

SIP in action



***Report on the activities
of the Association for Legal
Intervention (SIP) in 2021***



About the report

Our annual report regarding our activity connected with protecting the rights of migrants constitutes a concise summary of cases which our lawyers and integration advisers collaborating with the Association for Legal Intervention worked on in 2021. It also contains an overview of key issues which we tried to tackle, both domestically and internationally, in our striving to ensure better protection of the rights of refugees and migrants.

Our activity has been possible thanks to the invaluable support of a number of grant-giving organisations and private donors. We would like to express our sincerest thanks for your help.

If you support our values and what we do, you can help us by making a one-time donation or contributing regular payments to the account number below. All funds we receive are used to help refugees and migrants.

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Our goals

The Association for Legal Intervention (SIP) is a social organisation whose statutory objective is to take steps aimed at ensuring that human rights are respected and that there is no unequal treatment. Our main mission is to make sure that there is social cohesion by means of promoting the equality of all people in the face of the law. We extend our support chiefly to refugees and migrants in Poland. As of now, they form a group which runs a considerable risk of being socially excluded or discriminated against.

Our activities

There are many ways in which we strive to achieve our goals:

- We provide **free of charge legal assistance** to migrants and refugees in Poland.
- When fundamental rights of migrants are in danger, **we represent** them before Polish courts and the European Court of Human Rights and we also make third-party interventions in pending proceedings.
- We take an active part in social consultations related to legal acts pertaining to the situation of migrants in Poland. **We respond to any breaches of their rights** as soon as possible.
- **We help** migrants navigate in a new reality in Poland. We work to improve their **integration**, as well as access to **medical, social** and **housing assistance** in Poland.
- We conduct research, **carry out watchdog activities** and prepare expert opinions in the sphere of migration.
- We actively participate in conferences in Poland and abroad, as well as in meetings of international organisations monitoring the observance of human rights in Poland, **notifying them of main threats** to the rights of migrants in Poland.

Ladies and gentlemen,

Katarzyna Słubik

Like many other civil society organizations working in the field of migration, since 2021 the Association for Legal Intervention has been operating in crisis mode. First the humanitarian catastrophe on the Polish-Belarus border, and then the war in Ukraine, have forced us to reorganize, revise our plans, and rethink the way in which we spend our resources.

Still, we have tried to continue to do what we do best – provide non-citizens in Poland with legal support and use legal tools to build up their rights and freedoms. We have intervened in the cases of grievous violations of human rights in the border zone, as well as representing the persons placed in overcrowded detention centres in many locations in Poland. We've managed to achieve important, favourable to migrants, court decisions in these matters – you'll find more details below.

At the same time, we haven't forgotten about other, vulnerable groups of migrants, that the Polish state continues to fail. In the year 2021 our lawyers gave legal advice **over 4000 times**. We assisted single parents, large families, unaccompanied minors, members of the LGBT+ community, people with serious health problems, traumatized, or with the experience of torture and other forms of violence. I especially recommend the part of the report which deals with our efforts to secure for the migrants the access to the 300+ and 500+ benefits. For the last few years, we've been focussing on monitoring the implementation of these programs, fighting the accompanying discriminatory practices.

We will no doubt remember the last year as a turning point in the public awareness of the topics connected with migration. At last, migration, migrants, and migration policy are widely talked about. The social movement born out of the outrage against the illegal practices of the authorities on the Polish border gives us hope for a “new opening” in the debate about the migration policy, tolerance, and integration in our country. To support new activists and legal practitioners, in 2021 we organized countless trainings and workshops on the topic of migration law and human rights – we will be continuing these efforts in 2022, in the hope that this zeal and this outrage are here to stay.

I kindly invite you to read our report.





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I. The Polish-Belarusian border crisis

Since 2021 the Association for Legal Intervention has been active near the border with Belarus, where migrants brought there by the Belarussian regime have been trying to cross over, hoping to reach the territory of the European Union. For tens of thousands of people the situation took an unexpected turn, making crossing the Polish border illegally¹ their only option. Many of them cannot safely return to Belarus. Nevertheless, the Polish Border Guard follows the directive of the Polish government to turn them back over the border line, making it impossible for the migrants to apply for the international protection and start the asylum procedures prescribed by law. As a result, it has been impossible to establish how many among the migrants are in fact refugees.

The Polish-Belarusian border crisis continues since early August 2021. Male and female migrants, whole families, have been stranded in the woods, without shelter. Many of them get stopped by the Polish guards and pushed over the border, only to be forcibly turned back on the Polish territory by the Belarussian guards. Many have been pushed-back over the border – back and forth – a couple of times, in some cases dozens of times. The practice of illegal push-backs has become the new standard procedure for the Polish Border Guard.

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It led to a number of situations in which groups of migrants were effectively trapped in the border zone, with both countries denying them entry. Without access to food, water, shelter and medical help, they suffered hunger and cold, while the state of their health worsened. No less than 10 people died as a result of the crisis. Many of the migrants talked about the violence they had suffered, mainly at the hands of the Belarussian guards. The push-backs often ended in families being separated.

No less than 10 people died as a result of the crisis.

From the very beginning of the crisis, the Association for Legal Intervention has been acting in order to ensure the observance of the human rights and to provide humanitarian aid necessary for the survival of the people trapped on the Polish-Belarusian border.

SIP has been acting in order to provide humanitarian aid necessary for the survival of the people trapped on the Polish-Belarusian border.

¹ <https://grupagranica.pl/files/Raport-GG-Kryzys-humanitarny-napograniczu-polsko-bialoruskim.pdf>

The Association for Legal Intervention and the polish-belarussian border crisis

1) The Association for Legal Intervention is a co-founder of the broad civil initiative in Poland, known as Grupa Granica. As members of this Group, we've been monitoring the situation on Poland's eastern border, providing legal, interventional, and humanitarian aid to migrants (refugees), both those in detention and those remaining in hiding. We've been also training lawyers and activists willing to work pro bono to give legal assistance to migrants.

2) As in previous years, we've been active not only in the Republic of Poland, but also internationally. From the very first days of the crisis we've been filing complaints against Poland and the Polish authorities to domestic and international courts. In cooperation with the lawyers from the Helsinki Foundation for Human Rights, we're been representing before the European Human Rights Court a group of foreigners effectively imprisoned in the Polish-Belarusian border zone near Usnierz Górny from August to at least October 2021 (case R.A. et al. against Poland, complaint nr 42120/21²). In connection with this case, we filed to the EHRC a complaint which accuses Poland of, among other things, violating the prohibition of torture and other inhuman or degrading treatment, violating the prohibition of collective expulsion of aliens and violating the right to life. In addition, we accuse Poland of not establishing effective legal remedies in these kinds of cases, as none of the available legal tools can protect the migrants from being immediately turned back over the border. The Polish authorities were informed about the complaint.

3) Working together with the Helsinki Foundation, we were the first to obtain the so-called *interim measure* of the European Human Rights Court, ordering that the migrants be provided with humanitarian help and the possibility of contacting an attorney. Although this ruling has not been respected by the Polish authorities, it has inspired more lawyers to file for the use of the interim measure in the cases of individual migrants threatened with push-back. In 2021 the European Human Rights Court issued about 50 decisions to that effect³.

In cooperation with the lawyers from the Helsinki Foundation for Human Rights, we've been representing before the European Human Rights Court a group of foreigners effectively imprisoned in the Polish-Belarusian border.

4) We've been active in the area of strategic litigation⁴, aiming at preventing illegal push-backs. Since 20 August 2021, the Polish authorities have been justifying push-backs by the coming into force of an amendment to the Regulation of the Polish Minister of Internal Affairs and Administration; after the amendment, the regulation allows turning the foreigner back to the state frontier line if he or she crossed the border illegally. We believe this regulation to be incompatible with the law of the European Union and with the international law. It has been, however, put into practice, as in the case of two groups of refugees we represent.

The foreigners in question were transported to the stations of the Border Guard, where they spent several hours. The people from the first group were put in a locked cell which they couldn't leave. They were not officially arrested, they didn't have access to an interpreter, they were not informed about their rights or about the reasons for their detention. No formal action was taken in their case, despite the fact that they stated their intention to

² [https://hudoc.echr.coe.int/eng#{%22docname%22:\[%22R.A.%22\],%22documentcollectionid%22:\[%22COMMUNICATEDCASES%22\],%22itemid%22:\[%22001-212823%22\]}](https://hudoc.echr.coe.int/eng#{%22docname%22:[%22R.A.%22],%22documentcollectionid%22:[%22COMMUNICATEDCASES%22],%22itemid%22:[%22001-212823%22]})

³ <https://bit.ly/3FhWMk1>

⁴ Strategic litigation – legal action undertaken in the public interest, aiming at changing laws or a legal practices which violate the freedoms of the individual, promoting good legal standards, raising awareness of important social problems and fighting faulty decisions regarding human rights, i.a. by publicizing your interventions.

seek refugee status in Poland. No effort was made to establish whether turning them back behind the frontier line would not endanger their life or health. The migrants from both groups were then illegally pushed to Belarus – in the middle of the night, into the forest – without getting a chance to apply for asylum or contact their legal representative in Poland. We filed a complaint to the district court, alleging unfounded, illegal and irregular arrest.

In the case of one of the groups, the District Court in Sokółka decided to discontinue the proceedings (sygn. Akt II Kp 280/21, II Kp 281/21⁵) on the grounds that what took place was not an arrest but only a restriction of liberty, justified by the amended regulation. In the case of the second group of migrants, the proceedings are still ongoing. As can be seen from these examples, a complaint for the arrest filed to the district court is not always an effective legal remedy to push-backs, even if, before being removed, the foreigners were kept in the Board Guard stations for several hours.

In response to the discontinuation of the proceedings in the case of one of the groups which we represent, we filed a complaint to the European Human Rights Court. In the complaint we argue that the clients of SIP were submitted to the illegal procedure of push-back, in violation of the prohibition of collective expulsions and in a manner exposing the migrants to the risk of the so-called *chain refoulement*, or the removal of a foreigner to a country which will not grant him or her access to the asylum procedure, sending him or her instead to their country of origin, where their life can be in danger. We pointed out that pushing our clients in the middle of the night into the strict nature reserve of the Białowieża Forest amounted to endangering their health and their life, and given the conditions they were forced to endure, it could constitute a violation of the prohibition of inhuman and degrading treatment.

5) We've made efforts – as a group or individually – to advocate, in Poland and on the European forum, opposing the illegal actions of the Polish state authorities and the changes in law incompatible with the international law⁶.

It is especially important in the case of another legal change (an amendment to the Act on Foreigners) aiming at legalizing the illegal push-backs, by introducing the institution of decisions about the departure from the territory of the Republic of Poland. In the case of foreigners who crossed the Polish border in an unregulated manner, instead of initiating the procedures leading to their deportation or granting them the refugee status, a new type of decision was introduced. The procedure through which it is issued violates the right of the migrants to seek international protection, as well as the prohibition of expelling people to countries in which they could be in danger of losing their life or being subjected to torture or other inhumane or degrading treatment (*the non-refoulement principle*).

At the moment members of SIP represent six foreigners in whose cases such a decision was issued. We submit that it was done in violation of the absolutely binding non-refoulement principle dictated both by the EU and by the international law. Moreover, the decisions about the departure from the RP territory are issued without their justification, which precludes an effective appellate review. The cases are ongoing.

⁵ <https://isap.sejm.gov.pl/isap.nsf/download.xsp/WDU20210001536/O/D20211536.pdf>

⁶ <https://interwencjaprawna.pl/polska-narusza-prawo-ue-reagujemy-i-skladamy-skarge-do-komisji-europejskiej/>
<https://interwencjaprawna.pl/uwagi-sip-do-projektu-ustawy-zagrozenie-praw-osob-w-procedurze-powrotowej/>

6) We failed a complaint to the European Commission, arguing that the changes introduced in the Polish law, in particular creating the procedure of issuing the decisions about the departure from the RP territory and making it possible to disregard an application for asylum if the applicant crossed the border in an unregulated manner, are incompatible with the EU directives and fundamental rights. The system that was set up violates the fundamental principles of the Common European Asylum System⁷.

We also intervened individually in the interest of particularly vulnerable groups, threatened with illegal push-backs. We applied to the European Human Rights Court for the use of interim measures aiming at stopping the expulsion of our clients or at making it possible to apply for international protection of minors who came to Poland with an adult guardian.

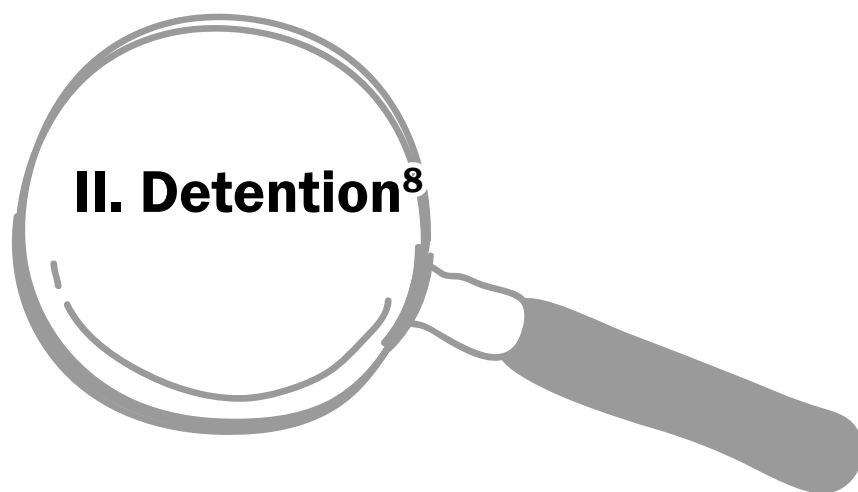
In order to stop the procedure of illegally expelling an unaccompanied child, we submitted – as a non-governmental organization – an application for asylum in the child's name.

We failed a complaint to the European Commission, arguing that the changes introduced in the Polish law are incompatible with the EU directives and fundamental rights.

7) Our interventions have been aimed at protecting individuals, while the litigation has been undertaken with the goal of ensuring a systemic change in the functioning of the present system. Given the length of court proceedings, the effects of litigation are usually not immediately evident. However, we believe that such actions are necessary for the protection of the human rights standards in Poland and in Europe.



⁷ <https://interwencjaprawna.pl/polska-narusza-prawo-ue-reagujemy-i-skladamy-skarge-do-komisji-europejskiej/>



II. Detention⁸

The Association for Legal Intervention has been monitoring residential conditions in guarded centres for foreigners. On their premises or in the on-line system, lawyers of the Association provide legal assistance to migrants detained in the centres. Through such observations and experiences, the Association for Legal Intervention has acquired broad and deep knowledge on the functioning of the above mentioned centres, the needs of the persons detained there, and especially their legal situation.

In 2021, the number of people in guarded centres for foreigners, as well as the conditions in which they were accommodated, became a problem of unprecedented proportions in Poland. As of 2021 only, 4,052 people, including 567 children, have been placed in these centres. This is more than a fivefold increase compared to last year (in 2020, 739 persons were placed in guarded centres, including 101 children)⁹.

Detention conditions of foreigners in guarded centres (according to SIP observations)

As a consequence of the previously unknown scale of detention in Poland, new guarded centres or temporary places where detained migrants are kept have been created. Some of these places operate without a legal basis, such as Centres for Registration of Foreigners and new temporary guarded centres. This is because the relevant regulations for their establishment have not been issued. In the existing guarded centres, the number of available places has been increased by reducing the living space per person, locating people not in residential buildings but in temporary adapted containers or in multi-person gymnasiums that do not provide minimum privacy. The living conditions in guarded centres have deteriorated so significantly that they may violate the prohibition of torture or other inhuman or degrading treatment.

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Regular legal consultations provided to migrants detained in Guarded Centres for Foreigners in Kętrzyn and Lesznowola familiarised us with the situation of people detained in such centres and the conditions in which they live there.

⁸ Detention – placing a person in a guarded center by virtue of a court decision. In relation to foreigners, detention is a deprivation of liberty for immigration reasons (when the foreigner's stay on the territory of the Republic of Poland is illegal, when the foreigner is waiting for a decision of the Head of the Office for Foreigners on refugee status or subsidiary protection). In principle, the detention may last up to 2 years. Detention centers operate under the responsibility of the Border Guard.

⁹ The response of the Border Guard Headquarters to the SIP's request for access to public information, KG-OI-VIII.0180.5.2022.JL.



2020



2021

In 2021 alone, a total of 4052 persons, including 567 children, were placed in these guarded detention centers. This marked a fivefold increase in the total number of people placed in the detention centers when compared with the previous year (in 2020, the number of detainees amounted to 739 persons, including 101 children)¹.

¹ Reply of the Polish Border Guard Headquarters to the request for access to public information submitted by the Association for Legal Intervention, KG-OI-VIII.0190.5.2022.JL.

One of the main issues reported by foreigners is limited access to medical care. This is particularly a problem when it comes to visiting specialist doctors. One of our clients waited for a long time to see a psychiatrist, even though he was in a psycho-physical state that could have endangered his health and safety. Another of our clients was not able to receive a medical consultation until a few days after breaking a finger. Limited access to medical care also affects foreign women who are pregnant. In conversations with lawyers, they express concern about too rare consultations with gynaecologists. There is a particular problem with access to medical care in the temporary guarded centre in Wędrzyn. As a rule, medical intervention is only provided for those in very serious health conditions, while those with milder health problems have a poor chance of receiving the necessary medical care.

The stay in a guarded centre adversely affects the mental health of foreigners; they often struggle with depression or anxiety disorders. Isolation may deepen traumas of people who left their country of origin due to ongoing armed conflicts. As a result, suicide attempts often occur in guarded centres. Our observations also indicate that the Border Guard's algorithms for identifying victims of violence are not effective – there are people in the centres experiencing violence who, according to the law, should never be placed there. Therefore, it is essential to provide foreigners with effective psychological assistance. In fact, in centres with several hundred people, there are only one or two psychologists who are unable to provide adequate care for everyone who may need it. The fact that psychologists can simultaneously be Border Guard officers undermines their independence and trust among foreigners.

One of the main issues reported by foreigners is limited access to medical care.

Some foreigners reporting psychological problems were informed about the presence of a psychologist in the centre only by a lawyer from the Association for Legal Intervention who provided consultations.

To make matters worse, in December 2021, the Border Guard took action against detained migrants to restrict their access to NGO representatives providing psychological consultations. For instance, the Border Guard deprived foreigners of the possibility of consultation with an Association psychologist who is not employed by the Border Guard.

The psychological state of detainees in the centres is seriously affected by difficulties in maintaining contact with the outside world, in particular with proxies and relatives. In the temporary centre in Wędrzyn, due to permanent inefficiency of the Internet, foreigners experience problems with conducting online visits or access to their e-mail accounts. This delays the flow of documents and pleadings and generates difficulties in meeting procedural deadlines in proceedings for placing foreigners in a centre, for an obligation to return or for granting international protection. In Wędrzyn, it is even noted that the system for the circulation and registration of postal correspondence is inefficient, which creates difficulties in determining whether and when a particular pleading was delivered to a person or whether it was sent by the deadline. All this makes foreigners live in a constant sense of uncertainty about their legal situation and how long they will stay in the centre.

It is essential to provide foreigners with effective psychological assistance.

Problems with providing adequate social support to foreigners have also increased. In some centres, foreigners do not have individually assigned social supervisors who should support them in daily activities (e.g. registering for a doctor's appointment, sending documents) or the cooperation with such caretakers is considerably hindered. Foreigners often

turn to representatives of non-governmental organisations with a request to send them warmer clothes or personal hygiene products.

According to foreigners, there are tensions and conflicts in the centres, including conflicts on religious grounds. This particularly applies to a situation when representatives of a given religion or nationality constitute a minority in a given centre. It is particularly noticeable in the temporary centre in Wędrzyn where foreigners are accommodated in rooms with a dozen or so people and representatives of different cultures. Conflicts often arise; therefore concerned clients of SIP lawyers ask us to notify the administration of the centre and intervene to mitigate them.

Foreigners live in a constant sense of uncertainty about their legal situation and how long they will stay in the centre.

My chances of succeeding in my case increased when the SIP lawyers visited me in the detention centre. I felt there was hope for me. SIP - hope in hopeless cases.
- Moses Emmanuel Emmanuelson

Legal situation of detainees in guarded centres (according to SIP observations)

Pursuant to the statements of foreigners with whom the lawyers of the Association for Legal Intervention met, the majority of them made a declaration of will to submit an application for international protection already at the moment of being detained at the border. These persons were first issued a return decision and on that basis were placed in a guarded centre.

There were cases of foreigners detained at the border being deliberately presented with documents on the waiver of the right to appeal against the decision obliging them to return, the content of which they did not understand and which they signed under pressure.

Simultaneously, the Border Guard notoriously did not accept applications for granting international protection both upon the first contact with a foreigner (during arrest at the border) and within the next few days. Foreigners had to wait in guarded centres for up to several weeks before such an application was formally accepted from them.

Another problem is that decisions on placing a foreigner in the centre or on prolonging the stay are delivered too late. It happens that foreigners receive translated decisions only at the end of the ordered (prolonged) stay, which in consequence excludes the possibility to lodge an effective appeal (complaint). In such circumstances, the complaint will reach the Court of Appeal a few days before the end of the adjudicated period of detention and thus cannot be considered before the end of that period.

The situation in the guarded centre in Kętrzyn also aroused concern among SIP lawyers when online legal consultations proved to be significantly impeded due to the presence of Border Guard officers in the room where foreigners were detained.

Foreigners detained at the border were deliberately presented with documents on the waiver of the right to appeal against the decision obliging them to return.



SIP activities on detention

1) We requested the penitentiary judge to urgently supervise the correctness and legality of the foreigners' residence in the Guarded Centre for Foreigners in Kętrzyn, in the Temporary Guarded Centre for Foreigners in Wędrzyn as well as in the Registration Centre for Foreigners in Dubicze Cerkiewne. The request was motivated by the observation of irregularities during visits to these sites.

In particular, we highlighted the size of a room per person and the inadequate conditions of living and administrative-economic premises located in buildings outside the guarded centre. We were seriously concerned that unaccompanied minors were being held in a detention centre and, as we found out, they also wanted to apply for international protection.

We requested the penitentiary judge to urgently supervise the correctness and legality of the foreigners' residence in the guarded centres.

2) Because of the severely unfavourable conditions in the Temporary Detention Centre for Foreigners in Wędrzyn we have filed a complaint with the European Court of Human Rights. We have indicated that the conditions under which clients of SIP lawyers are deprived of their liberty violate the prohibition of inhuman or degrading treatment, the right to protection of family and private life and, moreover, Polish legislation does not provide an effective remedy for poor detention conditions. We complained, inter alia, about insufficient space in residential cells, i.e. 2 m² per person, poor sanitary and living conditions in the centre. We indicated that our clients were not provided with adequate medical and psychological assistance despite reporting such a need, including, for example, experiencing a serious injury. However, the lack of sufficient number of computers with Internet access prevented them from maintaining close relations with their families and made communication with their lawyers difficult. The case has not yet been communicated to the Polish authorities.

Despite alarming information about adverse conditions in guarded centres for foreigners, courts still mostly agreed to the Border Guard's requests to place or prolong the detained persons' stay in a guarded centre. Only the Regional Court in Olsztyn, which is responsible for the Guarded Centre for Foreigners in Kętrzyn, in 2021, revoked approximately half of its decisions concerning the extension of the detention period of foreigners, often children or families with children.

Because of the severely unfavourable conditions in the Temporary Detention Centre for Foreigners in Wędrzyn we have filed a complaint with the European Court of Human Rights.

Table 1. Data on the effectiveness of applications for extending the period of stay in a guarded centre and the effectiveness of complaints against those decisions in courts with jurisdiction over guarded centres for foreigners (District Courts in: Białystok, Biała Podlaska, Grójec, Kętrzyn, Krosno Odrzańskie, Przemyśl; Regional Courts in: Lublin, Olsztyn, Przemyśl, Radom, Zielona Góra).

	District courts average	Regional courts average	Regional Court in Olsztyn
Recognition of Border Guard applications	98,83%		
Number of substantively examined applications of the Border Guard	2900		
Recognition of complaints		13,49%	52,5%
Cases with a foreigner's representative	0,24% (7)	10,23% (22)	19,75% (16)
Cases with a foreigner present in court	0,24% (7)	0%	0%

Note: Data does not include the Regional Court in Białystok, which declined to provide the requested response.

Only in a minority of cases was it possible to convince the court that placing a foreigner in a guarded centre is not justified.

Two interesting cases concerned Afghan nationals apprehended after crossing the Belarusian border in an irregular manner, against whom proceedings for commitment to return were initiated. We argued that with the current situation in Afghanistan (insecurity), and with the suspension of deportations to that country, there is no likelihood of a return commitment decision, as it is impossible to return to Afghanistan. Therefore, there is no necessity to secure the return proceedings. The District Court in Hajnówka in its decisions of 2 September 2021 accepted our arguments (ref. no. VII Ko 815/21, VII Ko 825/21). It indicated that returning to Afghanistan would involve exposing our client to risk of loss of life, liberty, or personal safety, as well as possible torture. Accordingly, the “cardinal, constitutive” prerequisite for placement in a guarded centre for foreigners, i.e. “the prerequisite in the form of a justified probability of a decision obliging the foreigner to return without a specified period of voluntary return”, was missing. Consequently, the District Court refused to place the foreign nationals in the guarded centre.

The Regional Court in Olsztyn, by the decision of 22 November 2021 (ref. no. VII KZ 546/21) did not accept the application of the Border Guard for prolonging the detention of the Afghan woman and her minor children in the guarded centre. The court accepted our arguments regarding the possibility of alternatives to detention for foreigners. Moreover, the court emphasised that staying in a guarded centre for foreigners for a longer period of time would have a negative impact on the psychophysical condition of both the foreigner and her minor children. The justification stated that the District Court had insufficiently considered alternatives to detention in the case.

3) In 2021, we were still struggling in the courts against the wrongful detention of the foreigners and filing applications for compensation for our clients. In total, this year we obtained for our clients in detention cases compensation in the amount of over PLN 250 000. Additionally, the amount of PLN 72 500 by the judgment which is not yet final.

The court accepted our arguments regarding the possibility of alternatives to detention for foreigners.

We have filed two claims for compensation due to wrongful placement in a guarded facility of persons who have experienced violence in the past. We participated in several other cases initiated earlier. Both new applications have been filed in Regional Court in Warsaw. One case is still pending. The other ended with a verdict consistent with our intention.

The Regional Court in Warsaw awarded our client and his family compensation in the full amount requested by us in a judgment (not legally binding): PLN 72,500.00 (ref. no. XVIII Ko 29/21). The Regional Court in Warsaw emphasized that already when submitting the application for refugee status, as well as during the status interview, the foreigner claimed that he had experienced violence, but this circumstance was not examined by the courts deciding about his detention. Furthermore, the court noted that the welfare of the minor child who had been placed in the guarded centre with his parents had also not been examined. This supported the wrongfulness of the detention applied. In the judgment, the Regional Court also noted that the foreigner himself was not questioned until after one month of his stay in the guarded centre, and his spouse already after her release from the centre. The court noted that during the more than two-month stay in the detention centre, the information on which the application for international protection is based was not collected to justify the deprivation of the family's liberty, which also supported the wrongfulness of the detention.

Poland, through a unilateral government declaration, admitted to violating the prohibition against arbitrary detention and violating the procedural rights of our client, who had suffered sexual violence in her country, and compensated her with EUR 9,000.00 in damages (A.A. v Poland, Application No 47888/191). Significantly, one of the allegations that Poland admitted was a violation of Article 5(4) of the European Convention on Human Rights by preventing the applicant from attending in person the court session deciding on the extension of her stay in the guarded centre. Furthermore, it should be highlighted that despite the aforementioned declaration of the Polish government, persons detained in guarded centres for foreigners are still not brought to the hearings concerning their further stay in those centres. This may violate the abovementioned procedural guarantees, which seems to be confirmed by the Polish government.

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Another case, concluded before the European Court of Human Rights, concerned the detention of a single mother with minor children. As a result of the concluded settlement, Poland granted the applicant and her children EUR 23 000.00 in compensation (Z.E. and Others v Poland, Application no. 4457/182). Following an almost year-long stay in the guarded centre, the children's mental condition deteriorated significantly. This resulted in the family being released from the guarded centre by the Regional Court in Olsztyn. We alleged that Poland violated the prohibition on arbitrary detention, the right to family life, freedom from torture and other inhuman and degrading treatment, and violated the applicant's procedural rights.

As a result of the concluded settlement, Poland granted the applicant and her children EUR 23 000.00 in compensation.

In several cases, the cases we have handled have reached the Court of Appeals.

In 2021, following the wrongful detention of a family with children, disregarding the welfare of the children, the Court of Appeal in Warsaw awarded our clients PLN 90,000.00 in compensation (ref. no. II AKa 415/19). The family was detained in a guarded centre for over 6 months. This had extremely negative psychological consequences for one of the children who had experienced traumatic events in their country. The court of first instance dismissed our application in its entirety, without even examining whether the detention was in line with the duty to safeguard the best interests of the child, and stressing that it was the parents' decisions that resulted in the deprivation of liberty (Regional Court in Warsaw, ref. no. XVIII Ko 5/18). The reasoning was not approved by the Court of Appeal.

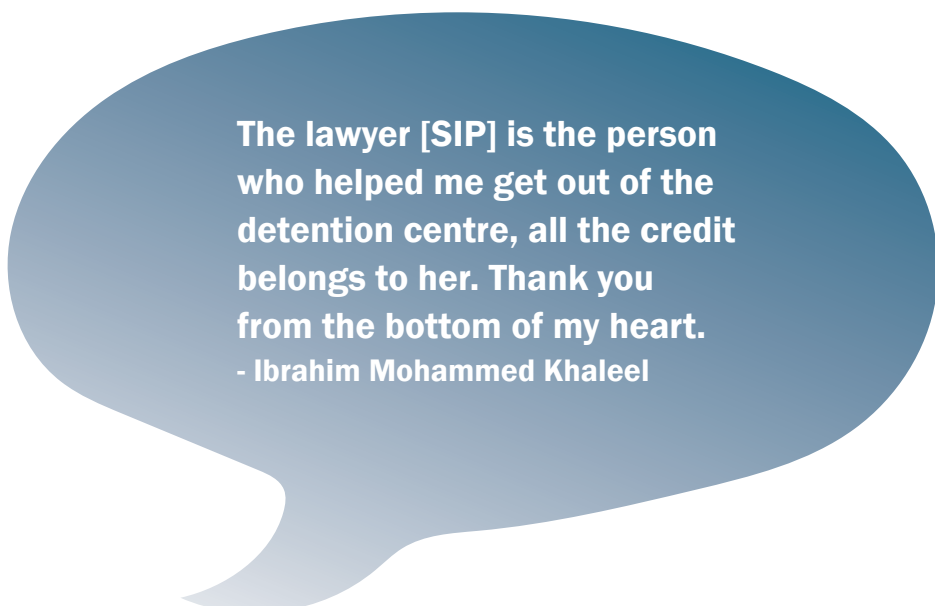
In 2021 the Court of Appeal in Warsaw awarded our client PLN 12,000.00 compensation due to unjustified placement in the guarded centre (ref. no. II AKa 187/20). Our client illegally crossed the Polish-German border and was returned to Poland. He was placed in a detention centre in order to gather information with his participation on which his wife's subsequent application for international protection was based. He was not interviewed once during his entire detention. No other information or evidence was collected with his participation. The Court of Appeals in Warsaw decided that the first 60-day period of deprivation of liberty was justified, as the foreigner's attitude, in particular his illegal departure to Germany, contributed to his placement in the guarded centre. The Court of Appeal concluded that at this stage it was not possible to prejudge whether or not a hearing with the applicant would actually take place. However, the court found that "the first 60 days [...], during which the applicant was interviewed and it was already foreseeable how the proceedings would end, were sufficient to achieve the objective, especially as she had not demonstrated any evidentiary initiative. Further prolonged detention, according to the Court of Appeal, no longer served the purpose of gathering information." Consequently, the court found the appellant's continued detention to be unreasonable. A cassation appeal was filed against this judgment in the part in which the Court of Appeals did not accept the foreigner's request for compensation (higher than the awarded compensation). The cassation argued that the detention of the foreigner in order to collect the information on which the application for international protection is based must result from an individual assessment of the case and, in particular, there must be documentation in the case file proving that such information will in fact be collected. Otherwise, there is wrongful imprisonment. The cassation also questioned the manner in which the amount of compensation was determined, in

In 2021 the Court of Appeal in Warsaw awarded our client PLN 12,000.00 compensation due to unjustified placement in the guarded centre.

He was not interviewed once during his entire detention. No other information or evidence was collected with his participation.

particular the reference to the criterion of the minimum wage and the failure to consider the health, individual and family consequences of the detention for the applicant. The case is pending.

Despite a number of successes in the issue of compensation for the wrongful deprivation of liberty of refugees and migrants, the Association for Legal Intervention has grounds to argue that these cases often find their conclusion only before the European Court of Human Rights.



The lawyer [SIP] is the person who helped me get out of the detention centre, all the credit belongs to her. Thank you from the bottom of my heart.
- Ibrahim Mohammed Khaleel

4) Defence of minors from detention is an important issue for SIP. Despite the judgments of the European Court of Human Rights, Polish courts continue to place children in guarded centres for foreigners. The analysis of decisions on placing and extending the detention of foreigners in guarded centres indicates that courts often act automatically. When placing foreign minors in guarded centres, they do not consider what impact the detention will have on the psychophysical condition of children and they do not take into account their individual situation. Residence in a guarded centre for foreigners is often a traumatic experience for a child and may lead to permanent and serious deterioration of their mental health.

The Association for Legal Intervention is handling, among others, a case concerning placement in a guarded centre of an unaccompanied alien minor applying for international protection. We filed a claim on his behalf for compensation for wrongful imprisonment. Despite the fact that the unambiguous wording of the national provision prohibits the detention of unaccompanied children, he spent almost 8 months in a detention centre during the asylum proceedings. The case is currently pending.

In another case, the Court of Appeals in Warsaw issued a troubling ruling regarding the detention of a child, as well as the standards of protection against arbitrary detention of persons awaiting a decision on refugee status or a commitment to return. The Court of Appeal dismissed our appeal in its entirety, indicating that the demand for compensation was unfounded. In our opinion, the court in this case did not respect the standard resulting from the case law of the European Court of Human Rights in detention cases against Poland.

The case involved the detention of a single mother with a young child in a guarded centre for almost 1.5 years (ref. no. II AKa 310/20). The Court of Appeal decided, in line with the court of first instance, that Polish law does not authorize to demand compensation for the detention of foreigners during the refugee status determination procedure. This standpoint is inconsistent with the jurisprudence of the Supreme Court and with Article 5(5) of the European Convention on Human Rights. The Court of Appeal also found that 1.5 years of administrative detention does not violate the rights of the child, as there was no separation of the family, and in the situation of an only child the most important thing is to provide the child with contact with the parent. The Court of Appeal, in our view unjustifiably, differentiated between families with multiple children and families with only one child. This was the basis for abandoning the standard resulting from the case law of the European Court of Human Rights in detention cases against Poland. Moreover, the Court of Appeals ignored the fact that the foreign woman was deprived of her liberty for the purpose of gathering with her the information on which the application for international protection is based, but after gathering this information she was not immediately released. The applicant and her child continued to be placed in a detention centre for the purpose of securing the implementation of return (deportation) proceedings. The detention was based on the delay in obtaining from her country the documents necessary for deportation. However, the Court of Appeal ignored the fact that these documents were provided to the Polish authorities within the timeframe provided by international agreements, focusing solely on the fact that the documents were not in the court file at the time the detention was extended.

The cassation also requested preliminary questions on the standard of protection of children's rights in detention cases.

A cassation appeal was filed against the judgment, in which we indicate a number of violations of national, EU and international law. The cassation also requested preliminary questions on the standard of protection of children's rights in detention cases, as well as the correct interpretation of the provisions of EU law permitting deprivation of liberty for failure to obtain documents from third countries.

The Court of Appeals in Warsaw that heard the case in question included a person promoted to that court by the politicized National Judicial Council. Therefore, the cassation submitted that the entire proceedings before the Court of Appeal suffered from the defect of invalidity. A preliminary question was also requested as to the effects of a judgment delivered by an incorrectly staffed Court of Appeal in the context of entitlement to a court and the obligation to provide effective legal protection in areas covered by EU law. The case is pending.



III. Activities to defend sensitive groups

In 2021, alongside our support for people in critical need due to the Polish-Belarusian border crisis and overcrowded guarded centres, we placed particular emphasis on supporting those who are members of vulnerable groups. In particular, we have provided legal assistance to persons identifying as LGBTQI+, people who have experienced violence, including domestic violence, families with children and unaccompanied minors. We fight for the granting of residence permits to children in Poland, as well as for their families' access to social assistance and benefits.

SIP efforts to defend vulnerable groups

1) We represent a few non-heteronormative people, who, because of their sexual orientation or gender identity, fear persecution in their home country. In 2021, we joined, inter alia, to proceedings for granting international protection to a foreigner who, as a circumstance justifying taking him to one of the forms of protection, calls for sexual contacts with persons of the same sex.

At the stage of the proceedings so far, the administration authorities have not analyzed the issue related to the foreigner's sexual orientation and its impact on the threat of persecution in the country of origin. The case was not examined on the merits – the administrative authority of the first instance found the application inadmissible, claiming that the circumstance invoked in the course of the second procedure took place before the submission of the first application for international protection, and therefore it is not a new circumstance. In addition, the authority indicated that the foreigner is not a reliable party to the administrative proceedings, as his statements were negatively assessed in the course of the previous proceedings for granting international protection.

In the pleadings addressed to the Refugee Board, referring to the jurisprudence of the Court of Justice of the European Union¹⁰, as well as to domestic jurisprudence¹¹, we try to show that the interpretation adopted by the body of first instance is a flawed interpretation, because the circumstances that existed before completion of the previous proceedings on granting international protection, but they were not established earlier.

¹⁰ Judgment of the Court (Third Chamber) of September 9, 2021 (reference for a preliminary ruling from the Verwaltungsgerichtshof, Austria) - XY (Case C-18/20), <https://eur-lex.europa.eu/legal-content/PL/TXT/PDF/?uri=OJ:C:2021:462:FULL&from=EN>

¹¹ For example: Judgment of the Provincial Administrative Court in Warsaw of April 18, 2019, ref. IV SA/Wa 3394/18; Judgment of the Provincial Administrative Court in Warsaw of April 29, 2021, ref. IV SA/Wa14663/20.

2) We represent people at risk of deportation who have experienced violence and torture by state officials in their countries. We represent people from Eastern Europe who have been tortured by law enforcement officers in their countries. Most of these people have photographic, medical or psychological documentation proving that they have experienced serious forms of violence.

In some cases, despite the diagnosis of mental disorders typical of people after experiencing violence, such as Post Traumatic Stress Disorder (PTSD), the administration authorities assume that the foreigners have not proved that they have experienced violence, because the psychological certificate was based on a declaration of the foreigner himself, which, in the opinion of the authorities, is unreliable. We point out that the evidence from the psychological opinion should be thoroughly analyzed regardless of whether the foreigner's testimony is credible. The psychologist has special qualifications that allow him to diagnose mental disorders, regardless of whether the patient is confabulating or not. In the event of any doubts, the authority should conduct further evidence based on the opinion of an expert psychiatrist or psychologist in order to confirm or exclude the occurrence of disorders typical of people after experiencing violence. These cases are currently pending.

We also consider the proceedings incorrect when, despite the initial recognition by the administration authorities that foreigners have actually experienced violence, after the negative decisions for them were revoked by administrative courts¹², administrative bodies – not having any new evidence – change their previous findings and assume that foreigners have in fact not proved that they have suffered violence. In our opinion, such behaviour violates the basic principles of a democratic state ruled by law. Findings regarding the facts must result from a reliable assessment of the collected evidence, and the departure from the previous findings should be carefully justified. As a rule, the same evidence should lead to identical or very similar findings of fact. Otherwise, the actions of administrative bodies are arbitrary. These cases are currently pending.

It happens that despite the fact that the violence suffered is recognized as proven, the administration authorities assume that the violence was purely criminal and not persecution, or that a foreigner can safely live in another part of his country. When assessing the possibility of internal relocation, the above-mentioned The authorities often ignore the psychophysical condition of the foreigner, and above all the fact that he has experienced violence by state officials operating throughout the country, and later also received threats. These cases are currently pending.

3) In 2021, we continued to extend special legal protection to women who have experienced gender-based violence.

In one of our cases, the administration authorities assumed that rape cannot justify granting refugee status, as it does not bear the hallmarks of long-term persecution. The Supreme Administrative Court categorically rejected this view, pointing out that "the criminal nature of rape does not exclude the possibility of recognizing it as persecution" (Case number: II OSK 1554/20).

In another case, the Refugee Board granted supplementary protection to our client due to repeated sexual violence experienced by her daughter by a high-ranking officer, our client's involvement in this case and active feminist activities in Poland. (Decision numer: RdU-452-6/S/16). The Refugee Board concluded that the individual experiences of the client and her daughter – in the context of the general low level of observance of women's rights in the country of origin – pose a real risk of suffering harm in the form of torture, inhuman or degrading treatment or punishment. The Refugee Board determined that in the country

¹² <https://interwencjaprawna.pl/nsa-przemoc-funkcjonariuszy-publicznych-to-nieludzkie-i-ponizajace-traktowanie/>

of origin "there are not infrequent cases of stigmatization of such women [victims of sexual violence] or cases of threats, even death threats, against victims of violence and their families"; therefore, she considered the threat to both women real and probable. The decision of the Refugee Board in this case, i.e. granting subsidiary protection, should be considered only partially positive, as the Association presented arguments justifying granting the refugee status to the woman during the proceedings.

We also joined the proceedings regarding the obligation to return our client and her daughters who experienced domestic violence by the client's ex-husband in their country of origin. As a consequence, they deal with trauma, anxiety and depression. In our position, we spoke in favor of granting them a residence permit in Poland for humanitarian reasons, arguing that the possible return of the family to the country of origin will be associated with a threat to their life and health and the intensification of mental disorders caused by traumatic experiences, as well as it will be contrary to the best interest and the well-being of children. The case is currently pending.

4) We pay special attention to children's rights. Throughout the year, we took up a fight in various individual cases, striving to ensure that the rights of foreigners' children were respected. We joined and participated in cases already pending before the court, and initiated a dozen or so proceedings concerning children strongly integrated with Poland, especially those who lived here most of their lives. Some of these cases concerned unaccompanied children in Poland. We are fighting to ensure that they are allowed to stay in Poland, as their deportation could adversely affect their further development.

A number of these issues have already ended positively for our clients. We also fight for children to have equal access to social assistance, regardless of their origin. As in previous years, we represent families that are brought before the courts of unjustly received allowances related to raising children, such as 500+ or 300+ (the so-called "Good Start"). Over the years of work, we have managed to overcome interpretation problems, as a result of which many of our clients have received the benefits they are entitled to.

We are fighting to ensure that they are allowed to stay in Poland, as their deportation could adversely affect their further development.



2016

Launch of the 500+ program.

2017

New conditions for obtaining the 500+ benefit, unfavorable for foreign women - single mothers. The obligation to obtain a maintenance judgment even in a situation where the foreign woman has escaped from domestic violence and is afraid to reveal her place of residence.



2019

Association for Legal Intervention obtains a favorable judgment of the Provincial Administrative Court in Warsaw¹ in the case of 500+ for a foreign woman - single mother. The court does not agree to the absolute application of the requirement to submit a maintenance order. It should be investigated whether there are any specific, individual circumstances of the case which make it impossible to obtain such a judgment.

Asociacion for Legal Intervention obtains another favorable judgment of the Provincial Administrative Court in Warsaw². From that moment on, the administration authorities may check the fulfillment of the income criterion by foreigners only when they apply for the 500+ benefit for the first child. When the application concerns the second and subsequent children, the financial status of the foreigners is irrelevant and cannot be examined.

¹ Judgment of June 19, 2019, ref. no. I SA/Wa 910/19.

² Judgment of May 15, 2019, ref. no. I SA/Wa 295/19.

2018



Launch of the "Good Start" program. It is an annual benefit of PLN 300 for a child studying at school, regardless of the family's income. Due to the widespread demand to provide documents not required by the act, many of our clients have been deprived of this form of support.

2019

Association for Legal Intervention obtains a favorable judgment of the Provincial Administrative Court in Warsaw¹ regarding the benefit from the "Good Start" program for persons applying for international protection. The exclusion of foreigners who are holders of temporary identity certificates is contrary to the Act.

¹ Judgment of the Provincial Administrative Court in Warsaw of May 17, 2019, ref. no. I SAB/Wa 49/19.

2020

Another Association for Legal Intervention win, this time in front of the Supreme Administrative Court¹. Supreme Administrative Court confirms that the regulation on the implementation of the "Good Start" program exceeds the scope of statutory delegation and unlawfully excludes many foreigners from access to the benefit.

¹ Judgment of May 18, 2020, ref. no. I OSK 2734/19.



IV. Hate crimes

The Association for Legal Intervention helps people who have experienced crimes motivated by racial, ethnic, religious or national bias in Poland. As a social organization, SIP joins issues with an element of prejudice, and thus fights against racism and xenophobia, which are still present in Polish society.

In 2021, the Association continued to provide legal support to victims of crimes motivated by racial, ethnic, religious or national bias. We helped in the preparation of notifications of a crime, complaints against decisions to discontinue an investigation or an investigation, and we also joined criminal proceedings in which there is an element of bias. We also accompanied the victims during the interrogations with their participation.

One case involved a British citizen of Indian descent who was attacked and insulted by a security guard and manager at one of the stores of a popular discount chain. The shop staff did not have any reason to violate the physical integrity of our client. In the case, an investigation was initiated for the offense specified in Article 257 of the Criminal Code (racial insult).

We also intervened in the case of a Polish citizen who, due to his origin, was insulted by security guards working at the railway station in Warsaw. Vulgar slogans of a xenophobic and racist nature were addressed to the aggrieved party.

We also joined the criminal proceedings against persons accused of making criminal threats and destroying a foreigner's property. In our opinion, these crimes were motivated by national hatred. During the attack, the perpetrators shouted the slogan "Poland for Poles" and destroyed foreign national flags held by a foreigner in question.

SIP continued to provide legal support to victims of crimes motivated by racial, ethnic, religious or national bias.

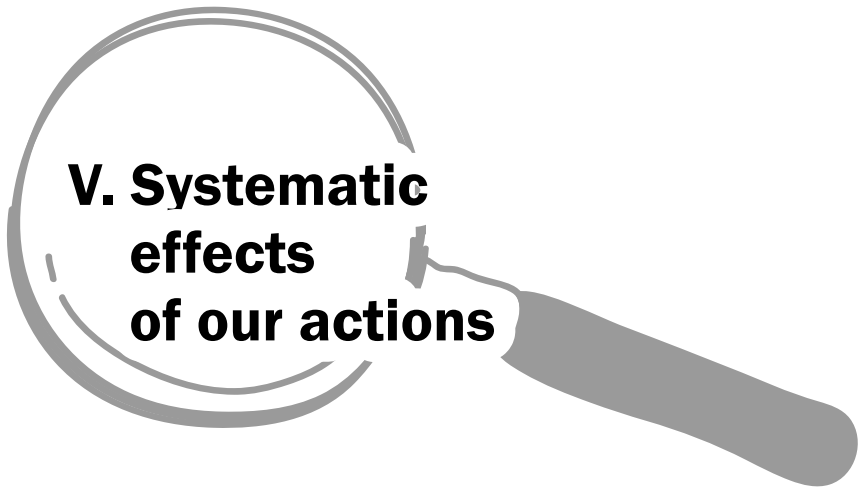
The crisis on the border with Belarus caused a lot of racist and xenophobic behaviour in Polish society. In November 2021, a banner was destroyed in Łódź, showing a photograph of people on the Polish-Belarusian border, with the caption: Cheated. Helpless. Our fellow men. We can save them. RATUJMY LUDZINAGRANICY.PL. The destruction consisted in the fact that, in place of the original signature, a new one was placed with the following content: CHEATED AGGRESSIVE NADERS #NIEDLANIELEGALNEJIMIGRACJI¹³. In this case, we submitted a notification to the prosecutor's office about the possibility of committing a hate crime specified in Article 256 § 1 of the Criminal Code (incitement to hatred based on national, ethnic and racial differences) and Article 257 of the Criminal Code (insults based on race, nationality, ethnicity). In our opinion, the perpetrators publicly insulted people seeking international protection at the Polish-Belarusian border with their behaviour and incited hatred towards these people, and the only motive for their actions was the fact that these people belonged to a different nationality, religion, race and ethnic origin. The prosecutor's office opened an investigation into the matter.

The crisis on the border with Belarus caused a lot of racist and xenophobic behaviour in Polish society.

Cheated. Helpless. Our fellow men. We can save them. RATUJMY LUDZINAGRANICY.PL



¹³ <https://wiadomosci.onet.pl/lodz/rodzina-z-granicy-przerobiona-na-nachodzcow-sprawa-baneru-trafi-na-policje/hgf0x5s>



V. Systematic effects of our actions

The fight that the Association for Legal Intervention wages for respect for human rights brings positive results in the form of court decisions – both in cases pending with the participation of SIP representatives and in a wider scope. In 2021, Polish courts issued important judgments, the content of which takes into account the principles of approach to refugees and migrants, discriminated persons, abused persons, people isolated in closed canters, at risk of deportation, minors and persons belonging to vulnerable groups as proposed by SIP, as well as to various situations and problems related to threats to human freedoms and rights.

Cases concluded



1. Supreme Administrative Court, II OSK 1554/20, A.A. – procedural guarantees in refugee proceedings

The Supreme Administrative Court indicated that when an administrative body of the second instance adopts a different, less favourable factual state for a party, including it as an unreliable person, it cannot refuse to take the requested evidence from the party's hearing. Such action violates Article 7, Article 77 §1 and Article 78 §1 and §2 of the Code of Administrative Procedure.

In this judgment, the Supreme Administrative Court emphasized the need to gather up-to-date information on the situation in the country of origin in the context of the circumstances of fleeing the party raised by the party. Collecting only general information about the system, political situation in the country, security situation and freedom of movement does not satisfy the obligation to establish the key circumstances in a given case, thus violating Article 7 and Article 77 §1 of the Code of Administrative Procedure.

The Supreme Administrative Court also recalled that despite the lack of the obligation of administrative authorities to translate all documents into Polish, the documents submitted by the party, which confirm the key circumstances of the case and are their only evidence, must be translated. This is required by Article 11 § 1 Act on granting protection to foreigners within the territory of the Republic of Poland.



2. Supreme Administrative Court, II OSK 373/21, A.V. – procedural guarantees in refugee proceedings

The case concerns a foreigner who was arrested twice in his home country by the police and was also subjected to torture.

In the course of the proceedings, the administration authorities did not take evidence from the documents submitted by the party. This was one of the grounds for the Supreme

Administrative Court to repeal the decision. The Supreme Administrative Court emphasized that the situation in which the authority ignores the pleadings submitted by a party, does not conduct the requested evidence or indicate the reasons for such proceedings, is inconsistent with the rules of administrative procedure.

The Supreme Administrative Court also pointed out that the authorities ignored the psychological opinion, which showed, inter alia, that the foreigner has memory and concentration disorders, and was also diagnosed with post-traumatic stress disorder (PTSD). In the opinion of the court, this could affect the correctness of the assessment of the credibility of his testimony. The court also noted that there were no opinions or observations made by the psychologist participating in the hearing in the case file.

However, the Supreme Administrative Court did not share our arguments that due to the systemic violation of the law by Border Guard officers at the border crossing in Terespol, any discrepancies between the application for international protection submitted there and the status interview cannot be held against the foreigner. The Supreme Administrative Court recalled, however, that the mere fact that there is a discrepancy between the application and the testimonies does not exclude the possibility of recognizing the testimony as credible if the foreigner convincingly explains the reason for these discrepancies.

In all the difficulties I had, I got help and support. [Had it not been for SIP's help the case] would have ended in a negative decision, most likely it would have.
- Anonymous



3. Supreme Administrative Court, II OSK 2315/20, N.M.

– the right to free assistance of a lawyer in the proceedings for the obligation to return, reinstating the deadline

The case concerned a foreigner suffering from post-traumatic stress disorder (PTSD) after suffering violence. The foreigner did not speak Polish and stayed in the guarded center. There, he received a decision obliging him to return. According to his declarations, within the statutory deadline, he appealed against this decision, written in his own language, but the employees of the guarded center did not register it until a day later. After contacting the lawyer, he submitted, out of procedural precaution, another appeal together with a request for reinstatement of the deadline.

The administration bodies and the Provincial Administrative Court in Warsaw refused to restore the deadline for his appeal.

In the cassation appeal, we argued that due to the lack of access to free legal aid, contrary to the obligations arising from EU law, we cannot speak of a culpable failure to meet the deadline, and thus the deadline should be reinstated. ECRE (European Council on Refugees and Exiles) joined the case, sharing our position in principle, including the request for a preliminary ruling in the discussed scope.

The Supreme Administrative Court, unfortunately, failed to resolve the key issues related to the obligation to provide legal assistance in return proceedings under European Union law, as well as the consequences of failure to provide such assistance. It ruled that the judgment and the decision that preceded it should be set aside, as the authorities had insufficiently examined (the requested evidence from the questioning of witnesses was not carried out) whether the foreigner actually lodged an appeal on time or failed to meet the deadline.



4. Supreme Administrative Court, II OSK 371/21, II OSK 178/21, II OSK 271/21, Association for Legal Intervention – reimbursement of translation costs to persons providing free legal assistance in appeal refugee proceedings

The Supreme Administrative Court confirmed that European Union law requires that applicants for international protection be provided with an effective remedy. To be able to talk about such a measure, the foreigner must be able to communicate with the person providing legal aid in a language that is understandable to both parties, including in order to obtain information about his legal situation. The Supreme Administrative Court recalled that not always the result of a lawyer's conversation with a foreigner through an interpreter must be a pleading submitted in the proceedings or another act in the proceedings. Even in the absence of such a letter, the reimbursement of translation costs will still be justified. The authorities cannot demand a written justification of the necessity of the translation performed in order to reimburse the translation costs.

In addition, the Supreme Administrative Court emphasized the lack of legitimacy of the request by the administration authority to present the foreigner's statement about the interview or its recording. The proof of translating the foreigner's conversation with the lawyer will be the attorney's or legal adviser's statement included in the free legal aid card. The profession of an advocate (legal advisor) is a profession of public trust.



5. Decision of the Supreme Administrative Court, II OZ 163/21 – the principle of non-refoulement towards foreigners considered a threat

The Supreme Administrative Court suspended the execution of the decision on the obligation to return issued in connection with the suspicion that the foreigner may conduct terrorist or espionage activities, or is suspected of committing one of these crimes (Article 329a of the Act on foreigners). Contrary to the position of the Provincial Administrative Court in Warsaw, the Supreme Administrative Court emphasized that the administrative courts are entitled to suspend the execution of such decisions. It results not only from national law, but also from European Union regulations, including the right to an effective remedy.

The Supreme Administrative Court also held the position that "in order to assess the merits of the applicant's request to stay the execution of the contested decision, it is necessary to assess the circumstances which, in the parties' opinion, may simultaneously constitute the lawfulness of the contested decision".

The applicant cannot be required to provide other circumstances. The Supreme Administrative Court emphasized that the assessment of the merits of the complaint and the legitimacy of the request to stay the execution of the decision has a different purpose and different

evidence requirements. Suspension of the execution of the decision may not, therefore, bind the court hearing the complaint on the merits.

The Supreme Administrative Court also pointed out that, taking into account the potential violation of the applicant's rights (freedom from torture) and the likelihood of its occurrence in the light of publicly available information, even the relatively high degree of generality of the application and the lack of belonging to a particular risk group, it is justified to suspend the execution of the decision to oblige return while the case is examined by the court.



6. Judgment of the Provincial Administrative Court in Warsaw, IV SA / Wa 2048/20, N.J. – procedural guarantees in the proceedings for granting the refugee status

The Voivodship Administrative Court in Warsaw recalled that, as a rule, the parties' submissions concerning the circumstances relevant to the case should be taken into account. A situation in which evidence requests submitted by a party are ignored - the authority does not refer to them and does not carry them out - violates the basic procedural guarantees. Even if the authority makes preliminary findings of the facts, the authority should conduct the evidence requested by the party, aimed at proving a different thesis. It is not permissible to evaluate evidence before it is carried out. The ability to take evidence is a party's primary procedural guarantee.



7. Judgment of the Provincial Administrative Court in Warsaw, IV SA / Wa 1466/20 – threat to people on the Tajik list of "persons associated with terrorism"

The Provincial Administrative Court in Warsaw revoked the decision of the Council for Refugees to refuse international protection to a Tajik citizen who referred to persecution on the grounds of kinship with one of the most important politicians of the Tajik opposition. The foreigner was on the list of "persons associated with terrorism" published on the website related to the Tajik regime.

The Voivodship Administrative Court found that insufficient verification of the situation of persons entered by the Tajik authorities on the list of "persons associated with terrorism" in the context of threats to their life and health constitutes a violation of the right to a detailed explanation of the facts.



8. Decision of the Office for Foreigners, DPU.420.716.2020 – a threat to Belarusians applying for international protection in Poland

The Head of the Office for Foreigners, by decision of January 12, 2021, DPU No. 420.716.2020 granted a couple from Belarus subsidiary protection in connection with the risk of torture, other inhuman or degrading treatment in the event of their return to the country. Foreigners once again applied for refugee status. Due to the deterioration of the situation in Belarus, the Office for Foreigners concluded, in a new procedure, that due to their stay in Poland, where they applied for international protection, these foreigners, after returning to Belarus, may be of interest to the Belarusian authorities, which in turn, it may result in their victimization.

2021 in numbers

We joined **14** cases concerning the granting of international protection, issuing residence permits in Poland and accessing welfare services.

We had achieved **91%** efficiency rate in cases concluded with final and binding verdicts.

We acted as a proxy in over **50** instances across different court cases.

We secured a grand total of **330 000** PLN to our clients.



Cases still in court calendar



1. Supreme Administrative Court, II OSK 457/21 – the principle of *non-refoulement* and procedural guarantees for persons considered to be a threat to safety

The foreigner was obliged to return due to the fear that he might conduct terrorist or espionage activities, or that he is suspected of committing one of these crimes. He had no access to the case file, nor was he informed as to why it was considered a security risk. It has also not been investigated whether returning to his country would expose him to the risk of torture or unlawful imprisonment. In the opinion of the Provincial Administrative Court in Warsaw, in the event of a threat of terrorist or espionage activity, the only acceptable decision is the decision to oblige to return, regardless of the risk of torture in the country of origin.

The foreigner had no access to the case file, nor was he informed as to why it was considered a security risk.

In the cassation complaint, it was argued that the ban on the expulsion of foreigners to countries where they may be at risk of torture is absolute.

It also indicated the need to ask for a preliminary ruling on the minimum procedural guarantees in these proceedings, and in particular on the scope of the necessary information regarding the reasons for considering it a threat to security, which must be provided to the foreigner in order to enable him to effectively defend himself. Among others, on the judgment of the Grand Chamber of the European Court of Human Rights in the case of Muhammad and Muhammad v. Romania.

In the cassation complaint, it was argued that the ban on the expulsion of foreigners to countries where they may be at risk of torture is absolute.



2. Supreme Administrative Court, II OSK 1180/21, A.T. – procedural guarantees (obligation to be heard) in the next procedure for granting international protection

A.T. submitted another application for international protection. Despite the emergence of new facts, significant in the opinion of the foreigner, he was not questioned in the course of the next procedure. The administration authorities, followed by the Voivodship Administrative Court in Warsaw, assumed that the obligation to interview had been fulfilled in previous proceedings and there was no need to repeat it.

In the cassation appeal, we argue that European Union and national law does not limit the obligation to conduct an interview only to the first procedure for granting international protection.

In a situation where the domestic law did not explicitly exclude the obligation to interview a foreigner in the next procedure, the authorities are obliged to question him also in each subsequent procedure. Such a position was confirmed in the judgment of the Supreme Administrative Court, Ref. no. II OSK 2485/19. In the above-mentioned judgment, however, the Supreme Administrative Court found that the failure to conduct the questioning had no impact on the content of the

In the cassation appeal, we argue that European Union and national law does not limit the obligation to conduct an interview only to the first procedure for granting international protection.

decision, and thus did not result in the revocation of the decision of the authorities. In the submitted cassation appeal, we indicate that in the light of the judgment of the Court of Justice of the European Union in the Addis case, ref. C-517/17, such a position is not entitled. Failure to conduct a compulsory interview in refugee proceedings will always entail the necessity to repeal the decision and refer the case for reconsideration, unless it is possible to hear a party at the stage of appeal proceedings with all guarantees provided for in European Union law.

I actually felt [with SIP] a lot more confident, I felt like I could win the case.
- Anonymous



3. Supreme Administrative Court, II Osk 1753/21, D.S. **– accelerated procedure in the procedure for granting international protection**

Throughout the procedure for granting international protection, the applicant consistently indicated that he was afraid of persecution on the grounds of sexual orientation in his country. His explanations were overwhelmingly credible. Nevertheless, the matter was examined in an expedited manner. The basis for considering the case under this procedure was allegedly giving reasons for the submission of the application other than the fear of persecution or the risk of serious harm. (Article 39 Paragraph 1 Point 1 Act on granting protection to foreigners within the territory of the Republic of Poland)

In the cassation complaint, we indicate that the expedited procedure is not tantamount to the lack of substantive legitimacy of the application.

If a foreigner, when submitting an application for international protection, indicates a fear of persecution for convention reasons, e.g. due to his sexual orientation, his case cannot be adjudicated in an accelerated procedure. The expedited procedure may be used only when, after the initial familiarization with the reasons for submitting the application for international protection indicated by the foreigner, it becomes clear that they do not fall within the meaning of persecution or suffering of serious harm. Determining whether the case should be adjudicated expedited or not is crucial due to the

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fact that the second instance authority issued a decision in the correct composition. Expedited decisions are issued in a one-person panel, while ordinary decisions are issued in a three-person panel.



4. District Court in Biała Podlaska, II K 796/21, V.L. – criminalization of illegal border crossing by refugees

We provide defence to a Belarusian citizen who has been granted refugee status in Poland. Due to the persecution and the search for him in Belarus, he was not able to cross the border at the border crossing. Due to the illegal crossing of the border, criminal proceedings were initiated against him. We point out that the Geneva Convention Relating to the Status of Refugees prohibits the criminalization of illegal border crossing by refugees.



5. Provincial Administrative Court in Warsaw, I SA / Wa 162/22, O.A. – payment of the "Good Start" benefit due to the possession of a permanent residence permit for children

In 2019, O. A. filed an application for the payment of the "Good Start" benefit for minor children. At that time, she was staying in the territory of the Republic of Poland illegally, while the children had a permanent residence permit, which they received in connection with the permanent residence of their recently deceased father. The administrative authorities refused to grant the benefit due to the lack of the mother's residence basis allowing her to work in the territory of the Republic of Poland. In the complaint to the administrative court, we argue that the catalog of persons entitled to receive the "Good Start" benefit specified in the regulation, which makes the granting of the benefit intended to meet the needs of children only dependent on the legal situation of legal guardians, is not exhaustive.

In the absence of an appropriate basis for granting the benefit on the part of legal guardians, the residence situation of the children, which may meet the conditions for granting the benefit, should be taken into account. In this case, the "Good Start" benefit should be granted due to the permanent stay of the children, regardless of the unregulated residence situation of the mother. A different decision would violate a number of legal guarantees for children and the family provided for in the Constitution of the Republic of Poland and binding on the Republic of Poland in international agreements.



How can you help?

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The Association for Legal Intervention is a public benefit organization. Thanks to the support of our donors, we can act to defend human rights and counteract unequal treatment. If you would like or would like to help us with this, you can make a donation via the form on our website or directly:

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Become a volunteer

There are several voluntary groups in the Association - linguistic, legal, social, children's and office organization / promotion. If you feel that you would like or would like to try your hand at one of them, please see the tab on our website dedicated to volunteering. There you will find information about each group and what people we are looking for, as well as an application form.

Join the group of lawyers pro bono

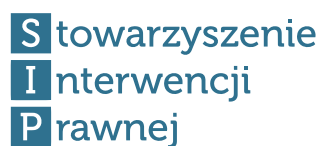
If you are an attorney-at-law / legal adviser or attorney-at-law / advocate and you would like or would like to become involved in defending the rights of foreigners in Poland, we invite you to cooperate in the following areas:

- exploitation of migrant workers
- discrimination
- being placed in a guarded center
- hate crimes
- gender-based and other violence.

More information can be found on our website.

Join the company to employee volunteering

Employee volunteering brings many benefits not only for employees, but also for the company's image. It is a great opportunity to integrate the team and test yourself in new situations. Write to us at the address dlapracodawcow@interwenc-japrawna.pl to find out what type of activity best suits the needs of your employees and company.



Report on the activities of the Association for Legal Intervention (SIP) in 2021

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