

Detention

The use of detention and alternatives to detention in the context of immigration policies in Poland

Prepared by the National Contact Point
to the European Migration Network in Poland



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This National Report was prepared by the Ministry of the Interior acting as the coordinator of the National Contact Point to the European Migration Network in Poland (PL NCP EMN) and constitutes a compilation of replies, which have been provided - on the request of the Migration Policy Department (Ministry of the Interior) - by the Border Guard. This Report follows the common specifications and methodology prepared by the European Migration Network (EMN).



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The study has been finalized in a very significant moment – when new Act on Foreigners, introducing a possibility of use of the alternatives to detention, entered into force (1st May 2014). The actual effectiveness of these measures is an open question now.

Summary

This study submitted by the National Contact Point to the European Migration Network in Poland has been prepared in close cooperation with the Border Guard – the main institution responsible for overall aspects of detention and with the Office for Foreigners – institution in charge of granting international protection.

The study specifies the categories of third-country nationals which can be detained in Poland and the grounds for detention related to each of these groups. Moreover, the conditions in the detention centres have been presented. To some extent the study provides information on the scale of detention in Poland, however data demonstrates only the total number of third-country nationals that were subject to this measure in the respective years.

The study has been finalized in a very significant moment – when new Act on Foreigners, introducing a possibility of use of the alternatives to detention, entered into force (1st May 2014). For that reason facts related to the detention reflect both previous and newly introduced legal provisions, whereas information related to alternative measures are limited only to the description. As the possibility of applying the alternatives to detention exists in the Polish legislation only since 1st May 2014, there was not possible to demonstrate any statistical data and to identify best practices in this regard.

Poland decided to incorporate into national legal frameworks measures referred to in Article 7 (3) of the Directive of the European Parliament and of the Council 2008/115/EC of 16 December 2008 on common standards and procedures in Member States for returning illegally staying third-country nationals: a regular reporting to the authorities, deposit of an adequate financial guarantee, submission of documents and the obligation to stay at a certain place.

The various alternatives shall be applied based on all the available evidence and taking into account all the circumstances. Currently, there are no separate criteria to be considered by the authorities when choosing an alternative to detention. Problems with the practical application of alternatives have not been anticipated.

The actual effectiveness of these measures is an open question now. However, their effectiveness is expected to be significantly lower than detention. No actions aimed at increasing the effectiveness of those measures can be introduced. The effectiveness of these measures can only be increased by ensuring that foreigners are aware of the possibility of applying sanctions on the basis of misdemeanours law in the case of avoiding the obligations set out in the order regarding the application of measures (i.e. obligation to report or obligation to reside in a particular place), or the possibility of being placed in a guarded centre.

One of the aims of the study was to examine to what extent detention and alternatives to detention contribute to the effectiveness of state return policies and international protection procedures. The Polish authorities responsible for implementing of return policy and for conducting of international protection procedures are persuaded that use of detention and alternatives to detention does not and cannot affect immigration procedures since it is only a manner of securing the stay of a foreign national and it is not used to accelerate the procedures – in every case a foreign national is placed in detention for the shortest period of time possible.

Another question was how effectively fundamental rights of foreigners have been ensured by a state. In general, Poland ensures that fundamental rights of foreigners are respected during periods of detention.

This issue has been carefully monitored (especially for the last two years) by the Border Guard and the authorities supervising this body (the Ministry of the Interior), as well as by the non-governmental organisations and the Human Rights Defender in Poland. No substantial infringements has been proved,

although some slight harms of fundamental rights has incidentally occurred. It should be underlined that following the NGOs' recommendations, Border Guards has improved some aspects of functioning the guarded centres.


This study has been prepared in May 2014.

1

Categories of third-country nationals that can be detained in Poland (national provisions and grounds for detention)

1.0 Categories of third-country nationals that can be detained in Poland (national provisions and grounds for detention)

1.1 What are the categories of third-country nationals that can be detained in Poland?

Categories of third-country nationals ¹	Can third-country nationals under this category be detained? (Yes/No)	If yes, is the possibility to detain laid down in legislation? (Yes/No)	If the possibility to detain third-country nationals exists but is not laid out in national legislation, please explain whether it is outlined in 'soft law' or policy guidelines	Please list the grounds for detention for each category of migrant that can be detained in Poland. Is there an exhaustive list of grounds outlined in your national framework?
 <p>Applicants for international protection in ordinary procedures</p>	yes	yes	n/a	<p>Legislation in force previously (until 30 April 2014) and as at 1 May 2014² (new Act of Foreigners³):</p> <ul style="list-style-type: none"> • identification, • preventing the abuse of the procedure for granting of the refugee status, • preventing hazards to safety, health, life or property of others, • safeguarding the state defence or security or safeguarding public safety and order, • the applicant or the person on whose behalf the applicant applies has illegally crossed or attempted to cross the border, unless they came directly from a territory where their life or freedom were threatened with persecution or serious harm, have presented a credible justification of their entry into the territory of the Republic of Poland, and applied for the refugee status immediately upon crossing the border, • the behaviour of the applicant or the person on whose behalf the applicant applies endangers the safety, health or life of other foreign nationals accommodated in the facility.

1. Children and other vulnerable groups are not included in this table as they are a cross-cutting category.

2. Act of 13 June 2003 on Foreigners – Dz. U. (Journal of Laws) of

2011, No 264, item 1573, consolidated text, as amended.

3. Act of 12 December 2013 on Foreigners – Dz. U. (Journal of Laws) of 2013, item. 1650.



Applicants for international protection in fast-track (accelerated) procedures

yes yes n/a

Legislation in force previously (until 30 April 2014) and as at 1 May 2014:

- identification,
- preventing the abuse of the procedure for granting of the refugee status,
- preventing hazards to safety, health, life or property of others,
- safeguarding the state defence or security or safeguarding public safety and order,
- the applicant or the person on whose behalf the applicant applies has illegally crossed or attempted to cross the border, unless they came directly from a territory where their life or freedom were threatened with persecution or serious harm, presented a credible justification of their illegal entry into the territory of the Republic of Poland, and applied for the refugee status immediately upon crossing the border,
- the behaviour of the applicant or the person on whose behalf the applicant applies endangers the safety, health or life of other foreign nationals accommodated in the facility.



Applicants for international protection subject to Dublin procedures

— — —

Pursuant to Dublin III Regulation (No 604/2013)⁴ - the person transferred to another Member State can be detained if there is a risk of absconding evaluated as the existence of reasons in an individual case and if other coercive measures cannot be applied effectively. Detention should be the shortest possible (for a period necessary for the required administrative transfer procedures to be carried out).

Referring to persons transferred to Poland grounds for detentions are in accordance with the general principles governing the situation of persons seeking international protection.

4. Regulation (EU) No 604/2013 of the European Parliament and of the Council of 26 June 2013 establishing the criteria and mechanisms for determining the Member State responsible for examining an appli-

cation for international protection lodged in one of the Member States by a third-country national or a stateless person.



Rejected applicants for international protection

yes yes n/a

Legislation in force until 30 April 2014:

- there is a risk of absconding of a foreign national against whom removal procedure is being carried out,
 - the alien has been issued an removal order which does not specify the deadline for departure from the territory of the Republic of Poland,
 - the foreign national has not left the territory of the Republic of Poland within the period specified in the removal order,
- the foreign national crossed or attempted to cross the border illegally.

Legislation in force as at 1 May 2014:

- an order obliging the foreign national to return without specifying the deadline for voluntary return is likely to be issued⁵, or
- an order obliging the foreign national to return without specifying the deadline for voluntary return has been issued, or
- the alien has not left the territory of the Polish Republic within the period specified in the order obliging him/her to return, and the immediate execution of the order is not possible, or
- the alien fails to comply with the obligations set out in the order on the application of alternatives to detention.



Rejected family reunification applicants

yes yes n/a

Legislation in force until 30 April 2014:

- there is a risk of absconding of a foreign national against whom removal procedure is being carried out,
- the alien has been issued an removal order which does not specify the deadline for departure from the territory of the Republic of Poland,
- the foreign national has not left the territory of the Republic of Poland within the period specified in the removal order,
- the foreign national crossed or attempted to cross the border illegally.

Legislation in force as at 1 May 2014:

- an order obliging the foreign national to return without specifying the deadline for voluntary return is likely to be issued, or
- an order obliging the foreign national to return without specifying the deadline for voluntary return has been issued, or
- the alien has not left the territory of the Polish

5. According to the Article 315 of the new Act on Foreigners:

1. The order obliging a foreign national to return shall specify the deadline for the voluntary return, which shall be between 15 and 30 days from the notification of the order.

2. The order referred to in paragraph 1 shall not specify the deadline for the foreigner's voluntary return if:

a) the foreign national is likely to escape, or
b) it is necessary for safeguarding national security or public safety and order.

3. A foreign national is considered as particularly likely to abscond if he/she: a) has declared disobedience to the obligations arising from the return order, or b) does not hold any documents certifying his/her

identity, or c) has crossed or attempted to cross the border in violation of the law, or d) entered the territory of the Polish Republic while being listed among foreigners whose stay on the Polish territory is undesirable, or while being listed in the Schengen Information System for the purpose of refusing entry.

4. An order obliging an alien to return, issued without specifying the deadline for voluntary return referred to in paragraph 2 point 2, shall indicate the country to which the foreigner is to return.

5. An order obliging an alien to return, issued without specifying the deadline for voluntary return referred to in paragraph 2 point 2, shall be subject to immediate execution.



Other rejected applicants for residence permits on basis other than family reunification

yes yes n/a

Republic within the period specified in the order obliging him/her to return, and the immediate execution of the order is not possible, or

- the alien fails to comply with the obligations set out in the order on the application of alternatives to detention.

Legislation in force until 30 April 2014:

- there is a risk of absconding of a foreign national against whom removal procedure is being carried out,
- the alien has been issued an removal order which does not specify the deadline for departure from the territory of the Republic of Poland,
- the foreign national has not left the territory of the Republic of Poland within the period specified in the removal order,
- the foreign national crossed or attempted to cross the border illegally.

Legislation in force as at 1 May 2014:

- an order obliging the foreign national to return without specifying the deadline for voluntary return is likely to be issued, or
- an order obliging the foreign national to return without specifying the deadline for voluntary return has been issued, or
- the alien has not left the territory of the Polish Republic within the period specified in the order obliging him/her to return, and the immediate execution of the order is not possible, or
- the alien fails to comply with the obligations set out in the order on the application of alternatives to detention.



Persons detained at the border to prevent illegal entry (e.g. airport transit zone)

n/a n/a n/a n/a

n/a



Persons found to be illegally present on the territory of Poland who have not applied for international protection and are not (yet) subject to a return decision

yes yes n/a

Legislation in force until 30 April 2014:

- there is a risk of absconding of a foreign national against whom removal procedure is being carried out,
- the foreign national crossed or attempted to cross the border illegally.

Legislation in force as at 1 May 2014:

- an order obliging the foreign national to return without specifying the deadline for voluntary return is likely to be issued, or
- the alien fails to comply with the obligations set out in the order on the application of alternatives to detention.



Persons who have been issued a return decision

yes yes n/a

Legislation in force until 30 April 2014:

- the alien has been issued an removal order which does not specify the deadline for departure from the territory of the Republic of Poland,
- the foreign national has not left the territory of the Republic of Poland within the period specified in the removal order,
- the foreign national crossed or attempted to cross the border illegally.

Legislation in force as at 1 May 2014:

- an order obliging the foreign national to return without specifying the deadline for voluntary return has been issued, or
- the alien has not left the territory of the Polish Republic within the period specified in the order obliging him/her to return, and the immediate execution of the order is not possible, or
- the alien fails to comply with the obligations set out in the order on the application of alternatives to detention.

1.2 Is it possible, within the national legal framework of Poland, to detain persons belonging to vulnerable groups, including minors, families with children, pregnant women or persons with special needs? Please indicate whether persons belonging to these vulnerable groups are exempt from detention, or whether they can be detained in certain circumstances.

Legislation in force until 30 April 2014:

Pursuant to the provisions of the Act of 13 June 2003 on Foreigners, a minor alien might be placed in a guarded centre for foreigners. The authority that has stopped an unaccompanied alien minor residing on the territory of the Republic of Poland could apply to the court having jurisdiction over the place of the detention of the minor foreigner and requested that him/her be placed in an institution of emergency care and education.

This solution is (and was in the past) - as a rule - applied to unaccompanied minors, and only in cases where the application of this solution is not possible or difficult for reasons beyond the control of the Border Guard (e.g. lack of places available

in an educational care facility, the need to ensure special surveillance over a minor), persons from this category may be placed in guarded centres. It should be emphasized that a minor detained in a guarded centre for foreigners without a guardian was (and is now) placed in a separate section of the facility to prevent his/her contact with adults accommodated in the centre. A foreign national placed in a guarded centre together with a minor under his/her care are accommodated in the same room, if possible. Both groups of foreign nationals are placed in guarded centres adapted to the needs of this group of persons requiring special treatment, i.e. in the facilities in Kętrzyn, Biała Podlaska and Przemyśl (with respect to accompanied foreign minors under school age).

According to previous legislation, the ban on placing foreigners in guarded centres applied only to those minor unaccompanied foreign nationals who have applied for the refugee status⁶.

According to the provisions of the Act of 13 June 2003 on granting protection to foreigners within the territory of the Republic of Poland⁷ in the above case, the body receiving an application for the refugee status lodged by an unaccompanied minor shall immediately address the guardianship court with a request to appoint a guardian to represent the minor in the refugee status procedure and to place the minor in an institution of emergency care and education, or to place an unaccompanied minor with a professional foster family unrelated to the minor foreigner in question acting as an emergency care centre or an institution of emergency care and education (no changes after 1 May 2014).

In the case of foreigners with special needs, the provisions of the Act on granting protection to foreigners within the territory of the Republic of Poland prohibit placing in a guarded centre unaccompanied minors and persons who have been victims of violence and minors with disabilities. The Act on Foreigners provides that a decision on placing an alien in a guarded centre or on his/ her arrest for the purpose of expulsion⁸ shall not be issued this it could prove dangerous to his/her life or health (no changes after 1 May 2014).

Pursuant to the previous Act on Foreigners, a pregnant woman might be placed in the arrest for the purpose of expulsion until the seventh month of pregnancy. The Act obliged the Border Guard supervising the arrest to apply early enough (before the end of the sixth month of pregnancy) to the court with a request for placing the woman in a guarded centre. It should be noted that guarded centres, which are designed to accommodate this group of foreign nationals requiring special treatment, provided them (and provide now) with adequate gynaecologic care and appropriate conditions during the breastfeeding period, as well as allowing the provision of suitable care to children.

6. A ruling on detention of foreigners in a guarded centre or in an arrest for foreigners/ detention centre shall not be issued if it could pose threat to the life or health of a foreigner.

7. Dz. U (Journal of Laws) of 2012, item 680, as amended.

8. According to the legislation in force until 30 April 2014, a facility used in case when there was a risk that the foreigner would not

Legislation in force as at 1 May 2014:

An unaccompanied minor applying for the refugee status cannot be placed in a guarded centre or an arrest for the purpose of expulsion.

A foreign national applying for the refugee status, whose mental and physical condition indicates that he/she might have been subjected to violence or that he/she is disabled cannot be placed in a guarded centre or in an arrest for the purpose of expulsion, unless his/her behaviour constitutes a threat to the safety, health or life of other foreigners accommodated in the facility or the staff, and if it may prove dangerous to his/her life or health.

Pursuant to the provisions of the Act on Foreigners, a foreign national cannot be placed in a guarded centre or in an arrest for the purpose of expulsion if placing him/her in such a facility could prove dangerous to his/her life or health. The same applies to a foreign national whose psychophysical state indicates that he/she has been subjected to violence.

The occurrence of the above contraindications should be assessed in relation to every foreign national with respect to whom there are reasons to justify placing him/her in a guarded centre.

In the case of detaining an unaccompanied minors residing on the territory of Poland, the Border Guard contacts the court with jurisdiction over the place of his/her detention with a request for placing the minor in an institution of emergency care and education or in a guarded centre.

An unaccompanied minor residing on the territory of the Polish Republic and aged at least 15 can be placed in a guarded centre if he/she does not seek the refugee status.

It should also be noted that the court which is to decide on placing an unaccompanied minor who resided on the territory of Poland in a guarded centre for foreigners, shall be obliged to take into account the following aspects:

- **degree of physical and mental development** of the minor foreign national;
- **personality traits** of the minor;
- **circumstances of detention** of the minor alien;

comply with the rules in force in a guarded centre was called "areszt w celu wydalenia" ["an arrest for the purpose of expulsion"]. Currently for this type of facility a new term is used: "areszt dla cudzoziemców" what can be translated as "arrest for foreigners" but having in mind that this facility plays in fact a role of detention centre for foreigners.

individual circumstances justifying placing the minor alien in a guarded centre.

Pursuant to the new Act on Foreigners, a pregnant woman may be placed in the arrest for foreigners/ detention centre for foreigners until the fourth month of pregnancy. The Act obliges the Border Guard supervising the arrest to apply early enough (before the end of the

third month of pregnancy) to the court with a request for placing the woman in a guarded centre. Guarded centres, which are designed to accommodate this group of foreign nationals requiring special treatment, provide them with adequate medical care and appropriate conditions during the breastfeeding period, as well as allowing the provision of suitable care to children.

1.3 Concerning persons, who cannot be removed and/or are granted tolerated stay, please provide information on any provisions in Poland regulating the release from detention of this category of third-country nationals⁹.

Polish law regulates the release of third-country nationals who cannot be removed, and who have been granted the tolerated stay status.

Legislation in force until 30 April 2014:

An alien shall be granted the permit for tolerated stay on the Polish territory if:

- he/she could be removed only to a country where his/her right to life, liberty and safety might be threatened, where he/she could be subjected to torture or to inhuman or degrading treatment or punishment, or be forced to work or deprived of the right to a fair trial, or be punished without a legal basis as defined in the Convention for the Protection of Human Rights and Fundamental Freedoms signed in Rome on 4 November 1950;
- if the removal contravenes the right to family life, as defined in the Convention for the Protection of Human Rights and Fundamental Freedoms signed in Rome on 4 November 1950, or contravenes the rights of the child, as set out in the Convention on the Rights of the Child, adopted by the United Nations General Assembly on 20 November 1989 (Dz. U. of 1991 No. 120, item 526 and Dz. U. of 2000 No. 2 item 1b) to an extent that could significantly affect the child's psychophysical development;
- if the removal is impossible for reasons beyond

the control of the authority executing the removal order and beyond the foreigner's control.

In addition, a foreign national may be granted the permit for tolerated stay on the Polish territory if his/ her removal could take place only into the country to which the removal is prohibited on the basis of a court ruling on the inadmissibility of an alien or on the basis of a decision of the Minister of Justice on the refusal removing the foreign national, taking into account the reason for which the removal of the foreign national was refused, and the interests of the Republic of Poland.

If a foreigner is issued with a tolerated stay permit, the court issues an order to release the alien from the guarded centre or the arrest for the purpose of expulsion.

Legislation in force as at 1 May 2014 (introducing an "authorization to stay on the Polish territory for humanitarian reasons"):

An alien shall be granted authorization to stay on the Polish territory for humanitarian reasons if his/her return:

- may only be conducted into a country where, within the meaning of the Convention for the Protection of Human Rights and Fundamental Freedoms signed in Rome on 4 November 1950:

for legal or other considerations detention ceases to be justified and the person concerned shall be released immediately.

- his/her right to life, liberty and safety may be threatened, or
- he/she may be subjected to torture or to inhuman or degrading treatment or punishment, or
- he/she may be forced to work, or
- he/she may be deprived of the right to a fair trial or punished without a legal basis, or
- contravenes the right to family life, as defined in the Convention for the Protection of Human Rights and Fundamental Freedoms signed in Rome on 4 November 1950, or
- contravenes the rights of the child as set out in the Convention on the Rights of the Child, adopted by the United Nations General Assembly on 20 November 1989 to an extent that could significantly affect the child's psychophysical development.

An alien shall be granted the permit for tolerated stay on the Polish territory if his/her return:

- may only be conducted into a country where, within the meaning of the Convention for the Protection of Human Rights and Fundamental Freedoms signed in Rome on 4 November 1950:
 - his/hēr right to life, liberty and safety may

be threatened, or

- he/she may be subjected to torture or to inhuman or degrading treatment or punishment, or
- he/she may be forced to work, or
- he/she may be deprived of the right to a fair trial or punished without a legal basis – where the circumstances justify the refusal granting the permission to stay for humanitarian reasons,
- is impossible for reasons beyond the control of the competent authority capable of enforcing the foreigner's return and beyond the foreigner's control, or
- could take place only into the country to which the removal is prohibited on the basis of a court ruling on the inadmissibility of an alien or on the basis of a decision of the Minister of Justice on the refusal removing the foreign national.

An alien placed in a guarded centre or in the arrest for the purpose of expulsion shall be released upon the delivery of a decision to grant the alien authorisation to stay for humanitarian reasons, or a decision on the permit for tolerated stay on the territory of Poland.

2

Assessment procedures and criteria for the placement of third-country nationals in detention

2.0 Assessment procedures and criteria for the placement of third-country nationals in detention

2.1 Please indicate whether an individual assessment procedure is used to determine the appropriateness of detention in the case of any of the categories of third-country nationals selected in Section 1. If yes, please list the categories of third-country nationals where individuals are subject to individual assessments. If individual assessment procedures are not used, please indicate the mechanism used to determine the appropriateness of detention e.g. are all individuals within a particular category of third country national automatically placed in detention?

Legislation in force as at 1 May 2014:

The law provides strict criteria for individual assessment only in relation to unaccompanied minors and foreign nationals with minors under their care.

It should also be noted that the court which is to decide on placing an unaccompanied minor foreign national who resided on the territory of Poland in a guarded centre for foreigners, shall be obliged to take into account the following aspects:

- **degree of physical and mental development** of the minor foreign national;
- **personality traits** of the minor;
- **circumstances of detention** of the minor alien;
- **individual circumstances** justifying placing the minor alien in a guarded centre.

The court considering placing a foreign national together with a minor under his/her care in a guarded centre takes into account the best interest of the minor. With regard to other categories of persons, legal provisions do not provide any specific criteria for individual assessment.

Nevertheless, it should be noted that the Border Guard is currently working on a project of early identification of individuals who may be victims of violence, torture and other forms of psychological, physical or sexual violence. The project is carried out by representatives of the Border Guard and the International Humanitarian Initiative Foundation. An algorithm for an appropriate procedure to be adopted in relation to this group of foreign national is being developed in the framework of the project.

2.2 Where individual assessment procedures are used, and specific criteria exist to help the competent authorities decide whether particular grounds for detention apply, please indicate the legal basis on which these individual assessment procedures are exercised (for example legislation, soft law/guidelines).

Best interest of a minor (as defined in the response to the above question) – a statutory obligation.

2.3 Where individual assessments are used, does the third-country national receive detailed information on the consequences of the interview before the individual assessment procedure? If yes, is there an emphasis on all possible options/outcomes of the assessment?

n/a

2.4 Where individual assessments are used, please indicate whether the procedure includes an assessment of the vulnerability of the individual in question. If yes, please describe the vulnerability assessment procedure used.

As it was stated above, the Border Guard is currently working on a project of early identification of individuals who may be victims of violence, torture and other forms of psychological, physical or sexual

violence. An algorithm for an appropriate procedure to be adopted in relation to this group of foreign national will be just developed as a result of these works.

2.5 Please provide more detailed information on the criteria/indicators used to decide whether particular grounds for detention apply in individual cases.

Ground 1: If there is a risk of absconding (Example: The risk of absconding may be measured on the basis of a previous escape or attempt to escape from detention, a statement about the person's reluctance to return to their home country, a previous breach of temporary release or non-compliance with an alternative to detention, lack of a valid passport, lack of address or residence, previous declaration of false identify, previous violation of voluntary departure or entry ban, etc.)

It should be taken into account that a foreign national is particularly likely to abscond if he/she:

- has declared disobedience to the obligations arising from the return order, or
- does not hold any documents certifying his/her identity, or
- has crossed or attempted to cross the border in violation of the law, or
- entered the territory of the Polish Republic while being listed among foreigners whose stay on the Polish territory is undesirable, or while being listed in the Schengen Information System for the purpose of refusing entry,

Ground 2: If the third-country national avoids or hampers the preparation of a return or removal process

n/a

Ground 3: If required in order to protect national security or public order

Safeguarding national security or public safety and order.

Ground 4: Please indicate any other ground(s) and the respective criteria/indicators considered in the assessment

The foreign national failed to leave the territory of the Polish Republic within the period specified in the return order, and the immediate execution of the order is not possible, or if the foreign national fails to comply with the obligations set out in the order on the application of alternatives to detention.

2.6 Is the possibility to provide alternatives to detention systematically considered when assessing whether to place a person in detention in Poland?

Yes. The Act of 12 December 2013 on Foreigners has introduced a possibility of use the alternative measures to detention.

2.7 Please indicate which national authorities are responsible for conducting individual assessment procedures (where these exist) and deciding on the placement of a third-country national in detention.

A decision about placing a foreigner in a guarded centre or an arrest for foreigners/detention centre is taken by the court at the request of the commanding officer of a Border Guard post or the commanding officer of a Border Guard unit. Both the commanding officer of a Border Guard post or the commanding officer of

a Border Guard unit and the court shall carry out an individual assessment of the appropriateness of requesting that the foreign national should be placed in a guarded centre or an arrest for foreigners/detention centre (the commanding officer of a post and the commanding officer of a unit) or placed in a guarded centre (court).

2.8 Please indicate whether judicial authorities are involved in the decision to place a third-country national in detention, and if so, at which stage(s) of the decision-making process and in what capacity? (e.g. do judicial authorities make the final decision, do they only make a recommendation, do they only come in if the third-country national appeals against a decision?)

Judicial authorities issue a decision on placing a foreign national in a guarded centre or an arrest for foreigners/detention centre at the request of the

commanding officer of a Border Guard post or the commanding officer of a Border Guard unit.

2.9 Please identify any challenges associated with the implementation of existing assessment procedures in Poland.

As indicated in the answer to question 2.1, appropriate procedures are currently being developed.

2.10 Please identify any good practices in relation to the implementation of assessment procedures (e.g. cited in existing evaluations/studies/other sources or based on information received from competent authorities).

n/a

3

Types of detention facilities and conditions of detention

3.0 Types of detention facilities and conditions of detention

3.1 Are there specialised immigration detention facilities in Poland, which are not prisons?

Yes. There are six guarded centres for foreigners in Poland, two of which have separated arrests for foreigners/detention centres (for those who do not comply with the rules in force in the guarded centres). All guarded centres for foreigners are part of the organizational structure of the Border Guard. Each of these facilities is placed in a separate unit of the Border Guard (4 centres for foreigners are located at the external border, one at the internal border, and one is located in the centre of the country).



3.2 Are there different types of specialised immigration detention facilities for third-country nationals in different circumstances (e.g. persons in return proceedings, applicants for international protection, persons who represent a security risk, etc.)?

The profiles of guarded centres for foreign nationals have been defined by adjusting the scope of their operation to the current migration situation, to the infrastructure of each facility and opportunities guaranteed by the staff of these centres in order to provide the foreigners with optimum living conditions (also by providing minor foreign nationals with the opportunity to receive compulsory education). They encompass:

- **Centres adapted only to the needs of families with children and unaccompanied minors**, where

compulsory education is provided to alien minors (Guarded Centre for Foreigners in Kętrzyn and Biała Podlaska).

- **Centres adapted only to the needs of men** (Guarded Centre for Foreigners in Białystok, Lesznów, Krosno Odrzańskie).
- **Mixed-type centres** encompassing a male and a female unit (Guarded Centre for Foreigners in Przemyśl, where a family unit also operates for families with children not attending school).

3.3 Which authorities/organisations are responsible for the day-to-day running of the specialised immigration detention facilities in Poland?

Commanding officers of Border Guard units or commanding officers of Border Guard posts (depending on the facility).

3.4 Please describe any measures taken by Poland to deal with situations where the number of third country nationals to be placed in detention exceeds the number of places available in the detention facilities.

There was no such situation in Poland.

3.5 Are third-country nationals detained in prisons in Poland? If yes, under which circumstances?

No.

3.6 If third-country nationals are detained in prisons in Poland, are they held separately from general prisoners? If yes, please provide information on the mechanisms to separate third-country nationals under immigration detention from general prisoners?

n/a

3.7 Please provide the information about the conditions of third-nationals who have been placed in an immigration detention facility in Poland.

Conditions of detention

The average available surface area per detainee (in square meters)

Statistics and/or comments

The surface of a room or cell for a foreigner cannot be less than 3m² per man and 4m² per woman or minor.



The average length of stay of a detainee in detention facility

An average length of stay of a foreign national in a guarded centre for foreigners is 69 days (data from 2013).



Are families accommodated in separate facilities?

Families with children reside in dedicated guarded centres for foreigners (see question 3.2).

Can children be placed separately from their parents? (e.g. in a childcare facility). Under what circumstances might this happen?

No such situation has been recorded. Families with children are placed in dedicated guarded centres (see question 3.2).

Are single women separated from single men?

Single women and single men are placed in mixed-type guarded centres comprising a male and a female unit.



Are unaccompanied minors separated from adults?

Unaccompanied minors are placed in facilities adapted for this purpose (see question 3.2).



Do detainees have access to outdoor space? If yes, how often?

Persons staying in guarded centres for foreigners can go for walks and move freely in their free time, that is, between 9:00 and 21:00. Their freedom to move around and go for walks may be constrained only by mealtimes.

**Are detainees allowed to have visitors?
If yes, which visitors are allowed (for example, family members, legal representatives, etc.) and how often?**

All persons placed in guarded centres for foreigners are guaranteed the right to receive visitors 7 days a week at certain times. A foreign national placed in a guarded centre or in an arrest for foreigners/detention centre is entitled to visits from relatives in specially designed rooms, upon approval of the Border Guard in charge of the facility or an approval of a person authorised by the BG. Additionally, foreign nationals have the right to contact NGOs providing assistance to foreigners, including legal assistance.



**Are detainees allowed contact with the outside world via telephone, mail, e-mail, internet?
If yes, are in- and/or out-coming messages screened in any way?**

All persons living in guarded centres are allowed to contact the outside world. The use of private mobile phones without the video recording function is authorized. Cameras without the video recording function, with which the centre is equipped, can also be used by its residents. In addition, before 1st May 2014, work was under way to adapt the facilities and equip them with devices providing access to the Internet. Currently, an access to the Internet is available to all foreign nationals residing in guarded centres and arrests for foreigners. Correspondence received by foreigners or sent via electronic mail is not monitored, although access to certain websites remains locked.



Are education programmes provided (e.g. school courses for minors and language classes for adults)?

Given the profile of guarded centres for foreigners (see Section 3, question 2) compulsory education for children is being implemented in two detention centres, i.e. in Kętrzyn (primary school, secondary school, high school) and in Biała Podlaska (primary school, secondary school and high school). Educational activities are held in guarded centres, while the curriculum, the number of teaching hours (8-12 hours/week) and the selection and delegation of teachers remain within the competence of local schools. In order to ensure better educational outcomes, minor foreign national are provided with the necessary textbooks and school supplies (including notebooks, pencils, etc.). Minors study the following subjects: Polish language, mathematics, science including Polish and world geography, art. In order to unify the compulsory education for children residing in guarded centres, the Ministry of the Interior has suggested to the Ministry of Education an undertaking efforts aiming at creation of a framework education programme tailored to this group of foreign children, taking into account their age, cultural and language diversity, short stay in Poland.

**Do detainees have access to leisure activities?
If yes, which leisure activities are provided in the detention facility?
And if yes, how often?**

In addition to school activities listed above, officers and employees of the Teaching and Education Section organize daily recreational and sports activities. Great emphasis is put on activating both minors and adults. The aim of these classes is not only to provide free-time activities (in order to prevent apathy and boredom), but also to impede any forms of behaviour that could adversely affect the cohesion of the group (arguments, bullying) and in order to give vent to tensions and the excess energy accumulated during the stay at the centre. To ensure

Can persons in detention leave the facility and if yes, under what conditions? Can persons move freely within facility or are their movements restricted to some parts/rooms of the facility?

maximum effectiveness of classes, teachers running recreation and sport activities may modify the curriculum to meet the individual needs and interests of participants.

Persons staying in guarded centres for foreigners can go for walks and move freely in their free time, that is, between 9:00 and 21:00. Their freedom to move around and go for walks may be constrained only by mealtimes.



They are not allowed to leave the guarded centre.

**Are detainees entitled to legal advice / assistance?
If yes, is it free of charge?**

In all guarded centres and arrests for foreigners/detention centres are acquainted with their rights and duties. All foreigners can use free legal assistance provided by non-governmental organizations.

**Is medical care available to detainees inside the facilities?
Is emergency care covered only or are other types of medical care included?**

Detainees have the right to be provided with language support in all cases justified by pending administrative proceedings against a foreign national and by any health reasons. Each of Border Guard units keeps an up-to-date database with contact details of translators/interpreters cooperating with the BG.



**Is medical care available to detainees inside the facilities?
Is emergency care covered only or are other types of medical care included?**

All persons placed in guarded centres for foreigners and arrests for foreigners/detention centres are provided with health care financed by the Border Guard. The quality of medical services is ensured by Public Healthcare Centres located in the proximity of Border Guard units. Services are provided by the staff of Public Healthcare Centres or external entities on the basis of civil law agreements and depending on the location of the centre in relation to the Public Healthcare Centre of the Border Guard unit. Access to medical care (general and specialized) provided to foreigners residing in guarded centres does not differ in terms of access procedures (several-stage access to specialist help) and the quality of medical care from health care provided to Polish citizens. Minor foreigner nationals residing in centres are also covered by the system of periodic health screening on the same terms that apply to children of Polish citizens. The Border Guard also ensures access to periodic preventive vaccination. In order to provide foreigners staying in guarded centres with medical care, nurses are on duty every day from 7:30 to 21:30 (7 days/week). Medical appointment is available within an agreed time-frame (doctor's work schedule is placed on the information board). Additionally, foreigners have access to psychological care (external psychologists) and consultations with specialists on addictions (if needed).

Are there special arrangements for persons belonging to vulnerable groups? Please describe

Special conditions apply to those who belong to vulnerable groups.

- **Unaccompanied alien minors and people with disabilities** are placed only in the guarded centre in Kętrzyn, whose facilities are adapted to their needs (one of the priorities of the Department of Aliens at the Border Guard Headquarters is to maximally reduce the time that alien minors spend in a guarded centre for foreigners. Therefore, a request has been submitted to the Head of the Office for Foreigners regarding the processing of applications for the refugee status submitted by these persons as a priority).
- **Victims of trafficking** – the Border Guard has implemented an Algorithm of procedure in relation to cases of human trafficking, which is used both at border crossing points and in guarded centres for foreigners. It provides persons performing the identification with a practical tool for streamlining the identification of this group of people, as well as information on their profiles and needs.
- **Persons requiring special treatment due to the fact that they may be victims of violence, torture, rape and other forms of psychological, physical or sexual violence** – as of 1 May 2014, a project is implemented in all guarded centres for foreigners, aimed at early identification of these persons, including adult foreigners applying for the refugee status.
- **Foreigners with special needs** – the Department of Aliens at the Border Guard Headquarters works on a pilot project aiming at ensuring of the institutional assistance for this group. The project is dedicated to foreigners staying in a guarded centres who have not applied for a refugee status, who have been issued a ruling to release them from a guarded centre on a basis of Article 406 subpar. 1 p. 2 of Act of 12 December 2013 on Foreigners – when there were ascertained that foreigner's stay in a guarded centre could pose threat to the life or health of a foreigner or when the foreigner's physical and psychological condition could justify a presumption that a foreigner has experienced violence. The institutional assistance might include the following aspects: accommodation, food, medical and psychological assistance.

Are there special arrangements for persons considered to be security risks for others and/or themselves? Please describe

Foreigners manifesting a negative and aggressive attitude towards obligations and proscriptions set out in the Act on Foreigners, as well as the rules and regulations of the guarded centre, and whose isolation is necessary in order to protect the health and lives of other persons accommodated in guarded centres, as well as officers and employees performing their duties at the centre, can be placed in quarters reserved for foreigners disrupting safety and order. A foreigner can be confined to such space for no longer than 48 hours. Placing an alien in such quarters should result in applying to a court with a request to place the alien in arrest for foreigners/detention centre due to his/her non-compliance with the rules in force in the guarded centre.



4

Availability and practical organisation of alternatives to detention

4.0 Availability and practical organisation of alternatives to detention

4.1 Please indicate whether any alternatives to detention for third-country nationals are available in Poland.

Alternatives to detention	Yes/ No (If yes, please provide a short description)
Yes, as 1 May 2014 Poland has introduced into its legal framework a possibility of use the alternatives to detention, referred to in Article 7 (3) of the Directive of the European Parliament and of the Council 2008/115/EC of 16 December 2008 on common standards and	procedures in Member States for returning illegally staying third-country nationals: a regular reporting to the authorities, deposit of an adequate financial guarantee, submission of documents and the obligation to stay at a certain place.
Reporting obligations (e.g. reporting to the policy or immigration authorities at regular intervals)	Third country nationals obliged to report regularly are required to do so at specified intervals at the Border Guard authority defined in the order.
Obligation to surrender a passport or a travel document	Third country nationals obliged to submit a travel document are required to submit a travel document to the authority designated in the order.
Residence requirements (e.g. residing at a particular address)	Third country nationals who have been imposed with certain requirements regarding their place of residence are required to reside at the place designated in the order.
Release on bail (with or without sureties)	n/a
Electronic monitoring (e.g. tagging)	n/a
Guarantor requirements	n/d
Release to care worker or under a care plan	n/a
Community management programme	n/a
Other alternative measures	Third-country nationals may be required to deposit a cash collateral in the amount specified in the order, amounting to no less than twice the minimum wage provided for in minimum wage regulations.

4.2 For each of the alternatives to detention that are available in Poland, please indicate the categories of third country nationals that may be provided an alternative to detention, making use of the list provided below.

- Applicants for international protection in ordinary procedures;
- Applicants for international protection in fast-track (accelerated) procedures;
- Applicants for international protection subject to Dublin procedures;
- Rejected applicants for international protection;
- Rejected family reunification applicants;
- Persons found to be illegally present on the territory of the (Member) State who have not applied for international protection and are not (yet) subject to a return decision);
- Persons who have been issued a return decision;
- Other categories of third-country nationals;
- Vulnerable persons (such as minors, families with very young children, pregnant women and persons with special needs.

Alternatives to detention may be applied to all categories of aliens with respect to whom circumstances justify placing them in a guarded centre, except for those who pose a threat to state defence or security, or to public safety and order.

4.3 For each of the alternatives to detention that are available in Poland, please indicate the legal basis on which they may be granted to particular categories of third country nationals (for example legislation, soft law/guidelines, other).

All alternatives to detention have their legal basis in the legislation in force.

4.4 For each of the alternatives to detention that are available in Poland, please indicate the authorities/ organisations responsible for deciding and administering the alternative.

Commanding officers of Border Guard posts and Border Guard units, as well as courts are authorities competent to issue decisions on the use of alternative measures.

4.5 For each of the alternatives to detention that are available in Poland, please provide information on any consequences if the third-country national does not follow the conditions of the alternative to detention.

Failure to comply with the requirements specified in the order may lead to placing an alien in a guarded centre.

4.6 Please indicate any challenges associated with the implementation of the alternatives to detention in Poland (based on existing studies/evaluations or information received from competent authorities).

Use of alternatives to detention is applied upon the entry into force of the Act on Foreigners of 12 December 2013, i.e. from 1 May 2014. Problems

with the practical application of alternatives, with the exception of their limited efficacy compared to detention, have not been anticipated¹⁰.

¹⁰ In case of foreigners who do not possess travel documents, problems with confirmation of their identity may occur.

4.7 Please provide any examples of good practices regarding the implementation of the alternatives to detention in Poland. Please specify the source (e.g. cited in existing evaluations/studies/other sources or based on information received from competent authorities).

n/a

5

Assessment procedures and criteria used for the placement of third-country nationals in alternatives to detention

5.0 Assessment procedures and criteria used for the placement of third-country nationals in alternatives to detention

5.1 In question 1.1, you have identified the grounds on which detention can be authorised for particular categories of third-country national. In what circumstances can those grounds be displaced in favour of an alternative to detention in Poland?

Decisions about the use of alternative measures are taken with regard to the individual circumstances of a foreign national, on the basis of all available evidence. The use of alternative measures is possible in relation to any foreign national, unless he/she fails

to comply with the obligations specified in the previously issued decision regarding the use of alternative measures or if issuing a return order is justified by security reasons.

5.2 Which other considerations are made before deciding whether to provide the third-country national concerned an alternative to detention, e.g. considerations regarding the availability of alternatives, the cost of alternatives, and vulnerabilities of the third-country national?

n/a

5.3 Please indicate whether an individual assessment procedure is used to determine whether the grounds on which detention can be authorised can be displaced in favour an alternative to detention.

Decisions about the use of alternative measures are taken with regard to the individual circumstances of a foreign national, on the basis of all available evidence. The use of alternative measures is possible in relation to any foreign national, unless he/she fails to

comply with the obligations specified in the previously issued decision regarding the use of alternative measures or if issuing a return order is justified by security reasons.

5.4 Where individual assessments are used, please indicate whether the procedure includes an assessment of the vulnerability of the individual in question. If yes, please describe the vulnerability assessment procedure used.

n/a

5.5 Are assessment procedures for providing alternatives to detention conducted on all third-country nationals who are apprehended, or only on those third-country nationals who have already completed a period in detention?

Individual assessment procedures apply to all third country nationals.

5.6 Please indicate which national authorities are responsible for conducting individual assessment procedures (where these exist) and deciding on alternatives to detention.

Commanding officers of Border Guard posts and Border Guard units, as well as courts are authorities competent to issue decisions on the use of alternative measures.

5.7 Please indicate whether judicial authorities are involved in the decision to provide an alternative to detention, and if so, at which stage(s) of the decision-making process and in what capacity? (e.g. do judicial authorities make the final decision, do they only make a recommendation, do they only come in if the third-country national appeals against a decision)?

When examining an application for placing a foreign national in a guarded centre, the court may rule on the use of alternatives to detention.

6

**Impact of
detention and
alternatives to
detention on the
effectiveness
of return and
international
protection
procedures**

6.0 Impact of detention and alternatives to detention on the effectiveness of return and international protection procedures

6.1 Effectiveness in reaching decisions on applications for international protection

Have any evaluations or studies (including studies of the views of detainees of alternatives to detention) in Poland considered the impact of detention and alternatives to detention on the efficiency of reaching decisions on applications for international protection? (for example, by affecting the time it takes to decide on international protection status).

No information. The new Act on Foreigners introducing the measures alternative to detention came into force only on 1st May 2014. This period is too short to make any studies.

Please provide any statistics that might be available in Poland on the average length of time needed to determine the status of applicants for international protection who are held in detention and who are in an alternative to detention.

No information. The new Act on Foreigners introducing the measures alternative to detention came into force only on 1st May 2014. This period is too short to collect any statistical data related to these measures.

Please provide any other evidence that may be available in Poland on the impact of detention and alternatives to detention on effectiveness in terms of reaching decisions on applications for international protection and provide any examples of good practice in this regard (e.g. cited in existing evaluations/studies/other sources or based on information received from competent authorities).

For the purpose of this EMN Study, the Office for

Foreigners provided the following statement: "The Head of the Office for Foreigners considers all proceedings regarding individuals applying for the refugee status and placed in a detention facility as a priority".

Pursuant to Article 89 (1) of the Act of 13 June 2003 on granting protection to foreigners within the territory of the Republic of Poland, the court shall issue an order to place the person applying for the refugee status (the applicant) or the person on whose behalf the applicant applies, in a guarded centre or in an arrest for foreigners/detention centre for a period of 30 to 60 days (60 days in practice). If the applicant is a foreigner staying in a guarded centre or in an arrest as a result of the implementation of a court order issued pursuant to the Act on Foreigners, the court shall extend the period of stay in a guarded centre or in an arrest for foreigners to 90 days, the first day of the extended period of stay being the date on which the application for the refugee status was submitted.

If the decision on refusing the refugee status or subsidiary protection is taken and delivered to the applicant before the expiry of the abovementioned periods, the period of stay in the guarded centre or in the arrest for foreigners may be extended for a limited period of time necessary for issuing a final decision on refusal to the grant the refugee status/subsidiary protection status.

Failure to issue a decision on the refugee status before the detention deadline results in an immediate dismissal from a guarded centre or an arrest for

foreigners prior to the expiry of the detention period. However, this provision shall apply only to persons who receive a negative decision.

The Head of the Office for Foreigners may decide to release a foreigner from the guarded centre or an arrest for foreigners ex officio or at the request of the applicant, but only if the evidence of the case indicates the applicant or the person on whose behalf the applicant applies are likely to comply with the conditions for being recognized as refugee, specified in Art. 13 or for being granted subsidiary protection, determined in Art. 15, and their stay on the territory of the Republic of Poland does not make a threat for state defence or security or safeguarding public safety and order and there are no serious grounds to suppose that:

- he/she committed a crime against peace, war crime or crime against the humanity as understood by international law,

- he/she is guilty for any actions contrary to aims and principles of the United Nations determined in the Preamble and Art. 1 and 2 of the United Nations Card,
- he/she committed a crime of other character than political one outside the territory of the Republic of Poland prior to submission of the application for granting to him/her a refugee status;
- he/she abetted to an offence or participated in any other way in committing the offence or act mentioned above,
- prior to his/her arrival to the territory of the Republic of Poland committed other act than this determined above, which is a crime pursuant to Polish law, threatened with penalty of imprisonment if such foreigner left his/her country of origin exclusively for the purpose of avoiding the punishment.

6.2 Effectiveness in reaching decisions regarding the immigration status of persons subject to return procedures and in executing returns

Have any evaluations or studies in your (Member) State considered the impact of detention and alternatives to detention on:

- the length of time from apprehending an irregular migrant to issuing a return decision?
- the length of time that transpires from issuing a return decision to the execution of the return?
- the share of voluntary returns out of the total number of returns?
- the total number of removals completed?

No information.

Please provide any evidence that may be available on the effectiveness in reaching decisions regarding the immigration status of persons subject to return procedures and executing the return, and provide any examples of good practice in this regard (e.g. cited in existing evaluations/studies/other sources or based on information received from competent authorities). For the purpose of this EMN Study, Polish Border Guards provided the following remarks: "In the case

of the refugee procedure, regardless of whether the alien is in detention or not, the procedure must be carried out in the same meticulous manner (according to the provisions of Polish national law, if following the application for the refugee status submitted by an alien in detention, whose period of stay has been set on the basis of a court decision at 2 to 3 months, the competent authority fails to issue a decision within the indicated period of 2-3 months, the alien is released, as there is no legal basis to extend his stay; the same provision states that detention should not affect the proceedings in such a vital matter).

In the case of the return procedure, detention can affect the efficiency of immigration procedure, i.a. when foreigner's identity is being confirmed. According to the return Directive, a foreign national is placed in detention for the shortest period of time possible, so in the case of protracted identification procedures he/she can be released from detention."

6.3 Costs

Have any evaluations or studies on the costs of detention and alternatives to detention been undertaken in your (Member) State?

No. The new Act on Foreigners introducing the measures alternative to detention came into force only on 1st May 2014. This period is too short to make any studies or evaluations.

Please provide any statistics available on the costs of detention and alternatives to detention (total costs, staffing, medical costs, food and

accommodation, legal assistance, other costs). Statistics on the costs are not available.

Please provide any other evidence that may be available in Poland on the cost-effectiveness of detention and alternatives to detention, and provide any examples of good practice in this regard. (e.g. cited in existing evaluations/studies/other sources or based on information received from competent authorities).

n/a

6.4 Respect for fundamental rights

Have evaluations or studies been conducted in your Poland on the impact of detention and alternatives to detention on the fundamental rights of the third-country nationals concerned (for example, with regard to the number of complaints of detainees or persons provided alternatives to detention)?

The Human Rights Defender in Poland and some non-governmental organisations give attention to some issues concerning respect for fundamental rights of the third-country detainees. However, there is no study/report which contains statistical data demonstrating a real scale of fundamental rights violation.

There are some reports presenting the findings from a monitoring of guarded centres which have been conducted by the Ministry of the Interior and by the NGOs. Additionally, the studies with analysis

of courts' jurisdiction on detention are available as well¹¹.

Please provide any statistics that might be available in Poland on the number of complaints regarding violations of human rights and the number of court cases regarding fundamental rights violations in detention as opposed to alternatives to detention. No information. Statistics of this kind are not available in Poland.

Please indicate if studies exist in Poland which show negative effects of the alternatives to detention in practice (for example, ankle bracelets can be socially stigmatizing and cause physical and emotional distress).

There are no studies related to the alternatives to detention in Poland.

Please provide any other evidence that may be

¹¹. The following reports/ studies have been published in Poland recently:
• „Vulnerable Foreigners in Poland: Identification, Detention and Judicial Practice”, M. Pajura, The Halina Nieć Legal Aid Centre (HNLAC), Cracow, November 2013, available in English: http://www.pomocprawna.org/images/stories/pomoc_uchodcom/Vulnerable_Foreigners_in_Poland_HNLAC2013.pdf
• „Migration is not a crime. Report on the Monitoring of Guarded Centres for Foreigners, The Association for Legal Intervention and The Helsinki Foundation for Human Rights, Warsaw 2013, available in English: <http://www.asylumineurope.org/files/resources/migration-is-not-a-crime.pdf>
• „The use of foreigners' detention. Monitoring Report and Recommendations/ Stosowanie detencji wobec cudzoziemców. Raport z monitoringu i rekomendacje”, red/ed. Tomasz Sieniow, Fundacja Instytut na rzecz Państwa Prawa/The Rule of Law Institute, Lublin 2013, available in Polish: http://panstwoprawa.org/site_media/stora-

[ge/files/2013-07/stosowanie-detencji-wobec-cudzoziemcow467471.pdf](http://www.pomocprawna.org/images/stories/pomoc_uchodcom/Vulnerable_Foreigners_in_Poland_HNLAC2013.pdf)
• „Still behind the bars. Report from the monitoring of the guarded centres for foreigners conducted by the Helsinki Foundation for Human Rights and Association for Legal Intervention/ Wciąż za kratami. Raport z monitoringu strzeżonych ośrodków dla cudzoziemców prowadzonego przez Helsińską Fundację Praw Człowieka i Stowarzyszenie Interwencji Prawnej, red/ed. Jacek Białas, W. Klaus, Warsaw 2014, available in Polish: http://www.hfhr.pl/wp-content/uploads/2014/05/HFPC_SIP_raport_wciaz_za_kratami.pdf
• „Realisation of the minor foreigners' right to education. Human Rights Defender Report./ Realizacja prawa małoletnich cudzoziemców do edukacji. Raport Rzecznika Praw Obywatelskich”, Warsaw 2013, available in Polish: http://www.rpo.gov.pl/sites/default/files/RAPORT-RZECZNIKA-PRAW-OBYWATELSKICH-Realizacja-prawa-maloletnich-cudzoziemcow-do-edukacji%20.png_.pdf

available in your (Member) State on the impact of detention and alternatives to detention on the fundamental rights of the third-country nationals, and provide any examples of good practice in this regard. (e.g. cited in existing evaluations/studies/

other sources or based on information received from competent authorities).
n/a



Statistical Annex

Statistical Annex

TABLE 1

Statistics on number of third-country nationals in detention

Source: Border Guard

	2009	2010	2011	2012	2013
Total number of third-country nationals in detention	1 671	1 515	1 117	1 416	1 755

TABLE 2

Average length of time in detention

Source: Border Guard

	2009	2010	2011	2012	2013
Average length of time in detention of all categories of third-country nationals in detention	—	—	—	73 days	69 days

The report has been finalized in a very significant moment – when new Act on Foreigners, introducing a possibility of use of the alternatives to detention, entered into force (1st May 2014). The actual effectiveness of these measures is an open question now.

This report was prepared in relation with Polish membership in the European Migration Network and constitutes contribution to the report synthesising the knowledge about the use of detention and alternatives to detention in the context of immigration policy in the European Union countries plus Norway.

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