

Poland

1. Responsible Authorities

According to Article 333(7) of the Act on Foreigners of 12 December 2013, the Minister of the Interior is responsible for issuing the regulations that inform Non-Governmental Organisations (NGOs) about return operations and their reporting. The institution that organises the returns is the Director of the Foreigners' Department in the Border Guard Headquarters.

The specific tasks of organizing and enforcing return are performed by Unit II of Identification and Return. The Unit is a part of the structure in the Foreigners' Department of the Border Guard Headquarters. Polish Border Guard is a state security agency responsible for the protection of the borders and various duties related to managing migration within a territory of Poland. It is one of the agencies supervised by the Ministry of Interior and Administration. In Poland, all 4 monitoring institutions are independent NGOs who have applied to participate in monitoring missions. The NGOs legally mandated to monitor forced returns are: the Rule of Law Institute, Multiocalenie Foundation, Helsinki Foundation for Human Rights, and the Halina Nieć Centre for Legal Aid Center.

2. National Return Operations – overview of national particularities

The removal of foreign nationals from the territory of Poland is regulated in the **Act on Foreigners from 12 December 2013, Journal of Laws 2020, item 35 (consolidated text)**¹.

¹ Ustawa z dnia 12 grudnia 2013 r. o cudzoziemcach (Dz. U. 2020 r. poz. 35 –j. t.

Article 329 of the Act on Foreigners, – specifies that during the implementation of forced-return operations, the provisions of the Annex to the Council Decision 2004/573/EC of 29 April 2004 apply.

Article 333 of the Act on Foreigners guarantees the presence of monitors during forced-return operations.

The presence of representatives of NGOs in the course of activities related to escorting a foreigner to the border or to an airport or sea port of the country to which he is being escorted to is also regulated in the **Regulation of the Minister of the Interior of 18 April 2014**, Journal of Laws 2014, item 534².

Representatives of NGOs draft a written report after monitoring a return operation. The report should be submitted to the Commander-in-Chief of the Polish Border Guard within 14 days of completing the return operation.

➤ Risk assessment

In every case, the risk assessment carried out before the return operation, is conducted in the detention centre. It is carried out by the return guardian (*opiekun powrotowy*) assigned to every foreign national in detention. The return guardian fills out the return risk assessment questionnaire (kwestionariusz analizy ryzyka powrotu), that is mandatory for every foreign national who refuses removal or when there is a substantiated

² Rozporządzenie Ministra Spraw Wewnętrznych z dnia 18 kwietnia 2014 r. w sprawie obecności przedstawicieli organizacji pozarządowych w toku działań związanych z doprowadzeniem cudzoziemca do granicy albo do portu lotniczego albo morskiego państwa, do którego zostaje doprowadzony, (Dz. U. 2014 r. poz. 534)

Return Enforcing Institution

Polish Border Guard
Headquarters
Foreigners' Department
Unit II of Identification and Return
ul. Wynałazek 4, 02-677
Warszawa, Poland
e-mail: zdsc.kg@strazgraniczna.pl
phone: +48 22 500 4237
fax: +48 22 500 4777

The Rule of Law Institute Foundation

14 Chopin Street Apt. 70,
20-023 Lublin, Poland
e-mail: fundacja@panstwoprawa.org
phone: +48 81 743 68 00

The Halina Nieć Legal Aid Center

ul. Krowoderska 11/7 31-141
Kraków, Poland
e-mail: biuro@pomocprawna.org
phone: +48 693 390 502
Fundacja "Multiocalenie"
Słowackiego 22 lokal 3
Warsaw, Poland
e-wmail: info@multiocalenie.org.pl
phone: +48 797 433 002

Helsinki Foundation for Human Rights

Zgoda 11 Street, 00-018
Warsaw, Poland
e-mail: hfhr@hfhr.pl
phone: (+48) 22 556 44 40

suspicion of resistance to the removal, The specialised unit in the Border Guard Headquarters (Unit II on Identification and Return) uses the questionnaire to decide whether an escort, medical personnel, or a guardian (in the case of a minor) are needed for a return operation.

► Vulnerabilities

The Border Guard uses an algorithm in the form of the Rules of Conduct for the Border Guard with vulnerable foreign nationals (approved in June 2019 by the Deputy Commander-in-Chief of the Border Guard). The Rules specify, *inter alia*, the subjective scope, adopted definitions, and *modus operandi* for identifying vulnerable foreign nationals when they are apprehended and when determining the procedure to be followed in identifying vulnerability after detention. The return of vulnerable individuals is organised in a way that reflects the priority treatment they are accorded, taking into account circumstances that require e.g. the presence of medical staff, appointed guardian for e.g. unaccompanied minors or the involvement during the return of additional personnel such as the return liaison officer (EURLO) or representatives of the competent institutions of the host country. Decisions are made on a case-by-case basis.

► Communication and information

According to Article 310 of the Act on Foreigners of 12 December 2013, a return decision is issued to a foreign national by the Commander-in-Chief of the Polish Border Guard or by the commander of a Border Guard Post who has established the grounds for justifying the decision. The administrative decision is issued in the 2nd instance by the Head of the Office for Foreigners and is subject to judicial review by the Warsaw Administrative Court. The decision is issued in writing.

According to Article 327(2) of the Act on Foreigners, the authority that issues the

return decision should provide an oral or written translation of: the legal basis for the decision; the ruling itself; and whether and how an appeal against the decision can be filed in a language that the foreign national understands. In practice, in most cases the information is only provided orally to the foreign national who is held in detention.

The return decision sets a deadline for voluntary return of between 15 to 30 days from the date of notification of the decision.

A return decision will be enforced if the deadline for returning voluntarily is not specified in the decision or if there is a likelihood that the individual will abscond, or they pose a threat to national defence, national security, or public safety and order.

The authority that conducts the proceedings should inform individuals about the NGOs that provide assistance, including legal assistance

If a foreign national has not voluntarily left the territory of the Republic of Poland within the period specified in the decision, the decision is subject to enforcement.

Enforcement of the decision involves taking the foreign national to the border or to an airport or sea port of the state to which they are to be sent.

In the case of foreign nationals who are in detention (guarded centres for foreigners or foreign nationals who have been arrested), the return guardian is responsible for informing them about the current stage of the administrative proceedings in their case, including information concerning return operations. This information may also be provided in the presence of a social guardian. The way the information is provided depends on the age and maturity of the individual. Information about the planned enforcement of the return decision and details that are important for the individual to know are provided to them.

After informing the returnee, the date and other details of the implementation of the return decision are determined.

In cases where it is necessary to prevent the return operation from being obstructed by e.g. suicidal attempts or self-mutilation, returnees may be notified about their transfer in the middle of the night when the return operation has already begun.

➤ **Medical examination and assistance**

According to Section 25 of the Rules of Organization and Order in Detention Facilities issued by the Minister of the Interior³, detainees undergo medical check-ups at least every three months and immediately before their release and, if possible, and where necessary prior to the start of the return operation

If the health of the returnee so requires, the escorting officers are assisted by medical staff⁴.

Provisions under Section 11 para. 2 of the Order No. 84 of the Commander-in-Chief of the Border Guard of 29 July 2016 on the performance of service by border guard officers while escorting foreigners (Journal of Laws of 2016, item 81), (hereinafter: "Order") state that the escort leader, as the person responsible for the returnee, is obliged to obtain a valid medical certificate confirming there are no contraindications to escorting the foreign national (fit-to-fly), in cases where:

- 1) There is a justified fear that the foreign national is in a state where there is a threat to life or health;

- 2) The foreign national has visible body injuries;
- 3) The foreign national declares that they suffer from medical conditions that require ongoing or periodic treatment, interruption of which would put their life or health in danger;
- 4) The foreign national is pregnant;
- 5) The foreign national took part in hunger strikes;
- 6) The foreign national is suspected of having an infectious disease;
- 7) The foreign national was given first aid.

In practice, however, medical checks are carried out for all returnees before the start of the return operation. Therefore, the doctor's certificate normally confirms the absence of medical contraindications for land or air transportation.

➤ **Briefing**

If any medical personnel, representatives of NGOs or others are participating in the return operation, the escort officer gives them the necessary information for the operation to be conducted safely before the operation begins (e.g. the rules applicable to monitors).

Polish law does not regulate when the briefing is supposed to be organised.

As a rule, briefings before return operations by air are carried out at the airport about 2-3 hours before scheduled departure.

However, depending on the circumstances of the operation including the degree of risk attached to it and the number of returnees and people involved, the time for the various activities may vary.

³ Appended to the Ordinance of the Minister of the Interior of 24 April 2015 on Guarded Centers and Arrests of Foreigners – Polish Journal of Laws 2018, item 1576 - consolidated text

⁴ In line with Section 32 of the Regulation of the Council of Ministers, 4 February 2020 on the exercise of certain powers by the Border Guard officers (Journal of Laws of 2020, item 187).

➤ **At the airport**

During the pre-departure phase at the airport, the escort leader conducts an interview with the returnee, officers carry out a body search (without monitors being present) and luggage search. Monitors are allowed to meet and have a short conversation with the returnee under the supervision of the escort officers. Escort officers inform monitors about a returnee's behaviour and share the general plan of the operation. Monitors are permitted to observe the operation (airport phase) up to the departure gate before the plane is boarded (unless they are accompanying the escort and the returnee).

➤ **Last minute asylum application**

Most returnees who are being escorted have exhausted their right to apply for international protection at an earlier stage (before the final decision on the obligation of return is issued). Poland respects the principle of non-refoulement.

➤ **During in-flight and hand-over**

Polish monitors mostly participate in the airport phase of return operations and sometimes the first connecting flight.

➤ **Unaccepted returnees**

The preparation phase of the return operation normally involves cooperation with the country of origin (identification and issuing of the required travel document(s)). In practice, the Border Guard return coordinator notifies the diplomatic or migration service of the country to which the foreign national is being returned about the date and time of the return.

➤ **Debriefing**

The debriefing, if it happens, is an internal Border Guard affair. It is not regulated by law.

3. Coercive measures

According to Article 23 section 1 of the Border Guard Act of 12 October 1990 (Journal of Laws 2020, item 305 -j.t.), the use of coercive measures listed in the Act on Measures of coercion and firearms of 24 May 2013 (Journal of Laws of 2019, item 2418) is allowed in justified circumstances (listed in Article 11). According to art. 12 of the Act numerous different measures may be used. In practice, however, physical strength, handcuffs or the isolation room at the airport are being used.

In accordance with Article 23 section 3 of the Border Guard Act, the use of coercive measures and firearms by border guard officers (including during return procedures) to ensure the safety of the convoy or escort and the documentation of this use is carried out on the basis of the Act on Measures of coercion and firearms of 24 May 2013.

The Border Guard also applies the provisions of Order No. 84 of the Commander-in-Chief of the Border Guard of 29 July 2016 on the performance of service by border guard officers while escorting foreign nationals, according to which the decision to use coercive measures on board a ship or plane is taken by the escort leader (Section 17 (1)).

Detailed rules on the use of coercive measures in joint return operations coordinated by Frontex involving Polish border guards are specified in Council Decision 2004/573 / EC and the Code of Conduct for Return Operations and Return Interventions Coordinated or Organised by Frontex.

➤ **Specific means of restraint**

Specific means of restraint may also be used in return operations. However, in practice physical strength, handcuffs or the isolation room at the airport are being used. Other possible restraints during

return operations include straitjackets, restraining belts or safety helmets.

► **Vulnerabilities**

According to Article. 9 of the Act on Measures of coercion and firearms of 24 May 2013 (Journal of Laws of 2019, item 24108), border guards may only use physical force in the form of incapacitating techniques against pregnant women, minors under 13 or people with visible disabilities. Other coercive measures are allowed exceptionally if it is necessary to respond to a direct, unlawful attack on the life or health of an escort officer or other person, and the use of physical force against the attacker, is insufficient or impossible.

4. Forced-Return Monitoring

Article 333 of the Act on Foreigners of 12 December 2013 guarantees the presence of monitors during forced-return operations.

This article states that representatives of NGOs or international organisations providing assistance to foreign nationals may participate in forced-return operations as monitors. During forced-return operations, monitors have the right to:

- 1) Observe the conduct of all activities involving the returnee from the beginning of the operation to the end to confirm that the dignity and rights of the returnee are respected.
- 2) Communicate with a returnee, as long as it does not interfere with the activities related to the transfer.

Following the Minister of the Interior Regulation of 18 April 2014 on the presence of representatives of NGOs in the course of activities related to escorting a foreigner was adopted, four organisations, the Rule

of Law Institute, Multiocalenie Foundation, Helsinki Foundation for Human Rights and Halina Nieć Centre of Legal Aid expressed their willingness to participate in escorted return operations by air. The Helsinki Foundation for Human Rights and Halina Nieć Centre of Legal Aid also agreed to participate in air operations organised without escort.

The duty to provide information about every return operation by land lies with the return coordinators in the Regional Divisions of the Border Guard. The Border Guard headquarters have the responsibility to inform about all return operation by air.

► **Monitoring mandate**

The monitoring mandate covers every phase of the return operation, that is: the pre-departure phase, the in-flight phase and the arrival phase.

In practice, monitoring is restricted to the phase that starts at the airport. The monitoring bodies are not being informed about the beginning of the air return operation in the detention centres. There are no legal grounds for monitors to participate in escorting the returnee from the detention centre to the airport.

► **Notifications and provided information**

All information is communicated by email.

According to the Regulation of the Minister of the Interior of 18 April 2014, the Border Guard should inform NGO representatives about planned return operations no later than:

- 1) Seven days before the planned operation;
- 2) 24 hours before the planned operation if less than 48 hours remain until the operation begins.

Representatives from NGOs should submit a declaration (via email) to the Border Guard confirming their willingness to participate in the operation within:

- 1) Five days from receipt of information about the planned operation;
- 2) 12 hours from receipt of information about the planned operation if less than 48 hours remain until the operation begins.

NGO representatives who do not submit a declaration to the Border Guard confirming their participation in the operation within the time limit are considered to have resigned from the operation.

➤ Access to medical information

Monitors have no access to medical information nor to any other documentation concerning the returnee.

➤ Decision on monitoring

Decisions regarding the deployment of monitors lie with the Board of the Rule of Law Institute. It depends on the availability of the employees of the Institute who are trained in forced-return monitoring. The monitoring bodies do not receive any public funding to perform monitoring duties, so the monitoring missions are organised on an ad hoc basis, where monitors are able to contribute their time without it affecting their other duties.

➤ Reporting

The monitors use a mandatory template for reporting. The report includes recommendations formulated by the monitors themselves.

The report is submitted electronically to the Director of the Board for Foreigners in the Border Guard Headquarters.

➤ Follow-up to reports

The information gathered for the reports is not publicly accessible. There are no annual reports published. The recommendations are analysed by the Board for Foreigners in the Border Guard Headquarters and are an internal matter for the Border Guard.

5. National Complaints Mechanisms

According to Article 221 of the Code of Administrative Procedure Act of 14 June 1960 - (Journal of Laws of 2020, item 256), every individual has the right to submit complaints and motions. The general administrative complaints mechanism may be used by a foreign national regarding the actions or omissions of the border guard officers carrying out activities during return operations.

The subject of the complaint addressed to the Commander-in-Chief of the Border Guard may be in particular regarding: negligence or improper performance of tasks by the authority or its employees (officers); violation of the rule of law or the complainants' interests; lengthy, bureaucratic settlement of cases (Article 227 of the Code of Administrative Procedure).

At the same time, the Border Guard has stated that as a rule, all the return operations by air are considered to be Frontex operations, and as such, the Frontex complaints mechanism is used.⁵

This means that anyone facing a forced return can file a complaint on the COMPLAINT FORM⁶ for potential violations of fundamental rights. The

⁵ Art. 111 of the Regulation on the European Border and Coast Guard (EU) 2019/1896 of the European Parliament and of the Council, 13 November 2019.

⁶ <https://frontex.europa.eu/fundamental-rights/complaints-mechanism/>

form in question is made available to the returnee if they wish to file a complaint about violation of their fundamental rights by border guard officer(s) in the course of activities related to the implementation of the return decision.

This factsheet has been produced in the framework of the Forced-Return Monitoring III (FReM III) project with the assistance of the European Union. The contents of this factsheet were elaborated based on answers to a questionnaire that were coordinated with the institution in the Member State responsible for enforcing removal and expulsion orders and/or with the competent forced-return monitoring body. They are the sole responsibility of the project and can in no way be taken to reflect the views of the European Union.