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**Mr. Felipe González Morales**

The UN Special Rapporteur on the  
human rights of migrants  
Office of the High Commissioner for  
Human Rights  
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Dear Mr. Morales,

According to your call for submissions on ending immigration detention of children and seeking adequate reception and care for them<sup>1</sup>, please find our response concerning **Poland**.

The Helsinki Foundation for Human Rights (hereinafter: "HFHR" or "the Foundation") was founded in 1989 in Warsaw, Poland. At present, HFHR is one of the most experienced non-governmental organizations whose statutory objects include human rights defense and advocacy, in Poland and the region. Since 1992, the HFHR is active in the area of respecting the rights of foreigners outlined in the national and international law. The Foundation cooperates closely with major international human rights institutions: Council of Europe, Organization for Security and Co-operation in Europe and its Office for Democratic Institutions and Human Rights, EU Agency for Fundamental Rights. The Foundation is also a member of the European Council on Refugees and Exiles (ECRE), European Asylum Support Office (EASO) Consultative Forum, and International Detention Coalition.

The HFHR has already prepared a contribution on Poland to the ECRE's submission to this call, however, we would like to elaborate more on practical obstacles in the development of alternatives to detention and provide you with other relevant information (**topics no. 4 and 5 of the call**). We want to express an additional position on Poland because the placement of foreign minors in detention centers in asylum and return proceedings is still one of the most significant problems concerning the rights of

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<sup>1</sup> Office of the High Commissioner for Human Rights, *Call for submissions on ending immigration detention of children and seeking adequate reception and care for them*, available at: <https://www.ohchr.org/en/Issues/Migration/SRMigrants/Pages/CallEndingImmigrationDetentionChildren.aspx>

immigrants handled by the HFHR. At the outset, we would like to point out that HFHR has been calling for an absolute ban on child detention for years.<sup>2</sup> The same position is shared by the other Polish NGOs<sup>3</sup> and Commissioner for Child's Rights in Poland<sup>4</sup> who provided in 2018, the Presidents of Polish appeals courts a set of the latest recommendations from international bodies concerning decisions involving placement of children in detention centers for immigrants. In the memorandum, the Commissioner emphasized the placement of children in detention centers never comports with the best interest of the child, always violates the child's rights, and may have an extremely negative impact on the minor's continued psychophysical development. He underlined that in 2014-2017, 1103 children were placed in detention centers for immigrants in Poland. According to the Commissioner's evaluation, **detention courts frequently superficially investigate the possibility of using means alternative to deprivation of liberty** and especially frequently find that families of asylum seekers may not be obligated to live in a specific location even though they have the legislative right to receive housing in the reception centers for asylum seekers.<sup>5</sup>

In 2018, 248 children in total were detained in Poland<sup>6</sup> and in 2019, this number has decreased to 132.<sup>7</sup> These numbers include both unaccompanied children and children in families, in asylum and return procedures.<sup>8</sup> Despite the visible decrease in 2019 compared to 2018 – which may be a result of the restricted access to asylum in Poland<sup>9</sup> and frequent use of alternatives to detention<sup>10</sup>- still in 2019 children stayed in detention centers on average for 83 days and in some of the detention centers even longer. In Poland, children are placed in immigration detention facilities in 3 towns: Kętrzyn, Biała Podlaska, Przemyśl. In detention center in Biała Podlaska, the average detention period was 115 days and in the detention center in Kętrzyn the average was 134.<sup>11</sup> What is

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2 *Still behind bars: Report on the Monitoring of Guarded Centres for Foreigners*, Helsinki Foundation for Human Rights and the Association for Legal Intervention, 2014, available at: <https://interwencjaprawna.pl/wp-content/uploads/still-behind-bars.pdf> and *Migration is not a crime: report on the monitoring of guarded centres for foreigners*, Helsinki Foundation for Human Rights and the Association for Legal Intervention, 2012, available at: <https://interwencjaprawna.pl/wp-content/uploads/migration-is-not-a-crime.pdf>

3 *Detention of migrant children must be put to stop, say NGOs*, Helsinki Foundation for Human Rights, 2012, available at: <https://www.hfhr.pl/en/detention-of-migrant-children-must-be-put-to-stop-say-ngos/>

4 Commissioner for Child's Rights in Poland, 3 December 2018, available at: [http://bip.brpd.gov.pl/sites/default/files/wystapienie\\_do\\_prezesa\\_rady\\_ministrow.pdf](http://bip.brpd.gov.pl/sites/default/files/wystapienie_do_prezesa_rady_ministrow.pdf)

5 Commissioner for Child's Rights in Poland, 6 March 2018, available at: [http://bip.brpd.gov.pl/sites/default/files/2018\\_03\\_06\\_wyst\\_prezesa\\_0.pdf](http://bip.brpd.gov.pl/sites/default/files/2018_03_06_wyst_prezesa_0.pdf)

6 European Commission for Refugees and Exiles, Asylum Information Database, country reports on Poland for 2018 prepared with the support of Helsinki Foundation for Human Rights, available at: <https://www.asylumineurope.org/reports/country/poland> ; Data based on the Information provided by Border Guard to Helsinki Foundation for Human Rights on 25 January 2019.

7 European Commission for Refugees and Exiles, Asylum Information Database, country reports on Poland for 2019 prepared with the support of Helsinki Foundation for Human Rights, available at: <https://www.asylumineurope.org/reports/country/poland> ; Data based on the Information provided by Border Guard to Helsinki Foundation for Human Rights on 17 January 2020, and 10 March 2020.

8 *Ibidem*.

9 *Access to asylum procedure at Poland's external borders*, Helsinki Foundation for Human Rights, 2019, available at: [https://www.hfhr.pl/wp-content/uploads/2019/06/0207\\_report-HFHR-en.pdf](https://www.hfhr.pl/wp-content/uploads/2019/06/0207_report-HFHR-en.pdf)

10 European Commission for Refugees and Exiles, Asylum Information Database, country reports on Poland for 2019 prepared with the support of Helsinki Foundation for Human Rights, available at: <https://www.asylumineurope.org/reports/country/poland> ; Data based on the Information provided by Border Guard to Helsinki Foundation for Human Rights on 17 January 2020, and 10 March 2020.

11 European Commission for Refugees and Exiles, Asylum Information Database, country reports on Poland for 2019 prepared with the support of Helsinki Foundation for Human Rights, available at:

important, in the detention center in Biała Podlaska, the average period of detention of all immigrants was shorter than the average period of detention of children.

It should also be noted that in 2019 **the courts deciding on detention very rarely requested expert opinions in order to properly assess the best interest of the child principle.** The district courts competent for the prolongation of the immigration detention requested it only once, whereas the competent regional courts, considering appeals against detention decisions, appointed an expert witness in two cases (information concerned adults and children). Regarding the detention of **unaccompanied minors**, in 2018, 20 unaccompanied minors were detained in Poland and in 2019 the number increased to 24. And even though **legal guardians were appointed to such minors, this institution was found widely ineffective** because in 2019 no appeal against detention was lodged by such guardian.<sup>12</sup>

In 2018, the UNHCR, Representation in Poland has published its 2017 report on the applicability of the best interests of the child principle as the primary consideration in detention decisions as well as the alternatives to detention in Poland. According to the findings of the report, not only domestic law but international law requires national authorities deciding on the detention of children to take into consideration their best interests, but these principles are rarely implemented by national authorities in practice. In the vast majority of cases analyzed for the purpose of the UNHCR's study, **detention courts did not examine the best interests of the child nor took it into consideration when ruling on their detention.** Children were usually mentioned only in the operative part of the court decision while in the justification only the situation of their parents was assessed. In only one case the court did not accept the Border Guards' request to detain family with children referring to the best interests of the child.<sup>13</sup>

We would like to also bring to your notice the recent recommendations of the UN Committee against Torture to Poland (hereinafter: "CAT"), which we found significant. In July 2019 in Geneva, CAT analyzed Poland's seventh periodic report on the implementation of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, which Poland ratified on 26 July 1989.<sup>14</sup> The UN Committee against Torture was concerned that families with children and unaccompanied minors over 15 years of age are placed **in detention centers for immigrants where conditions require improvements.**<sup>15</sup> According to the Committee,

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<https://www.asylumineurope.org/reports/country/poland> ; Data based on the Information provided by Border Guard to Helsinki Foundation for Human Rights on 14 January 2019, 25 January 2019, and 10 March 2020.

12 SIP in action, The rights of migrants in Poland in 2019, available at: <https://interwencjaprawna.pl/en/files/SIP-RAPORT-2019-ENG.pdf>

13 *Research results regarding placement of families with children in guarded centers for foreigners.* 2017, UN Refugee Agency, Representation in Poland and Helsinki Foundation for Human Rights, available at: <http://www.hfhr.pl/wp-content/uploads/2019/07/Children-detention-study-final-report.pdf>

14 UN Web TV, *Consideration of Poland (Cont'd) - 1762nd Meeting, 67th Session of Committee Against Torture*, 24 July 2019, available at: <http://webtv.un.org/meetings-events/human-rights-treaty-bodies/committee-against-torture/watch/consideration-of-poland-contd-1762nd-meeting-67th-session-of-committee-against-torture/6063626677001/?term=>

15 UN Committee against Torture, *Concluding observations on the seventh periodic report of Poland*, 22-24 July 2019, available at: [https://tbinternet.ohchr.org/Treaties/CAT/Shared%20Documents/POL/CAT\\_C\\_POL\\_CO\\_7\\_35715\\_E.pdf](https://tbinternet.ohchr.org/Treaties/CAT/Shared%20Documents/POL/CAT_C_POL_CO_7_35715_E.pdf)

**Poland should enshrine in its legislation the principle that detention of asylum-seekers, and in particular children and vulnerable persons, should be used as a measure of last resort, for as short a period as possible and in facilities appropriate for their status, and Poland should refrain from placing persons in need of international protection, and in particular children, in detention centers for immigrants.<sup>16</sup>**

We also want to draw your attention to the recent judgments of the European Court of Human Rights (hereinafter: "ECtHR") regarding children's detention, resulting from the complaints of the HFHR's lawyer.

On 25 March 2020, the ECtHR published its judgment in the case of *Bilalova and Others vs. Poland* (application no. 23685/14) concerning the detention of a foreign woman and her five children. The Court found that the detention of the children amounted to a violation of Article 5 (1) (f) ECHR. It concluded that there was insufficient evidence to show that the domestic authorities had carried out such assessment and that steps had not been taken to limit the duration of the children's detention. The Court noted that according to a well-established case-law **the confinement of young children in such structures should be avoided and that only short-term placement under suitable conditions and only as a measure as a last resort**, could be compatible with the Convention.

In June 2019 on the Council of Europe's website information on measures taken to implement the ECtHR's judgment in the case of *Bistieva and Others* against Poland were presented (application no. 75157/14, the judgment of 10 April 2018, final on 10 July 2018). The case concerned the detention of a Chechen family of asylum seekers. The ECtHR held that the Polish authorities **had not viewed the family's administrative detention as a measure of last resort**. According to the Court, the Polish authorities **had not given sufficient consideration to the best interests of the children**. The ECtHR held that detention of the family constituted a violation of Article 8 of the European Convention on Human Rights. The Court also stated that in the case where detention of minors lasted five months and twenty days it called for greater speed and diligence on the part of the authorities (§ 78). According to it, the Government is of the opinion that no further individual measures are necessary in this case and that the general measures adopted are sufficient to conclude that Poland has fulfilled its obligations under Article 46 § 1 of the Convention.<sup>17</sup> However, the HFHR did not agree with such a statement and published **recommendations** concerning actions to be taken, in order, to implement judgment properly, which we still consider appropriate and we kindly ask to pay special attention to them:

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16 UN Committee against Torture, *Concluding observations on the seventh periodic report of Poland*, 22-24 July 2019, available at: [https://tbinternet.ohchr.org/Treaties/CAT/Shared%20Documents/POL/CAT\\_C\\_POL\\_CO\\_7\\_35715\\_E.pdf](https://tbinternet.ohchr.org/Treaties/CAT/Shared%20Documents/POL/CAT_C_POL_CO_7_35715_E.pdf)

17 Council of Europe, ACTION REPORT, Information on measures taken to implement the judgment in the case of *Bistieva and Others* against Poland, 11 June 2019, available at: <https://rm.coe.int/1355th-meeting-september-2019-dh-action-report-11-06-2019-communicatio/168094ef06>

- **Judges and Border Guard officers should receive proper training on applying the principle of the best interests of the child, the UN standards and the ECtHR's case law in cases of immigration detention of minors;**
- **Guidelines for the specific actions to be taken by the national authorities and courts - as a part of the examination of the best interests of the child principle - should be drafted and implemented;**
- **The courts must examine, on a case-by-case basis, the best interests of the child in all matters concerning immigration detention, also by hearing the children concerned or experts;**
- **All court decisions to place a family in a detention center must incorporate a personalized assessment of the situation of the affected children.<sup>18</sup>**

Nevertheless, despite the recommendations mentioned above, we believe that to more effectively use alternatives to detention for children, **only the wholesale ban on placing foreign minors in detention and improvement of the community-based alternatives to it** is the best possible solution. Governments must be persuaded to implement it because depriving children of their liberty due to their migration status or due to the decisions taken by their parents, invariably contravenes their best interests.

Sincerely,



Danuta Przywara  
President of the Board  
Helsinki Foundation for  
Human Rights

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<sup>18</sup> Helsinki Foundation for Human Rights, *Has Poland fully executed ECtHR's judgment on Chechen family's detention? HFHR's communication to CoE's Committee of Ministers*, information available at: <http://www.hfhr.pl/en/has-poland-fully-executed-ecthrs-judgment-on-chechen-family-s-detention-hfhrs-communication-to-come-committee-of-ministers/>