



COUNTRY REPORT

IMMIGRATION DETENTION IN POLAND:

SYSTEMATIC FAMILY DETENTION AND LACK OF
INDIVIDUALISED ASSESSMENT

October 2018



GLOBALDETENTIONPROJECT

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THE GLOBAL DETENTION PROJECT MISSION

The Global Detention Project (GDP) is a non-profit organisation based in Geneva that promotes the human rights of people who have been detained for reasons related to their non-citizen status. Our mission is:

- To promote the human rights of detained migrants, refugees, and asylum seekers;
- To ensure transparency in the treatment of immigration detainees;
- To reinforce advocacy aimed at reforming detention systems;
- To nurture policy-relevant scholarship on the causes and consequences of migration control policies.

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Front cover image: Przemysl Guarded Centre for Aliens, ©Polish Border Guard

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CONTENTS

Glossary	5
Key Concerns	6
1. Introduction	7
2. Laws, Policies, Practices	9
2.1 Key norms	9
2.2 Grounds for detention	9
2.3 Asylum seekers	10
2.4 Children	11
2.5 Other vulnerable groups	14
2.6 Length of detention	14
2.7 Procedural guarantees	15
2.8 Detaining authorities and institutions	17
2.9 Non-custodial measures	17
2.10 Regulation of detention conditions	18
2.11 Domestic monitoring	19
2.12 International monitoring	20
2.13 Criminalisation	21
2.14 Cost of detention	16
2.15 Trends and statistics	21
3. Detention Infrastructure	22
3.1 Summary	22
3.2 Detention facilities	24
3.3 Conditions in detention	24



GLOSSARY

CAT	Committee against Torture
CERD	Committee on the Elimination of Racial Discrimination
CPT	European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment
CRC	Committee on the Rights of the Child
ECHR	European Convention on Human Rights
ECtHR	European Court of Human Rights
FRA	Fundamental Rights Agency
GDP	Global Detention Project
HFHR	Helsinki Foundation for Human Rights
HNLAC	Halina Niec Legal Aid Centre
HRC	Human Rights Committee



KEY CONCERNS

- Detention orders frequently lack individualised assessments and observers argue that detention measures are not applied as a last resort.
- Detainees are required to pay for their detention.
- The country places high numbers of families with children in detention.
- There are no well-developed mechanisms for identifying victims of violence and medical checks are not provided when entering detention.
- Although the law stipulates that asylum seekers should not be detained if detention constitutes a threat to their life or health, courts rarely consider mental health when issuing detention orders.
- While material conditions in detention are generally considered to meet basic standards, some facilities have been criticised for having prison-like environments.



1. INTRODUCTION

Poland has not faced the same immigration-related challenges that some of its European neighbours have experienced and yet public discourse in the country is rife with anti-immigrant rhetoric that portrays foreigners as security threats. Like its “Visegrad Group” counterparts—the [Czech Republic](#), [Hungary](#), and [Slovakia](#)—Poland has refused to participate in efforts to improve the EU asylum system and rejected a quota system aimed at distributing asylum seekers more evenly.¹ Poland’s interior minister has characterised refugees as a “ticking time bomb.”²

Poland refused entry to 34,485 non-EU nationals in 2016, the third highest figure amongst EU states that year.³ Very few asylum seekers are granted protection: more than 80 percent of asylum requests are rejected in the first instance while 98.6 percent are rejected upon appeal.⁴ In 2017, 5,053 people lodged applications, but only 150 were granted refugee status and 340 subsidiary protection. These developments are taking place against a backdrop of steep declines in asylum requests: there were 5,045 in 2017, down from 12,305 in 2016.⁵

Asylum seekers are routinely pushed back across country’s eastern borders and denied access to asylum procedures. This practice is especially common at the border with [Belarus](#)—at the crossing of Terespol—where asylum seekers, predominantly from Tajikistan, Georgia, and the Russian Republic of Chechnya, are illegally returned to Belarus.⁶ In 2016, the [UN Human Rights Committee](#) (HRC) expressed concern over the difficulties faced by asylum seekers seeking to apply for

¹ B. Kosztołanyi and S. Cullen, “Central European Countries to Skip Migration Summit as EU Tries to Work Out Refugee Issue,” CNN, 21st June 2018, <https://edition.cnn.com/2018/06/21/europe/hungary-slovakia-poland-czech-skip-migration-summit-intl/index.html>

² J. Cienski, “Why Poland doesn’t want refugees,” Politico, 21 May 2017, <https://www.politico.eu/article/politics-nationalism-and-religion-explain-why-poland-doesnt-want-refugees/>

³ Eurostat, “Statistics On Enforcement of Immigration Legislation,” May 2017, <https://bit.ly/2tyZZbP>

⁴ Helsinki Foundation for Human Rights “AIDA Country Report: Poland 2017 Update,” European Council on Refugees and Exiles (ECRE), February 2017, <http://www.asylumineurope.org/reports/country/poland/statistics>

⁵ Eurostat, “Asylum and First Time Asylum Applicants by Citizenship, Age and Sex. Annual Aggregated Data,” 24 August 2018, <https://ec.europa.eu/eurostat/web/asylum-and-managed-migration/data/main-tables>

⁶ Human Rights Watch, “Poland: Asylum Seekers Blocked at Border,” 1 March 2017, <https://www.hrw.org/news/2017/03/01/poland-asylum-seekers-blocked-border>; HNLAC, “Asylum Seekers in Poland: Current Trends,” September 2018

protection at the Terespol border.⁷ Several cases of push backs of Chechen asylum seekers, including three families, have been submitted to the [European Court of Human Rights](#) (ECtHR), which has granted interim measures in all of them. Poland has repeatedly refused to comply with these measures.⁸

In early 2017, the government proposed a draft amendment to the Law on Protection, which would impose detention on all individuals applying for asylum at the border, accelerate asylum proceedings at the border, and enforce removals without the possibility of appeal. The amendment also foresees development of a list of safe countries of origin, which would potentially include the [Russian Federation](#), as well as a list of safe third countries, potentially including [Ukraine](#) and [Belarus](#).⁹ Given that more than 80 percent of asylum applications in 2017 were filed by individuals of Russian (3,536 applications) or Ukrainian (668 applications) origin,¹⁰ this amendment would render the vast majority of asylum claims unfounded. As of October 2018, the amendment process was still on-going.¹¹

Poland places approximately 1,200 people in immigration-related detention each year. Although material conditions in detention centres generally meet minimum standards, observers have criticised the prison-like set up of some of these facilities. Concerns have also been expressed about the lack of consideration of “alternatives to detention,” the failure to provide separate detention decisions for children detained with their parents, the lack of adequate mechanisms to identify victims of torture or other forms of violence, and policy of requiring detainees to pay for their detention.

⁷ Committee on Human Rights, “Concluding Observations on the Seventh Periodic Report of Poland, CCPR /C/POL/CO/7,” 23 November, 2016, http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CCPR/C/POL/CO/7&Lang=En

⁸ Amnesty International, “Poland: EU Should Tackle Unsafe Returns to Belarus,” 5 July 2017, <https://www.amnesty.org/en/latest/news/2017/07/poland-eu-should-tackle-unsafe-returns-to-belarus/>

⁹ J. Bialas (Polish Helsinki Committee), “Poland: Draft Amendment to the Law on Protection of Foreigners – Another Step to Seal Europe’s Border,” European Council on Refugees and Exiles (ECRE), 10 March 2017, <https://www.ecre.org/poland-draft-amendment-to-the-law-on-protection-of-foreigners-another-step-to-seal-europes-border-op-ed-by-polish-helsinki-committee/>

¹⁰ Helsinki Foundation for Human Rights, “AIDA Country Report: Poland 2017 Update,” European Council on Refugees and Exiles (ECRE), February 2017, <http://www.asylumineurope.org/reports/country/poland/statistics>

¹¹ Interior Ministry, “Projekt ustawy o zmianie ustawy o udzielaniu cudzoziemcom ochrony na terytorium Rzeczypospolitej Polskiej oraz niektórych innych ustaw,” *Website*, <https://bip.mswia.gov.pl/bip/projekty-aktow-prawnyc/2017/24478,Projekt-ustawy-o-zmianie-ustawy-o-udzielaniu-cudzoziemcom-ochrony-na-terytorium-.html>



2. LAWS, POLICIES, PRACTICES

2.1 Key norms. The Law on Foreigners (*Ustawa o cudzoziemcach*), adopted in December 2013, overhauled Poland's legal framework governing migration. The law regulates the entry, transit, stay, and exit of non-citizens, and also contains provisions relating to immigration detention (*areszt dla cudzoziemcow*). The detention of asylum seekers is provided in the 2003 Law on Protection (*Ustawa o udzielaniu cudzoziemcom ochrony na terytorium Rzeczypospolitej Polskiej*), which has been amended several times, and which sets out the rules and procedures for granting international protection in Poland.

2.2 Grounds for detention. According to the Law on Foreigners, a non-citizen can be detained if: 1) it is probable that a return decision, with no possibility for a voluntary departure period, will be issued; 2) a return decision, with no possibility for a voluntary departure period, has already been issued and it is necessary to ensure its enforcement; 3) it is deemed necessary to ensure transfer of a person to a non-EU or Schengen country based on international agreement and an immediate transfer is not feasible; or 4) to ensure transfer to an EU country under the [Dublin Regulation](#) if there is a severe risk of absconding, an immediate transfer is not feasible, non-custodial measures are deemed inadequate, and the person has failed to leave Polish territory within a specified period (Article 398(a)).

In 2016, the HRC expressed concern at the high number of migrants and asylum seekers, including children, detained in Poland and urged the country to refrain from detaining non-citizens and, if detention is imposed, to ensure that the measure is reasonable, necessary, and proportionate in the individual circumstances of the case.¹² Similar concerns have also been expressed by civil society organisations: in 2017, the [Helsinki Foundation for Human Rights](#) (HFHR) noted that detention is not used as a measure of last resort,¹³ while in 2010, a study by the [Halina Niec Legal Aid Center](#) (HNLAC) revealed that the grounds and justifications given in court rulings were often extremely similar, indicating an insufficient individual assessment of the specific circumstances in each case.¹⁴

¹² Committee on Human Rights, "Concluding Observations on the Seventh Periodic Report of Poland, CCPR/C/POL/CO/7," 23 November 2016, <https://www.ohchr.org/EN/Countries/ENACARRegion/Pages/PLIndex.aspx>

¹³ Helsinki Foundation for Human Rights "AIDA Country Report: Poland 2017 Update," European Council on Refugees and Exiles (ECRE), February 2018, <http://www.asylumineurope.org/reports/country/poland/>

¹⁴ Halina Niec Legal Aid Center (HNLAC), "Raport o stosowaniu detencji wobec osob starajacych sie o nadanie statusu uchodzcy w Polsce," December 2010, http://www.pomocprawna.org/images/stories/pomoc_uchodcom/Raport_o_detencji.pdf

2.3 Asylum seekers. The December 2015 amendment to the Law on Protection transposed the [EU \(Recast\) Reception Conditions Directive](#) and the Dublin III Regulation. This amendment modified the grounds for the detention of asylum seekers, mirroring those provided for in the Reception Conditions Directive. Accordingly, an applicant for international protection may be detained: 1) when it is necessary to establish their identity; 2) in order to gather information regarding their application for international protection, which could not be obtained in the absence of detention, in particular when there is a risk of absconding; 3) if the non-citizen is in pre-removal detention in accordance with the [EU Returns Directive](#) and had previously had the opportunity to apply for asylum and it can be substantiated that they are making the application for international protection purely in order to delay or frustrate the enforcement of the return decision; 4) for state security or public order reasons; or 5) in accordance with the Dublin Regulation, when there is a serious risk of absconding but an immediate transfer is not feasible (Article 87(1)).

The risk of absconding is determined to exist if the applicant for international protection does not have their identity documents; unlawfully crossed or attempted to cross the state's border (unless they arrived directly from a territory where their life or freedom was threatened and showed viable reasons for their irregular entry and applied immediately for asylum); or they entered Poland during the period of an entry ban (Article 87(2)).

A controversial ground that had been frequently used to justify detention of asylum seekers was removed in the 2015 amendment to the Law on Protection. It permitted detention in order to prevent the abuse of asylum proceedings. A 2010 assessment of detention orders by HNLAC revealed that authorities tended to conflate irregular border crossings with the abuse of asylum proceedings, and found that it was used to justify detention measures in 24 of 46 cases assessed by the organisation.¹⁵

Under the Law on Foreigners (Article 406(1)(2)) and the Law on Protection (Article 88a(3)), asylum seekers should not be detained if detention constitutes a threat to their life or health. Asylum seekers with disabilities are also supposed to be exempt from detention (Article 88(a)(3)). However, the HFHR reports that in practice poor mental or psychological health is very rarely accepted by courts as sufficient grounds for not placing an individual in, or releasing an individual from, immigration detention. It is the physical, rather than the psychological, condition of migrants and asylum seekers that is more often taken into consideration by courts.¹⁶

In 2013, the [UN Committee against Torture](#) (CAT) expressed concern that asylum seekers, including children, were detained in guarded centres in prison-like

¹⁵ Halina Niec Legal Aid Center (HNLAC), "Raport o stosowaniu detencji wobec osob starajacych sie o nadanie statusu uchodzczy w Polsce," December 2010, http://www.pomocprawna.org/images/stories/pomoc_uchodcom/Raport_o_detencji.pdf

¹⁶ Helsinki Foundation for Human Rights "AIDA Country Report: Poland 2017 Update," European Council on Refugees and Exiles (ECRE), February 2017, <http://www.asylumineurope.org/reports/country/poland/>

conditions prior to their expulsion, and recommended that Poland refrain from detaining them.¹⁷

In 2016, Poland detained a total of 603 asylum seekers, compared to 246 in 2017—figures that constituted approximately five percent of the total number of people seeking international protection in these two years.¹⁸

2.4 Children. Polish legislation lays down different rules on the detention of children depending on whether the child is an asylum seeker and the age of the child. Under the Law on Protection, unaccompanied child asylum seekers may not be detained (Article 88(a)(3)(3)). Rather, they are to be placed in foster care or in a care-educational shelter (Article 62). However, according to the Law on Foreigners, if applicants for international protection refuse to undergo medical examinations to determine their age, they are to be automatically considered adults (Article 397(6)).

The Law on Foreigners fails to prohibit the detention of unaccompanied children, though it does prohibit the detention of children under the age of 15. Like in the Czech Republic and Finland, children who have turned 15 are subject to detention. The court decides whether the child should be placed in a care-educational centre or in a detention centre, taking into consideration various elements, including the circumstances surrounding their apprehension and personal situation (Articles 397(1)-(3) and 414(4)).

Unaccompanied children may only be placed in a “guarded centre” (rather than a “deportation-arrest”) and must be separated from adults (Articles 397(1)-(3) and 414(4)). In practice, they are mainly confined at the Ketrzyn guarded centre, which has dedicated rooms for children.¹⁹

Accompanied children, meanwhile, can only be placed in a guarded centre (and not deportation-arrest) and are accommodated together with their guardian (Law on Foreigners, Article 414(3)). In 2017, children were detained in the Ketrzyn, Biala Podlaska, and Przemysl centres.²⁰ As the EU Fundamental Rights Agency (FRA) observed, children detained with their parents do not receive separate detention decisions—a policy that the GDP has also observed in Latvia and Lithuania. Rather, they are considered as being accommodated within a detention centre in order to

¹⁷ Committee against Torture, “Concluding Observations on the Combined Fifth and Sixth Periodic Reports of Poland, CAT/C/POL/CO/5-6,” 23 December 2013, <http://www.ohchr.org/EN/Countries/ENACARegion/Pages/PLIndex.aspx>

¹⁸ Helsinki Foundation for Human Rights “AIDA Country Report: Poland 2017 Update,” European Council on Refugees and Exiles (ECRE), February 2018, <http://www.asylumineurope.org/reports/country/poland/>

¹⁹ Helsinki Foundation for Human Rights (HFHR), “Country report: Poland,” Asylum Information Database (AIDA), November 2015, <http://www.asylumineurope.org/reports/country/poland/>; Helsinki Foundation for Human Rights “AIDA Country Report: Poland 2017 Update,” European Council on Refugees and Exiles (ECRE), February 2017, <http://www.asylumineurope.org/reports/country/poland/statistics>

²⁰ Helsinki Foundation for Human Rights “AIDA Country Report: Poland 2017 Update,” European Council on Refugees and Exiles (ECRE), February 2017, <http://www.asylumineurope.org/reports/country/poland/statistics>

preserve family unity. According to the FRA, this practice may leave the child in a legal vacuum and undermine their right to challenge their detention.²¹

Compared to other EU member states, Poland detains high numbers of families with children.²² In 2016, 292 children were placed in detention centres with their parents;²³ in 2014, 347 children (of whom 18 were unaccompanied), were detained; in 2013, 374 (of whom three were unaccompanied); in 2012, 127 (of whom 16 were unaccompanied); in 2011, 201 (of whom 14 were unaccompanied), and in 2010, 270 (of whom one was unaccompanied).²⁴ According to the Ombudsman for Children and the UN High Commissioner for Human Rights, the detention of families with children and unaccompanied children between 15-18 continued into 2018.²⁵

Poland's practice of detaining children has attracted considerable international criticism. In 2018, the ECtHR ruled in *Bistieva and others v. Poland* that the country's practice of detaining families with children violated the [European Convention on Human Rights](#) (ECHR). The case concerned the detention of a Russian national and her three children at the Ketrzyn guarded centre. The ECtHR ruled that although there was some risk that the family would abscond, this was insufficient reason to justify an almost six-month detention period. Poland did not observe the best interests of the child and failed to apply detention as a last resort. The country thus violated their right to respect for family and private life, set forth in Article 8 of the ECHR.²⁶

In 2016, the UN HRC expressed concern at the large number of children in immigration detention in Poland. The committee urged the country to ensure that children are only detained as a measure of last resort and for the shortest appropriate period of time, and that their detention takes into account their best interests.²⁷ The [UN Committee on the Rights of the Child](#) (CRC) expressed similar concerns in 2015, in particular, its disappointment that the 2013 amendments to the Law on Foreigners had failed to remove provisions allowing for the detention of asylum-seeking children with their family members. The committee urged Poland to

²¹ European Agency for Fundamental Rights (FRA), "European Legal and Policy Framework on Immigration Detention of Children," 2017, <http://fra.europa.eu/en/publication/2017/child-migrant-detention>

²² European Agency for Fundamental Rights (FRA), "European Legal and Policy Framework on Immigration Detention of Children," 2017, <http://fra.europa.eu/en/publication/2017/child-migrant-detention>

²³ Helsinki Foundation for Human Rights "AIDA Country Report: Poland 2016 Update," European Council on Refugees and Exiles (ECRE), February 2017, <http://www.asylumineurope.org/reports/country/poland>

²⁴ Paweł Michniewicz (Interior Ministry, Migration Policy Department), Response to Global Detention Project/ Access Info Questionnaire, 30 April 2013; Dorota Skrzypczyk (Polish Border Guards), Email to the Global Detention Project, 12 November 2015.

²⁵ European Union Agency for Fundamental Rights (FRA), *Periodic data collection on the migration situation in the EU: September Highlights, 1 July–31 August 2018*, September 2018, <http://fra.europa.eu/en/publication/2018/migration-overviews-september-2018>

²⁶ European Court of Human Rights, "Bistieva and Others v. Poland, 75157/14," 10 April 2018, <http://hudoc.echr.coe.int/eng?i=001-182210>

²⁷ Committee on Human Rights, "Concluding Observations on the Seventh Periodic Report of Poland, CCPR /C/POL/CO/7," 23 November 2016, <https://www.ohchr.org/EN/Countries/ENACARRegion/Pages/PLIndex.aspx>

avoid all forms of detention of asylum seekers below the age of 18 and families with children, and to consider alternatives prior to detention.²⁸

In 2014, the [UN Committee on the Elimination of Racial Discrimination](#) (CERD) also expressed concerns regarding the detention of children. The committee highlighted the detention of minors with their parents in guarded centres for asylum seekers—a situation that prevents such children from accessing an appropriate education. The committee recommended that Poland refrain from detaining asylum-seeking minors and fully implement the revised Act on the Education System to address their educational difficulties by providing language classes or tutorial assistance in their mother tongue.²⁹

Concerns about the treatment of children in immigration detention are longstanding. Following a 2016 monitoring visit, the [Polish Ombudsman](#) noted that the Ketrzyn centre, which is the main centre where children are detained, did not have a permanently employed paediatrician.³⁰ In 2011, the [European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment](#) (CPT) expressed concern that in some facilities, children's nutritional needs were not given sufficient attention.³¹ The CPT also expressed concern about whether any activities were provided for children, in particular at Lesznowola.³²

According to the FRA, teachers from local schools provide classes in detention centres, but language assistance is frequently lacking and children are limited to just 18 hours of class-time per week.³³ Agreements have been concluded between border guards, educational institutions, and local authorities to ensure that classrooms with professional teachers are established in detention centres. However, education hours remain very limited: 27 hours in Ketrzyn and even less in Biała Podlaska.³⁴ The situation is better in Przemyśl, where compulsory schooling

²⁸ Committee on the Rights of the Child, "Concluding Observations on the Combined Third and Fourth Periodic Reports of Poland, CRC/C/POL/CO/3-4," 30 October 2015, <http://www.ohchr.org/EN/Countries/ENACARegion/Pages/PLIndex.aspx>

²⁹ Committee on the Elimination of Racial Discrimination, "Concluding Observations on the Combined Twentieth and Twenty-First Periodic Reports of Poland, CERD/C/POL/CO/20-21," 19 March 2014, <http://www.ohchr.org/EN/Countries/ENACARegion/Pages/PLIndex.aspx>

³⁰ Poland, National Preventive Mechanism, "Report of the National Preventive Mechanism on the Visit to the Guarded Centre for Foreigners in Kętrzyn (Raport Krajowego Mechanizmu Prewencji Tortur z wizytacji Strzeżonego Ośrodka dla Cudzoziemców w Kętrzynie)," National Preventive Mechanism, 30 January 2017.

³¹ European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), "Report to the Polish Government on the Visit to Poland Carried Out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 26 November to 8 December 2009, CPT/Inf (2011) 21," 12 July 2011, <http://www.cpt.coe.int/documents/pol/2011-20-inf-eng.pdf>

³² European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), "Report to the Polish Government on the Visit to Poland Carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 26 November to 8 December 2009, CPT/Inf (2011) 21," 12 July 2011, <http://www.cpt.coe.int/documents/pol/2011-20-inf-eng.pdf>

³³ European Agency for Fundamental Rights (FRA), "European Legal and Policy Framework on Immigration Detention of Children," 2017, <http://fra.europa.eu/en/publication/2017/child-migrant-detention>

³⁴ Helsinki Foundation for Human Rights, "AIDA Country Report: Poland 2017 Update," European Council on Refugees and Exiles (ECRE), February 2018, <http://www.asylumineurope.org/reports/country/poland/>

was implemented in January 2018.³⁵ (Before this, civil society organisations had noted that classes were carried out by detention staff rather than by professional educators, did not follow a uniform programme, and were organised without age division.)³⁶

There have also been some efforts recently to improve activities for children and provide them with recreational facilities. Centres in Przemysl and Ketrzyn now have well-equipped playgrounds, and Ketrzyn and Biala Podlaska purchased video game consoles.³⁷

2.5 Other vulnerable groups. According to the Law on Foreigners (Article 400(2)) and Law on Protection (Article 88(a)(3)), persons who are victims of violence are not to be detained. In practice, however, there is no effective mechanism for identification of such cases—an issue highlighted by the HFHR and the [Zbigniew Holda Association](#). The HFHR has documented numerous cases where torture survivors have been unlawfully detained.³⁸

Victims of trafficking are not explicitly protected from immigration detention. Both the HRC and CRC have thus recommended that Poland amend its legislation to include a provision prohibiting the criminal prosecution, detention, and punishment of trafficked persons for activities they were involved in as a direct consequence of their being trafficked.³⁹

2.6 Length of detention. Pursuant to the Law on Foreigners, a non-citizen arrested by the Border Guard or the police for immigration-related reasons may only be detained for an initial period not exceeding 72 hours in their facilities. If the police apprehended the non-citizen, they should transfer the person to the Border Guard. The Border Guard has a maximum of 48 hours to request a court to issue a detention order, which in turn should be ordered within 24 hours (Article 394(1)-(5)).

The initial detention order issued by the court can last for a maximum of 90 days. In cases where the enforcement of a return takes longer than 90 days due to a lack of cooperation from the detainee or delays in receiving the necessary documentation from a third country, the initial 90-day period can be extended up to one year. The

³⁵ Helsinki Foundation for Human Rights “AIDA Country Report: Poland 2017 Update,” European Council on Refugees and Exiles (ECRE), February 2018, <http://www.asylumineurope.org/reports/country/poland/>

³⁶ Halina Niec Legal Aid Center (HNLAC), “Detention of Migrant Children in Poland. Report on Implementation of International and Domestic Standards Concerning Detention of Migrant Children,” March 2011.

³⁷ Helsinki Foundation for Human Rights “AIDA Country Report: Poland 2017 Update,” European Council on Refugees and Exiles (ECRE), February 2018, <http://www.asylumineurope.org/reports/country/poland/>

³⁸ Helsinki Foundation for Human Rights & Professor Zbigniew Holda Association, “Universal Periodic Review of Poland, Submission,” 2016, https://www.upr-info.org/sites/default/files/document/poland/session_27_-_may_2017/js1_upr27_pol_e_main.pdf

³⁹ Committee on the Rights of the Child, “Concluding Observations on the Combined Third and Fourth Periodic Reports of Poland, CRC/C/POL/CO/3-4,” 30 October 2015, <http://www.ohchr.org/EN/Countries/ENACARegion/Pages/PLIndex.aspx>; Human Rights Committee, “Consideration of Reports Submitted by States Parties Under Article 40 of the Covenant, Concluding Observations of the Human Rights Committee, Poland, CCPR/C/POL/CO/6,” 15 November 2010, <http://www.ohchr.org/EN/Countries/ENACARegion/Pages/PLIndex.aspx>

detention period can further be extended up to 18 months if the detainee appeals their deportation order (Law on Foreigners, Article 403(1)-(5)).

The 12-month detention period under the Law on Foreigners does not include the time that a non-citizen spent in asylum detention (Article 403(4)). According to the Law on Protection, an applicant for international protection can be placed in detention for 60 days. If a person applies for asylum while already detained under the Law on Foreigners and the grounds for detention listed in the Law on Protection exist, their detention can be extended by 90 days from the moment of their asylum application. In both scenarios, if the asylum proceedings are not concluded during the period of 60 or 90 days and the grounds justifying detention still exist, detention can be extended up to six months (Law on Protection, Article 89(1)-(5)).

In 2010, the UN HRC expressed concern about the absence of specific laws concerning the detention of foreigners after the deadline for their expulsion, as well as reported cases of detention in transit zones extending beyond the expulsion deadline without a court order. The committee urged Poland to limit the length of detention in transit zones and to ensure that any detention extension is based on a court order.⁴⁰

Polish legislation does not explicitly prevent re-detention however in practice, the courts do not allow periods of detention exceeding 12 months.⁴¹

The average length of detention in guarded centres (for an explanation of detention centre types, see 3: Detention Infrastructure) was 75 days in 2017; 71 days in 2016; 75 days in 2015; and 66 days in 2014.⁴² In 2016 the average length of detention for asylum seekers was 68 days⁴³, an increase from 2015 when the average length was 65.8 days.⁴⁴ In 2010, the average length of detention was 59 days in guarded centres and 69 days in deportation-arrests.⁴⁵

2.7 Procedural guarantees. Under both the Law on Foreigners and the Law on Protection, migration-related detention is to be ordered and extended by a district court, upon the request of the border guard. Reportedly, courts usually accept the

⁴⁰ Human Rights Committee, "Consideration of Reports Submitted by States Parties Under Article 40 of the Covenant, Concluding Observations of the Human Rights Committee, Poland, CCPR/C/POL/CO/6," 15 November 2010, <http://www.ohchr.org/EN/Countries/ENACARRegion/Pages/PLIndex.aspx>

⁴¹ B. E. Mikolajczyk "National Synthesis Report: Poland," Redial Project, Odysseus Network, 2016, <http://euredial.eu/docs/publications/national-synthesis-reports>

⁴² Dominik Kowalik (Border Guard), Email exchange with Michael Flynn (Global Detention Project), September 2018.

⁴³ Helsinki Foundation for Human Rights "AIDA Country Report: Poland 2016 Update," European Council on Refugees and Exiles (ECRE), February 2017, <http://www.asylumineurope.org/reports/country/poland/>

⁴⁴ Helsinki Foundation for Human Rights (HFHR), "Country report: Poland," Asylum Information Database (AIDA), November 2015, <http://www.asylumineurope.org/reports/country/poland>

⁴⁵ Maciej Fagasinski (Legal Assistance to Refugees and Migrants, Helsinki Foundation for Human Rights), Global Detention Project Questionnaire, 8 August 2011.

border guard's arguments.⁴⁶ Both pieces of legislation also provide for a non-citizen to receive a hearing before the court makes its decision (Law on Foreigners, Articles 401(1) and 410(1); Law on Protection, Article 88(b)(1)). The non-citizen should be informed by the court, in a language they understand, about the grounds for their detention, detention procedures, and their rights (Law on Foreigners, Article 402(2); Law on Protection, Article 88(b)(4)).

Upon admission to the detention facility, the detainee must be informed—in a language they can understand—about their rights and obligations (Law on Foreigners, Article 411). In 2010, the UN HRC expressed concern that detained foreigners are often unable to learn about their rights, because boards containing such information are often only displayed in offices and interrogation rooms, are only available in Polish, and some interpreters are insufficiently qualified to translate. The committee thus urged Poland to ensure that non-citizens have easy access to information on their rights and in a language that they can understand—even if this requires the centre to provide a qualified interpreter.⁴⁷

The extension of a detention order by a court constitutes a de facto automatic review of detention.⁴⁸ Foreign nationals have the right to appeal their detention, and its extension by a district court, to the court of higher instance. Such an appeal should be made within seven days of the non-citizen receiving the order, and the court has seven days to examine the request (Law on Foreigners, Article 403(8); Law on Protection, Article 88(b)(3)).⁴⁹ Civil society organisations, however, have observed that the appeal procedure can be complicated and appeals need to be submitted in Polish, resulting in few appeals actually being filed.⁵⁰ In addition, court rulings often lack an in-depth analysis of the non-citizen's personal situation, and the reasons for their detention tend to be very general and without direct reference to the individual situation of the person concerned.⁵¹

⁴⁶ B. E. Mikolajczyk "National Synthesis Report: Poland," Redial Project, Odysseus Network, 2016, <http://euredial.eu/docs/publications/national-synthesis-reports>

⁴⁷ Human Rights Committee, "Consideration of Reports Submitted by States Parties Under Article 40 of the Covenant, Concluding Observations of the Human Rights Committee, Poland, CCPR/C/POL/CO/6," 15 November 2010, <http://www.ohchr.org/EN/Countries/ENACARegion/Pages/PLIndex.aspx>

⁴⁸ Helsinki Foundation for Human Rights (HFHR), "Country Report: Poland," Asylum Information Database (AIDA), November 2015, <http://www.asylumineurope.org/reports/country/poland>; Halina Niec Legal Aid Center (HNLAC), "Raport o stosowaniu detencji wobec osob starajacych sie o nadanie statusu uchodzcy w Polsce," December 2010, http://www.pomocprawna.org/images/stories/pomoc_uchodcom/Raport_o_detencji.pdf

⁴⁹ B. E. Mikolajczyk "National Synthesis Report: Poland," Redial Project, Odysseus Network, 2016, <http://euredial.eu/docs/publications/national-synthesis-reports>

⁵⁰ Maciej Fagasinski (Legal Assistance to Refugees and Migrants, Helsinki Foundation for Human Rights), Global Detention Project Questionnaire, 8 August 2011; Halina Niec Legal Aid Center (HNLAC), "Raport o stosowaniu detencji wobec osob starajacych sie o nadanie statusu uchodzcy w Polsce," December 2010, http://www.pomocprawna.org/images/stories/pomoc_uchodcom/Raport_o_detencji.pdf

⁵¹ Helsinki Foundation for Human Rights "AIDA Country Report: Poland 2017 Update," European Council on Refugees and Exiles (ECRE), February 2017, <http://www.asylumineurope.org/reports/country/poland/>

Under the Code of Penal Procedure, asylum seekers are entitled to request free legal assistance for the review of their detention.⁵² The Law on Protection provides that when ordering the detention of an asylum seeker, the court should inform them about this entitlement (Article 88(b)(4)). According to HFHR however, most asylum seekers are generally not aware of this and are unable to complete the necessary documentation, which is in Polish. Detainees who have not applied for international protection are not granted free legal counsel. Although legal assistance is often provided by NGOs,⁵³ such support was reduced in 2016 and 2017 due to a lack of funding caused by the delay in implementing the EU [Asylum, Migration and Integration Fund](#) (AMIF).⁵⁴

According to the Law on Foreigners, immigration detainees are entitled to lodge complaints regarding conditions of, and treatment in, detention to the authority in charge of the facility (Article 415(1)). Complaints, however, appear to be rarely made. For instance, between January 2008 and March 2011, just 13 complaints were lodged in Biala Podlaska guarded centre, all of which were considered unfounded. During the same period, three complaints were filed in Ketrzyn, one in Warsaw, and two in Krosno Odrzanskie. No complaints were filed in Przemysl, Bialystok, or Klodzko detention facilities during that period.⁵⁵

The Law on Foreigners explicitly provides for compensation for unlawful detention (Law on Foreigners, article 407(1)).

2.8 Detaining authorities and institutions. All seven operative immigration detention centres are managed and operated by the border guard. The Interior Ministry is the custodial authority responsible for immigration detainees.⁵⁶ The Border Guard and the police are authorised to apprehend people for immigration reasons (Article 394(2)).

2.9 Non-custodial measures. When deciding on a detention order, the court should first consider whether non-custodial measures would be adequate (Law on Foreigners, Article 401(5); Law on Protection, Articles 88a(1) and 88(b)(2)). The Law on Foreigners provides four such measures: regular reporting to the border guard, bail, relinquishing travel documents, and/or residing in a specific place of residence (Article 398(2)). The Law on Protection lists the same measures, with the exception of relinquishing travel documents (Article 88(1)). In 2017, of the 2,314 cases of alternatives to detention that were reportedly granted, 2,094 were reporting

⁵² Helsinki Foundation for Human Rights (HFHR), "Country report: Poland," Asylum Information Database (AIDA), November 2015, <http://www.asylumineurope.org/reports/country/poland>

⁵³ Maciej Fagasinski (Legal Assistance to Refugees and Migrants, Helsinki Foundation for Human Rights), Global Detention Project Questionnaire, 8 August 2011.

⁵⁴ W. Klaus, E. Ostaszewska-Żuk and M. Szczepanik, "The Role of European Funds in Supporting the Integration of Migrants in Poland," September 2017, <http://bit.ly/2EVdxxq>

⁵⁵ Maciej Fagasinski (Legal Assistance to Refugees and Migrants, Helsinki Foundation for Human Rights), Global Detention Project Questionnaire, 8 August 2011.

⁵⁶ Helsinki Foundation for Human Rights "AIDA Country Report: Poland 2017 Update," European Council on Refugees and Exiles (ECRE), February 2017, <http://www.asylumineurope.org/reports/country/poland/>

obligations, 1,818 were residence restrictions, 49 were orders to surrender travel documents; and 4 were orders to pay bail.⁵⁷

The use of alternatives to detention and the impact they have on detention rates are not clear. According to the 2017 Ombudsman report, non-custodial measures are rarely considered in practice and thus detention is not used solely as a measure of last resort.⁵⁸ Civil society groups had previously expressed similar concerns.⁵⁹ On the other hand, the number of non-citizens granted alternatives to detention has recently increased: from 1,411 in 2016 to 2,314 in 2017.⁶⁰ The adoption of alternatives has appeared to lead to decreases in detention rates for certain groups. For instance, border guard data shows that after the introduction of alternatives measures in 2014, the number of detained children decreased by more than 40 percent.⁶¹

2.10 Regulation of detention conditions. The Law on Foreigners lays down several rules related to the place and conditions of detention. Immigration detainees are to be held in “deportation-arrests” (*areszt dla cudzoziemcow*) or “guarded centres” (*strzeżone ośrodki*). Non-citizens are to be placed in deportation-arrests if there is a risk that they will not comply with the rules governing guarded centres (Article 399). However, in 2011 the HFHR observed that in practice, this provision was not interpreted in a coherent manner and that officials often lacked a firm understanding of the categories of non-citizens to be placed in the two types of facility. Reportedly, foreigners who break the law are accommodated in guarded centres while those who stay in Poland irregularly for a long period of time without committing any crimes are held in deportation-arrests.⁶² Both guarded centres and deportation-arrests can hold asylum seekers and irregular migrants; however, asylum seekers are rarely held in deportation-arrests, and only if it is deemed necessary for state security or public safety.⁶³

Men and women, as well as children, are to be accommodated separately, while families are to be placed together (Article 414). Non-citizens held in deportation-arrests are to be given the opportunity to walk outside for two hours daily, while detainees in guarded centres are to be allowed to move freely within the facility

⁵⁷ Helsinki Foundation for Human Rights “AIDA Country Report: Poland 2017 Update,” European Council on Refugees and Exiles (ECRE), February 2017, <http://www.asylumineurope.org/reports/country/poland/>

⁵⁸ Ombudsman, “Wyciąg Strzeżony Ośrodek dla Cudzoziemców w Krośnie Odrzańskim,” 30 January 2018, <http://bit.ly/2F2ptCr>; B.E. Mikolajczyk “National Synthesis Report: Poland,” Redial Project, Odysseus Network, 2016, <http://euredial.eu/docs/publications/national-synthesis-reports>

⁵⁹ Jacek Bialas (Helsinki Foundation for Human Rights), “Detention of Irregular Migrants in Poland,” November 2011, <http://fra.europa.eu/fraWebsite/frc2011/docs/detention-presentation-HR.pdf>

⁶⁰ Helsinki Foundation for Human Rights “AIDA Country Report: Poland 2017 Update,” European Council on Refugees and Exiles (ECRE), February 2018, <http://www.asylumineurope.org/reports/country/poland/>

⁶¹ Helsinki Foundation for Human Rights (HFHR), “Country report: Poland,” Asylum Information Database (AIDA), November 2015, <http://www.asylumineurope.org/reports/country/poland>

⁶² Maciej Fagasinski (Legal Assistance to Refugees and Migrants, Helsinki Foundation for Human Rights), Global Detention Project Questionnaire, 8 August 2011.

⁶³ Maciej Fagasinski (Legal Assistance to Refugees and Migrants, Helsinki Foundation for Human Rights), Email exchange with Michael Flynn (Global Detention Project), September 2010.

between 7am and 10pm (Article 416). According to the HFHR, this provision is generally respected.⁶⁴

Upon admission to a centre, non-citizens should undergo a medical examination (Article 413). Detained foreign nationals have the right to health care, including hospitalisation, medication and sanitary products; contact with close friends/relatives, legal representatives, Polish authorities, diplomatic representatives and NGOs; uninterrupted nine hours of sleep per day; clothing and shoes; access to the internet and a library, and visits (Articles 415 and 417).

The 2015 Ordinance of the Interior Ministry and Administration on the guarded centres and detention centres for foreigners (*Rozporządzenie Ministra Spraw Wewnętrznych w sprawie strzeżonych ośrodków i aresztów dla cudzoziemców*) spells out detailed regulations for detention facilities. Rooms in guarded centres and cells in deportation-arrests are to have heating, ventilation, beds, shelves for personal belongings, tables, and chairs. Rooms for non-citizens in the guarded centres and cells in the deportation-arrests are not to be smaller than 3 square metres per male detainee, and 4 square metres per female or minor. The Ordinance provides that immigration detainees should receive three meals per day, including one hot meal. It establishes detailed rules regarding daily dietary allowances based on detainee's age. For example, adults are to receive meals and beverages of at least 2,600 calories per day, while daily caloric intake for children 12-18, sick, as well as pregnant and breastfeeding women is to be 2,600-3,400.

The Law on Foreigners provides for disciplinary sanctions for those that breach the rules of a centre: detainees may be banned from participating in sport and cultural activities (with the exception of library use) or buying food or tobacco products for up to seven days (Articles 419-423). According to reports, these sanctions are very rarely imposed because detainees are aware that they may be transferred to the Przemyśl deportation-arrest—which is known for a much stricter regime than the country's guarded centres (see 3: Detention Infrastructure)—if they commit a serious breach of centre's rules.⁶⁵

2.11 Domestic monitoring. The Commissioner for Human Rights (Ombudsman) acting as the National Mechanism for the Prevention of Torture has a mandate to visit all detention centres. In 2016, the Commissioner visited centres in Biała

⁶⁴ M. Fagasinski (Legal Assistance to Refugees and Migrants, Helsinki Foundation for Human Rights), "Detention Facility Documentation: Guarded Center and Arrest for the Purpose of Expulsion in Biała Podlaska," 8 July 2011; M. Fagasinski, "Detention Facility Documentation: Guarded Center and Arrest for the Purpose of Expulsion in Białystok," 8 July 2011; M. Fagasinski, "Detention Facility Documentation: Guarded Center and Arrest for the Purpose of Expulsion in Ketrzyn," 8 July 2011; M. Fagasinski, "Detention Facility Documentation: Guarded Center and Arrest for the Purpose of Expulsion in Klodzko," 8 July 2011; M. Fagasinski, "Detention Facility Documentation: Guarded Center and Arrest for the Purpose of Expulsion in Przemyśl," 8 July 2011.

⁶⁵ European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), "Report to the Polish Government on the Visit to Poland Carried Out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 11 to 22 May 2017, CPT/Inf (2018) 39," July 2018, <https://rm.coe.int/16808c7a91>

Podlaska, Lesznowola, Krosno Odrzanskie, and Ketrzyn; and in 2017, the centres in Przemysl and Krosno Odrzanskie.⁶⁶

A number of civil society organisations also visit the centres, including the HFHR, HNLAC, [Association for Legal Intervention \(SIP\)](#), and the [Rule of Law Institute Foundation](#). Authorisation from the border guard's headquarters must be acquired before every visit, however NGOs generally do not face problems in accessing centres. The visits are not for the purpose of monitoring conditions and treatment in detention, but rather to offer legal aid.⁶⁷

2.12 International monitoring. As a State Party to the [European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment](#), Poland receives regular monitoring visits from the European Committee for the Prevention of Torture (CPT). In the past few years, four UN human rights treaty bodies have issued immigration detention-related recommendations to Poland: the HRC (2016),⁶⁸ CRC (2015),⁶⁹ CERD (2014),⁷⁰ and CAT (2013).⁷¹

2.13 Criminalisation. Under the Petty Offence Code (Articles 49(a) and 24(1)), irregular entry is subject to a fine of up to 1,160 EUR. Irregular stay is also punishable with fines under the Law on Foreigners (Article 465(1)).⁷² According to reports however, fines are rarely imposed in practice.⁷³

⁶⁶ National Mechanism for the Prevention of Torture, "Report on the Activities of the National Mechanism for the Prevention of Torture in 2016," 2017, <http://bit.ly/2sBpmvY>; Ombudsman, "Wyciąg Strzeżony Ośrodek dla Cudzoziemców w Krośnie Odrzańskim," January 2018, <http://bit.ly/2F2ptCr>; Ombudsman, "Wyciąg Strzeżony Ośrodek dla Cudzoziemców w Przemyślu," February 2018, <http://bit.ly/2EXIR4y>

⁶⁷ Daniel Witko (Helsinki Foundation for Human Rights (HFHR)), Email exchange with Izabella Majcher (Global Detention Project), September 2018; Magda Pajura (Halina Niec Legal Aid Center (HNLAC)), Email exchange with Izabella Majcher (Global Detention Project), September 2018; Katarzyna Słubik (Association for Legal Intervention (SIP)), Email exchange with Izabella Majcher (Global Detention Project), September 2018.

⁶⁸ Committee on Human Rights, "Concluding Observations on the Seventh Periodic Report of Poland, CCPR/C/POL/CO/7," 23 November 2016, <https://www.ohchr.org/EN/Countries/ENACARegion/Pages/PLIndex.aspx>

⁶⁹ Committee on the Rights of the Child, "Concluding Observations on the Combined Third and Fourth Periodic Reports of Poland, CRC/C/POL/CO/3-4," 30 October 2015, <http://www.ohchr.org/EN/Countries/ENACARegion/Pages/PLIndex.aspx>

⁷⁰ Committee on the Elimination of Racial Discrimination, "Concluding Observations on the Combined Twentieth and Twenty-First Periodic Reports of Poland, CERD/C/POL/CO/20-21," 19 March 2014, <http://www.ohchr.org/EN/Countries/ENACARegion/Pages/PLIndex.aspx>

⁷¹ Committee against Torture, "Concluding Observations on the Combined Fifth and Sixth Periodic Reports of Poland, CAT/C/POL/CO/5-6," 23 December 2013, <http://www.ohchr.org/EN/Countries/ENACARegion/Pages/PLIndex.aspx>

⁷² European Union Agency for Fundamental Rights (FRA), "Criminalisation of Migrants in an Irregular Situation and of Persons Engaging with Them," 2014, <http://fra.europa.eu/en/publication/2014/criminalisation-migrants-irregular-situation-and-persons-engaging-them>

⁷³ Maciej Fagasinski (Legal Assistance to Refugees and Migrants, Helsinki Foundation for Human Rights), Global Detention Project Questionnaire, 8 August 2011.

2.14 Cost of detention. The total cost of Poland’s immigration detention operations in 2010 amounted to around 9 million EUR. Roughly 7.6 million EUR was spent on staff and half a million EUR on the maintenance of detention infrastructure.⁷⁴

Like in the Czech Republic and **Germany**, non-citizens are required to pay for their detention.⁷⁵

2.15 Trends and statistics. Poland detained 1,290 non-citizens in 2017; 1,201 in 2016; 1,051 in 2015; and 1,322 in 2014. Of these detainees, 247 applied for asylum from detention in 2017; 289 in 2016; 281 in 2015; and 236 in 2014.⁷⁶ In total, the country detained 603 asylum seekers in 2016 and 246 in 2017, figures that constituted approximately five percent of the total number of people seeking international protection during these two years.⁷⁷

Between 2014 and 2017, the most common nationalities of detainees were Russian, Ukrainian, and Vietnamese. Russians constituted approximately 36 percent of all detainees in 2017; 37 percent in 2016; 27 percent in 2015; and 45 percent in 2014.⁷⁸

⁷⁴ Maciej Fagasinski (Legal Assistance to Refugees and Migrants, Helsinki Foundation for Human Rights), Global Detention Project Questionnaire, 8 August 2011.

⁷⁵ Helsinki Foundation for Human Rights “AIDA Country Report: Poland 2017 Update,” European Council on Refugees and Exiles (ECRE), February 2017, <http://www.asylumineurope.org/reports/country/poland/>

⁷⁶ Dominik Kowalik (Border Guard), Email exchange with Michael Flynn (Global Detention Project), September 2018.

⁷⁷ Helsinki Foundation for Human Rights “AIDA Country Report: Poland 2017 Update,” European Council on Refugees and Exiles (ECRE), February 2018, <http://www.asylumineurope.org/reports/country/poland/>

⁷⁸ Helsinki Foundation for Human Rights “AIDA Country Report: Poland 2017 Update,” European Council on Refugees and Exiles (ECRE), February 2018, <http://www.asylumineurope.org/reports/country/poland/>



3. DETENTION INFRASTRUCTURE

3.1 Summary. Poland uses specialised detention facilities to confine non-citizens on immigration-related grounds. As explained above (section 2.10: Regulation of detention conditions), Poland operates two types of dedicated facilities that can be used for long-term immigration detention: “deportation-arrests” (*areszty w celu wydalenia*) and “guarded centres” (*strzezone osrodki*). A key difference between these two types of facilities are their security regimes: deportation-arrests have a more severe internal security regime than guarded centres.⁷⁹

Until the early 2000s, the most common type of detention centres were **deportation-arrests**, which were located in police stations and border guard units. By 2009, the police had ceased operating these immigration detention facilities, which were transferred to the border guard. Before they came under the authority of the border guard, deportation-arrests had been criticised for mixing administrative detainees with criminal detainees.⁸⁰

In recent years, the number of deportation-arrests has decreased significantly. The GDP identified some two dozen deportation-arrests in operation during the period 2007-2008. As of January 2013, Poland operated only six such facilities, with a total estimated capacity of 136.⁸¹ By November 2015, the number of had declined to two—one in Bialystok and one in Przemysl—with a combined capacity of 48.⁸² Currently the only deportation-arrests still in operation is the one in Przemysl.⁸³

⁷⁹ Maciej Fagasinski (Legal Assistance to Refugees and Migrants, Helsinki Foundation for Human Rights), Global Detention Project Questionnaire, 8 August 2011.

⁸⁰ European Parliament, “The Conditions in Centres for Third Country National (Detention Camps, Open Centres, as well as Transit Centres and Transit Zones) with a Particular Focus on Provisions and Facilities for Persons with Special Needs in the 25 EU Member States,” December 2007.

⁸¹ M. Fagasinski (Legal Assistance to Refugees and Migrants, Helsinki Foundation for Human Rights), “Detention Facility Documentation: Arrest for the Purpose of Expulsion in Klodzko,” 8 July 2011; M. Fagasinski, “Detention Facility Documentation: Arrest for the Purpose of Expulsion in Warsaw,” 8 July 2011; N. Rafalik, “Cudzoziemcy ubiegający się o nadanie statusu uchodźcy w Polsce o teoretycznej a rzeczywistej (praktyka) (stan prawny na dzień 31 grudnia 2011 r.),” Centre of Migration Research, Working Paper 55/113, March 2012, <http://www.migracje.uw.edu.pl/publ/1808/>

⁸² Helsinki Foundation for Human Rights (HFHR), “Country Report: Poland,” Asylum Information Database (AIDA), November 2015, <http://www.asylumineurope.org/reports/country/poland>; Paweł Michniewicz (Interior Ministry, Migration Policy Department), Response to Global Detention Project/ Access Info Questionnaire, 30 April 2013.

⁸³ Dominik Kowalik (Border Guard), Email exchange with Michael Flynn (Global Detention Project), September 2018.

Meanwhile, the number of **guarded centres** has increased. Prior to joining the Schengen Area, Poland only had one guarded centre for non-citizens, located in Lesznowola. Established in 1996, the centre was run by the police until the border guard took over its management in 2008.⁸⁴ In preparation for Poland's formal entry into the Schengen Area, four new guarded centres had been opened in the east of the country by early 2008 (where most asylum seekers are apprehended): in Biala Podlaska, Bialystok, Ketrzyn and Przemysl.⁸⁵ Construction of these centres was funded in part by the European Fund for Asylum Seekers.⁸⁶ In January 2009, the Krosno Odrzanskie deportation-arrest, located on the country's western border, was also converted into a guarded centre for non-citizens.⁸⁷

Poland currently operates seven long-term detention centres.⁸⁸ The six guarded centres are located in Biala Podlaska (capacity of 130), Bialystok (capacity of 122), Ketrzyn (capacity of 122), Krosno Odrzanskie (capacity of 56), Lesznowola (capacity 42), and Przemysl (capacity of 103). The only remaining deportation-arrest is located in Przemysl (capacity of 33).⁸⁹ Poland also operates one short-term detention centre in a transit area at the Warsaw International Airport.⁹⁰ Individuals refused entry into the country are held there. As of January 2013, it had a capacity of 30.⁹¹

⁸⁴ N. Rafalik, "Cudzoziemcy ubiegajacy sie o nadanie statusu uchodzcy w Polsce olteoria a rzeczywistosc (praktyka) (stan prawny na dzien 31 grudnia 2011 r.)," Centre of Migration Research, Working Paper 55/113, March 2012, <http://www.migracje.uw.edu.pl/publ/1808/>

⁸⁵ Jesuit Refugee Service (JRS) and Caritas Poland, "Poland RefuCivil Society Report on Administrative Detention of Asylum Seekers and Illegally Staying Third Country Nationals in the 10 New Member States of the European Union, December 2007, <http://www.detention-in-europe.org/images/stories/10%20nms%20report%20final.pdf>

⁸⁶ European Parliament, "The Conditions in Centres for Third Country National (Detention Camps, Open Centres, as well as Transit Centres and Transit Zones) with a Particular Focus on Provisions and Facilities for Persons with Special Needs in the 25 EU Member States," December 2007.

⁸⁷ N. Rafalik, "Cudzoziemcy ubiegajacy sie o nadanie statusu uchodzcy w Polsce – teoria a rzeczywistosc (praktyka) (stan prawny na dzien 31 grudnia 2011 r.)," Centre of Migration Research, Working Paper 55/113, March 2012, <http://www.migracje.uw.edu.pl/publ/1808/>

⁸⁸ (as of October 2018)

⁸⁹ Dominik Kowalik (Border Guard), Email exchange with Michael Flynn (Global Detention Project), September 2018.

⁹⁰ Dominik Kowalik (Border Guard), Email exchange with Michael Flynn (Global Detention Project), September 2018.

⁹¹ Maciej Fagasinski (Legal Assistance to Refugees and Migrants, Helsinki Foundation for Human Rights), Global Detention Project Questionnaire, 8 August 2011; Maciej Fagasinski (Legal Assistance to Refugees and Migrants, Helsinki Foundation for Human Rights), Email exchange with Izabella Majcher (Global Detention Project), January 2013.

As of December 2017, the total capacity of long-term detention facilities in the country was 641,⁹² compared to 558 in November 2015,⁹³ and 881 in January 2013.⁹⁴

3.2 Detention facilities. Biala Podlaska guarded centre, Bialystok guarded centre, Ketrzyn guarded centre, Krosno Odrzanskie guarded centre, Lesznowola guarded centre, Przemyśl guarded centre, Przemysl deportation-arrest, and Warsaw Airport holding facility.⁹⁵

3.3 Conditions in detention. According to the HFHR, all six guarded centres (Bialystok, Krosno Odrzanskie, Lesznowola, Biala Podlaska, Ketrzyn and Przemysl) are in good condition. They were all built after 2008, except for Krosno and Lesznowola, which were both recently renovated. Yet, the design and layout of some of the centres closely resembles that of a prison, with thick walls, bars in the windows, and high exterior walls topped with barbed wire.⁹⁶

All guarded centres are either separated by gender, or have two separate blocks: one for men, and one for families (family blocks also confine women and unaccompanied minors). In 2012, authorities began attempting to place detainees in different centres according to their gender and age—this was declared an official policy by the Interior Ministry in 2013. Since then, there have been modifications in the assignation of centres to a particular gender or age group. As of January 2018 only men are held in in Bialystok, Krosno, and Lesznowola.⁹⁷ The other three centres—Biala Podlaska, Ketrzyn, and Przemysl—are reserved for women and families with children of school age (up to six years of age) (although men were still confined in Przemysl during the Ombudsman’s visit, as well as families with children). The centre of Ketrzyn also has a separate area reserved for unaccompanied irregular migrant children and two places for persons with disabilities.⁹⁸

⁹² Helsinki Foundation for Human Rights “AIDA Country Report: Poland 2017 Update,” European Council on Refugees and Exiles (ECRE), February 2017, <http://www.asylumineurope.org/reports/country/poland/>

⁹³ Helsinki Foundation for Human Rights (HFHR), “Country Report: Poland,” Asylum Information Database (AIDA), November 2015, <http://www.asylumineurope.org/reports/country/poland>

⁹⁴ Maciej Fagasinski (Legal Assistance to Refugees and Migrants, Helsinki Foundation for Human Rights), Email exchange with Izabella Majcher (Global Detention Project), 28 January 2013; N. Rafalik, “Cudzoziemcy ubiegajacy sie o nadanie statusu uchodzcy w Polsce – teoria a rzeczywistosc (praktyka) (stan prawny na dzien 31 grudnia 2011 r.),” Centre of Migration Research, Working Paper 55/113, March 2012, <http://www.migracje.uw.edu.pl/publ/1808/>

⁹⁵ Helsinki Foundation for Human Rights “AIDA Country Report: Poland 2017 Update,” European Council on Refugees and Exiles (ECRE), February 2017, <http://www.asylumineurope.org/reports/country/poland/>; European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), “Report to the Polish Government on the Visit to Poland Carried Out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 26 November to 8 December 2009, CPT/Inf (2011) 21,” 12 July 2011, <http://www.cpt.coe.int/documents/pol/2011-20-inf-eng.pdf>

⁹⁶ Helsinki Foundation for Human Rights “AIDA Country Report: Poland 2017 Update,” European Council on Refugees and Exiles (ECRE), February 2018, <http://www.asylumineurope.org/reports/country/poland/>

⁹⁷ Helsinki Foundation for Human Rights “AIDA Country Report: Poland 2017 Update,” European Council on Refugees and Exiles (ECRE), February 2018, <http://www.asylumineurope.org/reports/country/poland/>

⁹⁸ Helsinki Foundation for Human Rights “AIDA Country Report: Poland 2017 Update,” European Council on Refugees and Exiles (ECRE), February 2018, <http://www.asylumineurope.org/reports/country/poland/>

In general, rooms hold two to eight people and are equipped with metal beds, small tables, and small wardrobes. If all of one's personal belongings cannot be kept in the rooms they are stored in a separate space in the centre, which can be accessed only upon request. All the centres have adequate sport and recreation space including open-air space, libraries, and rooms for religious practices. For every detainee, an officer is appointed to discuss their case with them.⁹⁹

Following its visit to Lesznowola in May 2017, the CPT noted that the material conditions (the centre's state of repair, equipment, living space, and access to natural light) were of a good standard. Detainees were allowed to prepare their own food, and the centre employed a full-time nurse, who was also present during weekends and holidays but not at night. Doctors were visiting the centre on a contractual basis.¹⁰⁰ However the CPT did note that since there were no curtains in the windows, detainees had to cover windows with blankets as a protection from heat and the sun and were not allowed to open the windows without staff authorisation.

After its visit to Bialystok in May 2017, the CPT noted that rooms were of a sufficient size, and were well lit and ventilated. However, the committee noted several shortcomings—the centre's daily budget per detainee was low and the CPT noted several complaints about quality and quantity of food; a general practitioner and a nurse were present every day but not on the weekends, and guards permanently carried truncheons and tasers, including inside accommodation areas. The CPT thus urged authorities to remedy these issues.¹⁰¹

According to the CPT, neither Lesznowola nor Bialystok carried out systematic medical screening upon detention and medical examinations took place in the presence of staff. Both centres employed border guards and educators (return care officers), and staff regularly received training, including in mediation and conflict resolution. Although most of the personnel had some notions of Russian or English, communication was reportedly still problematic. In both centres, detainees were given access during the day to well-equipped common rooms with TV, radio, internet, books, and board games; indoor gyms, and spacious outdoor areas. However, the availability of organised activities was very limited.¹⁰²

⁹⁹ Helsinki Foundation for Human Rights "AIDA Country Report: Poland 2017 Update," European Council on Refugees and Exiles (ECRE), February 2018, <http://www.asylumineurope.org/reports/country/poland/>

¹⁰⁰ European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), "Report to the Polish Government on the Visit to Poland Carried Out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 11 to 22 May 2017, CPT/Inf (2018) 39, July 2018," <https://rm.coe.int/16808c7a91>

¹⁰¹ European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), "Report to the Polish Government on the Visit to Poland Carried Out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 11 to 22 May 2017, CPT/Inf (2018) 39," July 2018, <https://rm.coe.int/16808c7a91>

¹⁰² European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), "Report to the Polish Government on the Visit to Poland Carried Out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 11 to 22 May 2017, CPT/Inf (2018) 39," July 2018, <https://rm.coe.int/16808c7a91>

After its 2016-2017 visits, the Ombudsman lauded some centres' efforts to make the environment more friendly—for example, in Ketrzyn, grills were gradually being removed from windows and similar plans were made to remove bars from windows in Przemyśl. It was thus recommended that bars are removed from windows in all centres, especially in those where children are held, as they create an unnecessary prison-like environment. In addition, the recent construction of a large recreation and sports area in Przemyśl—comprising a children's playground, an outdoor gym, a football and a basketball field, had recently been built.¹⁰³

On the other hand, the Ombudsman criticised the regime in the Przemyśl deportation-arrest for being disproportionately restrictive. In order to use a toilet, detainees must ask permission from a guard, and many consequently end up urinating in plastic bottles instead. Detainees are also under permanent monitoring, which is a stricter regime than that applied in the country's penitentiary system. The Ombudsman also found that in both the deportation-arrest and the guarded centres, guards are equipped with an electric taser which is visible to detainees.¹⁰⁴

In terms of medical care, all detention centres must receive visits from a physician and a nurse. In cases of emergency or when specialist treatment is required, detainees are transferred to hospitals. No early identification of victims of torture or violence is carried out upon detention, and access to psychological assistance is limited.¹⁰⁵ In Ketrzyn, although the centre is dedicated to women and children, only male doctors are employed, creating a communication barrier with women from certain cultures, and there is no permanently employed paediatrician.¹⁰⁶ The Ombudsman observed that in Krosno, a man who attempted suicide after a prolonged hunger strike not only was never consulted by a psychologist or psychiatrist but was punished for his actions and placed in the deportation-arrest centre. Phone calls with the centre's psychologist also revealed that he had no training in, or knowledge of, the [Istanbul Protocol](#) and mechanisms for the identification of victims of torture.¹⁰⁷ In Przemyśl, the Ombudsman's team identified victims of torture.¹⁰⁸

Besides visits from NGOs (see 2.11: Domestic monitoring), detainees may receive visits from relatives, friends, and religious groups. The visits can last for up to 90

¹⁰³ Ombudsman, "Wyciąg Strzeżony Ośrodek dla Cudzoziemców w Przemyślu," February 2018, <http://bit.ly/2EXIR4y>; Ombudsman, "Wyciąg Strzeżony Ośrodek dla Cudzoziemców w Ketrzynie," January 2017, <http://bit.ly/2kPbgCA>

¹⁰⁴ Ombudsman, "Wyciąg Strzeżony Ośrodek dla Cudzoziemców w Przemyślu," February 2018, <http://bit.ly/2EXIR4y>

¹⁰⁵ Helsinki Foundation for Human Rights "AIDA Country Report: Poland 2017 Update," European Council on Refugees and Exiles (ECRE), February 2017, <http://www.asylumineurope.org/reports/country/poland/>

¹⁰⁶ Ombudsman, "Wyciąg Strzeżony Ośrodek dla Cudzoziemców w Ketrzynie," January 2017, <http://bit.ly/2kPbgCA>

¹⁰⁷ Ombudsman, "Wyciąg Strzeżony Ośrodek dla Cudzoziemców w Krośnie Odrzańskim," January 2018, <http://bit.ly/2F2ptCr>

¹⁰⁸ Ombudsman, "Wyciąg Strzeżony Ośrodek dla Cudzoziemców w Przemyślu," February 2018, <http://bit.ly/2EXIR4y>

minutes but may be longer in certain instances when permitted by the centre's manager. Detainees may use their own mobile phones, so-long as they do not include audio and video recording systems. If they do, detainees instead receive phones without cameras from the border guard for free. Detainees should pay for calls but if they do not have sufficient means to do so, they can use the border guard's telephones in justifiable cases.¹⁰⁹ The Ombudsman noted that in the Krosno centre internet access was limited, with many websites including social media networks and email providers blocked for security reasons, despite the fact that computer users are constantly monitored and records on all those using computers are kept.¹¹⁰

Transit zone. Poland also operates a holding facility in the transit area of the Warsaw International Airport, where it holds individuals who have been refused entry. They may be detained here for no longer than 24 hours, although according to reports, it has been used for periods that exceed this limit.¹¹¹ The facility has a maximum capacity of 30 and is divided into three rooms, including one large room capable of accommodating 16 persons and two smaller rooms for six and eight persons respectively.

The GDP classifies this facility as “transit zone detention” because of its location at a port of entry into the country, the repeated reports that the facility exceeds its short-term mandate, and the particular problems with respect to procedural guarantees that seem to result from the facility's intended use as a mechanism for preventing people from entering the country.

In 2010, the UN HRC expressed concern that in some cases persons were held in this facility beyond the deadline of their expulsion and without a court order. The committee therefore urged Poland to ensure that the detention of foreigners in transit zones is not excessively protracted and that when it is extended, such measures should be based on a decision adopted by a court. The committee also noted with concern reports of poor conditions in the transit zone.¹¹²

On the other hand, during its 2009 visit, the CPT found that the material conditions in the facility were generally adequate. It noted that besides bunk beds, the rooms were equipped with tables and chairs, had good access to natural light, were well ventilated, and had a call system. However, other concerns were raised. For example, the CPT found that while migrants were held on the premises overnight

¹⁰⁹ Helsinki Foundation for Human Rights “AIDA Country Report: Poland 2017 Update,” European Council on Refugees and Exiles (ECRE), February 2017, <http://www.asylumineurope.org/reports/country/poland/>

¹¹⁰ Ombudsman, “Wyciąg Strzeżony Ośrodek dla Cudzoziemców w Krośnie Odrzańskim,” January 2018, <http://bit.ly/2F2ptCr>

¹¹¹ Maciej Fagasinski (Legal Assistance to Refugees and Migrants, Helsinki Foundation for Human Rights), Global Detention Project Questionnaire, 8 August 2011; Maciej Fagasinski (Legal Assistance to Refugees and Migrants, Helsinki Foundation for Human Rights), Email exchange with Izabella Majcher (Global Detention Project), January 2013.

¹¹² Human Rights Committee, “Consideration of Reports Submitted by States Parties Under Article 40 of the Covenant, Concluding Observations of the Human Rights Committee, Poland, CCPR/C/POL/CO/6,” 15 November 2010, <http://www.ohchr.org/EN/Countries/ENACARegion/Pages/PLIndex.aspx>

only very rarely, in cases where they had to stay for extended periods of time, they were not provided with personal hygiene products. The CPT also criticised the failure to respect procedural safeguards. It noted that while detainees were in principle entitled to contact a lawyer, they were not actually allowed to meet this person. Although they could move freely within the detention area during the day, they were often granted only 15 to 30 minutes of outdoor exercise per day and there was no communal area. Moreover, non-citizens were not systematically provided with a copy of the forms setting out the rights of persons who are denied access to the territory. Finally, the facility's system of recording the detention of non-citizens was found to be inadequate—in many cases, no information regarding the identity of the individual, nor the time for which they were detained, was entered into the log book.¹¹³

113 European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), "Report to the Polish Government on the Visit to Poland Carried Out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 26 November to 8 December 2009, CPT/Inf (2011) 21," 12 July 2011, <http://www.cpt.coe.int/documents/pol/2011-20-inf-eng.pdf>



www.globaldetentionproject.org