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Voluntary return

guide for returning migrants

HR HELSINŃSKA FUNDACJA
PRAW CZŁOWIEKA

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Warsaw 2013

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PRAW CZŁOWIEKA

 **OPEN SOCIETY
FOUNDATIONS**

Contents

1. WHAT IS A VOLUNTARY RETURN?

p.6

1. Types and organisation of voluntary returns
2. Voluntary return organised by the Head of Office for Foreigners:
3. Voluntary return organised by IOM

2. STAYING IN POLAND WITHOUT PERMIT – CONSEQUENCES AND RIGHTS

p.12

1. Detention and placement in guarded centre for foreigners or in detention centre for the purpose of expulsion
2. Placement in guarded centre for foreigners
3. Placement in detention centre for the purpose of expulsion

3. CONSEQUENCES OF RETURN

p.18

1. Entry ban
2. Withdrawal of entry ban in case of voluntary return
3. Withdrawal of entry ban in case of forced return
4. Reapplying for refugee status during the entry ban

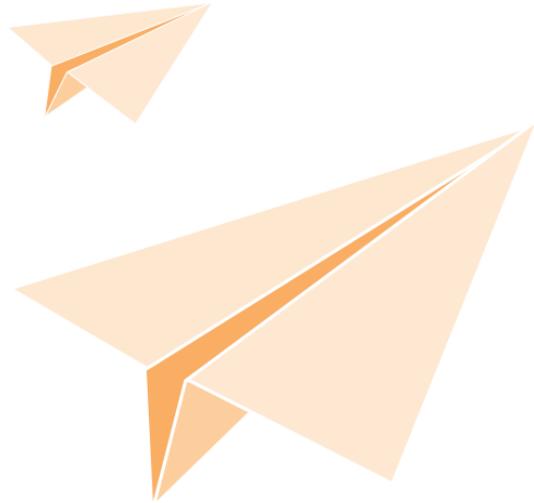
LIST OF NON-GOVERNMENTAL ORGANISATIONS YOU CAN TURN TO FOR ASSISTANCE

p.23



What is a voluntary return?

- 1 Types and organisation of voluntary returns
- 2 Voluntary return organised by the Head of Office for Foreigners:
- 3 Voluntary return organised by IOM



Voluntary return is a situation when you decide to leave Poland and go to:

- your country of citizenship;
- country where you have resided previously – if the return to your country of citizenship is not possible or if you are a stateless person;
- a country that agrees or is obliged to accept you.

The decision concerning your return must be taken of your own accord, without pressure and be based on accurate and objective information about the return conditions and situation in the country of return.

1 >> Types and organisation of voluntary returns

Voluntary returns are organized by:

- The Head of the Office for Foreigners (Szef UDSC) or;
- International Organization for Migration (IOM) within the framework of assisted voluntary return programme

2

Voluntary return organised by the Head of Office for Foreigners

If you apply for refugee status but decide to return to your country, you should notify the Head of the Office for Foreigners in writing. The letter should be submitted prior to the deadline for leaving Poland determined in the decision on rejection in refugee status determination procedure. The Head of Office for Foreigners' assistance in organisation of the voluntary return includes covering of:

- costs of public transport tickets for travelling to the country of your choice and whose territory you are allowed to enter;
- administrative fees for visas and permits;
- costs of alimentation during travel.



IMPORTANT: After having informed the Head of the Office for Foreigners about your intention to return voluntarily, you are entitled to receive social and medical assistance on the same conditions as during the refugee status determination procedure.

Voluntary return and reintegration assistance provided by IOM includes:

- return counselling, including provision of detailed information about the situation in the country of return;
- assistance in obtaining a travel document, if necessary;
- medical assistance, if necessary;
- organisation of return travel to the final destination in the country of return;
- reintegration assistance, which is a very important element of the assistance provided by IOM and is not ensured in voluntary returns organised by the Head of Office for Foreigners.

As a beneficiary of the reintegration assistance, you can receive cash allowances that will be given to you on the day of departure and can serve to meet your essential needs on the first days of your return. You can also apply for larger additional funding to start or continue a business activity, for education or subsidised employment. Additional

assistance is provided on the basis of reintegration plans which should be prepared by you and accepted by IOM. Assistance will take the form of aid in kind and will be provided by the local IOM office in your country of return.

Additional individual reintegration assistance is offered to returning unaccompanied minors, beneficiaries with special medical needs and victims of trafficking as well as to other vulnerable persons.

You can benefit from IOM assistance if you:

- applied for refugee status but decided to discontinue the procedure or if you have been refused international protection;
- reside in Poland without a valid stay permit;
- are a victim of trafficking.

For more information regarding your eligibility for voluntary return assistance contact IOM return assistant:

**IOM International Organization for Migration,
ul. Mariensztat 8, 00-302 Warszawa,
tel. (+48 22) 5389186, faks. (+48 22) 5389185,
e-mail: iomwarsawavr@iom.int (+48 22) 5389187,(+48 22) 5389212**

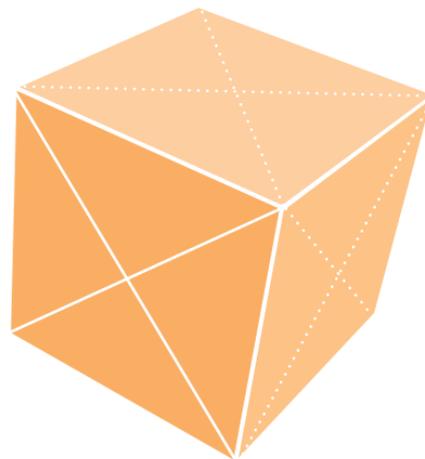
If you wish to return voluntarily, you should fill in a three-page application form.
You can do it:

- in person at IOM return consulting point
- online at: www.iom.pl w zakładce see tab, “Dobrowolne powroty”
- by calling IOM and asking to send you the application form via fax

2

Staying in Poland without permit – consequences and rights?

- 1 Detention and placement in guarded centre for foreigners or in detention centre for the purpose of expulsion
- 2 Placement in guarded centre for foreigners
- 3 Placement in detention centre for the purpose of expulsion



If you reside in Poland without documents entitling you to a legal stay (visa, permit) Polish authorities can issue a decision stating that you should leave Poland (if it has not yet been issued, for example in the negative decision on your refugee status application). Until the day of your departure, depending on circumstances, you can be obliged to stay in a particular place, report to the authorities or be placed in guarded centre for foreigners or detention centre for purposes of expulsion.

Currently, in the Polish law there are two types of decisions implying an obligation to leave the territory of Poland.

These are:

- decision obliging a foreigner to leave Poland
- decision on expulsion

These decisions can be appealed against within 14 days through the issuing authority.



NOTE! Inform the authorities if members of your family (husband/wife, partner, children) reside in Poland! The authorities are obliged to take it into consideration. The decision on expulsion cannot be executed if this would violate your right to respect for private and family life. This, however, applies only if your further presence in Poland does not constitute a threat to the national defence, national security or to the protection of public safety and order.



NOTE! Remember that you have a right to apply to the issuing authority for a written translation of the decision obliging you to leave Poland and the decision on expulsion. The authority will translate it into a language that you understand. However, bear in mind that the time to lodge an appeal will be counted from the day you received the Polish version.



NOTE! If you are obliged to appear in person before the Polish public authority or if an exceptional personal situation (ex. divorce) requires your presence in Poland, you can apply for an extension of the deadline for voluntary return from Poland determined in the decision. It can be extended up to one year at a time.



Detention and placement in guarded centre for foreigners or in detention centre for the purpose of expulsion

You should remember that while residing in Poland without permit, you can be detained by the Police or the Border Guard for a period of up to 48 hours. During this period the authorities can apply to do the court for placing you in a guarder centre for foreigners or detention centre for the purpose of expulsion. The court has 24 hours to issue a decision.



Placement in guarded centre for foreigners

You can be placed in a guarded centre for foreigners if:

- a decision on expulsion without stating the deadline for leaving Poland has been issued in your case;
- you did not leave Poland within the deadline determined in the decision on expulsion;

- here is an ongoing court proceeding on your expulsion and the court decides that there is a risk of your escape.

3



Placement in detention centre for the purpose of expulsion

You can be placed in this detention centre if there is a concern that you will not observe the rules in force in the guarded centre. The decision on placing a foreigner in a guarded centre for foreigners or in detention centre for the purpose of expulsion is issued by the court. **You can be placed there for 90 days but the duration of your stay may be extended. This period may not exceed 1 year.**



NOTE! You have a right to submit a complaint against the decision on your placement in guarded centre for foreigners or detention centre for the purpose of expulsion through the issuing court. Complaint needs to be submitted within 7 days counting from the day of issue.

Complaint needs to be prepared in Polish. At the end of this brochure as well as in every guarded centre for foreigners or detention centre for the purpose of expulsion you can find contact details of organisations providing legal assistance to foreigners.

Try to contact them as soon as possible, so that lawyer can prepare a complaint for you.

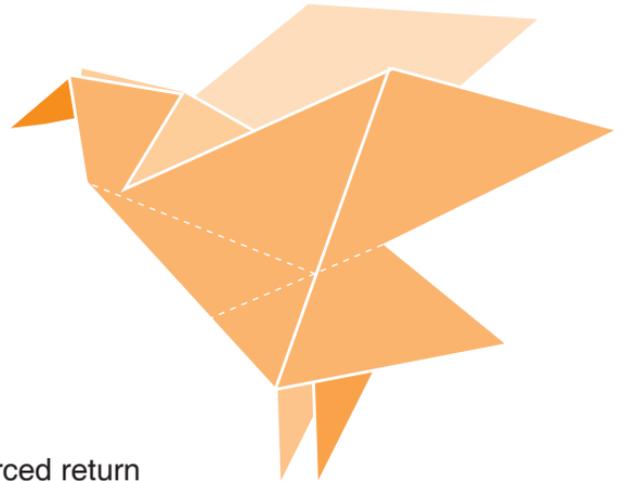


IMPORTANT: Court cannot decide on placing you in a guarded centre for foreigners or detention centre for the purpose on expulsion if it can put your life or health in danger. So, if you apply for refugee status and have in the past been subjected to violence and/or traumatic experience you can apply to the court to release you from the centre.

3

Consequences of return

- 1 Entry ban
- 2 Withdrawal of entry ban in case of voluntary return
- 3 Withdrawal of entry ban in case of forced return
- 4 Reapplying for refugee status during the entry ban



1 >> Entry ban

The decision obligating you to return to your country contains also a ban on re-entry to Poland or to Poland and other states of the Schengen area for a specified period. It means that during this period you will basically be refused the rights to entry, you will not receive visa or stay permit in Poland or in other states of the Schengen areas as well. The duration of this period can vary, depending on the reason for its determination.

The period of re-entry ban lasts **from 6 months to 3 years** if you resided in Poland without visa, crossed the border illegally, did not have financial means necessary to cover the costs of your stay in Poland, did not leave the territory of the Republic of Poland after having exhausted the allowed 3-month free-movement period in the Schengen territory or violated the regulations concerning local border traffic.

If you performed work/undertook business activities in violation of the laws in force in this field in the Republic of Poland or failed to meet tax obligations and one of these circumstances was a basis for issuing a decision on return, the period of re-entry ban is determined **for 1 to 3 years**.

The period of re-entry ban lasts **from 3 to 5 years** if the decision is issued because your name appears on the list of foreigners whose stay on the Polish territory is undesirable or in the Schengen Information System (SIS) database, as well as if you have committed a crime and or been sentenced to imprisonment or if you have not complied with the decision obliging you to leave Poland.

The longest possible re-entry ban period lasts **5 years** and is applied if you are considered a threat to national defence, national security or public safety.



Withdrawal of entry ban in case of voluntary return

Remember that in case you return voluntarily, you can apply for withdrawal of the entry ban.

In the application you need to demonstrate that you left Poland within the deadline determined in the decision and your re-entry to Poland or to other Schengen states will be due to justified circumstances, in particular to humanitarian reasons.

3

Withdrawal of entry ban in case of forced return

If you did not take the opportunity of returning voluntarily and were expelled, withdrawal of the entry ban to Poland and Schengen states will be possible **only after you cover the costs of expulsion.**

These include in particular the costs of:

- proceedings;
- collection of fingerprints and photography;
- stay in guarded centre for foreigners or detention centre for the purpose of expulsion;
- medical examination;
- transportation to the Polish border, border of the destination country or to the airport or seaport of this country.



Reapplying for refugee status during the entry ban

Remember, that if you want to return to Poland to reapply for refugee status but one of the decisions obliging you to return have been issued and the re-entry ban is still in force, you can be stopped at the border and placed in a guarded centre for foreigners or in detention centre for the purpose of expulsion.

List of non-governmental organisations you can turn to for assistance:

- **Biuro Rzecznika Praw Obywatelskich**
Aleja Solidarności 77,
00-090 Warszawa
Tel: (+48 22) 55 17 700
E-mail: rzecznik@rpo.gov.pl
www.rpo.gov.pl
- **IOM Międzynarodowa Organizacja do Spraw Migracji**
ul. Mariensztat 8,
00-302 Warszawa
Tel: (+48 22) 538 91 69
E-mail: iomwarsaw@iom.int ,
www.iom.pl
- **Biuro Rzecznika Praw Dziecka**
ul. Przemysłowa 30/32,
00-450 Warszawa
Tel: (+48 22) 696 55 45
E-mail: rpd@brpd.gov.pl
www.rpd.gov.pl,
- **Helsińska Fundacja Praw Człowieka**
ul. Zgoda 11, 00-018 Warszawa
Tel: (+48 22) 556 44 40, (+48 22) 556 44 66
E-mail: hfhr@hfhr.org.pl,
refugees@hfhr.org.pl, www.hfhr.pl,
<http://programy.hfhr.pl/uchodzcy/>

● **Stowarzyszenie
Interwencji Prawnej**
ul. Siedmiogrodzka 5/51
01-204 Warszawa
(+48 22) 621-51-65
E-mail:
interwencja@interwencjaprawna.pl
www.interwencjaprawna.pl

● **Centrum Pomocy Prawnej
im. Haliny Nieć**
ul. Krowoderska 11/7
31-141 Kraków
Tel: (+48 12) 633 72 23
E-mail: biuro@pomocprawna.org

● **Instytut na rzecz
Państwa Prawa**
ul. F. Chopina 14/70
20-023 Lublin

Tel: (+48 81) 743 68 05
E-mail: fundacja@fipp.org.pl
www.fipp.org.pl

● **Caritas**
ul. Skwer Kard. Stefana
Wyszyńskiego 9
01-015 Warszawa
Tel: (+48 22) 334 85 00
E-mail: Caritas@caritas.pl
www.caritas.pl

● **Fundacja „Ocalenie”**
ul. Ordynacka 9 / 21 (II piętro)
00-384 Warszawa
Tel: (+48 22) 828 50 54,
E-mail: fundacja@ocalenie.org.pl,
www.ocalenie.org.pl

The Helsinki Foundation for Human Rights, based in Warsaw, was founded in 1989. Its establishment was preceded by seven years of work of the Helsinki Committee in Poland. After political changes in Poland in 1989 Committee members decided to operate openly and establish an institute dealing with education and research in the field of human rights. As the legal system at that time did not allow to create independent institutes, it was decided that foundation should be created to perform this mandate. At present, the Helsinki Foundation for Human Rights is one of the most experienced and professional non-governmental organisations dealing with human rights. In 2007, the Foundation was granted advisory status at the UN Economic and Social Council (ECOSOC).

Since July 2012 the Helsinki Foundation for Human Rights implements the project **“RETURNS. Legal assistance and information for returning migrants”** which will last till June 2015. This project, through legal assistance, information and monitoring of the detention centres is aimed at improving the observance of rights of foreigners returning to their countries of origin. Free legal assistance is provided to all foreigners who:

- have already received a decision obliging them to leave Poland or decision on expulsion, and want to benefit from the possibility of returning home voluntarily;

- have not yet received the final negative decision in their refugee status determination procedure and wish to return voluntarily to the country of origin.

Particular attention is given to returning vulnerable migrants (unaccompanied minors, single mothers, persons with disabilities). As a part of the project, this brochure was prepared in Polish and translated into following languages: English, French, Russian, Georgian, Vietnamese, Arabic. It is also available in electronic version on the Programme of Legal Assistance to Refugees and Migrants website (section „Publications”).

Duty hours take place in the Foundation headquarters (ul. Zgoda 11, 00-018 Warszawa, room 413, IV floor). Advice is provided to beneficiaries in the order of arrival and after the registration at the lawyer’s office. It is not possible to arrange a meeting in advance.

It is also possible to contact us by telephone: 22 556 44 66, fax: 22 556 44 51
or **e-mail: refugees@hfhr.org.pl**



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