

## **POLAND**

JOINT SUBMISSION TO THE 76<sup>th</sup> SESSION OF THE COMMITTEE ON ECONOMIC,  
SOCIAL, AND CULTURAL RIGHTS

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## Association for Legal Intervention & the Global Detention Project

### Joint Submission to the Committee on Economic, Social, and Cultural Rights (CESCR) concerning Poland's Seventh Periodic Report

#### Issues Related to Refugee and Migrants Rights, Immigration Enforcement and Detention

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#### I. INTRODUCTION

1. The **Association for Legal Intervention** (Stowarzyszenie Interwencji Prawnej, or SIP) is a Warsaw-based civil society organisation that promotes the legal equality of all people, with a particular focus on refugees and migrants in Poland, who are at considerable risk of exclusion and discrimination.

2. The **Global Detention Project** (GDP) is an independent research centre based in Geneva, Switzerland, that investigates the use of detention as a response to international migration. Its objectives are to improve transparency in the treatment of detainees, to encourage adherence to fundamental norms, to reinforce advocacy aimed at reforming detention practices, and to promote scholarship of immigration control regimes.

3. The SIP and the GDP are pleased to provide the CESCR the following submission for consideration during the review of Poland's seventh periodic report at the Committee's 76<sup>th</sup> session in September 2024.

4. The submission concerns Poland's human rights obligations with respect to refugees, asylum seekers, and migrants, with a particular focus on the country's migration-related detention policies and practices. The submission is made in light of the numerous changes Poland has made in its laws and practices in response to important migration challenges it has faced in recent years, in particular since the tremendous surge in refugee arrivals that occurred following the Russian Federation's invasion of and subsequent war on neighbouring Ukraine and humanitarian crisis at the Polish-Belarusian border.

#### II. DETENTION CONTEXT

5. Poland operates six long-term specialised migration-related detention centres, called "Guarded Centres for Foreigners": **Biała Podlaska**, **Białystok**, **Lesznowola**, **Kętrzyn**, **Krosno Odrzańskie**, and **Przemyśl**. In addition to these centres, Poland also operates temporary or short-term custodial sites where migrants are deprived of their liberty, including at ad hoc sites along borders and at holding facilities in international airports.

6. There have been numerous complaints from official monitoring bodies concerning operations at these facilities. Many of these concerns have become increasingly urgent as Poland has faced numerous challenges along its borders with both Belarus and Ukraine. For instance, in August 2021, Poland decreased the minimum standard for personal living space

in Guarded Centres for Foreigners to 2 square meters thus contributing to increased overcrowding of detention facilities. The Polish Human Rights Commissioner has in particular expressed concerns about the living conditions in detention centres, especially in Wędrzyn and Czerwony Bór.

7. A critical ongoing detention-related concern is Poland's continuing detention of child migrants and asylum seekers, employing detention sites that have manifestly inadequate conditions and lack provision of education, health care, and other essential needs. The UN Committee on the Rights of the Child has repeatedly insisted that the immigration detention of children is inherently damaging to children and thus represents in all cases a violation of the "best interests" principle.<sup>1</sup> Likewise, the European Court of Human Rights has clearly indicated in five separate judgments that such detention violates Article 5 and 8 ECHR.<sup>2</sup> Third-country nationals detained for immigration purposes have also no sufficient and effective access to medical and psychological assistance. It is even more concerning taking into account that seriously ill (also mentally) and disabled persons as well as victims of violence continue to be detained in Poland.

### III. CONCERNS RELATED TO CONVENTION PROVISIONS

#### IIIa. Article 2(2): Non-discrimination

8. In the wake of Russia's invasion of Ukraine, Poland created two temporary protection regimes applicable to persons fleeing the conflict. For Ukrainian nationals and some of their family members, a special – generally generous – protection was offered (under the 2022 Special Law<sup>3</sup>). Other persons eligible for protection under the Temporary Protection Directive (thus, some non-Ukrainian third-country nationals living in Ukraine before the war) were only given rights arising from the 2003 Act on Protection.<sup>4</sup> The scope of rights under these two laws differs. For example, Ukrainian nationals enjoying temporary protection can access a general social welfare system (similarly to Polish nationals), while non-Ukrainian temporary protection beneficiaries can only receive a financial allowance for asylum seekers which is considered insufficient to cover their basic needs. ***The differentiation between Ukrainian nationals and third-country nationals who were displaced from Ukraine has been considered discriminatory.***<sup>5</sup>

9. Discrimination of Roma who fled from Ukraine was also widely reported by NGOs and national human rights institutions.<sup>6</sup> Roma were often denied temporary protection or discriminated in their access to accommodation, food, social and medical assistance offered

<sup>1</sup> CRC & CMW, *Joint General Comment No 23/ No 4 (2017) on State obligations regarding the human rights of children in the context of international migration in countries of origin, transit, destination and return*, <https://www.ohchr.org/en/documents/general-comments-and-recommendations/joint-general-comment-no-4-cmw-and-no-23-crc-2017>

<sup>2</sup> ECtHR, *R.M. and Others v. Poland*, no. 11247/18, Judgment of 9 February 2023; ECtHR, *Nikoghosyan and Others v. Poland*, no. 14743/17, Judgment of 3 March 2022; ECtHR, *A.B. and Others v. Poland*, nos. 15845/15 and 56300/15, Judgment of 4 June 2020; ECtHR, *Bilalova and Others v. Poland*, no. 23685/14, Judgment of 26 March 2020; ECtHR, *Bistieva and Others v. Poland*, no. 75157/14, Judgment of 10 April 2018.

<sup>3</sup> *Ustawa z dnia 12 marca 2022 r. o pomocy obywatelom Ukrainy w związku z konfliktem zbrojnym na terytorium tego państwa*,

<https://isap.sejm.gov.pl/isap.nsf/DocDetails.xsp?id=WDU20220000583>.

<sup>4</sup> *Ustawa z dnia 13 czerwca 2003 r. o udzieleniu cudzoziemcom ochrony na terytorium Rzeczypospolitej Polskiej*, Articles 106-118,

<https://isap.sejm.gov.pl/isap.nsf/DocDetails.xsp?id=WDU20031281176>.

<sup>5</sup> J. Prantl, I. M. Kysel, 'Generous, but Equal Treatment? Anti-Discrimination Duties of States Hosting Refugees Fleeing Ukraine', EJIL: Talk!, 2 May 2022, <https://www.ejiltalk.org/generous-but-equal-treatment-anti-discrimination-duties-of-states-hosting-refugees-fleeing-ukraine/>.

<sup>6</sup> Human Rights Commissioner (*Rzecznik Praw Obywatelskich*), 'Systemowo chronić grupy wrażliwe wśród uchodźców z Ukrainy. Odpowiedź pełnomocnika rządu ds. uchodźców z Ukrainy', 8 April and 13 July 2022, <https://bip.brpo.gov.pl/pl/content/rpo-ukraina-uchodzcy-systemowa-ochrona-grup-wrazliwych-mswia-odpowiedz>; Human Rights Commissioner, 'Problemy uchodźców wojennych w Przemysłu. Odpowiedź wojewody na ponowne pismo Rzecznika', 23 December 2022, 25 January, 5 July and 25 July 2023, <https://bip.brpo.gov.pl/pl/content/rpo-ukraina-uchodzcy-przemysl-wojewody-odpowiedz-kolejna>; Amnesty International, 'Polska: „Przyjechalismy tu, nie chcieli nas wpuścić”. Romowie z Ukrainy traktowani jak niechciani uchodźcy', 27 September 2022, <https://www.amnesty.org.pl/polska-przyjechalismy-tu-nie-chcieli-nas-wpuscic-romowie-z-ukrainy-traktowani-jak-niechciani-uchodzcy/>; K. Przybylska, 'Stateless persons from Ukraine seeking protection in Poland', HNLAC, 16 October 2023, <https://www.pomocprawna.org/lib/i5r5fu/Stateless-from-Ukraine-in-PL-2023-Report-lor8j9l5.pdf>, 5; Fundacja w Stronę Dialogu, 'To nie są uchodźcy, tylko podróżnicy. Sytuacja romskich osób uchodźczych w województwie podkarpackim. Raport monitoringowy 2022-2023', July 2023, [https://fundacijawstronedialogu.pl/wp-content/uploads/2023/07/To\\_nie\\_sa\\_uchodzcy\\_tylo\\_podroznicy\\_Sytuacja\\_romskich\\_osob\\_uchodzcych\\_Raport\\_2023.pdf](https://fundacijawstronedialogu.pl/wp-content/uploads/2023/07/To_nie_sa_uchodzcy_tylo_podroznicy_Sytuacja_romskich_osob_uchodzcych_Raport_2023.pdf).

to persons displaced from Ukraine. **Polish authorities generally do not respond (appropriately or at all) to these violations of Roma's rights.**

**10. Third-country nationals are generally insufficiently protected against discrimination in Poland.** Migrant workers report being discriminated in their workplace, but they are unwilling to seek protection against discriminatory practices as they are afraid of being dismissed and, consequently, losing their right to stay in Poland. Polish regulation implementing EU law on equal treatment<sup>7</sup> is rarely used in practice (only several cases in years 2012-2019<sup>8</sup>). The law is insufficient and imprecise, e.g., it does not define intersectional/cumulative and associative discrimination.<sup>9</sup> In 2023, ECRI voiced concerns as regards repeated reports of a political pressure being put on the Human Rights Commissioner who is responsible for the implementation of the principle of equal treatment in Poland.<sup>10</sup>

#### **11. Recommendations: Article 2(2): Non-discrimination:**

1. Poland must cease discriminatory treatment of non-nationals in and in connection with immigration or asylum procedures.
2. Poland must make additional efforts to ensure that Roma are not discriminated against in public policies and official practices.
3. Poland must take steps ensure that all official institutions involved in the treatment of migrants, refugees, and asylum seekers adhere to non-discrimination norms and that EU regulations are properly implemented in both law and practice.

#### **IIIb. Articles 6 and 7: Right to work and enjoy just and favourable working conditions**

**12. Increasingly protracted procedures regarding work and stay in Poland are a growing concern.** It can take many months or even years to be granted a temporary stay permit (over seven years in one case identified by the Supreme Audit Office in 2024).<sup>11</sup> Meanwhile, some migrants cannot work while they wait for this permit to be issued. The response of Polish authorities to the protracted procedures remained inadequate: they first extended the time limits for making decisions in the residence permits proceedings and next they fully suspended these time limits (March 2022-September 2025). Accordingly, currently, Polish authorities are not obliged to decide on a residence permit of a migrant worker in any prescribed time limit.

13. Migrant workers profoundly depend on their employers.<sup>12</sup> Work (and residence) permits are issued for a specified job in a specified workplace and for a specified remuneration. Migrant workers' stay in Poland is closely intertwined with their work. In case of dismissal, the work and temporary stay permit is revoked unless a migrant finds a new job in 30 days. Thus, being dismissed from work, a migrant worker may also lose their right to stay in Poland. **The close connection between work and legal stay strengthens the more advantageous position of employers in comparison with migrant workers. In**

<sup>7</sup> Ustawa z dnia 3 grudnia 2010 r. o wdrożeniu niektórych przepisów Unii Europejskiej w zakresie równego traktowania, <https://isap.sejm.gov.pl/isap.nsf/DocDetails.xsp?id=WDU20102541700>.

<sup>8</sup> I. Wróblewska, 'Przeciwdziałanie dyskryminacji na podstawie przepisów ustawy z dnia 3 grudnia 2010 r. o wdrożeniu niektórych przepisów Unii Europejskiej w zakresie równego traktowania', Przegląd Konstytucyjny 4/2020, <https://www.przeglad.konstytucyjny.law.ui.edu.pl/article/view/710>, 86.

<sup>9</sup> SIP, Letter to Ministry of Internal Affairs and Administration, 15 November 2017, <https://interwenciaprawna.pl/wp-content/uploads/2017/11/uwagi-SIP-do-sprawozdania-z-wykonania-CERD.pdf>, 9.

<sup>10</sup> ECRI, 'ECRI Report on Poland (sixth monitoring cycle)', 27 June 2023, <https://rm.coe.int/sixth-ecri-report-on-poland/1680ac8c62>, 7-8.

<sup>11</sup> Supreme Audit Office (Najwyższa Izba Kontroli), 'Państwo nie radzi sobie z napływem obcokrajowców', 19 March 2024, <https://www.nik.gov.pl/aktualnosci/obsługa-cudzoziemców.html>.

<sup>12</sup> SIP, 'SIP in Action. Report on the activities of the Association for Legal Intervention in 2022', 2023, [https://interwenciaprawna.pl/wp-content/uploads/2021/01/SIP-in-action\\_report-2022.pdf](https://interwenciaprawna.pl/wp-content/uploads/2021/01/SIP-in-action_report-2022.pdf), 40.

**consequence, the latter find it difficult to assert their rights in the event of discrimination, exploitation or abuse.**<sup>13</sup>

**14. Migrant workers who suffered discrimination, exploitation or abuse in Poland are not sufficiently assisted by state authorities.** The National Labour Inspectorate is an authority that focusses on investigating the legality of migrants' work, punishing them for working without needed documents and notifying them to the Border Guard conducting deportation proceedings rather than offering assistance in the event of discrimination, exploitation or abuse..<sup>14</sup>

### **15. Recommendations: Articles 6 and 7: Right to work and enjoy just and favourable working conditions**

1. Poland must adopt reforms that streamline residence and work permits to ensure that non-citizens enjoy basic living conditions and non-discriminatory workplace environments and opportunities.
2. Poland must adopt reforms that ensure that abusive working conditions do not unfairly burden non-citizens' ability to contest abuses and allow sufficient time to find suitable alternative employment opportunities.
3. Poland must offer non-citizens effective access to state support in the event of discrimination, exploitation or abuse.

### **IIIC. Article 9: Right to social security**

**16. Asylum seekers and non-Ukrainian temporary protection beneficiaries cannot benefit from the general social welfare system. They are offered access to accommodation and food organized by the Office for Foreigners,** or they can receive a financial allowance to cover their needs, including housing, by themselves. However, this allowance is too low to meet even the most basic needs of third-country nationals (see more below, p. 22). Its amount has not been changed since 2003 and the costs of living in Poland rose significantly since then. The situation of asylum seekers is worsened by the fact that they are not allowed to work for the first six months of the asylum procedure.<sup>15</sup> NGOs and national human rights institutions appealed many times to the Polish government to increase the amount of this financial allowance, albeit unsuccessfully.<sup>16</sup>

17. While recognized refugees and beneficiaries of subsidiary protection can access social welfare system to the same extent as Polish nationals, humanitarian stay holders – who are involuntary migrants like international protection beneficiaries – are only entitled to significantly limited social assistance, i.e. shelter, food, necessary clothing and an allowance granted for a particular purpose. The same limitation applies to tolerated stay holders.

**18. Access of Ukrainian temporary protection beneficiaries to the general social welfare system has been much hampered in practice due to the law adopted in 2022 and 2023 and its unfavourable application by the Border Guard.** First, under the 2022 Special Law (Article 11(2)), temporary protection is terminated if a person concerned leaves Poland for more than 30 days. However, many instances of such terminations were reported

<sup>13</sup> K. Wysińska-Di Carlo and W. Klaus, 'Pracodawcy i pracodawczynie a zatrudnianie cudzoziemców i cudzoziemek', SIP and Konrad Adenauer Stiftung, 2018, [https://www.interwencjaprawna.pl/wp-content/uploads/2018/06/RAPORT\\_PRACODAWCY\\_I\\_PRACODAWCZYNIEREv-1.pdf](https://www.interwencjaprawna.pl/wp-content/uploads/2018/06/RAPORT_PRACODAWCY_I_PRACODAWCZYNIEREv-1.pdf), 3.

<sup>14</sup> Ibid., 6; SIP, 'SIP in Action. Report on the activities of the Association for Legal Intervention in 2022', 2023, [https://interwencjaprawna.pl/wp-content/uploads/2021/01/SIP-in-action\\_report-2022.pdf](https://interwencjaprawna.pl/wp-content/uploads/2021/01/SIP-in-action_report-2022.pdf), 41-42.

<sup>15</sup> K. Rusiłowicz, E. Ostaszewska-Żuk and M. Łysienka, 'AIDA Country Report: Poland. 2023 Update', ECRE 2024, [https://asylumineurope.org/wp-content/uploads/2024/06/AIDA-PL\\_2023-Update.pdf](https://asylumineurope.org/wp-content/uploads/2024/06/AIDA-PL_2023-Update.pdf), 59-60, 65-66.

<sup>16</sup> Human Rights Commissioner, 'Interwencja RPO ws. świadczeń pieniężnych dla cudzoziemców ubiegających się o ochronę międzynarodową. MSWiA informuje, że będą zmiany w rozporządzeniu', 2 March and 12 April 2023, <https://bjp.brpo.gov.pl/pl/content/rpo-cudzoziemcy-ochrona-miedzynarodowa-swiadczenia-mswia-odpowiedz>; SIP, 'Complaint to the European Commission: insufficient allowances for asylum seekers', 13 July 2020, <https://interwencjaprawna.pl/en/complaint-to-the-ec-extremely-low-amount-of-financial-allowances-for-asylum-seekers/>.

upon shorter periods of absence. Second, since January 2023, any departure from Poland of a temporary protection beneficiary leads to the suspension of his/her social benefits. If that beneficiary returns to Poland, the benefits should be reinstated retroactively (Article 26(3g-3h) of the 2022 Special Law). However, in practice, social benefits are often not reinstated or they are reinstated with delay and/or great difficulty. Both problems are grounded in the unfavourable practice of the Border Guard, which requires a clear declaration at the border crossing point that a person concerned is entering Poland due to the war in Ukraine (or showing a proper residence permit), even if he/she had already been granted protection in Poland for this reason. Without such a declaration, the beneficiary's re-entry is not registered in a special registry, so the 30-day time limit is not interrupted and the social benefits are not reinstated. This practice, despite several interventions of the Human Rights Commissioner,<sup>17</sup> continued and led to thousands of suspensions of social benefits and withdrawals of temporary protection across Poland.<sup>18</sup>

### **19. Recommendations: Article 9: Right to social security**

1. Poland must increase the amount of the financial allowance granted to asylum seekers and non-Ukrainian temporary protection beneficiaries in order to provide them with an adequate standard of living.
2. Poland should provide full access to general welfare system for humanitarian stay holders and tolerated stay holders.
3. Poland must cease unfavourable practices implemented at the Ukrainian border that led to mass deprivation of benefits and status of temporary protection beneficiaries.

### **IIId. Article 10: Protection of the family and children**

20. Ukrainian nationals and their family members enjoying temporary protection in Poland have no right to a family reunification. Under the 2022 Special Law, this right has not been provided for and no procedure exists in this regard. The 2003 Act on Protection provides for some rules as regards family reunification of temporary protection beneficiaries, but they are not implemented in practice.<sup>19</sup>

21. NGOs observe that third-country nationals crossing irregularly the Polish-Belarusian border are separated from their family members by Polish authorities. They are pushed back to Belarus – irrespective of their pleadings for asylum, vulnerabilities and family relations – one by one, meters away from each other, making it often impossible to reunite upon the pushback. Separation of the family members is also reported when one of them needs medical assistance. For example, in July 2023, a mother with a broken leg was taken to a hospital and her 17-year-old daughter was pushed back to Belarus. Despite interventions of the Human Rights Commissioner and NGOs, the girl was not allowed to re-enter Poland; she eventually returned to Syria and her mother was detained in Poland.<sup>20</sup>

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<sup>17</sup> Human Rights Commissioner, 'Uchodźcy z Ukrainy tracą status UKR, a wraz z nim - prawo do świadczeń wychowawczych. Wyjaśnienia ZUS', 2 August, 26 October, 24 November 2023, <https://bip.brpo.gov.pl/pl/content/rpo-ukraina-uchodzczy-swiadczenie-wychowawcze-utrata-mswia-zus-odpowiedz>; Human Rights Commissioner, 'Uchodźcy z Ukrainy są błędnie pozbawiani statusu uprawniającego do opieki medycznej i pomocy. Ponowne pismo RPO', 16 March 2023 and 16 June 2023, <https://bip.brpo.gov.pl/pl/content/rpo-pelnomocnik-uchodzczy-ukraina-status-ukr-utrata-wyjazd-ponowne>.

<sup>18</sup> SIP, 'Input to the EUAA Asylum Report 2024', November 2023, [https://interwencjiprawna.pl/wp-content/uploads/2021/01/CSO\\_input-SIP.pdf](https://interwencjiprawna.pl/wp-content/uploads/2021/01/CSO_input-SIP.pdf), 18-19; M. Łysienia, 'Temporary Protection Poland: 2023 Update', 2024, AIDA ECRE, [https://asylumineurope.org/wp-content/uploads/2024/06/AIDA-PL\\_Temporary-Protection\\_2023.pdf](https://asylumineurope.org/wp-content/uploads/2024/06/AIDA-PL_Temporary-Protection_2023.pdf), 53-55; ACAPS, 'Poland: Loss of temporary protection status and social benefits for Ukrainian refugees', 14 November 2023, [https://www.acaps.org/fileadmin/Data\\_Product/Main\\_media/20231114\\_ACAPS\\_Thematic\\_report\\_Loss\\_of\\_temporary\\_protection\\_status\\_and\\_social\\_benefits\\_for\\_Ukrainian\\_refugees\\_in\\_Pol.pdf](https://www.acaps.org/fileadmin/Data_Product/Main_media/20231114_ACAPS_Thematic_report_Loss_of_temporary_protection_status_and_social_benefits_for_Ukrainian_refugees_in_Pol.pdf).

<sup>19</sup> SIP, 'Input to the EUAA Asylum Report 2023', February 2023, available [https://interwencjiprawna.pl/wp-content/uploads/2021/01/CSO\\_input\\_AR2023-SIP-final.pdf](https://interwencjiprawna.pl/wp-content/uploads/2021/01/CSO_input_AR2023-SIP-final.pdf), 15; M. Łysienia, 'Temporary Protection Poland: 2023 Update', 2024, AIDA ECRE, [https://asylumineurope.org/wp-content/uploads/2024/06/AIDA-PL\\_Temporary-Protection\\_2023.pdf](https://asylumineurope.org/wp-content/uploads/2024/06/AIDA-PL_Temporary-Protection_2023.pdf), 31.

<sup>20</sup> SIP, 'Input to the EUAA Asylum Report 2024', November 2023, [https://interwencjiprawna.pl/wp-content/uploads/2021/01/CSO\\_input-SIP.pdf](https://interwencjiprawna.pl/wp-content/uploads/2021/01/CSO_input-SIP.pdf), 4.

**22. Children continue to be detained in Poland for immigration purposes.** Polish law still allows for a deprivation of liberty of all accompanied minors (pending asylum and return proceedings) and unaccompanied minors above 15 years old (pending return proceedings). By law, asylum-seeking unaccompanied minors should not be detained, but in practice they are placed in the detention centres. ***In practice, children are deprived of liberty automatically, absent a rigorous scrutiny of their individual situation and needs, or of the psychophysical consequences of detention. Child's best interest is often not taken into account.*** It is also not investigated (at all or sufficiently) whether a detention is a measure of last resort or whether alternatives to detention should be applied.<sup>21</sup> Moreover, children are not being detained for as short a period as possible. Many cases of detention of accompanied and unaccompanied minors lasting several months or even over a year were reported.<sup>22</sup> Detention of families with children in Poland has been considered to be against Article 8 ECHR by the ECtHR.<sup>23</sup> Furthermore, in May 2024, the UN Special Rapporteur on violence against women and girls, upon her visit in Poland, stated that ***'The detention of children, pregnant women and individuals with mental health concerns in closed immigration facilities is not in line with international standards. Although children with accompanying adults are placed together, the detention of unaccompanied children with unrelated adults is concerning. Detention of children and other vulnerable individuals, including girls, violates the principle of the best interests of the child and also exacerbates trauma'***.<sup>24</sup>

## **23: Recommendations: Article 10: Protection of the family and children**

**1. Poland must immediately cease all detention of children and their families for reasons related to their migration status,** as provided in the Committee on the Rights of the Child's *Joint General Comment No 23/ No 4 (2017)*. Alternative and appropriate non-custodial accommodation must be found for children and their families. Children and their families currently in immigration detention should be immediately released. Poland should review and amend its immigration laws and policies to bring them in line with the principle that detention is never in the best interests of the child and children should never be detained for migration-related reasons under any circumstances.

**2. Poland must ensure that vulnerable groups are never placed in immigration detention,** including asylum seekers, LGBTIQ+ persons, children, and people with mental illnesses are not placed in detention settings, as provided in the *Working Group on Arbitrary Detention's Revised Deliberation No. 5*, paragraph 41: "Detention of migrants in other situations of vulnerability or at risk, such as pregnant women, breastfeeding mothers, elderly persons, persons with disabilities, lesbian, gay, bisexual, transgender and intersex persons, or survivors of trafficking, torture and/or other serious violent crimes, must not take place."

**3. Poland must provide access to family reunification to all non-citizens and cease practices leading to separating families at the border.**

<sup>21</sup> SIP, 'SIP in Action. Report on the activities of the Association for Legal Intervention in 2022', 2023, [https://interwencjaprawna.pl/wp-content/uploads/2021/01/SIP-in-action\\_report-2022.pdf](https://interwencjaprawna.pl/wp-content/uploads/2021/01/SIP-in-action_report-2022.pdf), 23, 29, 32-33; K. Rusilowicz, E. Ostaszewska-Żuk and M. Łysienia, 'AIDA Country Report: Poland. 2023 Update', ECRE 2024, [https://asylumineurope.org/wp-content/uploads/2024/06/AIDA-PL\\_2023-Update.pdf](https://asylumineurope.org/wp-content/uploads/2024/06/AIDA-PL_2023-Update.pdf), 98. See also M. Górczyńska and 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 and HFHR, 2017, <https://www.unhcr.org/pl/wp-content/uploads/sites/22/2016/12/HFHR-report-on-the-detention-of-children.pdf>.

<sup>22</sup> See e.g. 'Visit to Poland. Report of the Special Rapporteur on the human rights of migrants, Felipe González Morales', April 2023, <https://www.ohchr.org/en/documents/country-reports/ahrc5326add1-visit-poland-report-special-rapporteur-human-rights-migrants>, 15; FIPP, 'Migrants have the right to have rights – detencja cudzoziemców', 2023, <https://panstwoprava.org/wp-content/uploads/2023/01/Detencja.pdf>, 55.

<sup>23</sup> ECtHR, *A.B. an Others v. Poland*, nos. 15845/15 and 56300/15, Judgment of 4 June 2020, and ECtHR, *Bistiéva and Others v. Poland*, no. 75157/14, Judgment of 10 April 2018. See also friendly settlements in ECtHR, *R.M. and Others v. Poland*, no. 11247/18, Judgment of 9 February 2023; ECtHR, *Bilalova and Others v. Poland*, no. 23685/14, Judgment of 26 March 2020; ECtHR, *Z.E. and Others v. Poland*, no. 4457/18, Decision of 1 July 2021.

<sup>24</sup> 'Visit to Poland. Report of the Special Rapporteur on violence against women and girls, its causes and consequences', May 2024, <https://documents.un.org/doc/undoc/gen/g24/071/34/pdf/g2407134.pdf>, 11.

### IIIe. Article 11: Right to an adequate standard of living

**24. The financial allowance given to asylum seekers (and non-Ukrainian temporary protection beneficiaries) is generally insufficient to ensure an adequate standard of living in Poland.** As noticed in the AIDA report, “With only PLN 750-775 (around € 175-181) per month, it is very difficult or even impossible to rent an apartment or even a room in Warsaw, where most asylum seekers stay during the procedure. (...) As the amount of financial allowance is insufficient for renting separate accommodation, asylum seekers are often forced to live in overcrowded and insecure places. Many of them sleep in overcrowded apartments, where they have to share beds with other people or where living conditions do not provide privacy and personal safety”.<sup>25</sup>

25. Since 1 March 2023, the cost-free accommodation for Ukrainian temporary protection beneficiaries has been limited to 120 days. After this period, with some vague exceptions, a beneficiary must (increasingly) contribute to the costs of this accommodation. These new rules were criticised by the NGOs and Human Rights Commissioner. In August 2023, the Migration Consortium published a report concerning the access to accommodation for Ukrainian nationals upon the introduction of the co-payment obligation. The research showed that there is no coherency in interpreting the law in question and applying this obligation in practice. Not enough information has been given by the government both to the concerned Ukrainian nationals (some of whom thus returned to Ukraine fearing homelessness in Poland) and to local authorities responsible for the accommodation centres. It is unknown how many persons have been exempted from the co-payment obligation. The Consortium stated that the observed practice raises concerns whether the situation of Ukrainian nationals is really scrutinised. Meanwhile, the access to other accommodation is increasingly limited. NGOs provide support to Ukrainian nationals, filling gaps created by the new law.<sup>26</sup> The introduction of the co-payment obligation forced temporary protection beneficiaries to look for the cheaper accommodation. Some families were also separated as a result of the co-payment obligation: those family members who were not obliged to pay stayed in the centre, while the others moved. Due to the accommodation problems, some temporary protection beneficiaries returned to Ukraine or sought protection elsewhere.<sup>27</sup>

26. Polish authorities offered no support – other than a right to enter and stay in Poland for up to 15 days – to persons displaced from Ukraine but not eligible for temporary protection (e.g. asylum seekers, students, short-term migrant workers, temporary residence permit holders). Such persons needed to rely on NGOs to meet their basic needs, including housing and food.<sup>28</sup> The same was observed with regard to Roma minority from Ukraine (see above, paragraph 9).

<sup>25</sup> K. Rusiłowicz, E. Ostaszewska-Żuk and M. Łysienia, ‘AIDA Country Report: Poland. 2023 Update’, ECRE 2024, [https://asylumineurope.org/wp-content/uploads/2024/06/AIDA-PL\\_2023-Update.pdf](https://asylumineurope.org/wp-content/uploads/2024/06/AIDA-PL_2023-Update.pdf), 59-60, referring to *inter alia* Lukaszewicz, K., ‘Exile to Poverty: Policies and Poverty Among Refugees in Poland’, *International Migration* Vol. 55 (6) 2017, <https://onlinelibrary.wiley.com/doi/10.1111/imig.12356>, 63-64; M. Pachocka, K. Pędziwiatr, K. Sobczak-Szelc, J. Szalańska, ‘Reception Policies, Practices and Responses: Poland Country Report’, 2020, RESPOND Working Papers 2020/45, <https://www.migracje.uw.edu.pl/publikacje/reception-policies-practices-responses-poland-country-report-2/>, 56-58.

<sup>26</sup> SIP, ‘Input to the EUAA Asylum Report 2024’, November 2023, [https://interwencjaprawna.pl/wp-content/uploads/2021/01/CSO\\_input-SIP.pdf](https://interwencjaprawna.pl/wp-content/uploads/2021/01/CSO_input-SIP.pdf), 19; referring to Migration Consortium, ‘At the Starting Point. Monitoring of collective accommodation for Ukrainian refugees in 2023 in the light of legal changes’, August 2023, <https://konsorcjum.org.pl/storage/2023/10/Raport-eng-fin.pdf>, and Human Rights Commissioner, ‘MSWiA wyjaśnia zasady udziału uchodźców wojennych z Ukrainy w kosztach udzielanej im pomocy’, 19 June and 1 August 2023, <https://bjp.brpo.gov.pl/pl/content/rpo-ukraina-uchodzcy-pomoc-koszty-udzial-mswia-odpowiedz>.

<sup>27</sup> N. Bloch, Z. Szmyt, ‘Nomadland. Miejsca zbiorowego zakwaterowania osób uchodźczych z Ukrainy w Wielkopolsce a procesy integracyjne’, *Raport CeBaM UAM* 1/2024, Poznań University [https://www.cebam.pl/files/ugd/b6ce46\\_9be90d04c4354ec9ac79a480b5833e6e.pdf](https://www.cebam.pl/files/ugd/b6ce46_9be90d04c4354ec9ac79a480b5833e6e.pdf), 25-28.

<sup>28</sup> M. Łysienia, ‘Temporary Protection Poland: 2023 Update’, 2024, AIDA ECRE, [https://asylumineurope.org/wp-content/uploads/2024/06/AIDA-PL\\_Temporary-Protection\\_2023.pdf](https://asylumineurope.org/wp-content/uploads/2024/06/AIDA-PL_Temporary-Protection_2023.pdf), 8; SIP, ‘SIP in Action. Report on the activities of the Association for Legal Intervention in 2022’, 2023, [https://interwencjaprawna.pl/wp-content/uploads/2021/01/SIP-in-action\\_report-2022.pdf](https://interwencjaprawna.pl/wp-content/uploads/2021/01/SIP-in-action_report-2022.pdf), 13-14.



27. Since August 2021, Poland has been pushing irregular migrants back to Belarus and Belarus has been forcing them (directly by threats and violence or indirectly by not allowing them to leave the border area) to irregularly re-cross the Polish border. ***In consequence, many third-country nationals, including children, pregnant women and ill persons, have been stranded in the woods at the border for days or weeks without proper access to food, water, shelter, or medical assistance. It has been considered to constitute an inhuman and degrading treatment and challenged before the ECtHR.***<sup>29</sup>

28. ***In response to the crisis at the Polish-Belarusian border, new – ad-hoc – immigration detention centres were opened in 2021. The conditions in the two of them: in Wędrzyn and Czerwony Bór, were far from providing an adequate standard of living.*** They were heavily criticized by civil society and challenged before the ECtHR.<sup>30</sup> The Polish Human Rights Commissioner reproached the centre in Czerwony Bór for overcrowding and the lack of common spaces, including the ones dedicated for children. The Commissioner assessed the conditions in Wędrzyn as “very bad” for numerous reasons and concluded that the treatment of third-country nationals staying in this centre may be considered inhuman. Thus, it recommended a prompt closure of this detention centre.<sup>31</sup> The two centres were also controlled by the Supreme Audit Office. In 2022, it noticed that not all legal requirements as regards the operation of and conditions in the detention centres were satisfied there. With regard to the centre in Czerwony Bór, it identified, inter alia, problems with medical and psychological assistance, access to Internet, and lack of canteen. With regard to Wędrzyn, the Supreme Audit Office inter alia stated that the fire requirements have not been satisfied and the sanitary conditions therein were inappropriate, putting the life and limb of foreigners and Border Guard officers in danger.<sup>32</sup> In addition, in detention centres in Kętrzyn and Lesznowola third-country nationals were placed in containers with significantly decreased living conditions.<sup>33</sup>

29. ***As noted previously, in 2021 Poland decreased the minimum standard for personal living space in immigration detention centres to two square meters. The new law remained in force and was applied in practice since, even though it breaches international human rights standards and it has been unitedly criticized by CPT, NGOs and the Polish Human Rights Commissioner.***<sup>34</sup> Overcrowding in the immigration detention centres has been reported since the adoption of this new law. It has been challenged before the ECtHR.<sup>35</sup>

<sup>29</sup> See e.g. ECtHR, *R.A. and Others v. Poland*, no. 42120/21, communicated on 27 September 2021 and relinquished to the Grand Chamber on 25 June 2024.

<sup>30</sup> See e.g. ECtHR, *M.M. and Others v. Poland*, nos. 2509/22 10271/22 10373/22, communicated on 5 April 2023, and SIP, ‘Another case of illegal push-back communicated to Poland’, 5 June 2023, available in English here: <https://interwencjiprawna.pl/en/another-case-of-illegal-push-back-communicated-to-poland/>. See also SIP, ‘We are fighting for redress for the unlawful detention of an Iraqi citizen after experiencing violence’, 12 April 2023, <https://interwencjiprawna.pl/en/we-are-fighting-for-redress-for-the-unlawful-detention-of-an-iraqi-citizen-after-experiencing-violence/>.

<sup>31</sup> Human Rights Commissioner, ‘Sytuacja cudzoziemców w ośrodkach strzeżonych w dobie kryzysu na granicy Polski i Białorusi. Raport z wizytacji Krajowego Mechanizmu Prewencji Tortur’, June 2022, <https://bip.brpo.gov.pl/pl/content/kmpt-cudzoziemcy-strzezone-osrodki-raport>, 70-73.

<sup>32</sup> Supreme Audit Office, ‘Przygotowanie organów państwa na wypadek masowego napływu cudzoziemców do Polski’, <https://www.nik.gov.pl/kontrola/D/21/506/KST/>, 33-39. See also ‘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 21 March to 1 April 2022’, 2024, <https://rm.coe.int/1680ae9529>, 18.

<sup>33</sup> Human Rights Commissioner, ‘Sytuacja cudzoziemców w ośrodkach strzeżonych w dobie kryzysu na granicy Polski i Białorusi. Raport z wizytacji Krajowego Mechanizmu Prewencji Tortur’, June 2022, <https://bip.brpo.gov.pl/pl/content/kmpt-cudzoziemcy-strzezone-osrodki-raport>, 66-67.

<sup>34</sup> *Ibid.*, 66; ‘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 21 March to 1 April 2022’, 2024, <https://rm.coe.int/1680ae9529>, 18; ‘Visit to Poland. Report of the Special Rapporteur on violence against women and girls, its causes and consequences’, May 2024, <https://documents.un.org/doc/undoc/gen/g24/07/1/34/pdf/g2407134.pdf>, 11; SIP, ‘Input to the EUAA Asylum Report 2023’, February 2023, [https://interwencjiprawna.pl/wp-content/uploads/2021/01/CSO\\_input\\_AR2023-SIP-final.pdf](https://interwencjiprawna.pl/wp-content/uploads/2021/01/CSO_input_AR2023-SIP-final.pdf), 8; K. Rusiłowicz, E. Ostaszewska-Żuk and M. Łysienka, ‘AIDA Country Report: Poland. 2023 Update’, ECRE 2024, [https://asylumineurope.org/wp-content/uploads/2024/06/AIDA-PL\\_2023-Update.pdf](https://asylumineurope.org/wp-content/uploads/2024/06/AIDA-PL_2023-Update.pdf), 84-85.

<sup>35</sup> See e.g. ECtHR, *M.S.T. and Others v. Poland*, no. 40464/22, communicated on 5 April 2023; ECtHR, *M.H.D. and Others v. Poland*, no. 22399/22, communicated on 10 July 2023.

**30. *The conditions in the immigration detention centres where children are placed are not suitable: they are of a prison-like character and not sufficiently adapted to the special needs of children. Children placed in these centres do not have sufficient access to education too. Taking that into account, the Polish Human Rights Commissioner concluded that children should not be placed in the immigration detention centres as it may have a negative impact on their development and psychophysical condition.***<sup>36</sup> The Commissioner's approach to children's immigration detention in Poland was mirrored in the report of the UN Special Rapporteur on the human rights of migrants published upon his monitoring visit in 2022. After visiting detention centres in Lesznowola, Biala Podlaska and Bialystok, the Rapporteur called for a release of all families with children from Polish detention centres and for the increased use of alternatives to detention in these cases.<sup>37</sup> Similar conclusions were reached by CPT.<sup>38</sup> Detention of families with children in Poland was also found to violate Article 5 and 8 ECHR. The ECtHR stated that it cannot overlook the fact that the centres where minor applicants were held had many features of a custodial facility.<sup>39</sup>

### **31. Recommendations: Article 11: Right to an adequate standard of living**

1. Poland must increase the amount of financial allowance granted to asylum seekers and non-Ukrainian temporary protection beneficiaries in order to provide them with an adequate standard of living.
2. Poland must change rules concerning co-payment obligations for persons displaced from Ukraine to effectively provide them an adequate standard of living.
3. Poland must cease pushbacks at the Polish-Belarusian border that force third-country nationals to live in degrading and dangerous conditions.
4. Poland must make sure that third-country nationals are not subjected to degrading detention conditions as identified in Wędrzyn and Czerwony Bór and must repeal the laws enabling providing two square meters per person in immigration detention.
5. Poland must immediately cease all detention of children and their families for reasons related to their migration status.

### **III f. Article 12: Right to physical and mental health**

**32. *By law, no one – including migrants in irregular situations – can be denied emergency healthcare. However, irregular migrants are most often not covered by the public health insurance; thus, they must pay all medical expenses – often unaffordable – themselves.*** Moreover, in practice, medical staff frequently reports irregular migrants to the Polish authorities, disclosing their undocumented stay in Poland and indirectly prompting the initiation of return and/or detention proceedings. In consequence, irregular migrants are often afraid to access public healthcare system.

**33. *Access to medical care for detained third-country nationals continues to be limited.*** The number of GPs employed to provide medical assistance in the detention centres is considered inadequate.<sup>40</sup> The overcrowding of those centres, especially in 2021,

<sup>36</sup> Human Rights Commissioner, Letter of 25 January 2022 no. KMP.572.1.2021.PK, [https://bip.brpo.gov.pl/sites/default/files/2022-02/RPO\\_sad\\_25.1.2022.pdf](https://bip.brpo.gov.pl/sites/default/files/2022-02/RPO_sad_25.1.2022.pdf).

<sup>37</sup> 'Visit to Poland. Report of the Special Rapporteur on the human rights of migrants, Felipe González Morales', April 2023, available here: <https://www.ohchr.org/en/documents/country-reports/ahrc5326add1-visit-poland-report-special-rapporteur-human-rights-migrants>, 15-17.

<sup>38</sup> '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 21 March to 1 April 2022', 2024, <https://rm.coe.int/1680ae9529>, 19.

<sup>39</sup> ECtHR, *R.M. and Others v. Poland*, no. 11247/18, Judgment of 9 February 2023; ECtHR, *Nikoghosyan and Others v. Poland*, no. 14743/17, Judgment of 3 March 2022; ECtHR, *A.B. an Others v. Poland*, nos. 15845/15 and 56300/15, Judgment of 4 June 2020; ECtHR, *Bilalova and Others v. Poland*, no. 23685/14, Judgment of 26 March 2020; ECtHR, *Bistieva and Others v. Poland*, no. 75157/14, Judgment of 10 April 2018.

<sup>40</sup> See e.g. Human Rights Commissioner, 'Ośrodek dla cudzoziemców w Wędrzynie nie spełnia standardów ochrony ich praw. Wnioski po trzeciej wizytacji BRPO', 24 January 2022, <https://bip.brpo.gov.pl/pl/content/rpo-wedrzyn-cudzoziemcy-osrodek-standardy>; Amnesty International, 'Poland: Cruelty Not Compassion, at Europe's Other Borders', 11 April 2022, <https://www.amnesty.org/en/documents/eur37/5460/2022/en/>, 9.

worsened the situation, leaving some detainees without needed healthcare.<sup>41</sup> Detainees also struggle to access expert healthcare (e.g. gynaecological for pregnant women, in case of bone fractures).<sup>42</sup> In 2024, upon her visit in Poland, the UN Special Rapporteur on violence against women and girls, its causes and consequences, stated that 'Non-Ukrainian asylum-seekers who are admitted into the country are placed in severely overcrowded guarded detention facilities where access to adequate health care, including sexual and reproductive health services, psychosocial support (...) is limited'.<sup>43</sup> Access to emergency medical assistance in detention centres is also hampered. For example, in January 2023, an ambulance was called for a third-country national on a hunger strike who was detained in the centre in Lesznów. There was no medical staff at the time in the centre. The emergency unit was not allowed to enter the detention centre and provide medical assistance to the foreigner.<sup>44</sup>

**34. Psychological assistance in detention centres in Poland continues to be insufficient: not enough psychologists work in the detention centres and these psychologists, who were often also Border Guard officers, are not trusted by detainees.<sup>45</sup> Meanwhile, access to detention centres for external psychologists continues to be hindered. The Border Guard repeatedly denied access to detention centres to psychologists working in NGOs.<sup>46</sup>** Moreover, Polish authorities unwillingly release foreigners (even children) from detention due to their mental health problems.<sup>47</sup> For example, the *M.S.T. and Others v. Poland* case pending before the ECtHR concerns a married couple with a three-year-old child who spent almost six months in the Kętrzyn detention centre despite the mother's and child's deteriorating mental health condition. The hardship of the stay in the detention centre was intensified by the lack of adequate psychological care for the family, including the Border Guard's refusal to allow a consultation with an independent external psychologist and the lack of a child psychologist in the centre.<sup>48</sup>

**35. In consequence of the humanitarian and political crisis at the Polish-Belarusian border, since August 2021, third-country nationals have been stranded at the border for days or weeks without an appropriate access to water, food, shelter, and medical care.** Third-country nationals forced to seek to survive in the woods near the border – also in the harsh winter conditions – often suffered from hypothermia, frostbitten limbs (leading in extreme cases even to amputation), dehydration, food poisonings and injuries inflicted by border guards or resulting from walking barefoot or climbing through a fence built in 2022.

<sup>41</sup> Amnesty International mentioned 'extremely restricted access to medical care' in the detention centres in Białystok and Wędrzyn, see Amnesty International, 'Poland: Cruelty Not Compassion, at Europe's Other Borders', 11 April 2022, <https://www.amnesty.org/en/documents/eur37/5460/2022/en/>, 6.

<sup>42</sup> See e.g. '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 21 March to 1 April 2022', 2024, <https://rm.coe.int/1680ae9529>, 20; SIP, 'Input to the EUAA Asylum Report 2024', November 2023, [https://interwencjaprawna.pl/wp-content/uploads/2021/01/CSO\\_input-SIP.pdf](https://interwencjaprawna.pl/wp-content/uploads/2021/01/CSO_input-SIP.pdf), 10; SIP, 'A mother from Cameroon and her child received refugee status in Poland', 27 November 2023, <https://interwencjaprawna.pl/en/a-mother-from-cameroon-and-her-child-received-refugee-status-in-poland/>.

<sup>43</sup> 'Visit to Poland. Report of the Special Rapporteur on violence against women and girls, its causes and consequences', May 2024, <https://documents.un.org/doc/undoc/gen/q24/071/34/pdf/q2407134.pdf>, 11.

<sup>44</sup> SIP, 'Lack of medical assistance for foreigners in the guarded center for foreigners', 24 March 2023, <https://interwencjaprawna.pl/en/lack-of-medical-assistance-for-foreigners-in-the-guarded-center-for-foreigners/>.

<sup>45</sup> Human Rights Commissioner, 'Sytuacja cudzoziemców w ośrodkach strzeżonych w dobie kryzysu na granicy Polski i Białorusi. Raport z wizytacji Krajowego Mechanizmu Prewencji Tortur', June 2022, <https://bip.brpo.gov.pl/pl/content/kmpt-cudzoziemcy-strzezone-osrodki-raport>, 44; Human Rights Commissioner, 'Pomoc psychologiczna w strzeżonych ośrodkach dla cudzoziemców – także ze strony NGO-sów. Odpowiedź SG', 20 October 2022, 22 November 2022, 25 April 2023, <https://bip.brpo.gov.pl/pl/content/rpo-cudzoziemcy-osrodki-pomoc-psychologiczna-ngo-sg-odpowiedz>.

<sup>46</sup> SIP, 'SIP files a complaint against the refusal to admit psychologists to guarded centres', 1 July 2022, <https://interwencjaprawna.pl/en/sip-files-a-complaint-against-the-refusal-to-admit-psychologists-to-guarded-centres/>; Human Rights Commissioner, 'Pomoc psychologiczna w strzeżonych ośrodkach dla cudzoziemców – także ze strony NGO-sów. Odpowiedź SG', 20 October 2022, 22 November 2022, 25 April 2023, <https://bip.brpo.gov.pl/pl/content/rpo-cudzoziemcy-osrodki-pomoc-psychologiczna-ngo-sg-odpowiedz>.

<sup>47</sup> See e.g. ECtHR, *R.M. and Others v. Poland*, no. 11247/18, no. 11247/18, Judgment of 9 February 2023; ECtHR, *Z.E. and Others v. Poland*, no. 4457/18, Decision of 1 July 2021 (friendly settlement).

<sup>48</sup> ECtHR, *M.S.T. and Others v. Poland*, no. 40464/22, see also SIP, 'The ECtHR communicates another case concerning immigration detention of families in Poland', 13 June 2023, <https://interwencjaprawna.pl/en/the-ecthr-notifies-another-polish-family-detention-case/>. Similarly, ECtHR, *M.H.D. and Others v. Poland*, no. 22399/22; ECtHR, *V.M. and Others v. Poland*, no. 40002/22, and ECtHR, *Z.H.R. and Others v. Poland*, no. 55558/22.

Since its built, third-country nationals have been increasingly crossing the border through swamps, wetlands and rivers which increased a risk of drownings, injuries, hypothermia or death.<sup>49</sup>

36. The use of violence at the border have only increased since 2021. ***The UN Special Rapporteur on Human Rights of Migrants stated in 2023 that, while both states deny using violence at the Polish-Belarusian border, the evidence proves that abusive and violent tactics are used by Polish and Belarusian forces.<sup>50</sup> Third-country nationals are subjected to beating (with hands and batons), fully undressing, insults, derision, denying access to toilet, water or food, and destroying the foreigners' possessions: clothes, shoes, phones and food.*** Tear gas is regularly used (including with pepper spray throwers), also towards minors.<sup>51</sup> Moreover, in November 2023, a Syrian citizen was shot in the back at the border by Polish forces and needed a six-hour surgery.<sup>52</sup>

37. Several dozen persons died at the Polish-Belarusian border since the beginning of the humanitarian crisis in August 2021, mostly from hypothermia.<sup>53</sup> Civil society organizations claimed that some of the fatalities at the Polish-Belarusian border had happened after the person concerned had been pushed back from Poland. They asserted that some of those persons could have survived if the Polish authorities would – at all, properly or timely – react to the other migrants' calls for help for the ill foreigner who they had to leave in the woods to seek medical assistance.<sup>54</sup> The death of an Ethiopian woman raised particular doubts as reportedly Polish Police and Border Guard were informed by the other third-country nationals about her bad medical condition. Instead of transporting her to the hospital, Polish authorities pushed her back to Belarus. The Human Rights Commissioner investigated this case; however, the Border Guard and Police seemed to be unwilling to cooperate.<sup>55</sup> While the authorities claim that the medical assistance at the border is available, NGOs and media constantly report that not all persons needing medical assistance are receiving it. They are pushed back to Belarus despite being ill or injured.

**38. Access to medical assistance for persons crossing the Polish-Belarusian border continues to be hampered.** In September 2022, the emergency state was announced at the Polish-Belarusian border. The closed zone was created at this border that excluded media, NGOs and medical staff from the area surrounding the border. The medical staff's calls for allowing them to enter the restricted area were ignored by Polish authorities.<sup>56</sup> In consequence, essential medical assistance was provided by doctors, nurses and paramedics – many volunteering their free time – in the woods surrounding the restricted

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<sup>49</sup> K. Rusilowicz, E. Ostaszewska-Żuk and M. Łysienica, 'AIDA Country Report: Poland. 2023 Update', ECRE 2024, [https://asylumineurope.org/wp-content/uploads/2024/06/AIDA-PL\\_2023-Update.pdf](https://asylumineurope.org/wp-content/uploads/2024/06/AIDA-PL_2023-Update.pdf), 73-76; 'Visit to Poland. Report of the Special Rapporteur on the human rights of migrants, Felipe González Morales', April 2023, <https://www.ohchr.org/en/documents/country-reports/ahrc5326add1-visit-poland-report-special-rapporteur-human-rights-migrants>, 14; Grupa Granica, 'Periodic report of Grupa Granica on the situation at the Polish-Belarusian border. December 2022-January 2023', February 2023, <https://hfhr.pl/upload/2023/02/report-of-grupa-granica-december-january.pdf>, 10.

<sup>50</sup> 'Visit to Poland. Report of the Special Rapporteur on the human rights of migrants, Felipe González Morales', April 2023, <https://www.ohchr.org/en/documents/country-reports/ahrc5326add1-visit-poland-report-special-rapporteur-human-rights-migrants>, 13-14.

<sup>51</sup> PRAB, 'What we do in the shadows', May 2023, <https://pro.drc.ngo/media/3h1d5s5r/vi-prab-report-what-we-do-in-the-shadows-jan-to-april-2023.pdf>, 10; PRAB, 'Surprisingly surprised', September 2023, <https://pro.drc.ngo/media/zprpb3cq/prab-report-may-to-august-2023-final.pdf>, 10.

<sup>52</sup> Grupa Granica, 'November 2023. Report from the Polish-Belarusian border', December 2023, [https://drive.google.com/file/d/1tqPuTu0q018kj0TUCCICXUOUAvWv7\\_IM/view](https://drive.google.com/file/d/1tqPuTu0q018kj0TUCCICXUOUAvWv7_IM/view), 4.

<sup>53</sup> The exact number is unknown, the NGOs reported that it was from 40 to 60 persons, see Ocalenie Foundation, No Safe Passage. Migrants' deaths at the European Union-Belarusian border, July 2024, [https://en.ocalenie.org/pl/wp-content/uploads/2024/07/ENG\\_No-Safe-Passage-Migrants-deaths-at-the-European-Union-Belarusian-border.pdf](https://en.ocalenie.org/pl/wp-content/uploads/2024/07/ENG_No-Safe-Passage-Migrants-deaths-at-the-European-Union-Belarusian-border.pdf), 59; HFHR, 'Disappearances at the Polish-Belarusian border - HFHR response', 23 November 2023, <https://hfhr.pl/aktualnosci/zaginiecia-na-graniczy-dzialania-hfpc>; PRAB, 'What we do in the shadows', May 2023, <https://pro.drc.ngo/media/3h1d5s5r/vi-prab-report-what-we-do-in-the-shadows-jan-to-april-2023.pdf>, 8-9.

<sup>54</sup> Grupa Granica, 'Periodic report of Grupa Granica on the situation at the Polish-Belarusian border. December 2022-January 2023', February 2023, <https://hfhr.pl/upload/2023/02/report-of-grupa-granica-december-january.pdf>.

<sup>55</sup> Human Rights Commissioner, 'Śmierć obywatelki Etiopii przy granicy. RPO pyta policję, co zrobiła dla jej odnalezienia i pomocy. Odpowiedź KGP', 6 and 14 March 2023, 12 and 20 April 2023, <https://bip.brpo.gov.pl/pl/content/rpo-etiojka-granica-smierc-prokuratura-policja-bialystok-kgp-odpowiedz>.

<sup>56</sup> In response Médecins Sans Frontières temporarily withdrew all its teams from the Polish-Belarusian border, see 'MSF leaves Polish border after being blocked from assisting people', 6 January 2022, <https://www.msf.org/msf-leaves-polish-border-after-being-blocked-assisting-migrants-and-refugees>.

area. Due to their activity at the border, doctors, nurses and paramedics experienced hostility, threats and violence.<sup>57</sup> Moreover, some persons who entered – intentionally or not – the restricted area to rescue life and health of third-country nationals were arrested and prosecuted.<sup>58</sup>

39. In the circumstances of the humanitarian crisis at the Polish-Belarusian border, calling for an ambulance and hospital treatment was avoided unless necessary, as it entailed a risk for migrants to be pushed-back again by Polish authorities. Moreover, it was reported that ambulances were not sent (or were sent only upon civil society intervention) because of a foreign nationality and irregular status of the ill person.<sup>59</sup>

#### 40. Recommendations: Article 12: Right to physical and mental health

1. Poland must provide effective access to medical assistance in immigration detention, including expert and emergency medical care.
2. Poland must provide effective access to mental healthcare in immigration detention. In particular, psychological assistance provided by the NGOs should be allowed.
3. Poland must cease pushbacks and violence at the Polish-Belarusian border that put third-country nationals' life and limb at risk.
4. Poland must allow entry to the closed zone at the Polish-Belarusian border to all medical teams and NGOs providing humanitarian assistance. Medical assistance in the border area should be provided to all persons in need irrespective of their nationality or the manner of entry.

#### IIIg. Article 14: Right to education

41. By law, all children staying – also irregularly – in Poland have a constitutional right to education. The number of foreign pupils in Poland has been constantly rising in the recent years entailing various challenges to Polish educational system. Those difficulties were not accurately recognized and addressed by the Polish authorities. For example, *the Supreme Audit Office concluded in 2020 that the Ministry of Education showed no interest in the education of foreign pupils: despite having public funds for an essential training for teachers in that area, the money was not spent, and no monitoring of the situation of foreign pupils was conducted on a national level.*<sup>60</sup>

42. *Most worrying is the lack of access to a proper education for children that are detained in Poland.* Some didactic and educational activities are organized in the detention centres, but they do not cover even a minimal scope of the compulsory curriculum.<sup>61</sup> The access to the limited education offered in detention is also hindered by the transfers of minors from one guarded centre to another.<sup>62</sup> While the lack of access to regular schools and

<sup>57</sup> K. Rusiłowicz, E. Ostaszewska-Żuk, M. Łysienka, 'Asylum Information Database. Country Report: Poland 2021 Update', ECRE 2022, [https://asylumineurope.org/wp-content/uploads/2022/05/AIDA-PL\\_2021update.pdf](https://asylumineurope.org/wp-content/uploads/2022/05/AIDA-PL_2021update.pdf), 81.

<sup>58</sup> A. Pałęcka, 'Przemoc państwa i działania oddolne. Raport Fundacji Ocalenie z kryzysu humanitarnego na pograniczu polsko-białoruskim', Fundacja Ocalenie, May 2022, available in Polish at [https://ocalenie.org.pl/wp-content/uploads/2022/04/Raport-Fundacji-Ocalenie-z-kryzysu-humanitarnego-na-pograniczu-PL-BY\\_1kor-1.pdf](https://ocalenie.org.pl/wp-content/uploads/2022/04/Raport-Fundacji-Ocalenie-z-kryzysu-humanitarnego-na-pograniczu-PL-BY_1kor-1.pdf), 24-27.

<sup>59</sup> Pushbacks from hospitals were regularly reported, see e.g. 'Visit to Poland. Report of the Special Rapporteur on the human rights of migrants, Felipe González Morales', April 2023, <https://www.ohchr.org/en/documents/country-reports/ahrc5326add1-visit-poland-report-special-rapporteur-human-rights-migrants>, 13-14; Medecins Sans Frontieres, 'Death, Despair and Destitution: The Human Costs of EU's Migration Policies', February 2024, <https://lekarze-bez-granic.pl/wp-content/uploads/death-despair-and-destitution-msf-report.pdf>, 44; A. Pałęcka, 'Przemoc państwa i działania oddolne. Raport Fundacji Ocalenie z kryzysu humanitarnego na pograniczu polsko-białoruskim', Fundacja Ocalenie, May 2022, [https://ocalenie.org.pl/wp-content/uploads/2022/04/Raport-Fundacji-Ocalenie-z-kryzysu-humanitarnego-na-pograniczu-PL-BY\\_1kor-1.pdf](https://ocalenie.org.pl/wp-content/uploads/2022/04/Raport-Fundacji-Ocalenie-z-kryzysu-humanitarnego-na-pograniczu-PL-BY_1kor-1.pdf), 40-42.

<sup>60</sup> Supreme Audit Office, 'Kształcenie dzieci rodziców powracających do kraju i dzieci cudzoziemców', September 2020, <https://www.nik.gov.pl/kontrola/P/19/028/>.

<sup>61</sup> ECRE, 'The Right to Education for Asylum Seekers in the EU', March 2023, <https://ecre.org/wp-content/uploads/2023/03/Policy-Note-Accessing-to-Education-for-Asylum-Seekers-in-the-EU-March-2023.pdf>, 2, referring to the 'SIP's submission to ECRI', June 2022, <https://interwencjaprawna.pl/wp-content/uploads/2022/06/ECRI.pdf>, 2.

<sup>62</sup> FIPP, 'Migrants have the right to have rights – detencja cudzoziemców', 2023, <https://panstwoprawa.org/wp-content/uploads/2023/01/Detencja.pdf>, 55-56.

teaching is explained by the Polish authorities by the short period of the children's detention, in practice, cases of detention of accompanied and unaccompanied minors lasting several months or even over a year are often reported.<sup>63</sup> ***The period of immigration detention pending return was extended in April 2023. It is now six months that can be prolonged by twelve months, so in total 18 months. In addition to the abovementioned 18 months, a person concerned may be detained for up to 6 months pending asylum proceedings. There are no exceptions from these rules regarding children provided for in law.***

43. Outside detention, the main problems relating to foreign nationals' education include language and cultural barriers. By law, all foreign children attending Polish schools are entitled to: additional free Polish language classes – organised as long as a child needs it, not less than 2 hours a week; compensatory (catch-up) classes – organized for a maximum of twelve months; assistance of a teacher's assistant who knows the mother language of a child, for max. twelve months. However, not all foreign children receive this support in practice. Additional Polish language and compensatory classes are not organized at all in some schools, or they are not adapted to individual needs of foreign pupils. Limitations to twelve months and to max. 5 hours of additional Polish language and compensatory classes per week for one child are criticized. It may be not enough time to learn a new language and catch-up with peers. Moreover, not enough teacher's assistants supporting foreign children attending schools are employed in Poland.<sup>64</sup>

44. To address these problems, since 2016, schools have a possibility to organise preparatory classes for foreign pupils who do not know Polish language in a sufficient manner. Preparatory classes are aimed at making foreign pupils ready for joining their Polish peers in regular classes, but it is often an unaccomplished goal. First, foreign minors attending preparatory classes, until recently, could have only 3 hours per week of Polish language lessons (since March 2022 – 6 hours), which was criticized as being counterproductive. Second, teachers are expected to implement the same curriculum in the preparatory classes as in the regular ones; only a method of teaching may be adapted to the special needs of foreign children. Third, one preparatory class can be organised for children of different ages and levels of education. Lastly, teachers struggle with accessing needed training in regard to working with foreign pupils.<sup>65</sup>

45. In July 2023, the UNHCR and UNICEF informed that less than half of Ukrainian children (approx. 173.000) who fled war were enrolled to Polish schools. It was assessed that approx. 30% of these children are also attending the Ukrainian online schools. Children not attending Polish schools most probably take part in online education organized by the Ukrainian authorities. However, reports of children being enrolled to no school are also available.<sup>66</sup> To counteract the Ukrainian children's exclusion from the Polish education

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<sup>63</sup> See e.g. SIP, 'SIP in Action. Report on the activities of the Association for Legal Intervention (SIP) in 2021', 2022,

<https://interwencjiaprawna.pl/wp-content/uploads/2022/06/RAPORT-2022-ENG.pdf>, 20-21 (8 months, 1.5 year); Human Rights Commissioner, 'Sytuacja cudzoziemców w ośrodkach strzeżonych w dobie kryzysu na granicy Polski i Białorusi. Raport z wizytacji Krajowego Mechanizmu Prewencji Tortur', June 2022, [https://bjp.brpo.gov.pl/pl/content/kmpt-cudzoziemcy-strzezone-osrodki-raport\\_17](https://bjp.brpo.gov.pl/pl/content/kmpt-cudzoziemcy-strzezone-osrodki-raport_17) (over 4 months); SIP, 'We submit a complaint to the ECtHR against unlawful detention of a family with a child', 27 September 2022, <https://interwencjiaprawna.pl/en/we-submit-a-complaint-to-the-ecthr-against-unlawful-detention-of-a-family-with-a-child/> (6 months).

<sup>64</sup> K. Rusiłowicz, E. Ostaszewska-Żuk and M. Łysienią, 'AIDA Country Report: Poland. 2023 Update', ECRE 2024, [https://asylumineurope.org/wp-content/uploads/2024/06/AIDA-PL\\_2023-Update.pdf](https://asylumineurope.org/wp-content/uploads/2024/06/AIDA-PL_2023-Update.pdf), 67-69; K. Potoniec, 'Comparative analysis of instruments supporting the integration of pupils under international protection in the educational systems of the Czech Republic, Poland and Hungary', December 2021, <http://www.forintegration.eu/pl/pub>, 12, 15. See also Supreme Audit Office, 'Kształcenie dzieci cudzoziemców w polskich szkołach', 12 December 2023, [https://www.nik.gov.pl/plik/id\\_28888\\_vp.31720.pdf](https://www.nik.gov.pl/plik/id_28888_vp.31720.pdf).

<sup>65</sup> K. Rusiłowicz, E. Ostaszewska-Żuk and M. Łysienią, 'AIDA Country Report: Poland. 2023 Update', ECRE 2024, [https://asylumineurope.org/wp-content/uploads/2024/06/AIDA-PL\\_2023-Update.pdf](https://asylumineurope.org/wp-content/uploads/2024/06/AIDA-PL_2023-Update.pdf), 69-70.

<sup>66</sup> UNHCR and UNICEF, 'More than half of Ukrainian refugee children not enrolled in schools in Poland', 10 July 2023, <https://www.unhcr.org/pl/14657-unhcr-i-unicef-edukacja.html>. See also M. Łysienią, 'Temporary Protection Poland: 2023 Update', 2024, AIDA ECRE, [https://asylumineurope.org/wp-content/uploads/2024/06/AIDA-PL\\_Temporary-Protection\\_2023.pdf](https://asylumineurope.org/wp-content/uploads/2024/06/AIDA-PL_Temporary-Protection_2023.pdf), 45-47; Human Rights Commissioner, 'Nierozwiązane problemy edukacji dzieci i młodzieży z Ukrainy. Min. Przemysław Czarnek odpowiada RPO', 31 March and 13 June 2023, <https://bjp.brpo.gov.pl/pl/content/rpo-mein-problemy-edukacja-uczniowie-ukraina-odpowiedz>.

system, in May 2024, the payment of some social welfare benefits was made dependant on the Polish school's attendance. This change was considered an introduction of mandatory education for Ukrainian children in Poland by the UNHCR and as a measure leading to unequal treatment by SIP.<sup>67</sup>

46. Ukrainian children who attend Polish schools face many obstacles. The Human Rights Commissioner noticed in 2023 that there is an insufficient number of preparatory classes (only 8% of Ukrainian children enrolled in these classes), schools are overcrowded, there is an insufficient number of cultural assistants and psychosocial support, and bullying and discrimination of Ukrainian pupils are reported. Teachers informed the Commissioner that they struggle with the language barrier and dealing with war-traumatised children.<sup>68</sup> In a 2024 report, Care, IRC, Save the Children, and Triangle reported numerous difficulties facing Ukrainian students, including difficulty with transferring Ukrainian diploma certifications, increased crowding in schools, difficulties with understanding of the enrolment procedures, cultural and language barriers, amongst other problems.<sup>69</sup>

#### **47. Recommendations: Article 14: Right to education**

1. Poland should provide full access to education for all foreign children staying in Poland. Due to the lack of access to proper education in detention centres, children should not be detained for immigration purposes.
2. Poland should establish an effective educational support for all foreign pupils.
3. Ukrainian children should be encouraged and supported in their education in Poland. The identified barriers to education should be effectively removed.

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<sup>67</sup> UNHCR, 'Draft law amending the Act on Assistance to Citizens of Ukraine in the Context of the Armed Conflict in Ukraine ("the Special Act"). UNHCR Comments and Observations', April 2024, <https://www.refworld.org/legal/natlegcomments/unhcr/2024/en/147928>, 6; SIP, 'The Polish government is working on changes to the Special Act and we reported some comments related to it', 19 April 2024, <https://interwencjiprawna.pl/en/the-polish-government-is-working-on-changes-to-the-special-act-and-we-reported-some-comments-related-to-it/>.

<sup>68</sup> Human Rights Commissioner, 'Nierozwiązane problemy edukacji dzieci i młodzieży z Ukrainy. Min. Przemysław Czarnek odpowiada RPO', 31 March and 13 June 2023, <https://bip.brpo.gov.pl/pl/content/rpo-mein-problemy-edukacja-uczniowie-ukraina-odpowiedz>.

<sup>69</sup> Care, IRC, Save the Children, Triangle, 'Out of School: Assessment on barriers to school enrolment for Ukrainian refugee adolescents in Poland', February 2024, [https://www.rescue.org/sites/default/files/2024-02/Out-of-School-Report\\_en.pdf](https://www.rescue.org/sites/default/files/2024-02/Out-of-School-Report_en.pdf).