

**Combating trafficking in human beings, with a particular focus on Trafficking in
Children**

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ENGLISH only

**DETENTION OF CHILDREN IN POLAND VERSUS THE BEST
INTERESTS OF A CHILD**

Good afternoon. My name is Agnieszka Gorlach. I am a Polish lawyer from the Halina Niec Legal Aid Centre, a non-governmental organization providing legal assistance to asylum seekers, migrants, victims of trafficking in human beings and all foreigners of vulnerable groups. I would like to address some of the problems arising from the detention of children.

As a general rule asylum seekers in the Republic of Poland are placed in one of 14 open centers for refugees, where they are provided with social assistance. In cases specified in the act on granting protection to aliens of 13 June 2003 asylum seekers and other foreigners, including victims of trafficking in human beings, can be placed in one of 9 detention centers for foreigners.

- **Unaccompanied minors**

The law allows for placing unaccompanied minors without legal status in Poland in a detention center for foreigners. There is a possibility to request that the court places the minor in a home for children.

- **Unaccompanied minors in asylum procedure**

Pursuant to the Act of 13 June 2003 on granting protection to Foreigners within the territory of Republic of Poland an unaccompanied minor in asylum procedure should not be placed in detention centre.

According to the Agreement between the city of Warsaw and the Office for Foreigners, unaccompanied minors in asylum procedure are placed in home for children in Warsaw.

- **Accompanied children**

Children who are in asylum procedure with their parents are detained if the court decides that it is necessary to establish their identity, to prevent from abuse in procedure for granting the refugee status or to prevent from a threat to other people safety, health, life or property. They can also be detained if they crossed the border illegally with their parents.

The implementation of legal regulation concerning detention with respect to the rights of a child is in some respects questionable. The above-mentioned rules are applied inconsistently by border guards and courts. This can also be seen from statistics on Dublin II returnees detained which differs substantially across Poland. Thus it is recommended to issue a guidance preventing detention of children based on international standards and the best interest of the child.

I would like now to present major problems concerning the rights of foreign children in the context of detention.

- **Access to legal assistance**

In Poland there is no government funded system of free legal assistance for foreigners in immigration detention. Legal aid is provided to them only by NGOs funded by international donors or privately. Foreigners are given a leaflet containing information about NGOs contact data. However they sometimes are reluctant to contact the organization by phone or by fax, since they are afraid to talk about their problems on the phone to a person they've never seen or don't feel confident due to language barriers. Also less than half of the detention centers are regularly visited by NGOs lawyers (that could be once a week or once a month). It is important to improve access to legal aid in detention centers including through widening the scope of the visits.

The current situation limits the possibility of detained foreigners, especially children, to challenge their detention and have their rights protected.

- **No best interests of a child taken into account when detaining/releasing children with families**

Families with children are subjected to general rules of releasing from detention centers stipulated in the Act on aliens. They can be released by the court if the detention

seriously threatens life or health of a family member. This premise is applied very restrictively by courts. The best interests of the child are not taken into consideration.

The best interests of a child should be considered when deciding on placing/releasing a family with children in detention center.

- **Access to education**

Children in detention centers are deprived of access to education. In less than half of detention centers special classes for children are organized, but they do not exceed ten hours per week, and cover only a limited number of subjects.

It is therefore essential to widen the scope and frequency of such classes and introduce measures alternative to detention.

- **Alternatives to detention**

HNLAC is currently working on a legal opinion on the need to introduce measures alternative to detention, that should be applied especially to families with children. They could involve an obligation to register weekly or daily at the police office or at the reception center.

Introducing alternatives to detention of children, in particular those accompanied by their parents should be the priority for the next years.