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RAP/Cha/POL/22(2023)

## **EUROPEAN SOCIAL CHARTER**

Comments submitted by  
the United Nations High Commissioner for Refugees  
concerning the 22nd National Report on the implementation  
of the European Social Charter

submitted by  
**THE GOVERNMENT OF POLAND**  
Articles 7, 8, 16, 17, and 19  
for the period 01/01/2018 – 31/12/2021

Comments registered by the Secretariat  
on 14 July 2023

**CYCLE 2023**

**Submission by the United Nations High Commissioner for Refugees to the European  
Committee of Social Rights of the Council of Europe  
On the 19<sup>th</sup> National Report on the implementation of the European Social Charter  
submitted by the Government of POLAND covering the period from 1 January 2018 to 31  
December 2021**

**Issue 1: Accede to the 1954 Convention Relating to the Status of Stateless Persons (1954 Convention) and the 1961 Convention on the Prevention of Statelessness (1961 Convention), in order to better fulfil its protection obligations under the European Social Charter**

UNHCR would like to note that Poland is neither party to the 1954 Convention nor to the 1961 Convention. Poland does not have a dedicated statelessness determination procedure in place and there is no definition of a stateless person in Polish law. According to Polish legislation a stateless person is considered a foreigner under Article 3(2) of the Act on Foreigners. Relevant procedures which include components of identification of statelessness and nationality assessment include the asylum and return procedures.

The 1961 Convention establishes an international framework to ensure the right of every person to a nationality by establishing safeguards to prevent statelessness at birth and later in life. Accession to the 1961 Convention and effective implementation of the convention remains the most effective way to prevent and resolve statelessness.

Stateless persons who meet the refugee definition contained in the 1951 Convention Relating to the Status of Refugees (1951 Convention) are afforded the necessary international protection associated with that status. However, the international refugee protection regime does not specifically address the rights of non-refugee stateless persons who are in need of international protection. Without the nationality of any country, stateless persons are often subject to a range of human rights violations and can often fall into a vicious cycle involving failed expulsion and prolonged or repeated detention and release into situations of destitution. Stateless persons are also at a heightened risk of abuse and exploitation. The 1954 Convention is an important instrument to ensure that stateless persons are able to enjoy their human rights. In addition to establishing the international legal definition of a “stateless person”, the 1954 Convention also provides a core set of principles for their treatment.

In light of the above, the Committee may wish to encourage the Polish Government to ratify the 1954 Convention and the 1961 Convention.

**Issue 2: Consider reform of the national citizenship law to fully protect children born on Polish territory against statelessness, in line with Art. 17 of the European Social Charter**

Poland does not have a full safeguard to prevent children from being born stateless on the territory. The Polish citizenship law does not provide for the acquisition of nationality by children born to parents who are known but cannot transfer their citizenship.

The Committee may wish to encourage the Polish government to review the Act on Polish Citizenship (2009) and consider including provisions that ensure that children born on Polish territory who would otherwise be stateless are able to acquire a nationality. This amendment would facilitate limitation of existing risk of statelessness at birth in the country.

The 2013 *Act on Foreigners*<sup>4</sup> includes provisions for the detention of asylum-seekers. While it does not prioritize detention as a last resort, it specifies that detention should be applied only when no alternatives are available. According to Article 398a of the *Act on Foreigners*, the Border Guard is authorized to detain individuals based on legitimate grounds, such as establishing identity, preventing absconding, pre-removal detention, transfers under the Dublin Regulation, and reasons related to state security or public order. Upon apprehension, the Border Guard has the option to directly apply alternatives to detention or seek a court decision regarding detention or the use of alternatives.

Furthermore, UNHCR would like to note that pregnant and nursing mothers are placed in detention unless there is a specific threat to their health or life. Release is not authorize

<sup>1</sup> Law of 2 April 2009 on Polish citizenship, JoL 2012, item 161, [Ustawa z dnia 2 kwietnia 2009 r. o obywatelstwie polskim \(sejm.gov.pl\)](#)

<sup>3</sup> UN High Commissioner for Refugees (UNHCR), Guidelines on Statelessness No. 4: Ensuring Every Child's Right to Acquire a Nationality through Articles 1-4 of the 1961 Convention on the Reduction of Statelessness, para. 18, 21 December 2012, HCR/GS/12/04, available at: <https://www.refworld.org/docid/50d460c72.html>.

<sup>4</sup>Law of 12 December 2013 on Foreigners, JoL 2013, item 1650, [Ustawa z dnia 12 grudnia 2013 r. o cudzoziemcach \(sejm.gov.pl\)](#)

their psychophysical condition indicates a likelihood of violence, if they are unaccompanied children, or if they have disabilities.

Therefore, the Commission may consider recommending that the Government of Poland implements alternatives to detention and utilizes detention only as a measure of last resort, when necessary and proportionate, and for the shortest possible duration. It is important to ensure that conditions in detention and reception facilities are humane and dignified, and that survivors of torture and other vulnerable individuals are not placed in detention.

#### **Issue 4: Implement alternatives to detention for asylum-seeking children in order to ensure the right of children and young persons to protection, in line with Art. 7 of the European Social Charter**

Poland's *Act on Foreigners* and *Act on Protection*<sup>5</sup> allow for the detention of accompanied asylum-seeking children with family if an adult family member is detained, in a separate family detention facility. The duration of a child's detention often equals that of family members. Unaccompanied minors over age 15 can also be placed in detention, except for those seeking international protection.

According to Polish law, when considering the placement of an unaccompanied minor in a guarded center, the court shall take various factors into account, including the child's physical and mental development, personality traits, circumstances of detention, and personal conditions favoring placement in a detention facility. Article 401(4) of the Act on Foreigners specifies that when deciding on placing a foreigner with a child under their care in a detention center, the court should also prioritize the welfare of the child.

UNHCR wishes to highlight that in cases concerning the detention of families with children, the European Court of Human Rights (ECtHR) has consistently emphasized that the best interests of the child should be the primary consideration. The ECtHR, in cases concerning use of detention for families with children in Poland, reiterates that the best interests of the child principle ought to be the primary consideration. In *Bistieva and Others v. Poland*, the Court held "the child's best interests cannot be confined to keeping the family together and that the authorities have to take all the necessary steps to limit, as far as possible, the detention of families accompanied by children and effectively preserve the right to family life"<sup>6</sup>.

In light of the above, the Commission may wish to recommend to the Government of Poland to always implement alternatives to the detention of children, whether accompanied or unaccompanied and separated, and take measures in accordance with the best interests of the child.

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<sup>5</sup> Law of 12 June 2003 on Granting Protection to Foreigners, JoL, 2003, item 1176 [Ustawa z dnia 13 czerwca 2003 r. o udzielaniu cudzoziemcom ochrony na terytorium Rzeczypospolitej Polskiej \(sejm.gov.pl\)](http://sejm.gov.pl/ustawy/ustawy.htm)

<sup>6</sup> *Bistieva and Others v. Poland*, Application no. 75157/14, para. 85, ECHR, 2018