take part in IPI, because ensuring integration for people who cannot be obliged to return to their own country seems immensely important in both social and economic terms.

II. Family benefits

Indirect discrimination affects some foreigners applying for family benefits, mostly single mothers who were forced to leave their home country in search of a better place for themselves and their children because of domestic violence.

According to current laws, a person bringing up a child on their own is not entitled to a family allowance if no child support has been ruled for in favour of the child under an executive title from a court or approved by a court unless both of the child’s parents are dead or one of their parents is dead or the child’s father is unknown, a petition to rule for child support from the other parent has been dismissed, or the court has obliged one of the parents to bear all costs connected with raising the child without requesting child support from the other parent⁴⁰.

In practice, the above indicated regulation deprives many foreigners to whom international protection has been granted of their right to family benefits because, in view of their legal and actual situation, they are not able to ask the authorities in their country of origin for the required documents. Sometimes people applying for family allowance cannot sue the other parent of their child for child support because this would lead to them revealing their location and could put the plaintiff and their child(ren) at risk of harm from the other parent or that other parent’s family. Due to this, such people cannot, for reasons beyond their control, present documents requested by the relevant administrative bodies and, as a result of this, are denied access to family benefits.

In the Association’s opinion, requiring documents which they cannot reasonably present from people to whom international protection has been extended amounts to indirect discrimination. The

³⁹ Article 348 et seq. of the Act on Foreigners of 12th December 2013 (consolidated text: Journal of Laws of 2018, item 2094)

⁴⁰ Article 7(5) of the Family Benefits Act of 28th November 2003 (consolidated text: Journal of Laws of 2016, item 1518, as amended).

regulation in question seems neutral because it requires that an executive title from a court or approved by a court needs be presented by all people raising a child on their own and wishing to apply for a family allowance; however, in practice, there are some social groups, including people under international protection, who cannot submit such required documents.

The implementation of the provisions of the Article 5 – other civil rights

In its report, the Polish government indicates that in a situation where it is impossible to oblige a foreigner to return to their own country for reasons beyond the control of the relevant body and the foreigner themselves, such a person is granted tolerated residence (point 116).

It should be pointed out that foreigners to whom a tolerated residence permit has been granted due to it being impossible to expel them find themselves in a very difficult legal situation – even though they are not at fault, as clearly indicated in the rules of such residence. Such a person does not have the right to apply for any of the documents issued by Polish authorities to foreigners residing in Poland⁴¹ and also has no right to apply for a permanent residence permit⁴² or for a long-term EU resident stay in Poland⁴³. As a result of this, they have no right to apply for Polish citizenship in the administrative mode.

A foreigner under tolerated residence due to it being impossible to expel them are deprived of their right to travel outside of Poland due to the fact that they have no travel documents which, together with a residence card, would make it possible for them to leave Poland. Such a document – as has already been stated elsewhere – is issued neither by Polish authorities nor by the authorities of that foreigner's country which refuse to confirm their identity.

In addition to not being able to travel freely, a foreigner under tolerated residence has very limited access to social aid – only the right to a shelter, a meal, necessary clothing, and a specific-purpose allowance⁴⁴.

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⁴¹ Documents issued to foreigners and entities authorised to receive them are listed in Article 226 et seq. of the Act on Foreigners.

⁴² Article 195(6)(b) of the Act on Foreigners.

⁴³ Article 213(1)(1) of the Act on Foreigners.

⁴⁴ Article 5(1)(b) of the Act on Social Aid.