

## **POLAND**

JOINT SUBMISSION TO THE EUROPEAN COMMITTEE FOR THE PREVENTION OF  
TORTURE, IN PREPARATION FOR ITS 2022 VISIT TO POLAND

**MARCH 2022**

**Association for Legal Intervention**

*Stowarzyszenie Interwencji Prawnej*

ul. Siedmiogrodzka 5/51

01-204 Warszawa

tel/fax (+ 48) 792 568 561

(+48) 22 621 51 65

[biuro@interwencjaprawna.pl](mailto:biuro@interwencjaprawna.pl)

<https://interwencjaprawna.pl/>

**Global Detention Project**

3, rue Varembé

1202 Geneva

Switzerland

[admin@globaldetentionproject.org](mailto:admin@globaldetentionproject.org)

<https://www.globaldetentionproject.org>

## **Association for Legal Intervention and Global Detention Project**

### **Joint Submission to the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT)**

#### **in Preparation for its Visit to Poland**

**MARCH 2022**

## **1. INTRODUCTION**

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.

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.

The SIP and the GDP are pleased to provide the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) the following submission in preparation for its visit to Poland during 2022. The submission concerns the detention of migrants, asylum seekers, and refugees, as well as their treatment in related custodial settings. The submission is based on the CPT's relevant standards as included in "Foreign Nationals Detained Under Aliens Legislation" (7th General Report of the CPT, CPT/Inf (97)10, 1997) and "Safeguards for Irregular Migrants Deprived of their Liberty" (19th General Report of the CPT, CPT/Inf (2009)27, 2009).

This submission is made taking into account the two million refugees who have crossed into Poland in recent weeks following the Russian Federation's invasion of and subsequent war on neighbouring Ukraine, as well concerns about Poland's treatment of migrants and asylum seekers entering the country along its border with Belarus since mid-2021.

## **2. FOLLOW UP TO RECOMMENDATIONS ISSUED BY CPT AFTER 2017 VISIT**

During the CPT's previous visit to Poland, in 2020, it did not focus attention on migration-related detention in Poland or the conditions at the country's border control establishments. Its most recent visits to migration-related detention sites in Poland took place in 2017, when the delegation carried out a follow-up visit to the Guarded Centre for Foreigners in Lesznowola and a first-time visit to the Guarded Centre for Foreigners in Białystok.<sup>1</sup>

In the subsequent report on its 2017 visits in Poland, the CPT made several recommendations concerning a broad range of policies and practices at the Lesznowola and Białystok detention centres.

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<sup>1</sup> Council of Europe, "Report to the Poland Government on the Visit to Poland Carried Out by 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, 25 July 2018, <https://rm.coe.int/16808c7a91>

## 2A. TREATMENT OF DETAINEES

- **The delegation issued a general recommendation that “officers at Lesznowola and Białystok be reminded that they should treat detained foreign nationals in a respectful manner”** (p. 37), noting that reports of use of racist language by guards and complaints of disrespectful behaviour towards detainees (p. 37).
- The CPT also expressed concern about the use of “special means (‘means of coercion’)” at the detention centres—including handcuffs, truncheons, tasers, and pepper spray—which although not frequently used were carried “in full view. **The CPT recommended that practice of carrying coercive devices practice “cease without delay”** (p. 51).

## 2B. CONDITIONS & REGIME

- The CPT noted that although material conditions appeared to be generally acceptable at the detention centres, **improvements needed to be made with respect to (p. 39):**
  - **Privacy with toilets;**
  - **The quality and quantity of food, including enabling detainees to prepare their own food;**
  - **Access to fresh air, allowing detainees to open their windows;**
  - **Shades on windows to control entrance of sunlight.**
- The CPT also recommended **“that efforts be made to enlarge the offer of activities at the Guarded Centres visited, in the light of the above remarks. This will also require additional efforts to fill all staff vacancies”** (p. 42).

## 2C. HEALTHCARE

- **Improved access to appropriate medical professional:** The CPT recommended “that steps be taken at the Guarded Centre for Foreigners in Białystok to ensure nursing cover also on weekends” and that “a person competent to provide first aid (which should include being trained in the application of CPR and the use of a defibrillator) is present on every night shift (p. 43).
- **Improvements in medical screening:** “The CPT recommends that a full and thorough medical examination of foreign nationals be carried out upon admission at the Guarded Centres in Lesznowola and Białystok (and, as applicable, in other guarded centres); in particular, newly-arrived detainees should be systematically screened for transmissible diseases (including tuberculosis). The screening should also aim at identifying possible victims of torture, with clear rules on the procedures to be followed whenever a medical practitioner reports on any detained person who may have been the victim of torture. (P. 44)
- **Continuing problems with possible inappropriate involvement by non-medical staff in medical treatment at detention centres (dual loyalty/conflicts of interest problems):** “Furthermore, despite the Committee’s recommendations made in the past, medical examinations were still taking place in the presence of non-medical Border Guard officers. The CPT once again calls upon the Polish authorities to ensure that in all Guarded Centres for Foreigners medical confidentiality is observed in the same way as in the outside community. In particular, all medical examinations should be conducted out of the hearing and – unless the doctor concerned requests otherwise in a particular case – out of the sight of custodial Border Guard officers. Detained persons’ medical files.” (P. 45)
- **Improvements in mental healthcare:** The CPT recommended hiring more professional psychological staff, filling vacancies, and improving interpretation services (p. 46).

## 2D. LEGAL SAFEGUARDS

- **Ongoing need for improved access to legal services and provisions of information about legal remedies and the reasons for detention.** “Committee can only reiterate its recommendation that steps be taken to ensure that all foreign nationals detained under aliens legislation are effectively able to benefit from legal counselling and, if necessary, legal representation. For indigent foreign nationals, these services should be provided free of charge.” (p. 47).

## 2E. FOLLOW-UP RECOMMENDATIONS

The SIP and the GDP urge the Committee to carefully review the state of implementation of each of the recommendations listed above from its 2017 visit to Poland. In particular, we urge the CPT to:

- **Carefully review conditions in detention centres which, as noted below, appear to be extremely poor in many detention facilities, as the Polish Ombudsperson has reported. Despite the CPT’s finding in 2017 that there appeared to be adequate space in cells for migration detainees, there are clearly important problems with this issue today, which has been exasperated by Poland’s decision in August 2021 to decrease the minimum standard for personal living space in Guarded Centres for Foreigners to 2 square meters (for up to 12 months) thus contributing to increased overcrowding of detention facilities.**
- **Assess ongoing problems in the provision of medical care in detention centres.**
- **Investigate ongoing problems in detainees accessing legal assistance and necessary information about their cases.**

## 3. RECENT CONCERNS RAISED BY DETENTION MONITORS & CIVIL SOCIETY

### 3A. INHUMAN AND DEGRADING CONDITIONS IN GUARDED CENTERS FOR FOREIGNERS

Poland currently operates six long-term specialised migration-related detention centres, called “Guarded Centres for Foreigners”: **Biała Podlaska, Białystok, Lesznowola, Ketrzyn, Krosno Odrzańskie, and Przemyśl**. In addition to these centres, Poland also operates other temporary or short-term custodial sites where migrants are deprived of their liberty, including the **Foreigners Registration Center in Dubicze Cerkiewne**, the **Temporary Guarded Center for Foreigners in Wędrzyn** and **Temporary Guarded Center for Foreigners in Czerwony Bór**.

Since the CPT’s last visits to migration detention centres in Poland in 2017, there have been numerous complaints about the treatment of detainees at many of these facilities and the conditions of these detention centres. Many of these concerns have become increasingly urgent over the past year as Poland has faced numerous challenges along its borders with both Belarus and Ukraine. Furthermore, in August 2021, Poland decreased the minimum standard for personal living space in Guarded Centres for Foreigners to 2 square meters (for up to 12 months) thus contributing to increased overcrowding of detention facilities.

The Polish Ombudspersonman expressed concerns about the deteriorating living conditions in detention centres. The SIP recently issued complaints about the treatment of refugees from Afghanistan in detention centres, in particular at the **Foreigners Registration Center in Dubicze Cerkiewne, the Temporary Guarded Center for Foreigners in Wędrzyn**, the **Guarded Centre for Foreigners in Ketrzyn and Przemyśl**, and border control stations at **Sanok**.

An example of the problems that have been found is the situation at the Guarded Centre at **Przemyśl**, which includes a border control post on the premises. The Ombudsperson found

problems with lack of space, problems with detainees ability to access telephones, lack of food and fresh air, amongst numerous other concerns. For more details on these reports from the Polish Ombudsperson, see:

- “CHR Office representatives in the Podkarpackie and Lubelskie voivodeships,” 5 March 2022, <https://bip.brpo.gov.pl/en/content/chr-office-representatives-podkarpackie-and-lubelskie-voivodeships-0>
- “Visits of the CHR Office representatives on the Polish-Ukrainian border,” 26 February 2022, <https://bip.brpo.gov.pl/en/content/visits-chr-office-representatives-polish-ukrainian-border>

Based on the findings of these reports, the **Association for Legal Intervention** (Stowarzyszenie Interwencji Prawnej, or SIP) has submitted an official complaint before the European Court of Human Rights (ECHR), which includes both detention issues and issues concerning the treatment that many refugees have suffered at Poland’s border’s (see below for more details).

Concerning the situation in detention centres, the SIP complaint to the ECHR highlights:

- the prohibition of arbitrary detention and the prohibition of inhuman or degrading treatment, because the conditions in guarded centres are unsuitable for refugees.

See: “SIP complains about the inhumane treatment of refugees,” <https://interwencjaprawna.pl/en/sip-complains-about-the-inhumane-treatment-of-refugees/>

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### *3B. ABUSES OF NON-CITIZENS ON THE BORDER WITH BELARUS*

It is important to impress upon the Committee that many of the abuses that non-citizens in official custody face are not confined to official detention centres, but rather in other custodial situations, including during border procedures, forced pushbacks, and removals. Since May 2021, there has been a growing migrant crisis on Poland’s border with Belarus with tens of thousands of migrants, most of them from Afghanistan and Iraq, attempting to cross the border from Belarus into the bordering countries of Poland, Lithuania, and Latvia. At the end of October, Poland said that 500 people were attempting to cross the border every day and reported 24,500 attempted crossings in 2021, compared to a total of 120 people who crossed in 2020. EU countries accused Belarus of weaponizing the plight of migrants, luring them to Belarus in order to travel on to EU countries as retaliation against EU sanctions, and using them as pawns to destabilise the EU.<sup>2</sup>

Poland responded harshly to this situation: it sent 11,000 soldiers to the border, erected razor-wire fencing, and started the construction of a 350 million Euro, 186-kilometre wall, equipped with thermal cameras and motion detectors, to prevent asylum seekers entering from Belarus. Polish border guards were brutal in their treatment of migrants attempting to cross, many of whom sustained serious injuries from Polish and Belarussian border guards. Thousands were left stranded in the forests between the two countries in deplorable conditions with no food, shelter, blankets, or medicines: at least 19 migrants died in the

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<sup>2</sup> See Global Detention Project updates on the Poland-Belarus border at <https://www.globaldetentionproject.org/countries/europe/poland>

freezing winter temperatures. Anti-immigrant sentiment and rhetoric was stirred up during this crisis and has been rife throughout the country. In practice, asylum applications are regularly not accepted from people crossing the Polish-Belarusian border.

In August 2021, Poland adopted legislation that would allow it to expel anyone who irregularly crossed its border and banned their re-entry for six months to three years.<sup>3</sup> No effective remedies are available in case of such an immediate removal. In those circumstances, since October 2021, Polish Border Guard can issue a decision ordering a foreigner to leave Poland. A person concerned is immediately forced to depart from Polish territory. Return proceedings are not initiated. Moreover, if the foreigner who entered Poland irregularly applies for international protection, that application may not be considered at all, unless the foreigner entered Poland directly from a territory where his/her rights could be violated.

In early September 2021, shortly after the Taliban takeover in Afghanistan, Human Rights Watch reported that 32 Afghan nationals were trapped for over three weeks on Poland's border with Belarus and refused entry into Poland; they were prevented from seeking asylum and denied access to food and medicine.<sup>4</sup> In a ruling on the case of the 32 Afghans who were stuck on the border at Usnarz Górny from August to at least October 2021, the European Court of Human Rights (ECtHR) ordered Poland to provide the applicants with food, water, clothing, adequate medical care and, if possible, temporary shelter for a limited amount of time. In some cases, it was also indicated that applicants should not be removed from Poland or that they should have access to a lawyer.<sup>5</sup> Additionally, the Court ordered that lawyers should have access to their applicant clients. The court's orders were not observed.

UNHCR also called upon Poland to allow the group of 32 Afghans to apply for asylum urging the "government to make an individualised assessment of each case before expelling these people or preventing them from entering the territory."<sup>6</sup>

The situation on the border is further aggravated by the fact that authorities persistently deny civil society actors and the media access to the border zone. This limits possibilities to provide legal and humanitarian assistance to persons stranded on the border, as well as reliable media coverage of the situation.

Poland reported that it had detained 900 migrants who crossed from Belarus in 2021, 349 of them in the first week of August alone, compared to 122 migrants in the whole of 2020. Although events in Ukraine have overshadowed the migrant crisis on Poland's border with Belarus, the situation of pushbacks, ill-treatment, and detention continues today.

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<sup>3</sup> Infomigrants, "Poland Passes Law Allowing Migrant Pushbacks at Border," 15 October 2021, <https://www.infomigrants.net/en/post/35768/poland-passes-law-allowing-migrant-pushbacks-at-border>

<sup>4</sup> L. Gall, "Afghans Stuck at Poland's Border Need Protection," Human Rights Watch, 2 September 2021, <https://www.hrw.org/news/2021/09/02/afghans-stuck-polands-border-need-protection>

<sup>5</sup> ECtHR, *R.A. and Others v. Poland*, no. 42120/21, communicated case; ECtHR, 'Requests for interim measures concerning the situation at the borders with Belarus,' Press Release of 6 December 2021, available in English at: <https://bit.ly/3Im80Vf>; ECtHR, 'Interim measures accepted in 2021', available in English at: [https://www.echr.coe.int/Documents/Stats\\_art\\_39\\_02\\_ENG.pdf](https://www.echr.coe.int/Documents/Stats_art_39_02_ENG.pdf). European Court of Human Rights, "Court indicates interim measures in respect of Iraqi and Afghan nationals at Belarusian border with Latvia and Poland," ECHR 244 (2021), 25 August 2021, <https://hudoc.echr.coe.int/eng-press#%22itemid%22:%22003-7100942-9612632%22>}}

<sup>6</sup> UNHCR, "UNHCR Calls for an end to the Impasse on the Polish-Belarus Border," 24 August 2021, <https://www.unhcr.org/pl/13303-unhcr-apeluje-o-zakonczenie-impasu-na-granicy-polsko-bialoruskiej.html>

In February 2022, the Polish Legal Intervention Association (SIP), lodged complaints with the European Court of Human Rights on behalf of two refugees from Afghanistan who tried to enter Poland in August 2021.<sup>7</sup> Despite making claims for refugee protection, the two refugees were illegally deported to the strict reserve of the Białowieża Primeval Forest in the middle of the night where they were held without proper clothing, food, drinking water, shelter, or medical care. When they were finally allowed into Poland, they were placed in guarded centres for foreigners. They were moved from the Foreigners Registration Center in Dubicze Cerkiewne, to the Guarded Center for Foreigners in Kętrzyn, and then to the Temporary Guarded Center for Foreigners in Wędrzyn. The SIP argued in its complaint that Poland had breached its obligations under the European Convention on Human Rights on the following grounds:

- prohibition of collective expulsion,
- prohibition of inhuman or degrading treatment and the right to life in connection with the deportation of refugees in the middle of the night to the strict reserve of the Białowieża Primeval Forest, where they were not provided with the possibility of meeting their basic needs (shelter, medical assistance, access to drinking water and food),
- the obligation to provide an effective remedy, because Poland does not provide a legal path to appeal against an illegal push-back,
- the prohibition of arbitrary detention and the prohibition of inhuman or degrading treatment, because the conditions in guarded centers are unsuitable for refugees.

According to Małgorzata Jaźwińska, member of the Board of SIP and the attorney-at-law in charge of the case: “We decided to file a complaint because the conditions in the centers where refugees are placed are degrading and inhuman... Refugees are given less personal space than prisoners. The centers are often dirty and sanitary conditions are poor. Access to the help of a doctor or psychologist is often purely illusory. Refugees should not be locked up in such places at all.”<sup>8</sup>

The Polish Ombudsman also highlighted poor conditions in guarded centers, in particular in the Temporary Guarded Center for Foreigners in Wędrzyn, as well as the conditions in the Guarded Center for Foreigners in Kętrzyn.

The SIP is currently waiting for the case to be communicated to the European Court of Human Rights.

### *3C. DISCRIMINATORY DETENTION PRACTICES OF NON-UKRAINIAN REFUGEES*

Since the start of Russia’s war in Ukraine, there have been numerous reports about the unequal treatment that non-Ukrainian refugees are getting as they flee Ukraine. In Poland, this has included attacks by anti-migrant gangs, in particular at the border crossing at Przemyśl, the distribution of false news reports about alleged crimes committed by non-European migrants, and unequal treatment by Polish guards and officials.

One key concern, according to sources in Poland, is that whereas refugees from Ukraine are not being detained, nationals from other parts of the world sometimes are. Although few

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<sup>7</sup> Stowarzyszenie Interwencji Prawnej, “SIP Complains about the Inhuman Treatment of Refugees,” 15 February 2022, <https://interwencjaprawna.pl/en/sip-complains-about-the-inhumane-treatment-of-refugees/>

<sup>8</sup> Stowarzyszenie Interwencji Prawnej, “SIP Complains about the Inhuman Treatment of Refugees,” 15 February 2022, <https://interwencjaprawna.pl/en/sip-complains-about-the-inhumane-treatment-of-refugees/>

details are available, the Polish Ombudsperson recorded the cases of several asylum seekers from Africa in late February 2022:

Between 25 and 28 February 2022 the Border Guard post in Sanok received five applications for international protection, all of which were filed by citizens of Congo. The persons who filed the applications were transferred to the Open Centre for Foreigners in Kolonia Horbów. The post in Przemyśl received three such applications from Nigerian citizens who, due to the negative results of their identity verification, were transferred to the Guarded Centre for Foreigners in Lesznowola. Unfortunately, neither reports on acceptance of declaration of intent, nor applications for international protection in the territory of the Republic of Poland are translated into the languages spoken by foreigners. In practice, the lack of translation of such documents may lead to a situation that was observed by the visiting team while waiting to enter the border crossing point in Przemyśl: a foreigner who was a speaker of Russian, and whose identity had already been verified, asked the visiting team to explain to him the meaning of the report on acceptance of the declaration.

See:

- “CHR Office representatives in the Podkarpackie and Lubelskie voivodeships,” 5 March 2022, <https://bip.brpo.gov.pl/en/content/chr-office-representatives-podkarpackie-and-lubelskie-voivodeships-0>

### *3D. DETENTION OF CHILDREN*

Despite growing global recognition that the migration-related detention of children represents an inherent child rights violation—which has been repeatedly affirmed by the UN Committee on the Rights of the Child as well as by the Council of Europe, UN High Commissioner for Refugees, and numerous UN human rights mechanisms—Poland continues to allow the detention of children in its migration-related detention centres (“Guarded Centres”).

In 2020, 101 children (including 22 unaccompanied) were placed in the guarded centres for foreigners, but in 2021 the number of detained minors rose to 567 (81 unaccompanied).<sup>9</sup> Polish law still allows for the 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 guarded centres, in particular when their age is contended by Polish authorities or when they applied for asylum while staying in detention as irregular migrants.<sup>10</sup>

In practice, children are deprived of liberty automatically, without a rigorous scrutiny of their individual situation and needs, or of the psychosocial consequences of their detention. In the operative part of the courts’ decisions, accompanied minors are sometimes not even mentioned. The child’s best interest is often not taken into account. It is also not investigated (at all or sufficiently) whether a detention is a measure of last resort or whether alternatives to detention should be applied. Moreover, children are not detained for as short a period as

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<sup>9</sup> SIP, “SIP w działaniu. Prawa cudzoziemców w Polsce w 2021 roku,” 2022, forthcoming.

<sup>10</sup> Ibid. See also K. Rusiłowicz, E. Ostaszewska-Żuk, M. Łysienia, “Asylum Information Database. Country Report: Poland 2020 Update ECRE 2021,” available in English at: [https://asylumineurope.org/wp-content/uploads/2021/04/AIDA-PL\\_2020update.pdf](https://asylumineurope.org/wp-content/uploads/2021/04/AIDA-PL_2020update.pdf), 79.

possible. Cases of detention of accompanied and unaccompanied minors lasting several months or even over a year are repeatedly reported.<sup>11</sup>

The conditions in the guarded centres where minors are placed are not suitable for children and they do not have adequate access to appropriate education or healthcare. Although additional buildings were adapted for immigration detention purposes in 2021, conditions were still poor and overcrowded and did not meet international human rights standards, according to the Polish Ombudsman and NGOs. Despite this, unaccompanied minors continue to be placed in these centres.<sup>12</sup>

Poland has been repeatedly reproached by the ECtHR for detaining families with children in the guarded centres without a rigorous examination of alternative measures and the best interest of a child. Poland was found to have violated Article 5 and 8 of the ECtHR in four recent immigration detention cases.<sup>13</sup> Moreover, in a case concerning the detention of an accompanied minor for almost a year, whose psychological state worsened while in detention, Poland has settled with the applicants before the ECtHR. In 2021, for the first time, a case concerning immigration detention of children was communicated to the Polish government by the Human Rights Committee.<sup>14</sup>

In July 2021, the ECtHR communicated the case of *Z.E. et al. v. Poland* to the Polish government, in a case supported by Małgorzata Jaźwińska, a lawyer cooperating with the SIP.<sup>15</sup> The case involved a mother with four children. They spent more than 10 months in a guarded centre for foreigners, which they were not allowed to leave. Despite numerous complaints about the deteriorating mental state of one of the children, the Border Guard did not release the family from detention. It was only after obtaining an expert opinion, which indicated that the boy was suffering from depression, chronic psychological problems, as well as withdrawal and isolation, and that his further detention would not be in his best interests, that the family was released from the guarded centre by the court.

The applicants indicated that their rights to family life, freedom from torture, and unlawful detention had been violated. Prolonged deprivation of liberty had a negative impact on the psychological state of the children. Moreover, according to Polish law, the woman should not have been placed in a guarded centre as she was a survivor of domestic violence. The

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<sup>11</sup> SIP, 'SIP w działaniu. Prawa cudzoziemców w Polsce w 2021 roku', 2022, forthcoming. 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 Helsinki Foundation for Human Rights, 2018, available in English at: <https://www.hfhr.pl/wp-content/uploads/2019/07/Children-detention-study-final-report.pdf>.

<sup>12</sup> SIP, "SIP w działaniu. Prawa cudzoziemców w Polsce w 2021 roku," 2022, forthcoming. See also Commissioner for Human Rights, 'Ośrodek dla cudzoziemców w Wędrzynie nie spełnia standardów ochrony ich praw. Wnioski po trzeciej wizytacji BRPO', 24 January 2022, available in Polish at: <https://bip.brpo.gov.pl/pl/content/rpo-wedrzyn-cudzoziemcy-osrodek-standardy>.

<sup>13</sup> ECtHR: *Nikoghosyan and Others v. Poland*, no. 14743/17, Judgment of 3 March 2022; *A.B. and Others v. Poland*, nos. 15845/15 and 56300/15, Judgment of 4 June 2020; *Bilalova and Others v. Poland*, no. 23685/14, Judgment of 26 March 2020; *Bistieva and Others v. Poland*, no. 75157/14, Judgment of 10 April 2018.

<sup>13</sup> ECtHR, *Z.E. and Others v. Poland*, no. 4457/18, Decision of 1 July 2021 (friendly settlement).

<sup>14</sup> M. Górczyńska, "Pierwsza sprawa detencji cudzoziemców przed Komitetem Praw Człowieka," *Laboratorium Migracji Blog (LIA)*, 15 March 2021, available in Polish at: <https://interwencjaprawna.pl/pierwsza-sprawa-detencji-cudzoziemcow-przed-komitetem-praw-czlowieka/>.

<sup>15</sup> SIP, "ECHR communicates case against Poland: the detention of a mother who suffered domestic violence with her children," 22 July 2021, <https://interwencjaprawna.pl/en/echr-communicates-case-against-poland-the-detention-of-a-mother-who-suffered-domestic-violence-with-her-children/>

family claimed that alternative measures which did not include the deprivation of their liberty should have been explored, but this did not happen. The family also claimed that their procedural rights had been violated. They had not received a request to extend their detention and had not been provided with ex officio legal aid, and their court hearing was considerably delayed. In its communication to the Polish government the ECtHR asked, *inter alia*, whether the family had been afforded a fair trial and whether the prohibition of torture, other inhuman or degrading treatment had been violated.

### *3D. RECOMMENDATIONS*

- **Urgently review conditions inside migration-related detention facilities to ensure that detainees are treated humanely and in accordance with international standards, including the provision of adequate space; access to adequate health care and education for children; access to legal advice, information and assistance; adequate food; access to outdoor spaces; access to means of communication with the outside world.**
- **Repeal national legislation that allows the restriction of personal living space in detention facilities to 2 square meters.**
- **Respect the principle of non-refoulement in law and practice.**
- **Cease all push-backs, illegal expulsions and deportations at the Polish border with Belarus and ensure that all migrants are treated with respect and dignity and have full access to basic needs and services, including food, health care, shelter, clothing, protection and legal assistance.**
- **Carry out independent investigations into all reports of cruel, inhuman or degrading treatment of migrants by security forces and border guards in border regions.**
- **Cease immediately the arbitrary detention of migrants trying to cross the border between Poland and Belarus in conditions which are inhuman and degrading.**
- **Ensure that all asylum seekers have full access to asylum determination procedures and repeal legislation that denies access to individuals who cross the border “illegally.”**
- **Repeal national legislation that disrespects the principle of non-refoulement and allows for the immediate removal and non-re-entry of asylum seekers who enter Poland “illegally.”**
- **Urgently investigate reports of discriminatory treatment and possible detention of third country nationals fleeing the war in Ukraine: ensure that all refugees are given equal protection and treatment, in accordance with Article 3 of the 1951 Refugee Convention which stipulates that all member states “shall apply the provisions of this Convention to refugees without discrimination as to race, religion or country of origin.”**
- **End the detention of all minors, both accompanied and unaccompanied, and ensure that this prohibition is respected in practice.**
- **While children are detained, ensure that they have access to adequate education and health care.**

- **Cease the detention of survivors of violence pending asylum and return proceedings.**