**Input of POLAND to the OHCHR study on the situation of migrants in transit**

**A. Does your country have laws, public policies or programmes, action plans or other relevant measures in place to ensure protection of the human rights of all migrants in transit?**

Poland has not experienced a massive flow of migrants in transit. Migrants applying for legalization of stay in PL, and especially those who apply for international protection, treat PL as their destination country. Only those who have transit visas or transit airport visas are seen as foreigners in transit. It has to be underlined that guarantees on human rights refer to any person staying at the territory of the Republic of Poland, regardless his/her citizenship or status. In consequence, there is no need to develop special regulations, programmes or other relevant measures with reference to migrants in transit.

However, Poland has laws and programmes concerning protection of human rights, which could be also applicable to migrants in transit.

From 1 May 2014 new Act on Aliens is in force which foresees number of protective provisions for foreigners (including migrants in transit). Act on granting protection to aliens within the territory of the Republic of Poland also includes guarantees rights for third country national, including children.

It is also worth mentioning that PL has a National Action Plan against Human Trafficking for 2013-2015.

Alternatives to immigration detention and protection against arbitrary detention.

A decision on placing a foreigner in a guarded centre is issued, upon the request of a Polish Border Guard, by the independent and impartial court.

Despite placing a foreigner in a detention centre a foreigner may be obliged to:

a) report at specified intervals to the Polish Border Guard authority,

b) lodge a security deposit (bail),

c) surrender his/her travel document for custody,

d) reside at the indicated place

– until a decision on imposing the return obligation has been executed.

The ruling may allow for one or more abovementioned measures and shall be subject to immediate execution.

The decision on use the alternatives to detention concerns one person and subjects to an individual assessment. Such the decision can be ruled by the Border Guard that apprehended a third country national or by the court. The use of the alternatives to detention is also considered when deciding on the prolongation of stay of a third country national in a detention centre. The above mentioned measures can be used concerning all of the categories of foreigners.

Measures to ensure that any returns of migrants in transit are carried out in accordance with international law and standards, including the principle of non-refoulement and the prohibition of collective expulsion.

The rules of the return procedure are defined in provisions of Act on Aliens, that is the implementation i.a. Directive 2008/115/EC of the European Parliament and of the Council of 16 December 2008 on common standards and procedures in Member States for returning illegally staying third country nationals into the national legal order of the Republic of Poland.

Nevertheless, the return procedures of migrants shall be conducted in accordance with the provisions of the Administrative Procedure Code that determines precisely that the administration bodies:

‒ shall take all necessary steps to clarify the facts of a case and to resolve it (having regard to the public interest and the legitimate interests of members of the public),

‒ are required to conduct proceedings in such a way as to increase the trust of citizens in the State bodies and public awareness and appreciation of the law,

‒ are required to provide full and proper information to the parties regarding the factual and legal circumstances which may affect the establishment of their rights and the obligations that are the subject of the administrative proceedings,

‒ shall take care to ensure that parties and other persons involved in proceedings do not suffer any loss owing to ignorance of the law and shall therefore provide the necessary clarifications and advice,

‒ are required to ensure that parties are actively involved in each stage of proceedings and they shall allow the parties to express an opinion on the evidence and materials collected and the claims filed, before any decision is issued.

According to the Polish law a return decision is issued in respect to one person only (may also concern minors being under the custody of the person concerned).

The authority conducting the proceeding on imposing the return obligation shall instruct a foreigner about the opportunity of submitting an application for the refugee status in the Republic of Poland, that suspend the return procedure (until a decision on refusing of granting the refugee status has become final).

Furthermore, the Border Guard within every return procedure examines the possibility of granting the protection against expulsion to a foreigner. As a result of the examination, the humanitarian protection or a permit for a tolerated stay (depending on circumstances) can be granted.

**B. Does your country (as a country of origin, transit and/or destination) have measures in place that ensure a human rights-based approach to the governance of transit migration?**

Since January 2010 in Border Guard and Police a mechanism of transfer of complaints and other relevant information to the Ombudsman functions. Transferred information can be divided into two different types – first: allegations of the most serious violations of human rights contained in the complaints submitted by the applicants in connection with the activities of the Border Guard or the Police; second: information on events, during which, by act or omission of an officer, a fatal accident, violation of sexual freedom, excessive use of coercive measures or violence happened. The Ombudsman may decide to examine specific case, acting pursuant to the powers conferred by an Act on the Ombudsman.

On 10 July 2014, a decision of the Minister of Interior on the introduction to the use of the Police and Border Guard "Guidelines on principles and modalities for the transfer of complaints and other relevant information by the Police and the Border Guard to the Ombudsman's Office and to the Ministry of Interior" has been signed.

The aim of the abovementioned decision is to organize the existing procedures eliminating the problems and to clarify the obligations imposed on the various parties involved in this procedure.

At all levels of training of the Border Guard officers, as well as through specialized training for managers and commanders of the Border Guard, training programs in the field of human rights have been introduced. Apart from this, the subject of human rights, fight against racism and raising awareness of cultural differences is conducted within the framework of many training courses.

On 6 July 2015 a Strategy measures aimed at preventing human rights abuses by the Border Guard officers has been signed. The aim of the document is to provide a wide range of projects on preventing negative phenomena that might occur in the Border Guard in the area of human rights.