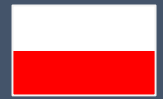




# aida

Asylum Information  
Database

## Country Report: Poland



**November 2015**

Edited by:

**HR** HELSINKI FOUNDATION  
for HUMAN RIGHTS

 **ecre**  
European Council  
on Refugees and Exiles

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This report was written by Karolina Rusilowicz, in collaboration with Maja Łysienia and Ewa Ostaszewska-Żuk lawyers at the Helsinki Foundation for Human Rights, and was edited by ECRE.

The information in this report is up-to-date as of 13 November 2015.

## The AIDA project

The AIDA project is jointly coordinated by the European Council on Refugees and Exiles (ECRE), Forum Réfugiés-Cosi, Irish Refugee Council and the Hungarian Helsinki Committee. It aims to provide up-to date information on asylum practice in 16 EU Member States (AT, BE, BG, CY, DE, FR, GR, HR, HU, IE, IT, MT, NL, PL, SE, UK) and 2 non-EU countries (Switzerland, Turkey) which is easily accessible to the media, researchers, advocates, legal practitioners and the general public through the dedicated website [www.asylumineurope.org](http://www.asylumineurope.org). Furthermore the project seeks to promote the implementation and transposition of EU asylum legislation reflecting the highest possible standards of protection in line with international refugee and human rights law and based on best practice.



This report is part of the AIDA project (Asylum Information Database) funded by the European Programme for Integration and Migration (EPIM).

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## Glossary & List of Abbreviations

<b>AMIF</b>	Asylum, Migration and Integration Fund
<b>ASQAEM</b>	Asylum Systems Quality Assurance and Evaluation Mechanism
<b>CAR</b>	Central African Republic
<b>CJEU</b>	Court of Justice of the European Union
<b>DRC</b>	Democratic Republic of the Congo
<b>ECtHR</b>	European Court of Human Rights
<b>EMN</b>	European Migration Network
<b>ERF</b>	European Refugee Fund
<b>HFHR</b>	Helsinki Foundation for Human Rights
<b>IFA</b>	Internal Flight Alternative
<b>LIA</b>	Legal Intervention Association
<b>MS</b>	Member State
<b>PTSD</b>	Post-Traumatic Stress Disorder
<b>SG</b>	Border Guard / Straż Graniczna
<b>SGBV</b>	Sexual and gender-based violence
<b>TCN</b>	Third Country National
<b>UNHCR</b>	United Nations High Commissioner for Refugees

## Statistics

**Table 1: Applications and granting of protection status at first instance: 2015 (January-September)**

	Applicants in 2015	Pending applications in 2015	Refugee status	Subsidiary protection	Humanitarian protection	Rejection <sup>1</sup>	Refugee rate	Subs. Prot. rate	Hum. Prot. rate	Rejection rate
<b>Total</b>	8,340	3,030	310	135	105	2,305	10.8%	4.7%	3.7%	80.8%

Breakdown by countries of origin of the total numbers

Russia	5,015	1,630	15	80	80	520	2.1%	11.5%	11.5%	74.9%
Ukraine	1,885	820	0	5	0	1,425	0%	3.8%	0%	96.2%
Georgia	330	225	0	0	5	95	0%	0%	5%	95%
Tajikistan	305	20	0	0	0	15	0%	0%	0%	100%
Syria	265	30	195	0	0	0	100%	0%	0%	0%
Armenia	135	60	0	0	10	35	0%	0%	22.2%	77.8%
Kyrgyzstan	95	40	0	0	0	80	0%	0%	0%	100%
Iraq	50	25	20	20	0	0	50%	50%	0%	0%
Stateless	30	0	15	0	0	0	100%	0%	0%	0%
Vietnam	25	20	0	0	0	20	0%	0%	0%	100%
Afghanistan	5	5	5	5	0	5	33.3%	33.3%	0%	33.3%
Eritrea	0	0	-	-	-	-	-	-	-	-
Somalia	0	0	-	-	-	-	-	-	-	-
Kosovo	0	0	-	-	-	-	-	-	-	-

Source: Eurostat (rounded).

<sup>1</sup> Rejection should include *both* in-merit and admissibility negative decisions (including Dublin decisions).

**Table 2: Gender/age breakdown of the total numbers of applicants: 2015 (January-June)**

	Number	Percentage
<b>Total number of applicants</b>	3826	100%
Men	1950	50,9%
Women	1876	49,1%
Children	1585	41%
Unaccompanied children	15	0,4%

Source: Letter from the Head of the Office for Foreigners from 27 August 2015 no BSZ-0811/1429/15/RW, accessible at: [www.udsc.gov.pl](http://www.udsc.gov.pl).

**Table 3: Comparison between first instance and appeal decision rates: 2015 (January-June)**

	First instance		Appeal	
	Number	Percentage	Number	Percentage
<b>Total number of decisions</b>	4,806	100%	909	100%
<i>Positive decisions</i>	273	5.7%	30	3.3%
• <i>Refugee status</i>	103	2.1%	2	0.2%
• <i>Subsidiary protection</i>	91	1.9%	27	3%
<i>Negative decisions</i>	1,614	33.6%	817	89.9%

**Table 4: Applications processed under the accelerated procedure in 2015 (January-June)**

	Number	Percentage
<b>Total number of applications</b>	3826	100%
Applications treated under accelerated procedure at first instance	214	5.6%

Source: Letter from the Head of the Office for Foreigners from 27 August 2015 no BSZ-0811/1429/15/RW, accessible at: [www.udsc.gov.pl](http://www.udsc.gov.pl).

**Table 5: Subsequent applications lodged in 2015 (January-June)**

	<b>Number</b>	<b>Percentage</b>
<b>Total number of subsequent applications</b>	926	100%

Main countries of origin

<b>Russia</b>	445	48%
<b>Ukraine</b>	299	32%
<b>Georgia</b>	86	9%
<b>Tajikistan</b>	12	1%
<b>Syria</b>	6	0.6%

Source: Letter from the Head of the Office for Foreigners from 27 August 2015 no BSZ-0811/1429/15/RW, accessible at: [www.udsc.gov.pl](http://www.udsc.gov.pl).

**Table 6: Number of applicants detained per ground of detention: 2013-2015**

Data for the number applicants detained per ground of detention is not made available.

**Table 7: Number of applicants detained and subject to alternatives to detention**

Data for alternatives to detention is not made available.



## Overview of the legal framework and practice

### Main legislative acts relevant to asylum procedures, reception conditions and detention

Title (EN)	Original Title (PL)	Abbreviation	Web Link
Law of 13 June 2003 on granting protection to foreigners within the territory of the Republic of Poland (Journal of Laws 2012 pos. 680)	Ustawa z dnia 13 czerwca 2003 r. o udzielaniu cudzoziemcom ochrony na terytorium Rzeczypospolitej Polskiej (Dz.U. 2012 poz. 680)	Law on Protection	< <a href="http://bit.ly/1eHn2b2">http://bit.ly/1eHn2b2</a> > (PL)
Law of 12 December 2013 on foreigners (Journal of Laws 2013 pos. 1650)	Ustawa z dnia 12 grudnia 2013 r. o cudzoziemcach (Dz.U. 2013 poz. 1650)	Law on Foreigners	< <a href="http://bit.ly/1HebFUe">http://bit.ly/1HebFUe</a> > (PL)
Law of 14 June 1960 Code of administrative proceedings (Journal of Laws 2013 pos. 267)	Ustawa z dnia 14 czerwca 1960 r. Kodeks Postępowania Administracyjnego (Dz.U. 2013 poz. 267)	Code of administrative proceedings	< <a href="http://bit.ly/1TNeKhC">http://bit.ly/1TNeKhC</a> > (PL)
Law of 10 September 2015 amending the Law on Protection and other acts (Journal of Laws 2015 pos. 1607)	Ustawa z dnia 10 września 2015 r. o zmianie ustawy o udzielaniu cudzoziemcom ochrony na terytorium Rzeczypospolitej Polskiej oraz niektórych innych ustaw	Law amending the Law on Protection	< <a href="http://bit.ly/1SHT11B">http://bit.ly/1SHT11B</a> > (PL)

### Main implementing decrees and administrative guidelines and regulations relevant to asylum procedures, reception conditions and detention

Title (EN)	Original Title (PL)	Abbreviation	Web Link
Ordinance of the Minister of Interior and Administration of 10 November 2011 on the amount of assistance for foreigners seeking refugee status (Journal of Laws 2011 no 261 pos. 1564)	Rozporządzenie Ministra Spraw Wewnętrznych i Administracji z dnia 10 listopada 2011 r. w sprawie wysokości pomocy dla cudzoziemców ubiegających się o nadanie statusu uchodźcy (Dz.U. 2011nr 261 poz. 1564)	Regulation on amount of assistance for asylum seekers	< <a href="http://bit.ly/1BAKS1W">http://bit.ly/1BAKS1W</a> > (PL)
Ordinance of the Ministry of Interior of 23 October 2015 on the rules of stay in the centre for foreigners (Journal of Laws 2015 pos. 1828)	Rozporządzenie Ministra Spraw Wewnętrznych z dnia 23 października 2015 r. w sprawie regulaminu pobytu w ośrodku dla cudzoziemców (Dz. U. 2015 poz. 1828)	Regulation on rules of stay in the centre for asylum seekers	< <a href="http://bit.ly/1OheyUn">http://bit.ly/1OheyUn</a> > (PL)
Ordinance of the Ministry of Interior and Administration of 24 April 2015 on the guarded centres and detention centres for foreigners (Journal of Laws 2015 pos. 596)	Rozporządzenie Ministra Spraw Wewnętrznych i Administracji z dnia 24 kwietnia 2015 r. w sprawie strzeżonych ośrodków i aresztów dla cudzoziemców (Dz.U. 2015 poz. 596)	Regulation on detention centres	< <a href="http://bit.ly/1RqKKWs">http://bit.ly/1RqKKWs</a> > (PL)

## Overview of the main changes since the previous report update

The report was previously updated in **January 2015**.

### *Asylum reform*

- The law transposing the recast Asylum Procedures and Reception Conditions Directives entered into force in November 2015. The introduction of a state legal aid system is the major change in this regard. The system, entering into force in January 2016, will consist in legal information by the Office for Foreigners at first instance and legal aid from lawyers, legal counsellors and NGOs at second instance.

### *Statistics and relocation*

- In the forthcoming 2 years Poland is expected to receive 2,000 refugees within relocation and resettlement (mostly coming from Syria and Eritrea).
- In the first 6 months of 2015, 1,345 citizens from Ukraine applied for asylum in Poland. They constituted  $\frac{1}{3}$  of all asylum applicants. In the reporting period none of the Ukrainians were granted refugee status by the Head of the Office for Foreigners (first instance authority) and only 2 persons were granted subsidiary protection. 925 citizens of Ukraine were refused protection and 440 had their cases discontinued. As a result of appeal proceedings held by the Refugee Board, 2 Ukrainians were granted refugee status and altogether 8 were granted subsidiary protection. 475 persons had their decision upheld and 28 – quashed.

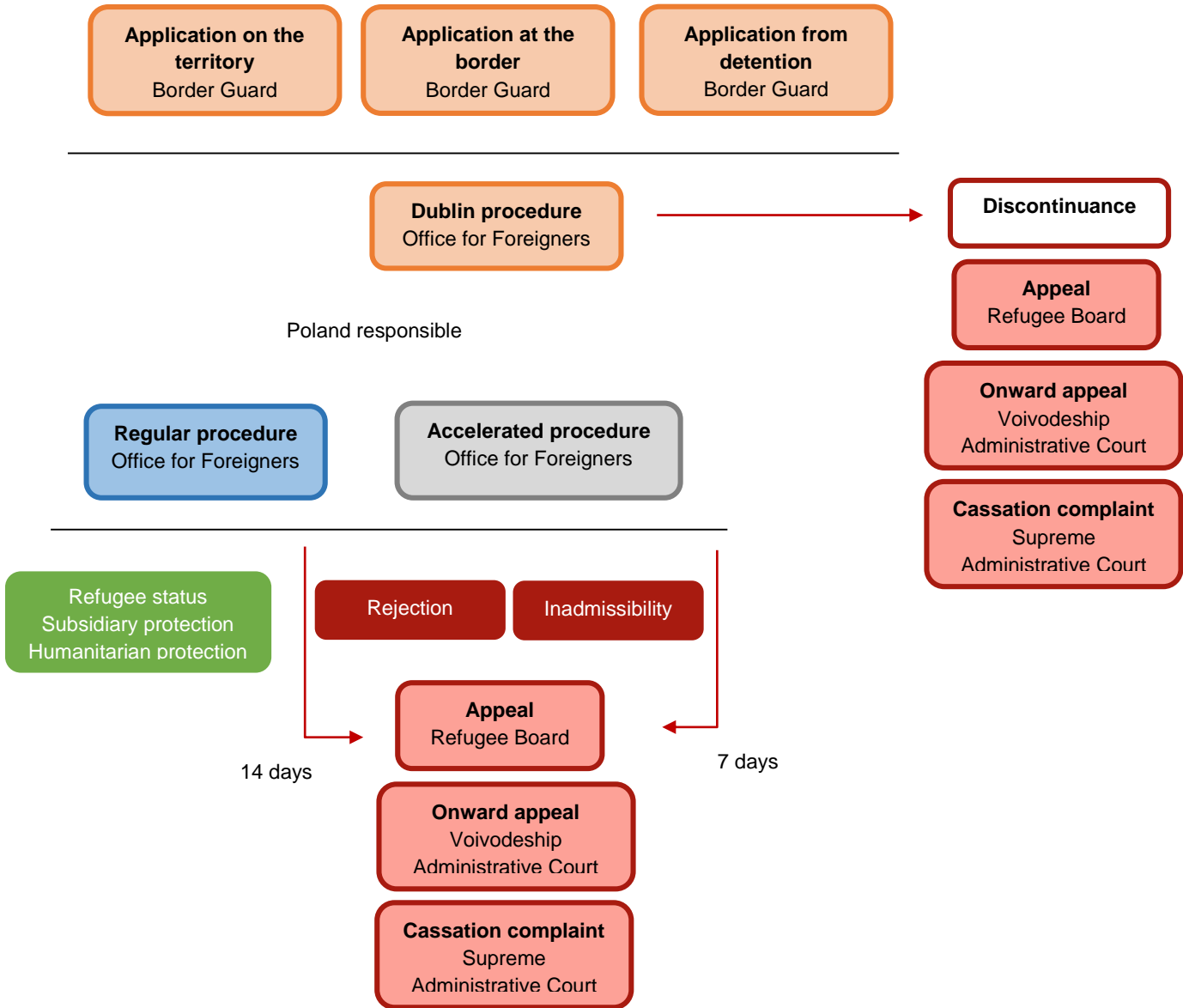
### *Procedure*

- Since 1 July 2015, there are no readmission transfers to Greece. Beforehand, in the first half of 2015 12 persons were readmitted there.

# Asylum Procedure

## A. General

### 1. Flow chart



## 2. Types of procedures

### Indicators: Types of Procedures

Which types of procedures exist in your country?

- |   |   |  |
|---|---|--|
| ❖ Regular procedure:                    | <input checked="" type="checkbox"/> Yes | <input type="checkbox"/> No            |
| ▪ Prioritised examination: <sup>2</sup> | <input type="checkbox"/> Yes            | <input checked="" type="checkbox"/> No |
| ▪ Fast-track processing: <sup>3</sup>   | <input type="checkbox"/> Yes            | <input checked="" type="checkbox"/> No |
| ❖ Dublin procedure:                     | <input checked="" type="checkbox"/> Yes | <input type="checkbox"/> No            |
| ❖ Admissibility procedure:              | <input checked="" type="checkbox"/> Yes | <input type="checkbox"/> No            |
| ❖ Border procedure:                     | <input type="checkbox"/> Yes            | <input checked="" type="checkbox"/> No |
| ❖ Accelerated procedure: <sup>4</sup>   | <input checked="" type="checkbox"/> Yes | <input type="checkbox"/> No            |
| ❖ Other: Asylum                         |   |  |

Are any of the procedures that are foreseen in the law, not being applied in practice?  Yes  No

## 3. List of authorities intervening in each stage of the procedure

Stage of the procedure	Competent authority in EN	Competent authority in original language (PL)
Application at the border	Border Guard	Straż Graniczna (SG)
Application on the territory	Border Guard	Straż Graniczna (SG)
Dublin (responsibility assessment)	Head of the Office for Foreigners	Szef Urzędu do Spraw Cudzoziemców
Refugee status determination	Head of the Office for Foreigners	Szef Urzędu do Spraw Cudzoziemców
Appeal procedures ❖ First appeal ❖ Second (onward) appeal	❖ Refugee Board ❖ Voivodeship Administrative Court in Warsaw ❖ Supreme Administrative Court	❖ Rada do Spraw Uchodźców ❖ Wojewódzki Sąd Administracyjny w Warszawie ❖ Naczelny Sąd Administracyjny
Subsequent application (admissibility)	Head of the Office for Foreigners	Szef Urzędu do Spraw Cudzoziemców

## 4. Number of staff and nature of the first instance authority

Name in English	Number of staff as of 31 July 2015	Ministry responsible	Is there any political interference possible by the responsible Minister with the decision making in individual cases by the first instance authority?
Office for Foreigners	35	Ministry of Interior	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No

<sup>2</sup> For applications likely to be well-founded or made by vulnerable applicants. See Article 31(7) APD.

<sup>3</sup> Accelerating the processing of specific caseloads as part of the regular procedure.

<sup>4</sup> Labelled as "accelerated procedure" in national law. See Article 31(8) APD.

## 5. Short overview of the asylum procedure

An asylum application may be lodged either on the territory or at the border or from a detention centre, in all cases through a Border Guard (SG) officer that will transfer the request to the Head of the Office for Foreigners (Office for Foreigners).

The examination of an asylum application lodged in Poland then involves two main stages:

- a. Examination on the merits by the Office for Foreigners;
- b. Appeal procedure before the Refugee Board.

A Dublin procedure is applied whenever there is evidence or any sign that another State may be responsible for examining the claim.<sup>5</sup> However, Poland is principally a “receiving” country, rather than a country which requests and carries out transfers to other States.

The main asylum authority is the Head of the Office for Foreigners, for which the Ministry of Interior is responsible. It is an administrative authority specialised in asylum and is responsible for examining, granting, refusing, and withdrawing protection in Poland as well as for Dublin procedures.

In Poland a single procedure applies and includes the examination of conditions to grant refugee status and subsidiary protection (until 1 May 2014 there was also a tolerated stay permit granted within this procedure, but it is now part of a return procedure). A regular asylum procedure therefore has four possible outcomes:

1. The applicant is granted refugee status;
2. The applicant is granted subsidiary protection;
3. The application is rejected;
4. The proceedings are discontinued (e.g. when the applicant is no longer on the territory of Poland).

In the two last cases the authority issuing the decision informs the Border Guard about either one of these circumstances, subsequently allowing for return proceedings to be initiated.

There is also a national protection status called ‘asylum’. A foreigner can be granted ‘asylum’ in a separate procedure if it is necessary to provide them with protection, but only if it is in the interest of the state. Political aspects are, therefore, taken into account in this procedure (however, in practice, the procedure is very rarely applied).

Admissibility procedures are most often applied in case of a subsequent application, considered to be based on the same circumstances. There is no border procedure.

The Refugee Board is a second instance administrative body competent to handle appeals against first instance negative decisions in all types of procedures (including Dublin). Appeals before the Refugee Board have automatic suspensive effect and must be lodged within 14 calendar days after the decision has been notified to the applicant (the only exemption to this is the appeal in accelerated procedures which must be submitted in 7 days). The procedure is not adversarial and there is no hearing.

The Refugee Board may then:

1. Annul the first instance decision (in case the Board considers that essential information is lacking in order to decide on the appeal and further investigation by the Office for Foreigners is needed);
2. Overturn the Office for Foreigners negative decision (i.e. grant refugee status or subsidiary protection) or
3. Confirm the decision of the Office for Foreigners (which is most often the case).

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<sup>5</sup> From 13 November 2015 the Dublin procedure should be applied in every case: Article 36(1) Law on Protection.

After the administrative appeal procedure before the Refugee Board, there is a possibility of an onward appeal before the Voivodeship Administrative Court in Warsaw. Only points of law can be litigated at this stage and there is no fee applicable to the procedure. This onward appeal does not have a suspensive effect on the Refugee Board's decision. Upon request of the applicant, the court may suspend a decision for the time of the court proceedings, which happens in some cases, but usually takes some months. The court procedure is adversarial.

The ruling of the Voivodeship Administrative Court in Warsaw can be appealed again to the Supreme Administrative Court by lodging a cassation complaint, based exclusively on the legal conditions foreseen in the law. The Court may suspend execution of the decision for the time of the court proceedings upon request.

## B. Procedures

### 1. Registration of the asylum application

#### Indicators: Registration

1. Are specific time-limits laid down in law for asylum seekers to lodge their application?  Yes  No
2. If so, what is the time-limit for lodging an application?
3. Are there any reports (NGO reports, media, testimonies, etc.) of people refused entry at the border and returned without examination of their protection needs?  Yes  No

Asylum applications should be submitted to the Border Guard (SG) which will then transfer them to the Head of the Office for Foreigners. If the application is lodged at the border or in detention the relevant authority receiving it is the SG unit responsible for the border check point or the detention facility. Under the Law amending the Law on Protection which entered into force on 13 November 2015 if the application is lodged in the territory, it should be submitted to any SG unit. There is also a possibility to declare a will to apply for asylum by post for i.e. elderly persons, persons with disabilities, pregnant women, persons in hospitals or imprisoned.<sup>6</sup>

The Head of Office for Foreigners is competent to examine the claim, so the SG cannot refuse to accept the application.

When applying for asylum, the asylum seeker has to surrender their travel document (e.g. passport) to the SG. Travel documents are kept by the Head of the Office for Foreigners. Asylum seekers are issued a temporary ID document entitling them to stay on the territory of Poland.<sup>7</sup> The document is initially valid for 90 days (10 days in case of Dublin returnees), then for 6 months and can be prolonged every 6 months by the Head of the Office for Foreigners until the end of the asylum procedure.<sup>8</sup>

When asylum seekers are already on the territory and express the intention to apply for asylum to the SG unit in Warsaw, in practice it happened that they were asked to come back in a few days, notably when there is a need to provide interpretation in a language other than Russian or English.<sup>9</sup> Moreover, it is often the case that when an NGO lawyer representing a client wants to assist with the application, they are asked to schedule a meeting in advance (e.g. two-three days).<sup>10</sup> In 2014 and 2015 HFHR received information from Ukrainian asylum seekers that registration can approximately take 7 days. The Border

<sup>6</sup> Article 28(2) Law on Protection, as amended in November 2015.

<sup>7</sup> Foreigner's Identity Temporary Certificate, *Tymczasowe Zaświadczenie Tożsamości Cudzoziemca*.

<sup>8</sup> Article 55(1) and (2) and Article 55a(2) Law on Protection, as amended in November 2015.

<sup>9</sup> Information provided by the Office for Foreigners, Department of Asylum Procedures on 25 March 2014.

<sup>10</sup> HFHR lawyers had such an experience in cases of Belarussians in 2012.

Guard Headquarters presents the opinion that it is max 2-3 days and such delays should not be considered as a rule. This issue will be monitored in the frame of the internal control carried out by the Border Guard Headquarters.<sup>11</sup> From 13 November 2015 this practice is reflected in the law. The SG is entitled to inform an asylum seeker that it is impossible to apply for asylum on a day when said individual came to the SG unit and instead to set a date and place when it will be possible.<sup>12</sup>

## **Push-backs**

In 2012-2015 cases were reported where persons were denied access to the territory at the border crossing checkpoint in Terespol (at the border with Belarus), which is the main entry point in Poland for asylum seekers. HFHR made numerous inquiries in individual cases asking for clarification of these situations and brought up the issue at ministerial level.<sup>13</sup> In some cases asylum seekers were refused entry, in others they were detained on the basis of abusing the asylum procedure (apparent even in the case of first-time applicants). The asylum seekers, mostly of Georgian nationality, interviewed in the detention centre in Bialystok in October 2012 by the HFHR representatives claimed they had asked for asylum on the first instance, but managed to enter the territory only after several attempts and days later and were subsequently detained. The SG states that Third Country Nationals (TCNs) do not ask for asylum while trying to cross the border without a visa or other permit and give other reasons which do not entitle them to enter Poland (financial problems in the country of origin, family members in other Member States).<sup>14</sup> They also claim that Poland is a transit country.

The issue was discussed at several meetings with the SG representatives in 2013 and 2014. Still, HFHR and another NGO (Legal Intervention Association, LIA) receive phone calls from asylum seekers trying to cross the border in Terespol. On 29 October 2013 five representatives of the HFHR and LIA went to Terespol with the purpose of meeting with the SG and monitoring the border crossing checkpoint. During their visit, the lawyers were shown the rooms and facilities for TCNs (waiting areas, kitchen, toilet, room for mothers and their children). They talked to two asylum-seeking families (one from Chechnya, one from Georgia), waiting for all the necessary procedural steps (fingerprinting, short interview) to be taken. The family of Chechen origin entered Poland for the first time, but the Georgian family claimed they had tried to enter Poland nine times before they succeeded and managed to lodge an asylum application. According to their statement, they were not given the decision on refusal of entry, but signed a document written in Polish.

According to the SG in Terespol, there are no cases of refusal of entry of foreigners who want to apply for asylum. Every time there is a TCN who does not fulfil the conditions to enter Poland, the SG issues a decision on refusal of entry, which can be appealed. There were no cases of appeal in practice. The SG hand over to the refused entrant the decision issued on the form with the instruction on appeal (in Polish) and the list of NGOs which are available in Russian. The SG officer places a decision on refusal of entry in the registry with a detailed memo on what were the TCNs reasons for entry. The SG claims it is mostly work or visiting family members and that TCNs do not express any fear for their life or health.

HFHR reports that in 2014 Syrian and Iraqi applicants at Terespol were also exposed to the same treatment. Some of them had lived in Belarus or Russia for some time as students. At a HFHR meeting in 2014 with the SG Headquarters it was reconfirmed that if it is asylum they apply for, their claims are registered and no further inquiries as to the reasons for entry are made. However HFHR and UNHCR still receive phone calls from the border and TCNs saying they want to apply for asylum but are refused entry at the border. HFHR has intervened in the past at the border crossing point and after some of these

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<sup>11</sup> Letter from the Border Guard Headquarters to HFHR from 24 August 2015 no FAX-KG-CU-5944/IP/15.

<sup>12</sup> Article 28(1) Law on Protection, as amended in November 2015.

<sup>13</sup> This issue was also included in HFHR's intervention letter submitted to the Head of the Office for Foreigners, the Border Guard Commander in Chief and the Ministry of Interior on 18 January 2013 (not published) and was mentioned in HFHR's comments to the project of the new Law on foreigners from November 2012, available (in Polish), accessible at: <http://bit.ly/1MG2ae7>.

<sup>14</sup> Consultation meeting with the Border Guard and NGO representatives held on 26-27 February 2013 in Lublin.

interventions TCNs were allowed entry in as asylum seekers. The problem is also widely described in the HFHR report published in December 2014.<sup>15</sup>

In the first half of 2015, 2,027 persons applied for asylum at the Terespol border crossing point. The highest number of asylum seekers per day was 41 (comparing to approximately 250 in 2013). 3,130 persons were refused entry. HFHR lawyers confirm that they keep receiving information about the described problem from asylum seekers.<sup>16</sup> The Border Guards Headquarters reiterates that access to the procedure is monitored by UNHCR and the NGO indicated by UNHCR, which is Halina Niec Legal Aid Centre (*Centrum Pomocy Prawnej im. Haliny Niec*).<sup>17</sup>

## 2. Regular procedure

### 2.1. General (scope, time limits)

#### Indicators: Regular Procedure: General

1. Time-limit set in law for the determining authority to make a decision on the asylum application at first instance: 6 months
2. Are detailed reasons for the rejection at first instance of an asylum application shared with the applicant in writing?  Yes  No
3. Backlog of pending cases as of 30 September 2015 at first instance: 3,030

The Head of Office for Foreigners is a state authority which is responsible, among others, for making first instance decisions in granting and withdrawing protection status, deciding on the state's responsibility under the Dublin Regulation and on social assistance provided in the asylum procedure. It is also responsible for the legalisation of the stay of foreigners in Poland (central visa authority and second instance authority in residence permits procedures).

The time limit set in law for the Head of the Office for Foreigners to make a decision on the asylum application is six months.<sup>18</sup> Under the Law amending the Law on Protection, which entered into force on 13 November 2015, it can be prolonged to 15 months if the case is complicated, if there are many asylum seekers applying at the same time or if the asylum seeker did not fulfil the obligation of presenting all the evidence and documents or attending the interview.<sup>19</sup>

In 2015 the average processing time to issue a decision on the merits in practice was 161 days (5 months and 8 days).<sup>20</sup>

According to lawyers working on cases at the HFHR, there is a backlog in both first and second instance proceedings. At first instance, 3,030 applications were pending at the end of September 2015;<sup>21</sup> information on pending cases at second instance is not available.

<sup>15</sup> K. Rusiłowicz, *Dostęp do procedury uchodźczej (Access to an asylum procedure)*, in Helsinki Foundation for Human Rights, *W poszukiwaniu ochrony. Wybrane problemy dotyczące realizacji praw cudzoziemców ubiegających się o nadanie statusu uchodźcy i objętych ochroną międzynarodową w latach 2012-2014. Obserwacje Programu Pomocy Prawnej dla Uchodźców i Migrantów Helsińskiej Fundacji Praw Człowieka (In search of protection. Selected problems concerning the enforcement of rights of foreigners who apply for refugee status and are under international protection in the years 2012-2014. Observations of the Legal Assistance for Refugees and Migrants Programme of the Helsinki Foundation for Human Rights)*, 2014, accessible in Polish at: <http://bit.ly/1eiVxDF>, 16.

<sup>16</sup> E-mail information to HFHR from 3 September 2015.

<sup>17</sup> Letter from the Border Guard Headquarters to HFHR from 18 August no MAIL KG-OI-614/III/15 and from 24 August 2015 no FAX-KG-CU-5944/IP/15.

<sup>18</sup> Article 34(1) Law on Protection, as amended in November 2015.

<sup>19</sup> Article 34 Law on Protection, as amended in November 2015.

<sup>20</sup> Office for Foreigners, *Commentary to the statistics for 1 half of 2015*, accessible at: <http://bit.ly/1EW04DT>.

<sup>21</sup> Eurostat, *Pending applications*, September 2015 (rounded).



According to the law, if the decision is not issued within 6 months, the general provisions on inaction of the administrative authority apply,<sup>22</sup> i.e. the Head of the Office for Foreigners should inform the applicant in writing about the reasons of delay (which in practice is done in a very general way) and the applicant can submit a complaint to the second instance authority (the latter hardly ever happens in practice). The most significant consequence for the applicant of not issuing a decision on asylum application within 6 months is a possibility to apply for a work permit on this basis.<sup>23</sup> The Head of the Office for Foreigners then issues a certificate, which – together with a temporary ID – gives a right to work in Poland until the end of the procedure.<sup>24</sup>

## 2.2. Fast-track processing

According to the Office for Foreigners well-founded cases (e.g. Syrians), cases of persons requiring special treatment (e.g. unaccompanied minors) and cases of detained asylum seekers are prioritised as much as it is possible and/or needed.<sup>25</sup> In the case of Syrians, the average time to process their asylum applications in the first half of 2015 was 94 days, in the case of unaccompanied minors it was 90 days; the general average was 161 days.<sup>26</sup>

## 2.3. Personal interview

### Indicators: Regular Procedure: Personal Interview

1. Is a personal interview of the asylum seeker in most cases conducted in practice in the regular procedure?  Yes  No
  - ❖ If so, are interpreters available in practice, for interviews?  Yes  No
2. In the regular procedure, is the interview conducted by the authority responsible for taking the decision?  Yes  No
3. Are interviews conducted through video conferencing?  Frequently  Rarely  Never

Personal interviews are conducted by the Office for Foreigners and are generally mandatory in a regular procedure, unless:

1. A decision on granting refugee status can be issued on the basis of evidence already gathered; or
2. An applicant is not fit to be interviewed (e.g. due to health or psychological problems).<sup>27</sup>

According to the Office for Foreigners, interviews are conducted in the majority of cases in a regular procedure.<sup>28</sup> In previous years,<sup>29</sup> it has happened that the interview was conducted although the applicant was not fit for interview due to serious psychological and psychiatric problems.<sup>30</sup> The Office for Foreigners states that in 2015 there were cases where the interview was not conducted because the applicant was not fit for interview.<sup>31</sup> The procedures are generally gender-sensitive.

Interpretation is ensured respectively by the Head of the Office for Foreigners and the Refugee Board. The interview should be conducted in a language understandable for the applicant. In the asylum

<sup>22</sup> Article 36-38 Code of Administrative Proceedings.

<sup>23</sup> Article 35 Law on Protection.

<sup>24</sup> No data made available upon request on the average length of asylum procedure in both instances and on the backlog of cases in the first and second instance authorities.

<sup>25</sup> Letter from the Head of the Office for Foreigners to HFHR from 27 August 2015 no BSZ-0811/1429/15/RW.

<sup>26</sup> *Ibid.*

<sup>27</sup> Article 44(1) and (2) Law on Protection, as amended in November 2015.

<sup>28</sup> Information provided by the Office for Foreigners, Department of Asylum Procedures, 25 March 2014.

<sup>29</sup> No data made available upon request on the number of cases in which the applicant was interviewed by the first instance authority.

<sup>30</sup> Case of a Cameroonian woman, a torture survivor, handled by HFHR in 2012. Other anecdotal evidence was collected by HFHR.

<sup>31</sup> Letter from the Head of the Office for Foreigners to HFHR from 27 August 2015 no BSZ-0811/1429/15/RW.

application, the asylum seeker has to declare their mother tongue as well as any fluent knowledge of other languages.

The contract established between the Office for Foreigners and interpretation services regulates the quality, liability, and specifies the field (asylum). Interpretation is available in most of the languages spoken by the asylum applicants in Poland. In the previous year's NGOs pointed at some problems with the quality of interpretation: the dialect of a particular language is not duly taken into account, as well as the knowledge of the country of origin and intercultural competence of the interpreters.<sup>32</sup> According to the Office for Foreigners, in 2014 and 2015 there were no problems with ensuring interpretation services for any language.<sup>33</sup>

Audio or video recording is possible under national legislation if an applicant was informed about this fact and technical means allow for that. According to the Office for Foreigners reply from 2015, there are no technical means to do it.<sup>34</sup> As for videoconferencing – there are no statistics available for 2015, but in 2014 videoconferencing was used with regard to asylum seekers placed in detention centres, now used on a regular basis, unless there was a vulnerable applicant. According to the Office for Foreigner in those cases the interviewer came to the detention centre with a psychologist.<sup>35</sup> However, the HFHR reports a case in 2014 where the applicant placed in the detention centre, suffering from post-traumatic stress disorder (PTSD) diagnosed in Germany, was interviewed through videoconferencing, without a psychologist.<sup>36</sup>

The law provides that a copy of the report of the interview should be handed in to the applicant after a personal interview. In some cases the applicants do not take or keep them, but they can ask for a copy at any stage of the proceedings. The report is prepared in Polish and contains all the questions asked and responses received, but it is not a verbatim transcript. The report is handwritten, which sometimes makes it unreadable; however, some officers at the Office for Foreigners do use computers. At the end of the interview the report is read to the applicant in an understandable language and before signing it, interviewees can make corrections (and are informed about such possibility).<sup>37</sup>

However, a recurring problem is that asylum seekers are not aware of the importance of the interview, that they should give detailed testimonies, check thoroughly how their statements are put in the report and that comments made in the appeal or in subsequent proceedings are generally not taken into account.

**2.4. Appeal**

**Indicators: Regular Procedure: Appeal**

1. Does the law provide for an appeal against the first instance decision in the regular procedure?

<ul style="list-style-type: none"> <li>❖ If yes, is it</li> <li>❖ If yes, is it suspensive</li> </ul>	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> Judicial <input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No <input checked="" type="checkbox"/> Administrative <input type="checkbox"/> No
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2. Average processing time for the appeal body to make a decision:<sup>38</sup>      63.3 days

Decisions of the Head of the Office for Foreigners in the regular procedure can be appealed to the Refugee Board within 14 calendar days. The decision (without a justification) as well as guidance on how

<sup>32</sup> M. Tobiasz, *Practices in interviewing immigrants. Legal implications* (project funded by the Visegrad Fund) Report from Poland, 2011, accessible at: <http://bit.ly/1O7Arap>.  
<sup>33</sup> Letter from the Head of the Office for Foreigners, DPU-07-1410/2013 from 22 February 2013.  
<sup>34</sup> Letter from the Head of the Office for Foreigners to HFHR from 27 August 2015 no BSZ-0811/1429/15/RW.  
<sup>35</sup> Information obtained from the Office for Foreigners, 25 March 2014.  
<sup>36</sup> The case was handled by HFHR lawyer, decision of the Head of the Office for Foreigners was issued on 17 January 2014.  
<sup>37</sup> Interview with HFHR lawyers who shared their experience in representing asylum seekers before the Head of the Office for Foreigners.  
<sup>38</sup> First half of 2015.

to appeal is translated into the language that the applicant for asylum had previously declared as understandable. The applicant can submit the appeal in their own language.

The Refugee Board is an administrative body, consisting of twelve members, supported in their work by six employees, not involved in decision-making process.<sup>39</sup> In the regular procedure, decisions are made by three members. The procedure includes an assessment of the facts, and there is a possibility of hearing applicants. The time limit set in law for the appeal procedure is one month.<sup>40</sup> The appeal has suspensive effect.<sup>41</sup>

Average processing time for the appeal body to make a decision in the first half of 2015 was 63.3 days. The maximum time period was 296 days and the minimum – 1 day (this was a case of withdrawing the appeal). According to the official statistics of the Office for Foreigners, the Refugee Board issued 909 decisions in the first half of 2015.<sup>42</sup> According to the data provided by the Refugee Board, the appeal authority issued 598 decisions.<sup>43</sup> Only in 49 cases the Refugee Board decided to hear the applicant (and as estimated, approximately 80% personal interviews were conducted in practice). As for hearing a witness – there was only one such case in the first half of 2015.<sup>44</sup>

As mentioned above the Refugee Board may annul the first instance decision; overturn it or confirm the decision of the Head of the Office for Foreigners. In the majority of cases decisions of the Head of the Office for Foreigners are confirmed (817 decisions out of 909 by mid-2015<sup>45</sup> or in 448 decisions out of 598 by mid-2015).<sup>46</sup> Neither hearings nor decisions of the Refugee Board are made public.

After the negative decision or a decision on discontinuing the asylum procedure becomes final, the respective authority informs the Border Guard and the return proceedings can be launched.<sup>47</sup>

After the administrative appeal procedure before the Refugee Board, the latter's decision can be further appealed to the Voivodeship Administrative Court in Warsaw within 30 days, but only points of law can be litigated at this stage.<sup>48</sup> From mid-2015 there is no fee for the procedure. This onward appeal does not have a suspensive effect on a final administrative decision. However, asylum seekers can ask the court to suspend a decision for the time of the court proceedings, if the decision can cause irreversible harm. The court procedure is adversarial (both the Refugee Board and the asylum seeker are parties before the court). The ruling of the Voivodeship Administrative Court in Warsaw can itself be appealed to the Supreme Administrative Court by lodging a cassation complaint, based exclusively on the legal conditions foreseen in the law, also accompanied by a request for suspension of the administrative decision.<sup>49</sup>

As of May 2014, the Law on Foreigners separates asylum proceedings and return proceedings, which means that a return decision is no longer issued within the asylum procedure. However, it can be issued after the administrative asylum procedure finishes and before the Voivodeship Administrative Court in Warsaw examines the appeal against the final administrative decision refusing protection to the applicant. This is considered problematic by many NGOs in Poland, which stress that the Refugee Board is an administrative body, not the court, so the asylum seeker should be granted access to an effective remedy

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<sup>39</sup> Letter from the Head of the Refugee Board to HFHR from 27 August 2015 no DP-RURPW-02157-2015-KW.

<sup>40</sup> Article 35(3) Code of Administrative Proceedings.

<sup>41</sup> Article 130(1) and (2) Code of Administrative Proceedings.

<sup>42</sup> Statistics available at: <http://bit.ly/1WI17Rm>.

<sup>43</sup> The difference in numbers has been explained as a question of methodology, without further clarifications.

<sup>44</sup> Letter from the Head of the Refugee Board to HFHR from 27 August 2015 no DP-RURPW-02157-2015-KW.

<sup>45</sup> Statistics available at: <http://bit.ly/1WI17Rm>.

<sup>46</sup> Letter from the Head of the Refugee Board to HFHR from 27 August 2015 no DP-RURPW-02157-2015-KW.

<sup>47</sup> Article 48a Law on Foreigners.

<sup>48</sup> Regulated in the Law of 30 August 2002 on the proceedings before administrative courts, *Journal of Laws* 2012 pos. 270 (*ustawa z dnia 30 sierpnia 2002 r. Prawo o postępowaniu przed sądami administracyjnymi*, *Dz.U.* 2012, poz. 270).

<sup>49</sup> *Ibid.*

before a court before return can be conducted.<sup>50</sup> The jurisprudence of the Voivodeship Administrative Court in Warsaw and Supreme Administrative Court on this issue is not coherent. There have been rulings in 2015, in which it was stated that launching the return proceedings should be withheld until the court decides on the asylum case.<sup>51</sup> However, the Court has also ruled the opposite.<sup>52</sup> In 2015 HFHR and LIA advocated in the Parliament to introduce suspensive effect of the appeal to the court on a negative asylum decision, so that when the asylum seeker lodges a complaint to the court, the execution of the negative asylum decision is automatically withheld and the return proceedings cannot be launched.<sup>53</sup> No such provision was adopted.

According to the statistics of the Refugee Board, in 2015 (until 14 August 2015) 184 Refugee Board decisions have been appealed to the Voivodeship Administrative Court in Warsaw. In 2014 the Court annulled the decision of the Refugee Board in twenty four cases and in 2015 so far in six cases.<sup>54</sup> Cassation complaints examined by the Supreme Administrative Court are dismissed to a great extent. The available data shows that in 2014 there were 45 cases before this court and in only one case the Court annulled the judgement of the Voivodeship Administrative Court and the decision of the Refugee Board.<sup>55</sup>

## 2.5. Legal assistance

### Indicators: Regular Procedure: Legal Assistance

1. Do asylum seekers have access to free legal assistance at first instance in practice?
 

<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> With difficulty	<input type="checkbox"/> No
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  - ❖ Does free legal assistance cover:
 

<input type="checkbox"/> Representation in interview	<input checked="" type="checkbox"/> Legal advice
--	--
  
2. Do asylum seekers have access to free legal assistance on appeal against a negative decision in practice?
 

<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> With difficulty	<input type="checkbox"/> No
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  - ❖ Does free legal assistance cover
 

<input type="checkbox"/> Representation in courts	<input checked="" type="checkbox"/> Legal advice
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As of November 2015 there is no state legal aid system and legislation in force does not guarantee access to legal assistance. In 2012 and until mid-2015 free legal assistance for asylum seekers and people granted international protection was only provided through projects run by NGOs funded by the European Refugee Fund (ERF); 75% of the projects' budget was covered by the ERF and there was a possibility for NGOs to request an additional 10% from the state budget, while 15% had to be provided by the organisation itself.

NGOs providing legal assistance differ between one another: there are some specialised organisations, with extensive experience in the field, engaged also in strategic litigation and advocacy. For some others, providing legal assistance to asylum seekers is another component of their general assistance activities.<sup>56</sup>

<sup>50</sup> See e.g. HFHR letter sent to the Court in The Hague in one of the Dublin cases, describing the problem, accessible at: <http://bit.ly/1FPBj1v>.

<sup>51</sup> Supreme Administrative Court, Ruling from 1 April 2015 no II OZ 218/15, summary and the original ruling accessible at: <http://bit.ly/1jK7oxl>.

<sup>52</sup> Following rulings of the Supreme Administrative Court: from 9 January 2015 no II OZ 1384/14, from 28 January 2015 no II OZ 41/15, from 21 April 2015 no II OZ 309/15 from 7 May 2015 no II OZ 378/15, from 8 May 2015 no II OZ 402/15, all cited in the ruling of the Voivodeship Administrative Court from 29 May 2015 no IV SA/Wa 1227/15 accessible at: <http://bit.ly/1j98Mdb>.

<sup>53</sup> See comments to Article 13 of the draft Law amending the Law on Protection, accessible in Polish at: <http://bit.ly/1O7Aq6r>.

<sup>54</sup> Letter from the Head of the Refugee Board to HFHR from 27 August 2015 no DP-RURPW-02157-2015-KW.

<sup>55</sup> Report on the activities of the Refugee Board for 2014 (*Sprawozdanie z działalności Rady do Spraw Uchodźców za 2014 r.*), Warsaw, January 2015 (not available online).

<sup>56</sup> A. Bergiel, K. Kubin, *Bezpłatne poradnictwo prawne dla migrantów przymusowych – opis działalności organizacji pozarządowych. Wyniki badań jakościowych (Free legal aid for forced migrants - a description of the NGOs' activities. The results of qualitative research)* in J. Frelak, W. Klaus, ed., *Slabe ogniwa. Wyzwania dla*

In most cases, NGOs assist asylum seekers not only in the asylum process, but also in other legal proceedings and in solving every-day problems. Assistance related to the asylum procedure includes providing information and preparing relevant documents (appeals, applications, complaints) covering every stage of the procedure.<sup>57</sup>

Legal representation is provided only in some cases, as the organisations providing legal assistance generally lack resources. For instance, legal presence during the personal interview cannot be ensured and the assistance can cover only the administrative procedure (first and second instance) and submitting an onward appeal to the Voivodeship Administrative Court in Warsaw. Representation before this court and proceedings before the Supreme Administrative Court can be provided only by professional legal representatives (lawyers, legal counsellors). There is a general possibility to apply for a cost-free professional legal representation before these courts on the same rules that apply to Polish citizens (i.e. insufficient financial resources). There is a form, in Polish, available in the court or on the court's website (not in the offices of administrative authorities examining the claim). So although in practice legal representation is granted by the court, it is very doubtful that asylum seekers would benefit from it without the assistance from NGOs. In the absence of legal representation, applicants will receive the correspondence themselves. Since the appearance at the hearing is mostly not obligatory, the applicant may be served with the ruling after it is made.

Legal assistance provided by NGOs consists mainly of individual consultations during office hours.<sup>58</sup> But only some projects involve the provision of legal assistance during visits to accommodation and detention centres. Generally asylum seekers in reception centres face practical obstacles in accessing legal assistance, as most of the reception centres are located in remote areas, while NGOs have their offices in the main cities of the four *voivodeships* (Mazowieckie, Małopolskie, Podlaskie and Lubelskie).<sup>59</sup>

Asylum seekers are informed about legal assistance provided by NGOs by the posters and leaflets in the Office for Foreigners, reception centres and detention centres as well as by the officers.

One of the main problems for the provision of legal assistance in Poland is the limited funding opportunities. For ERF and state funded projects, NGOs need to provide a contribution of 15% of the total project budget from their own finances, which they often lack. Issues related to the delay in launching calls for proposals and thus gaps between the different projects have been an issue in the previous years.<sup>60</sup> In addition, significant delays in the payments of projects which are already being implemented are particularly hard for smaller organisations.<sup>61</sup>

Projects for legal assistance funded through the ERF finished at the end of 2014. Some NGOs, such as LIA, had to reduce their activities from 1 January 2015.<sup>62</sup> National authorities responsible for the implementation of the funds, after numerous requests from NGOs and information in the media, decided to issue an additional call for projects and the funds were made available from 1.01.2015 until the end of June 2015. In mid-2015 the state legal aid system was expected to enter into force, but it did not. Apart from that, there are calls for projects regarding legal aid under AMIF. Currently, as of 30 September 2015, the results were published, but no grant agreement was signed. For almost 3 months NGOs assisting asylum seekers were deprived of financial means, mostly because of the delay in publishing the above mentioned results.

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*funkcjonowania systemu ochrony uchodźców w Polsce (Weak links. Challenges for the functioning of the system of refugee protection in Poland)*, InstytutSprawPublicznych, 2011, 15.

<sup>57</sup> A. Gutkowska, *Ewaluacja funkcjonowania poradnictwa prawnego dla uchodźców – analiza prawna i praktyczna (Evaluation of the functioning of legal counseling for refugees- legal and practical analysis)* in J. Frelak, W. Klaus, ed., *Słabe ogniwa. Wyzwania dla funkcjonowania systemu ochrony uchodźców w Polsce*, Instytut Spraw Publicznych, 2011, 144.

<sup>58</sup> A. Bergiel, K. Kubin, *op.cit.*, 34.

<sup>59</sup> A. Gutkowska, *op.cit.*, 136 and 146.

<sup>60</sup> *Ibid*, 146.

<sup>61</sup> A. Bergiel, K. Kubin, *op.cit.*, 21 and 22.

<sup>62</sup> Accessible in Polish at: <http://bit.ly/1j98zXB>.

A State legal aid system was introduced by the Law amending the Law on Protection on 13 November 2015.<sup>63</sup> This is something new within Polish legislation (there is still no state-funded legal aid for citizens). The legal aid system will cover legal information, provided by the employees of the Office for Foreigners in cases concerning cessation of protection in the first instance, and legal aid provided by advocates, legal counsellors and NGOs in the second instance. The latter will involve preparing appeal and providing legal representation in cases concerning refusal of protection, discontinuance of the procedure, refusal of reopening the procedure, Dublin, inadmissibility of the application and cessation of protection. The system will be managed by the Head of the Office for Foreigners who will contract advocates, legal counsellors and NGO lawyers. The system will enter into force on 1 January 2016. At this stage it is hard to evaluate it, especially the distribution of cases among the listed entities.

### 3. Dublin

#### 3.1. General

Indicators: Dublin: General		
1. Number of outgoing requests in 2015 (January-June):		124
❖ Top 3 receiving countries	DE	35
	FR	22
	IT	12
2. Number of incoming requests in (January-June):		2,924
❖ Top 3 sending countries	DE	1,632
	FR	393
	AT	238
3. Number of outgoing transfers in (January-June):		4
❖ Top 3 receiving countries	DE	4
4. Number of incoming transfers in (January-June):		103
❖ Top 3 sending countries	DE	53
	SE	8
	BE	5

#### Application of the Dublin criteria

According to the Dublin Proceedings Unit at the Office for Foreigners, the request for taking charge / taking back may be initiated at any stage of the asylum procedure if any circumstances justifying the request arise. The vast majority of the requests (1,615 out of 2924 “in” requests and 95 out of 124 “out” requests) concern taking back an applicant whose asylum application is under examination and who made an application in another Member State or resided there without any permit.

In 2015 in cases of “out” requests, the most common circumstances that justified launching the Dublin procedure were: interception of the illegally staying foreigner and Eurodac hit (take back requests, 60% of “out” requests), family reunification (take charge requests, approximately 15% of “out” requests), holding a visa or residence permit issued by another Member State (take charge requests, app. 10 % of “out” requests) or Eurodac hit of an asylum applicant (take back requests, 7% of “out” requests).

In case of “in” requests, the most common circumstances that justified launching the Dublin procedure were: asylum application lodged in another Member State and Eurodac hit; less frequently: illegal stay and Eurodac hit (take back requests, 72% of “in” requests), holding a visa or residence permit issued by

<sup>63</sup> Article 69(c)-(m) Law on Protection, as amended in November 2015.

Poland (take charge requests, 26% of “in” requests) and family reunification (take charge requests, app. 1% of “in” requests).

In 2015 in cases considering family unity in Dublin procedures no use was made of DNA tests. In all cases the asylum seekers were in possession of the documents certifying family ties and there was no need to confirm family links by forms, there were requests for information or medical examination. Generally requests to other Member States are made if there is enough evidence, taking into consideration the stage of the procedure and the applicable deadlines.<sup>64</sup>

### The discretionary clauses

The humanitarian clause has not been applied so far in 2015. The sovereignty clause was used on four occasions: two cases concerned family unity and the other two were linked to the residence regularisation procedures.<sup>65</sup>

## 3.2. Procedure

### Indicators: Dublin: Procedure

1. On average, how long does a transfer take after the responsible Member State has accepted responsibility? 4-6 weeks if not appealed

The Head of the Office for Foreigners is responsible for Dublin procedures.<sup>66</sup> All asylum seekers (over 14 years old) are fingerprinted and checked in Eurodac at the time of lodging their asylum application. Until 12 November 2015 if there was any evidence or sign that another country may be responsible for examining the application, the Dublin procedure was applied. There were no grounds set in the national law that would allow for not applying the Dublin procedure, if there was any sign that another country may be deemed responsible.

From 13 November 2015 on, in all cases the Head of the Office for Foreigners applies the Dublin procedure.<sup>67</sup>

According to the Dublin Unit at the Office for Foreigners, if the authorities decide to apply the Dublin procedure, neither asylum seekers nor their legal representative are informed about it *ex officio*. They are, however, informed about the following steps of the procedure (decision received from another Member State, the need to submit additional documents). Asylum seekers and their legal representatives can contact the Dublin Unit in person, in writing or by phone.<sup>68</sup>

### Individualised guarantees

The judgment *Tarakhel v Switzerland* has not influenced the practice of the Head of the Office for Foreigners in Dublin cases. The reason given is that the only foreigners transferred from Poland to Italy are single men.<sup>69</sup>

### Transfers

The time period during which the transfer is made depends on whether the Dublin procedure was initiated by the asylum authorities or by the applicant themselves (e.g. family reunification requests). In the latter case asylum seekers usually do not appeal the decision on transfer. In cases of detention involving illegal stay or family reunification it takes on average 4-6 weeks before the applicant is transferred to the

<sup>64</sup> E-mail information from the Dublin Unit at the Office for Foreigners from 8 September 2015.

<sup>65</sup> Letter from the Head of the Office for Foreigners to HFHR from 27 August 2015 no BSZ-0811/1429/15/RW.

<sup>66</sup> Article 36(2) Law on Protection, as amended in November 2015.

<sup>67</sup> Article 36(1) Law on Protection, as amended in November 2015.

<sup>68</sup> Letter from the Head of the Office for Foreigners to HFHR from 27 August 2015 no BSZ-0811/1429/15/RW.

<sup>69</sup> *Ibid.*

Member State which accepted responsibility (from 13 days to 3 months). In cases of holding residence permit or visa of another Member State by the applicant or Eurodac hit it is hard to estimate, since asylum seekers often appeal such decisions on transfer. In these instances the Member State concerned is informed about the suspensive effect.<sup>70</sup>

Asylum seekers are transferred under escort only when there is a risk of absconding or if the asylum seeker has already absconded beforehand. It happens rarely, as in most cases asylum seekers are willing to be transferred (e.g. in family reunification cases). In 66 cases by mid-2015, foreigners were transferred under coercion (from the detention centre).<sup>71</sup>

When an asylum seeker is transferred back from another Member State, they need to lodge an asylum application through the SG (or an application to re-open their asylum procedure). The SG either directs them to a reception centre or detains them for a maximum of 48 hours and requests a placement in a guarded centre to the court. Depending on the situation, their procedure is re-opened (if it was discontinued beforehand, because they left) or their application is considered subsequent, if they already received a decision before leaving Poland.

An asylum seeker can be detained after being transferred back from another state, as crossing the border illegally when leaving Poland constitutes a basis to be placed in detention or they may be detained in case of a lack of identity documents.<sup>72</sup> In 2014 HFHR handled a case of an Iranian woman, who was transferred under the Dublin Regulation from the Netherlands to Poland with an established identity according to the transfer documents but was detained upon arrival on the basis of her lack of identity documents. Assisted by HFHR lawyers, the asylum seeker (now granted subsidiary protection) applied to the court for compensation due to unlawful detention. Compensation, in this case, has been granted entirely.

There is also a legal basis for detention in Dublin “out” cases introduced by the Law amending the Law on Protection which entered into force on 13 November 2015, based on the risk of absconding (see Grounds for Detention).<sup>73</sup>

### **The situation of Dublin returnees**

There is no information on obstacles in accessing the asylum procedure by the Dublin returnees. There were cases when HFHR, trying to follow the asylum seekers transferred back from another country, learned from the SG that they applied straight away for voluntary return and left the territory. The reason why they chose return over a (re)examination of their asylum claim is not known. The time limit to reopen the procedure has not been problematic as it was 2 years. In the Law amending the Law on Protection relating to transposition of the recast Asylum Procedures Directive which entered into force on 13 November 2015 the deadline is 9 months. In cases where e.g. the applicant did not wait for examination of his asylum claim in Poland but went to another Member State and did not come back to Poland within 9 months, the case will not be evaluated under the regular “in-merit” procedure. Their application lodged after this deadline will instead be considered as a subsequent application and subject to an admissibility procedure.<sup>74</sup> These provisions will concern decisions on discontinuing the procedure issued under the new regulations. For the decisions on discontinuing the procedure issued under the previous law, the deadline of 2 years for reopening the procedure is still applicable.<sup>75</sup>

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<sup>70</sup> *Ibid.*

<sup>71</sup> Letter from the Border Guard Headquarter from 18 August 2015 no MAIL KG-OI-614/III/15.

<sup>72</sup> No data made available by the Border Guards on how many transferees were detained upon arrival. Last available statistics on this issue can be found in the Transnational Dublin Project Final Report from May 2011, accessible at: <http://bit.ly/1MG39e7>.

<sup>73</sup> Article 398(1)(3a) Law on Foreigners, as amended in November 2015.

<sup>74</sup> Article 40(6) Law on Protection, as amended in November 2015.

<sup>75</sup> Article 15 Law amending the Law on Protection.



In 2013 and 2014 HFHR was concerned about the practice of the application of the Dublin II Regulation, which resulted in the separation of the families of asylum seekers between two countries. Based on their information there were cases in which German authorities, transferred only some members of the foreigners' family, who have been initially under one, common asylum application in the territory of the Republic of Poland. Such practice was most commonly used in cases of foreigners who lodged an asylum application to the Head of the Office for Foreigners in Poland and after that travelled on to Germany. Subsequently their procedure in Poland was discontinued. Apart from infringement of international and European standards regarding family unity, said practice leads also to other legal problems.

In a situation where an asylum seeker is transferred to Poland the Head of the Office of Foreigners lifts the previous decision of discontinuation of the proceedings and decides on its renewal. In some cases members of the family of the asylum seeker, on behalf of whom the asylum seeker lodged an asylum application, are also under these proceedings, even though those members are not on the territory of the Republic of Poland. In such a situation, when part of the family of the asylum seeker is on the territory of another country, there is a problematic issue on the legitimacy of examining the asylum application for the whole family. In case of initiating such proceedings asylum seekers who are not present in the territory of Poland are not provided with the right of active participation in the proceedings for granting them the status of a refugee. There is also no legal basis for granting the protection for the family of the asylum seeker if the application turns out to be justified. Whereas in the situation when part of the family is transferred, without the applicant, the members of the family have no capacity to request for renewal of the previous proceedings concerning them. In this situation the solution of filing another asylum application by the members of the family cannot be recognized satisfactory. When the family of the applicant has left his / her country of origin, due to possible danger that threatened only the applicant, and has as a whole been under one asylum application, this family is left with no chance of obtaining protection.

Furthermore, in one case reported to HFHR, the applicant (male adult) was transferred to Poland, while his wife, who was at the time in an advanced stage of pregnancy, stayed in Germany along with their minor children. In another case only a mother with small children, was transferred to Poland while the father of the family stayed in Germany. As a result, these families were separated and women with children stayed without their husbands. During the meeting of the HFHR with the SG Headquarters representatives, it was said that after discussion with the German counterparts, there were no such cases. The Dublin Unit at the Office for Foreigners confirms that these cases were incidental in 2014 and 2015.

Asylum seekers returned under the Dublin procedure are considered economic migrants rather than persons in need of international protection. The main argument raised in negative decisions is that an asylum seeker tried to improve their economic status instead of accepting the protection guaranteed by the first safe country they entered (irrespective of what the reasons for leaving Poland for another Member State were).

### 3.3. Personal interview

**Indicators: Dublin: Personal Interview**

Same as regular procedure

1. Is a personal interview of the asylum seeker in most cases conducted in practice in the Dublin procedure?<sup>76</sup>  Yes  No

<sup>76</sup> The Dublin procedure is the same as the regular procedure in Poland and thus there is no separate interview where an applicant's case falls under Dublin.

There is no personal interview conducted exclusively for the purpose of the Dublin procedure. The information about the possible responsibility of another Member State is taken through various means. Alongside the Eurodac database information may be acquired from a form on which an asylum claim is registered by the SG or from an interview in the regular asylum procedure conducted by the Office for Foreigners. If there is a need to obtain additional information or documents from an asylum seeker involved in a Dublin procedure, they are contacted in writing, by phone or are asked to come to the Office for Foreigners.<sup>77</sup> It is worth mentioning that under the Law amending the Law on Protection there is a new form for an asylum application issued and additional questions useful for the Dublin procedure form an integral part of it.<sup>78</sup>

### 3.4. Appeal

**Indicators: Dublin: Appeal**  
 Same as regular procedure

1. Does the law provide for an appeal against the decision in the Dublin procedure?

<ul style="list-style-type: none"> <li>❖ If yes, is it</li> <li>❖ If yes, is it suspensive <ul style="list-style-type: none"> <li>○ First appeal</li> <li>○ Onward appeal<sup>79</sup></li> </ul> </li> </ul>	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> Judicial <input checked="" type="checkbox"/> Yes <input checked="" type="checkbox"/> Yes <input type="checkbox"/> Yes	<input type="checkbox"/> No <input checked="" type="checkbox"/> Administrative <input type="checkbox"/> No <input type="checkbox"/> No <input checked="" type="checkbox"/> No
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Asylum seekers can appeal against decisions taken in the Dublin procedure to the Refugee Board (and then to the Voivodeship Administrative Court in Warsaw and the Supreme Administrative Court) within 14 days following the same procedure described in the section on appeals in the Regular Procedure: Appeal.

The average time for the appeal procedure in Dublin cases in 2015 was 43.6 days. In the first half of 2015 the Refugee Board issued five decisions in Dublin proceedings, confirming the decision of the Head of the Office for Foreigners.

### 3.5. Legal assistance

**Indicators: Dublin: Legal Assistance**  
 Same as regular procedure

1. Do asylum seekers have access to free legal assistance at first instance in practice?

<ul style="list-style-type: none"> <li>❖ Does free legal assistance cover:</li> </ul>	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> Legal advice	<input checked="" type="checkbox"/> With difficulty <input type="checkbox"/> Representation in interview <input checked="" type="checkbox"/> Legal advice	<input type="checkbox"/> No
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2. Do asylum seekers have access to free legal assistance on appeal against a Dublin decision in practice?

<ul style="list-style-type: none"> <li>❖ Does free legal assistance cover</li> </ul>	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> Legal advice	<input checked="" type="checkbox"/> With difficulty <input type="checkbox"/> Representation in courts <input checked="" type="checkbox"/> Legal advice	<input type="checkbox"/> No
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Free legal assistance is offered only by NGOs, as described in the section on Regular Procedure: Legal Assistance. State legal aid which will be introduced by the Law amending the Law on Protection from 1 January 2016 covers preparing an appeal and representation in the second instance.<sup>80</sup>

<sup>77</sup> Information obtained from the Dublin Proceedings Unit at the Office for Foreigners in 2014 (orally and by e-mail).

<sup>78</sup> Regulation of the Ministry of the Interior of 4 November 2015 on the asylum application form (Rozporządzenie Ministra Spraw Wewnętrznych z dnia 4 listopada 2015 r. w sprawie wzoru formularza wniosku o udzielenie ochrony międzynarodowej), accessible at: <http://bit.ly/1I97b7F>.

<sup>79</sup> Information was provided by the Dublin Proceedings Unit at the Office for Foreigners.

<sup>80</sup> Article 69e Law on Protection, as amended in November 2015.

### 3.6. Suspension of transfers

#### Indicators: Dublin: Suspension of Transfers

1. Are Dublin transfers systematically suspended as a matter of policy or jurisprudence to one or more countries?  Yes  No
- ❖ If yes, to which country or countries? Greece

The Office for Foreigners adopted a policy of non-transfer to **Greece** from 1 February 2011, as a result of the European Court of Human Rights (ECtHR)'s *M.S.S.* judgment.<sup>81</sup> In case of **Bulgaria**, there is no general suspension of transfers, every case is handled individually.<sup>82</sup>

Poland does not direct any take charge/take back requests to Greece, but tries to establish whether another state could be responsible for examining the asylum application and if not, it takes the responsibility for examining the asylum application. There were no other systematic suspensions to any other Member States as a result of jurisprudence or policy. It is worth mentioning that, as reported by HFHR in 2014, transfers to Greece under readmission agreements did take place. Some of the returnees were rejected asylum seekers (e.g. from Pakistan). There was no information on whether their situation in Greece upon return was subject to any evaluation. The problem of readmissions to Greece was described by HFHR in their report published on 27 June 2015.<sup>83</sup> The Border Guard Headquarters have informed HFHR that since 1 July 2015 readmissions to Greece have been suspended.<sup>84</sup> By mid-2015 there were 12 foreigners readmitted to Greece.

When establishing the facts within the Dublin procedure or when awaiting a response from another Member State, asylum proceedings may be suspended in individual cases, but asylum seekers have full access to reception conditions pending a decision.

## 4. Admissibility procedure

### 4.1. General (scope, criteria, time limits)

An admissibility procedure is provided for in national legislation.<sup>85</sup> The Head of the Office for Foreigners is the authority responsible for taking a decision on admissibility. Until 12 November 2015 if an asylum application was deemed inadmissible, a decision on discontinuing the procedure was issued. From 13 November 2015 if an asylum application is deemed inadmissible, the Head of the Office for Foreigners issues a decision on the inadmissibility of the application.<sup>86</sup>

An asylum application is considered inadmissible under the following exhaustive grounds:

- (a) Another Member State has granted refugee status to the applicant;
- (b) The applicant submitted a subsequent application after receiving a final decision, based on the same circumstances;

<sup>81</sup> ECtHR, *M.S.S. v. Belgium and Greece*, Application No. 30696/09, Judgment of 21 January 2011.

<sup>82</sup> Letter from the Head of the Office for Foreigners to HFHR from 27 August 2015 no BSZ-0811/1429/15/RW.

<sup>83</sup> Przekazania cudzoziemców do Grecji (*Transfers of foreigners to Greece*) in the Helsinki Foundation for Human Rights, POWROTY. Obserwacje Programu Pomocy Prawnej dla Uchodźców i Migrantów Helsińskiej Fundacji Praw Człowieka dotyczące przestrzegania praw cudzoziemców powracających do kraju pochodzenia (*RETURNS. Observations of the Legal Assistance for Refugees and Migrants Programme of the Helsinki Foundation for Human Rights concerning the rights of returning migrants*), 2015, 62, accessible in Polish at: <http://bit.ly/1MG3i1e>.

<sup>84</sup> Letter from the Border Guard Headquarters to HFHR from 24 August 2015 no FAX-KG-CU-5944/IP/15.

<sup>85</sup> Article 40 Law on Protection (applicable until 12 November 2015). From 13 November 2015: Article 38 Law on Protection.

<sup>86</sup> Article 38(4) Law on Protection, as amended in November 2015.

- (c) A spouse of an applicant lodged a new asylum application after the applicant received a final decision and when the spouse's case was a part of an application made on their behalf and there are no facts justifying a separate application of the spouse.<sup>87</sup>

In the new Law amending the Law on Protection, which entered into force on 13 November 2015, apart from the grounds listed above, a concept of the first country of asylum has been introduced. The application will be considered inadmissible if there is a first country of asylum where the applicant is treated as a refugee and can enjoy protection there or is protected against *refoulement* in any other way.<sup>88</sup>

There are no specific time limits that must be observed by the Head of the Office for Foreigners and the Refugee Board in this procedure, so the rules governing regular procedures are applicable (the general deadline is 6 months). There is no data on whether the time limits for taking a decision are respected in practice.

The statistics obtained from the Office for Foreigners show, that in 2015, decisions on discontinuation of the procedure because of inadmissibility of the asylum application (issued on the basis of the Law on Protection before the amendment) were received by:

- (a) 6 asylum seekers on the basis of the first ground where the applicant was a recognised refugee in another Member State,
- (b) 196 asylum seekers on the basis of the second ground where the applicant lodged a subsequent application on identical facts,
- (c) 6 asylum seekers on the basis of the third ground where a spouse's application contained the same reasoning as the applicant.

## 4.2. Personal interview

### Indicators: Admissibility Procedure: Personal Interview

Same as regular procedure

1. Is a personal interview of the asylum seeker in most cases conducted in practice in the admissibility procedure?  Yes  No
  - ❖ If so, are questions limited to identity, nationality, travel route?  Yes  No
  - ❖ If so, are interpreters available in practice, for interviews?  Yes  No
2. Are interviews conducted through video conferencing?  Frequently  Rarely  Never

The rules concerning personal interview are the same as in a regular procedure. There is no data on how many interviews were conducted in admissibility procedures in 2015. In 2014 according to the Office for Foreigners, in 90% of cases of subsequent applications which are subject to admissibility procedure, there is no personal interview of the applicant.<sup>89</sup> For the admissibility procedures much depends on the case whether it is a detailed interview, as in the regular procedure, or whether it focuses only on specific issues (e.g. new circumstances).<sup>90</sup>

## 4.3. Appeal

<sup>87</sup> Article 40(2) Law on Protection (applicable until 12 November 2015). From 13 November 2015: Article 38 Law on Protection.

<sup>88</sup> Article 38 Law on Protection, as amended in November 2015.

<sup>89</sup> Email from the Office for Foreigners, Department of Asylum Proceedings from 1 April 2014.

<sup>90</sup> Information obtained from the Office for Foreigners, letter DPU-07-1410/2013 from 22 February 2013.

#### Indicators: Admissibility Procedure: Appeal

Same as regular procedure

1. Does the law provide for an appeal against the decision in the admissibility procedure?

❖ If yes, is it

❖ If yes, is it suspensive

Yes

Judicial

Yes

No

Administrative

No

Generally the appeal system in the admissibility procedure does not differ from the one in the regular procedure, including its suspensive effect. The deadline for the appeal is 14 days.

However, it is worth highlighting that subsequent applications do not have an automatic suspensive effect on return proceedings (or return decision) but the applicant can submit a motion for suspension of a return order, together with a subsequent asylum application, to the Office for Foreigners (see section on Subsequent Applications) Due to the legal amendments introduced on 13 November 2015, the first subsequent application will have a suspensive effect on a return decision until it is claimed inadmissible (or until the protection is refused).<sup>91</sup>

#### 4.4. Legal assistance

##### Indicators: Admissibility Procedure: Legal Assistance

Same as regular procedure

1. Do asylum seekers have access to free legal assistance at first instance in practice?

Yes

With difficulty

No

❖ Does free legal assistance cover:

Representation in interview

Legal advice

2. Do asylum seekers have access to free legal assistance on appeal against an admissibility decision in practice?

Yes

With difficulty

No

❖ Does free legal assistance cover

Representation in courts

Legal advice

Free legal assistance is offered only by NGOs, in the same context as described in the section on Regular Procedure: Legal Assistance. State legal aid which will be introduced by the Law amending the Law on Protection from 1 January 2016 covers preparing an appeal and representation in the second instance.<sup>92</sup>

#### 5. Border procedure (border and transit zones)

There is no border procedure in Poland.

#### 6. Accelerated procedure

##### 6.1. General (scope, grounds for accelerated procedures, time-limits)

Until 12 November 2015 accelerated procedures were applied with regard to 'manifestly unfounded

<sup>91</sup> Article 330(2) and (3) Law on Foreigners, as amended in November 2015.

<sup>92</sup> Article 69e Law on Protection, as amended in November 2015.

applications'. Under the Law of Protection, the application was considered manifestly unfounded in cases where the asylum seeker:<sup>93</sup>

- (a) Provides other reasons for applying for asylum than well-founded fear of persecution for reasons of race, religion, nationality, membership of a particular social group or political opinion, or a risk of serious harm; or did not provide any information on circumstances referring to the well-founded fear of persecutions or risk of serious harm;
- (b) Comes from a safe country of origin, included in the common minimum list of safe countries of origin, established by the Council of the European Union;
- (c) Misleads the authority by hiding or presenting false information or documents which are important in an asylum procedure,
- (d) Submits another application with other personal data,
- (e) Makes inconsistent, contradictory, improbable or insufficient explanation of the persecution they are fleeing from,
- (f) Submits an application to delay or disturb enforcement of a return decision,
- (g) Is a threat to national security or public order and was, on this ground, already expelled from the territory.

In the Law amending the Law on Protection, which entered into force on 13 November 2015, the procedure will be named "accelerated" and the term "application manifestly unfounded" will no longer be used. As for the grounds, they have principally stayed the same, however the safe country of origin concept has been deleted.<sup>94</sup>

The Head of the Office for Foreigners should issue a decision in the accelerated procedure within 30 calendar days. If a decision cannot be issued within 30 calendar days, the Head of the Office for Foreigners has to inform the applicant about the reasons for the delay and the date when a decision will be issued.<sup>95</sup> There are no consequences of not respecting this time limit.

The statistics obtained from the Office for Foreigners show that in the first half of 2015 the Head of the Office for Foreigners considered 214 applications manifestly unfounded.

## 6.2. Personal Interview

### Indicators: Accelerated Procedure: Personal Interview

Same as regular procedure

1. Is a personal interview of the asylum seeker in most cases conducted in practice in the accelerated procedure?  
 Yes  No  
❖ If so, are questions limited to nationality, identity, travel route?  Yes  No  
❖ If so, are interpreters available in practice, for interviews?  Yes  No
2. Are interviews conducted through video conferencing?  Frequently  Rarely  Never

Until 12 November 2015 in the cases referred to above (where the Office for Foreigners considers that the applicant had others reasons for applying for asylum than a well-founded fear of persecution or had not provided any information on the fear of persecution) there was no mandatory interview by the Head of the Office for Foreigners, unless the applicant was an unaccompanied child.<sup>96</sup> The rule is not applicable from 13 November 2015. This means that the interview in accelerated procedure is conducted according to the same rules as in regular procedure (see [Regular Procedure: Personal Interview](#)).<sup>97</sup>

<sup>93</sup> Procedure regulated in Article 34 Law on Protection (applicable until 12 November 2015), this list is exhaustive.

<sup>94</sup> Article 39 Law on Protection, as amended in November 2015.

<sup>95</sup> No data was made available upon request if the time limit is respected in practice.

<sup>96</sup> Article 34(2)(1) Law on Protection applicable until 12 November 2015.

<sup>97</sup> Article 44 Law on Protection, as amended in November 2015.

In 2014 according to the Office for Foreigners, in 60% of cases considered manifestly unfounded, the personal interview was not conducted.<sup>98</sup> No data from 2015 has been made available. If it does take place, the interview does not differ from the one in a regular procedure – it is in the same form and the same rules apply.

### 6.3. Appeal

#### Indicators: Accelerated Procedure: Appeal

Same as regular procedure

1. Does the law provide for an appeal against the decision in the accelerated procedure?

- |                            |   |  |
|----------------------------|---|--|
| ❖ If yes, is it            | <input checked="" type="checkbox"/> Yes | <input type="checkbox"/> No                        |
| ❖ If yes, is it suspensive | <input type="checkbox"/> Judicial       | <input checked="" type="checkbox"/> Administrative |
|                            | <input checked="" type="checkbox"/> Yes | <input type="checkbox"/> No                        |

The appeal system is broadly the same in the accelerated procedure as in the regular procedure. However, there are two important differences:

- (1) The time limit to lodge an appeal is 7 calendar days instead of 14;<sup>99</sup>
- (2) Decisions on the appeal in this procedure are issued by only one member of the Refugee Board (instead of three as in the regular procedure).<sup>100</sup>

The short timeframe for lodging an appeal, while extended from 5 to 7 calendar days by the Law amending the Law on Protection, still constitutes a significant obstacle in practice, because it is a short time, even more so if it falls on a weekend.

### 6.4. Legal assistance

#### Indicators: Accelerated Procedure: Legal Assistance

Same as regular procedure

1. Do asylum seekers have access to free legal assistance at first instance in practice?

- |                                     |  |   |                             |
|-------------------------------------|--|---|-----------------------------|
|                                     | <input type="checkbox"/> Yes                         | <input checked="" type="checkbox"/> With difficulty | <input type="checkbox"/> No |
| ❖ Does free legal assistance cover: | <input type="checkbox"/> Representation in interview |   |                             |
|                                     | <input checked="" type="checkbox"/> Legal advice     |   |                             |

2. Do asylum seekers have access to free legal assistance on appeal against a decision in practice?

- |                                    |   |   |                             |
|------------------------------------|---|---|-----------------------------|
|                                    | <input type="checkbox"/> Yes                      | <input checked="" type="checkbox"/> With difficulty | <input type="checkbox"/> No |
| ❖ Does free legal assistance cover | <input type="checkbox"/> Representation in courts |   |                             |
|                                    | <input checked="" type="checkbox"/> Legal advice  |   |                             |

Free legal assistance is offered only by NGOs, in the same context described in the section on Regular Procedure: Legal Assistance. State legal aid which will be introduced by the Law amending the Law on Protection on 1 January 2016 covers preparing an appeal and representation in the second instance.<sup>101</sup>

<sup>98</sup> E-mail from the Office for Foreigners, Department of Asylum Proceedings from 1 April 2014.

<sup>99</sup> Article 39(2)(3) Law on Protection, applicable from 13 November 2015.

<sup>100</sup> Article 34(2)(4) and (5) Law on Protection (applicable until 12 November 2015). From 13 November 2015: Article 39(2) Law on Protection.

<sup>101</sup> Article 69e Law on Protection, as amended in November 2015.

## C. Information for asylum seekers and access to NGOs and UNHCR

### Indicators: Information and Access to NGOs and UNHCR

1. Is sufficient information provided to asylum seekers on the procedures, their rights and obligations in practice?  Yes  With difficulty  No
  - ❖ Is tailored information provided to unaccompanied children?  Yes  No
2. Do asylum seekers located at the border have effective access to NGOs and UNHCR if they wish so in practice?  Yes  With difficulty  No
3. Do asylum seekers in detention centres have effective access to NGOs and UNHCR if they wish so in practice?  Yes  With difficulty  No
4. Do asylum seekers accommodated in remote locations on the territory (excluding borders) have effective access to NGOs and UNHCR if they wish so in practice?  Yes  With difficulty  No

The same level of information on the asylum procedure is provided to applicants during all types of procedures. According to the Law on Protection, as of 13 November 2015, the SG officer who receives an asylum application has to inform in writing the applicant in a language that they understand on:

- a. Rules related to the asylum procedure;
- b. Rights and obligations of the asylum seeker and their legal consequences;
- c. The possibility of informing UNHCR of an asylum procedure, reading the files, making notes and copies;
- d. NGOs which work with asylum seekers;
- e. The scope of the material reception conditions and medical assistance;
- f. Access to the free of charge state legal aid;
- g. The address of the centre where the applicant will live in.<sup>102</sup>

With regard to general information on the asylum procedure, rights and obligations of asylum seekers etc. as well as information on rights after protection is granted it has to be stressed that they are formulated in legal terms and are therefore not easily understandable.

In addition, the Office for Foreigners also offers information in the form of a booklet entitled “First steps in Poland – practical brochure for the asylum applicants in Poland”.<sup>103</sup> It was published in 2011 under a project co-financed by ERF and then updated in 2015. It is now available in 6 languages (Russian, English, Georgian Arab, French and Polish) and contains basic information on Poland, Polish law regarding asylum seekers and social assistance.

Asylum seekers are informed about the Dublin procedure when they apply for international protection in accordance with the Dublin III Regulation.<sup>104</sup> They receive a leaflet, as specified in Article 4(3) of the Dublin III Regulation, when their fingerprints are taken. These leaflets are currently available in the following languages: Polish, English, Arabic, Armenian, Pashto, Persian, Ukrainian, Vietnamese, Russian and Georgian. There is also a separate instruction about the rules of the Dublin procedure, which has been a part of a general instruction for asylum seekers since 2004, currently available in: Polish, English, Arabic, Chinese, French, Georgian, Hindi, Spanish, Moldavian, Armenian, Panjabi, Persian, Portuguese, Russian, Ukrainian and Urdu.<sup>105</sup>

Information on the Dublin procedure is rather unclear and it is hard to estimate, whether it is the insufficient information or other reasons that make an asylum seeker go to other Member States despite

<sup>102</sup> Article 30(1)(5) Law on Protection, as amended in November 2015.

<sup>103</sup> The booklets are accessible at: <http://bit.ly/1IsLwQG>.

<sup>104</sup> Article 4 Dublin III Regulation.

<sup>105</sup> Letter from the Border Guard Headquarters to HFHR from 24 August 2015 no FAX-KG-CU-5944/IP/15.



the fact that Poland, according to the hierarchy within the Dublin Regulation, should examine their application.

NGOs also provide information on asylum within projects co-funded by ERF. A leaflet entitled “Refugee procedure in Poland – vulnerable persons and victims of sexual and gender based violence” was produced by the Halina Nieć Legal Aid Centre and the Office for Foreigners in 2012<sup>106</sup> in Polish and English. In 2012, the HFHR prepared a booklet on the asylum procedure and a booklet on the rights and obligations after being granted protection in Polish, English, Russian, Arabic and French. The booklets are available on the webpage of the HFHR, and were sent to the Office for Foreigners, as well as detention and reception centres. Both HFHR booklets were updated in 2014. Updated versions are available in Polish, English and Russian.<sup>107</sup> In 2015 HFHR published a video on family reunification procedure, available in Polish, English, Russian, Ukrainian, Vietnamese and Chinese.<sup>108</sup>

Information about the possibility to contact UNHCR is available in the Office for Foreigners (in English, Russian, French, Arabic and Vietnamese) and in reception and detention centres. The instructions for asylum applicants provided by the SG contain information about the possibility to contact UNHCR and NGOs. They are available in: Polish, English, Arabic, Chinese, French, Georgian, Hindi, Spanish, Moldavian, Armenian, Panjabi, Persian, Portuguese, Russian, Ukrainian and Urdu.<sup>109</sup>

In every reception centre there is an organisation, which provides integration assistance (e.g. educational and leisure activities) to asylum seekers accommodated there,<sup>110</sup> although it is dependent on financial means of these organisations.

#### D. Subsequent applications

##### Indicators: Subsequent Applications

1. Does the law provide for a specific procedure for subsequent applications?  Yes  No
2. Is a removal order suspended during the examination of a first subsequent application?
  - ❖ At first instance  Yes  No
  - ❖ At the appeal stage  Yes  No
3. Is a removal order suspended during the examination of a second, third, subsequent application?
  - ❖ At first instance  Yes  No
  - ❖ At the appeal stage  Yes  No

Subsequent applications are subject to an admissibility procedure (see section on Admissibility Procedure). Until 12 November 2015 if the application was considered inadmissible, the decision on discontinuing the procedure was issued. From 13 November 2015, in that case the decision on inadmissibility is issued. In the first half of 2015, 926 out of 3,826 asylum seekers lodged subsequent applications. These were submitted mainly by Russians, Ukrainians and Georgians.

<sup>106</sup> The leaflet was published within the framework of the project “Give them a chance! - Legal and information support to vulnerable asylum seekers and SGBV prevention in centres for asylum seekers in Poland” The booklet is accessible at: <http://bit.ly/1IsLwQG>.

<sup>107</sup> HFHR, “Me in the asylum procedure”, accessible at: <http://bit.ly/1Lt7Hcu> and “Refugee status, subsidiary protection – what next?”, accessible at: <http://bit.ly/1FPBrOt>.

<sup>108</sup> HFHR, “The whole family in Poland. Educational Film for Migrants on Family Reunification”, accessible at: <http://bit.ly/1QUgH8I>.

<sup>109</sup> Letter from the Border Guard Headquarters to HFHR from 18 August 2015 no MAIL KG-OI-614/III/2015.

<sup>110</sup> Information provided by the Office for Foreigners, Department for Social Assistance, 25.03.2014. List of NGOs with which Office for Foreigners cooperated is listed in an informative brochure: Urząd do Spraw Cudzoziemców, *Informator Departamentu Pomocy Socjalnej*, from 21 January 2013.

In 2011 the Supreme Administrative Court, in a significant judgment,<sup>111</sup> highlighted that the administrative authorities, when deciding on admissibility of a subsequent asylum application:

- a) Cannot simply compare the first and the subsequent application and are not bound exclusively by the content of the application – which means they should conduct administrative proceedings to gather relevant evidence and examine the case;
- b) Should always check if the situation in the country of origin has not changed;
- c) Should always check if the law has not changed.

This judgment is respected in practice and is cited in other cases.<sup>112</sup>

If the application is considered admissible, i.e. containing new circumstances relevant for the case, no separate decision until 12 November 2015 was issued and the proceedings are continued according to general rules of the regular procedure. From 13 November 2015, in that case the Head of the Office for Foreigners issues a decision considering the application admissible.<sup>113</sup>

As mentioned in the section on Admissibility Procedure, until the entry into force of amendments in 13 November 2015, subsequent applications generally did not have an automatic suspensive effect but the applicant could submit a motion for suspension of a return order, together with a subsequent asylum application. It had to be duly justified. The Head of the Office for Foreigners had 5 calendar days to issue a decision on the motion. Submitting such a motion did not itself withhold a return order. It could be enforced and there were such cases, especially when the applicant was already detained. If the decision was negative, the applicant had the right to submit an appeal to the Head of the Office for Foreigners within 5 calendar days. If the decision was positive, the appeal in the admissibility procedure had a suspensive effect. The return order could also be withheld by the Head of the Office for Foreigners at any time.<sup>114</sup>

Under the Law amending the Law on Protection, which entered into force on 13 November 2015, in case of a first subsequent application, it will have to be first considered inadmissible (or protection will have to be refused) in a final administrative decision before the return decision can be enforced.<sup>115</sup>

With regard to personal interviews, appeal and legal assistance, see section on the Admissibility Procedure.

## **E. Guarantees for vulnerable groups of asylum seekers (children, traumatised persons, survivors of torture)**

### **1. Special procedural guarantees**

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<sup>111</sup> Supreme Administrative Court, Judgment from 24 February 2011, II OSK 557/10 (not published).

<sup>112</sup> Voivodeship Administrative Court in Warsaw, Judgment from 13 June 2012, V SA/Wa 2332/11 (not published). See also Report on the activities of the Refugee Board for 2014 (*Sprawozdanie z działalności Rady do Spraw Uchodźców za 2014 r.*), Warsaw, January 2015 (not available online).

<sup>113</sup> Article 38(5) Law on Protection, as amended in November 2015.

<sup>114</sup> Article 33(4)-(10) Law on Protection (as applicable until 12 November 2015).

<sup>115</sup> Article 330(2) and (3) Law on Foreigners, as amended in November 2015.

### Indicators: Special Procedural Guarantees

1. Is there a specific identification mechanism in place to systematically identify vulnerable asylum seekers?  Yes  For certain categories  No  
❖ If for certain categories, specify which:
2. Are there special procedural arrangements/guarantees for vulnerable people?  Yes  For certain categories  No  
❖ If for certain categories, specify which:

As of 13 November 2015, foreigners, who need special treatment, are defined particularly as:<sup>116</sup>

- (1) Minors;
- (2) Disabled people;
- (3) Elderly people;
- (4) Pregnant women;
- (5) Single parents;
- (6) Victims of human trafficking;
- (7) Seriously ill;
- (8) Mentally disordered people;
- (9) Victims of torture;
- (10) Victims of violence (psychological, psychical, including sexual).

### Identification

Under the law there is a specific identification mechanism in place to identify defined groups of asylum seekers who need specific procedural guarantees (victims of violence, disabled persons, unaccompanied children) at the beginning of or during the asylum procedure.<sup>117</sup>

Until 12 November 2015 the Head of the Office for Foreigners should ensure medical or psychological examinations only to asylum seekers who themselves inform the authority carrying out the procedure that they are a victim of violence, are disabled or whose psychophysical status leads to believe that they have been a victim of violence.

However, the identification mechanism provided in legislation was not considered sufficient and effective by UNHCR, NGOs and some scholars.<sup>118</sup> In practice, the Office for Foreigners has not developed an effective process of identifying people with special needs, including victims of violence and traumatised people.<sup>119</sup> Asylum seekers do not give information about their disability or any violence they have suffered in the past, because they believe it is obvious or they do not know that it will lead to obtaining special

<sup>116</sup> Article 68(1) Law on Protection, as amended in November 2015.

<sup>117</sup> Articles 68 and 69 Law on Protection.

<sup>118</sup> A. Chrzanowska, W. Klaus, (*Recommendations for policy on placement of the centres for refugees*), in A. Chrzanowska, W. Klaus, A. Kosowicz, ed., *Polityka wyboru i lokalizacji ośrodków dla uchodźców. Analiza i rekomendacje (The policy on selection and location of the centres for refugees. Analysis and recommendations)*, Stowarzyszenie Interwencji Prawnej, Fundacja Polskie Forum Migracyjne, 2011, 17, accessible at <http://bit.ly/1NwNBuf>. Also: D. Witko, K. Rusiłowicz, *Brak identyfikacji, gwarancji proceduralnych i odpowiednich warunków recepcyjnych dla osób wymagających szczególnej opieki (Lack of identification, procedural guarantees and proper reception conditions for vulnerable asylum seekers)*, in Helsinki Foundation for Human Rights, *W poszukiwaniu ochrony. Wybrane problemy dotyczące realizacji praw cudzoziemców ubiegających się o nadanie statusu uchodźcy i objętych ochroną międzynarodową w latach 2012-2014. Obserwacje Programu Pomocy Prawnej dla Uchodźców i Migrantów Helsińskiej Fundacji Praw Człowieka 2014*, accessible in Polish at: <http://bit.ly/1eiVxDF>, 27-32.

<sup>119</sup> P. Nikiel, *Raport z wyników badań i obserwacji zrealizowanych podczas projektu „Kampania na rzecz uchodźców i działania monitoringowe w ośrodkach dla cudzoziemców w Bytomiu i w Grotnikach (Report on the results of the research and observations carried out during the "Campaign for refugees and monitoring activities in the centres for foreigners in Bytom and Grotniki")*, Centrum Pomocy Prawnej im. H. Nieć, 2011, 14, accessible in Polish at: <http://bit.ly/1f0ONLE>, 14.

procedural guarantees.<sup>120</sup> This self-identification mechanism present in Polish legislation has been criticised by ECRE.<sup>121</sup> According to the UNHCR National Office Poland, the main challenge regarding the procedure concerns the identification of vulnerable persons and procedural guarantees for them. Whilst the relevant legal provisions are in place, current identification methods are not sufficient, however UNHCR has noted some developments in this regard. Notably from September-October 2012 if the applicant stated in the asylum application that they were subject to violence, the Office for Foreigners ensures psychological consultation in order to confirm this statement.<sup>122</sup>

Under the new Law amending the Law on Protection there will be a new form of an asylum application issued.<sup>123</sup> Apart from the self-identification mechanism (questions concerning medical conditions, disability, pregnancy), a SG officer registering the application will check whether an applicant (or any person covered by the application) may belong to one of these two groups: victims of trafficking in human beings or persons subject to torture.

In case of an asylum application of a person from one of these groups, the Head of the Office for Foreigners assesses if this person needs special treatment – in international protection procedure or in a matter of material reception conditions. The Head of the Office for Foreigners can arrange medical and psychological examination in order to make this assessment. The cost is covered by state budget. If the Head of the Office for Foreigners does not arrange such examination, it informs an asylum seeker that he can arrange it by himself on his cost. If an asylum seeker does not agree for an examination, he is considered as a person who does not need special treatment.<sup>124</sup>

### Special procedural guarantees

If the examination confirms that an applicant should be identified as a vulnerable asylum seeker, all the steps in the asylum procedure should be done in conditions which ensure a freedom of expression, in a particularly tactful manner and adapted to their mental and physical state,<sup>125</sup> with the participation of a psychologist or a doctor and, where necessary, an interpreter of a gender indicated by the asylum seeker. The law provides that activities in an asylum procedure (e.g. personal interview) can be performed where the applicant resides. Alternative means of transport should be provided for an asylum seeker to give evidence and statements or use health services. The time limits for submitting evidence and support for gathering evidence are not extended, but the interview should be done in a special way and manner by specifically trained staff in the presence of a psychologist. Additionally, if the examination confirmed that the applicant was subject to violence or is disabled the activities in the asylum procedure and those related to granting social assistance in the reception centre can be performed by a person of a gender designated by the applicant and who was trained to work with people affected by crime or subjected to violence and people with disabilities.<sup>126</sup>

In one of the cases involving a traumatised asylum seeker the Office for Foreigners decided to interview the applicant once more to clarify small contradictions which occurred in her previous statements notwithstanding that her legal representation had applied for the personal interview to be replaced with written explanations along with the psychological problems which occurred during the first interview and confirmed by the psychologist. The asylum seeker was not in a fit state to participate in the second

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<sup>120</sup> M. Pajura, K. Przybysławska (ed.), *Cudzoziemcy szczególnej troski w Polsce (identyfikacja, detencja, orzecznictwo) [Vulnerable foreigners in Poland (identification, detention, jurisdiction)]*, Centrum Pomocy Prawnej im. Haliny Nieć, 2013, accessible at: <http://bit.ly/1dxieU4>.

<sup>121</sup> See ECRE's submission in *Bilalova v Poland* with argumentation to this effect, accessible at: <http://bit.ly/1M6NOXt>.

<sup>122</sup> Information provided by UNHCR on 11 February 2014.

<sup>123</sup> Regulation of 5 November 2015 on the asylum application form (Rozporządzenie Ministra Spraw Wewnętrznych z dnia 5 listopada 2015 r. w sprawie wzoru formularza wniosku o udzielenie ochrony międzynarodowej), accessible at: <http://bit.ly/1hljivW>.

<sup>124</sup> Article 68 Section 3-6 of the Law on Protection (as amended on the basis of Article 1 point 25 of the Law amending the Law on Protection).

<sup>125</sup> Article 68 Law on Protection (as applicable until 12 November 2015).

<sup>126</sup> Article 69 Law on Protection (as applicable until 12 November 2015).

interview because of her Post-Traumatic Stress Disorder (PTSD), which was confirmed by medical reports and known to the Office for Foreigners. Nonetheless the interview was still organised. The individual was not able to answer any questions, because symptoms of PTSD occurred at the beginning of the interview (dissociation, panic attacks, paralysis of the body). She was then taken to hospital. She was later granted subsidiary protection.<sup>127</sup>

Psychological counselling is available in every reception centre and at the Office for Foreigners. Psychologists have a minimum 4 duty hours a week per 120 foreigners. In the contract under which the psychologists are hired, there is an obligation to ensure an interpreter.<sup>128</sup>

In Poland there is a very limited number of NGOs specialising in psychological support for vulnerable asylum seekers, some of them concentrate on assistance directed to a particular group (children or victims of trafficking). There are two NGOs which provide psychological support to asylum seekers – the first one is the International Humanitarian Initiative – they support asylum seekers on a regular basis in Warsaw. They visit detention centres occasionally if they receive information about asylum seekers who need psychological support. They run a project – “Protect” – process of recognition and orientation of torture victims in European countries to facilitate care and treatment.

The second one is Ocalenie Foundation; they support asylum seekers on a regular basis, three times a week in Warsaw. Their psychologist speaks English and Russian. Other NGOs, due to financial reasons, provide psychological support in a limited way, and not on a regular basis (Caritas, Polish Humanitarian Action).

The Border Guard Headquarters note that in 2014 they prepared and applied an algorithm on how to handle vulnerable applicants. It defines aims, ways and rules for the SG actions in case of identifying a vulnerable person. The objective is to ensure optimal conditions guaranteeing the assistance of medical personnel and psychologists whenever needed.<sup>129</sup>

According to the Office for Foreigners, in 2014 accelerated procedures were not used either towards unaccompanied children or victims of torture, rape or other serious forms of psychological, physical or sexual violence. In very rare cases the interview is not carried out at all.<sup>130</sup>

## 2. Use of medical reports

### Indicators: Use of medical reports

1. Does the law provide for the possibility of a medical report in support of the applicant's statements regarding past persecution or serious harm?  
 Yes       In some cases       No
2. Are medical reports taken into account when assessing the credibility of the applicant's statements?  
 Yes       No

As said in the section on Special Procedural Guarantees, legislation until 12 November 2015 specified that the Head of the Office for Foreigners should ensure medical or psychological examinations only to asylum seekers who themselves inform the authority carrying out the procedure that they are a victim of violence or are disabled or whose psychophysical status leads to believe that they have been a victim of

<sup>127</sup> D. Witko, K. Rusiłowicz, *Lack of identification, procedural guarantees and proper reception conditions for vulnerable asylum seekers*, in Helsinki Foundation for Human Rights, *W poszukiwaniu ochrony. Wybrane problemy dotyczące realizacji praw cudzoziemców ubiegających się o nadanie statusu uchodźcy i objętych ochroną międzynarodową w latach 2012-2014. Obserwacje Programu Pomocy Prawnej dla Uchodźców i Migrantów Helsińskiej Fundacji Praw Człowieka* 2014, 28-29, accessible at: <http://bit.ly/1eiVxDF>.

<sup>128</sup> Letter from the Head of the Office for Foreigners to HFHR from 27 August 2015 no BSZ-0811/1429/15/RW.

<sup>129</sup> Letter from the Border Guard Headquarters to HFHR from 24 August 2015 no FAX-KG-CU-5944/IP/15.

<sup>130</sup> Information obtained from the Department for Social Assistance, Office for Foreigners, 25 March 2014.

violence.<sup>131</sup> From 13 November 2015 the Head of the Office for Foreigners assesses if a person needs special treatment, also on the basis of medical reports; but assessment is not obligatory on this basis.<sup>132</sup>

A psychologist examines psychological conditions of the applicant, formulates a diagnosis on PTSD (classification DSM IV is applicable) and gives an opinion whether specific safeguards envisaged in the legal provisions should be applied- if the psychologist is necessary during the interview.<sup>133</sup>

The methodology set in the Istanbul protocol is not used.<sup>134</sup> However, UNHCR is in the process of translating the Protocol and soon will promote its use among relevant authorities.<sup>135</sup> The Head of the Office for Foreigners covers the costs of the medical reports, if it initiates them.<sup>136</sup>

### 3. Age assessment and legal representation of unaccompanied children

#### Indicators: Unaccompanied Children

1. Does the law provide for an identification mechanism for unaccompanied children?  
 Yes       No
2. Does the law provide for the appointment of a representative to all unaccompanied children?  
 Yes       No

#### Age assessment

Polish law provides for an identification mechanism for unaccompanied children.<sup>137</sup> An asylum seeker, who claims to be a child, in case of any doubts as to their age, may have to undergo medical examinations – with their consent or with the consent of their legal representative – in order to determine their actual age. There are no additional criteria set in law.

In case of a lack of consent, the applicant is considered an adult. Results of the medical examination should contain the information, if an asylum seeker is an adult. In case of any doubts, the applicant is considered as a minor. The responsibility for undertaking a medical examination is triggered by the authorities and shall be ensured by the SG.<sup>138</sup>

There are not any requirements as to which methods should be chosen and used and what qualifications doctors should have. The legislation only states that examination should be done in manner respecting dignity and using the least invasive technique.<sup>139</sup> However, since the end of 2013 there is an algorithm of conducting medical examination of age assessment in return and asylum proceedings applied by the SG. It was drafted following the guidelines of the Study Group on Forensic Age Diagnostics. It foresees three methods:

- 1) General examination;
- 2) X-ray of a wrist;
- 3) Teeth examination (pantomogram).

They are applied following the appointed order (from the least invasive) and in case of establishing a minor's age no additional examinations are conducted.<sup>140</sup> In practice in case the assessment cannot establish an exact age, young people are usually given the benefit of the doubt (this rule is reflected in the

<sup>131</sup> Article 68 Law on Protection (as applicable until 12 November 2015).

<sup>132</sup> Article 68(1) Law on Protection, as amended in November 2015.

<sup>133</sup> Letter from the Head of the Office for Foreigners, DPU-07-1410/2013 from 22 February 2013.

<sup>134</sup> Letter from the Head of the Office for Foreigners, DPU-07-1410/2013 from 22 February 2013.

<sup>135</sup> Information provided by UNHCR on 11 November 2014.

<sup>136</sup> Article 68(3) Law on Protection, as amended in November 2015.

<sup>137</sup> Article 30 Law on Protection (as applicable until 12 November 2015). From 13 November 2015: Article 32 Law on Protection.

<sup>138</sup> Article 32 Law on Protection, as amended in November 2015.

<sup>139</sup> Article 32(4) Law on Protection, as amended in November 2015.

<sup>140</sup> Letter from the Border Guard Headquarters to HFHR from 24 August 2015 no FAX-KG-CU-5944/IP/15.

law as of 13 November 2015). Although in 2011, several Afghan youths were subjected to an age assessment examination initiated by the SG (the applicants were detained) and they were declared adults, despite submitting documents from their country of origin, confirming that they were children. The practice of according little weight to documents confirming the age of the applicant sent from his country of origin and to giving preference to the age assessment expertise (even with the margin of error) continued in following years.<sup>141</sup>

In 2013, two age assessments procedures were carried out. The asylum applicants were unaccompanied children – one from Bangladesh and one from Ivory Coast. Apart from x-rays of the wrist, their skull, spine, and teeth were also x-rayed. During the second stage of the examination, there was a meeting with a dentist, anthropologist and two doctors with the interpreters. The doctors interviewed the children about infectious diseases, place of birth, height of family members, and previous operations. They also analysed the x-rays, and requested an examination of the genitalia upon the consent of the child. The legal representative was absent during the examinations.

In another case the opinion on age assessment did not include the margin of error and because of this shortcoming it was considered inadmissible.

In 2014 there was a case of an unaccompanied child of Vietnamese nationality, who was subject to the Dublin procedure as an asylum-seeking child, while at the same time being detained as an adult by the Border Guard on the basis of a medical examination. HFHR granted him legal assistance, but did not manage to stop his detention until he was successfully transferred to Germany.

### Legal representation

The Law on Protection provides for the appointment of a legal representative to an unaccompanied child - special guardian (*kurator*).<sup>142</sup> The guardian is appointed only for the purpose of the asylum procedure – i.e. the guardian cannot act in the other fields of life, even to apply for an integration program if the child is recognised as a refugee or granted subsidiary protection. There are no exceptions; each child has to have a legal representative and all unaccompanied children get one in practice. The Head of the Office for Foreigners or the SG immediately lodges the request to the district custodial court. The court appoints the legal representative. There is no specific time limit to appoint a representative to an unaccompanied child, but the guardian – in the best interests of the child – should be appointed as soon as possible. According to the Office for Foreigners, this usually takes approximately 2 months.<sup>143</sup> Under the Law amending the Law on Protection which entered into force on 13 November 2015, the deadline for appointing the guardian is 3 days.

There is no special requirement in the Law on Protection for being eligible as a representative of an unaccompanied child for an asylum procedure. The representative should be an adult and have legal capacity. There is no remuneration for being a legal representative. In practice, there are problems arising from the insufficient numbers of trained legal representatives for unaccompanied children. NGOs personnel and students of legal clinics at universities are appointed as guardians. The provisions on the appointment of a legal representative do not differ depending on the procedure. The legal representative

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<sup>141</sup> M. Jaźwińska, *Procedura badania wieku cudzoziemców (Procedure of foreigners' age assesment)*, in Helsinki Foundation for Human Rights, *W poszukiwaniu ochrony. Wybrane problemy dotyczące realizacji praw cudzoziemców ubiegających się o nadanie statusu uchodźcy i objętych ochroną międzynarodową w latach 2012-2014. Obserwacje Programu Pomocy Prawnej dla Uchodźców i Migrantów Helsińskiej Fundacji Praw Człowieka (In search of protection. Selected problems concerning the enforcement of rights of foreigners who apply for refugee status and are under international protection in the years 2012-2014. Observations of the Legal Assistance for Refugees and Migrants Programme of the Helsinki Foundation for Human Rights)*, 2014, accessible in Polish at: <http://bit.ly/1eiVxDF>, 76-77.

<sup>142</sup> Article 61 Law on Protection.

<sup>143</sup> Letter from the Head of the Office for Foreigners to HFHR from 27 August 2015 no BSZ-0811/1429/15/RW.

should be present during the interview, together with a psychologist, and may ask questions and make comments.<sup>144</sup>

Currently unaccompanied children are placed in various intervention facilities in Poland, instead of in a central institution. After the court ruling they can be placed in other care and educational facilities or families. Mostly unaccompanied minors in asylum proceedings are directed to care and educational facilities. There is no information whether the personnel speaks foreign languages there, this is not one of criteria.<sup>145</sup> In the first half of 2015 there were fifteen asylum seeking unaccompanied minors (5 from Vietnam, 4 from Tajikistan, 3 from Russia, 1 from Afghanistan, 1 from Iraq and 1 from Kyrgyzstan). In 12 cases the asylum proceedings were discontinued because the minor absconded.<sup>146</sup> During the reporting period three age assessments were conducted in the detention centre in Ketrzyn. In all three cases the applicants were minors.<sup>147</sup>

**F. The safe country concepts**

Indicators: Safe Country Concepts		
1. Does national legislation allow for the use of “safe country of origin” concept?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
❖ Is there a national list of safe countries of origin?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
❖ Is the safe country of origin concept used in practice?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
2. Does national legislation allow for the use of “safe third country” concept?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
❖ Is the safe third country concept used in practice?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
3. Does national legislation allow for the use of “first country of asylum” concept?	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No

**Safe country of origin**

National legislation in force until 12 November 2015 foresaw that an application should be considered manifestly unfounded and subject to an accelerated procedure if the applicant comes from a safe country of origin included in the common minimum list of safe countries of origin established by the Council of the European Union.<sup>148</sup> However, as such a list was never adopted by the Council of the EU, there was therefore in practice no safe country of origin concept being implemented in Poland.

After the amendment of the Law of Protection applicable from 13 November 2015 this concept does not apply in Poland.

**First country of asylum**

The concept of first country of asylum is included in Law amending the Law on Protection transposing the recast Asylum Procedures Directive and reflects the wording of Article 35 of that Directive. The law entered into force on 13 November 2015.

<sup>144</sup> Article 65(3) and (4) Law on Protection.  
<sup>145</sup> Letter from the Head of the Office for Foreigners to HFHR from 27 August 2015 no BSZ-0811/1429/15/RW.  
<sup>146</sup> Letter from the Head of the Office for Foreigners to HFHR from 27 August 2015 no BSZ-0811/1429/15/RW.  
<sup>147</sup> Letter from the Border Guard Headquarters from 18 August 2015 MAIL KG-OI-614/III/2015.  
<sup>148</sup> Article 34(1) Law on Protection (as applicable until 12 November 2015).



## G. Treatment of specific nationalities

### Indicators: Treatment of Specific Nationalities

1. Are applications from specific nationalities considered manifestly well-founded?  Yes  No  
❖ If yes, specify which: Syria
2. Are applications from specific nationalities considered manifestly unfounded?<sup>149</sup>  Yes  No  
❖ If yes, specify which:

In Poland there is no official policy implemented with regard to the top 5 countries of origin (Russia, Ukraine, Georgia, Tajikistan, Syria), because every application is examined individually. However, there are some trends visible in cases of Syrian, Ukrainian and Georgian asylum seekers. While asylum applications of Syrians are granted (or cases are discontinued, probably because of leaving Poland), Ukrainians and Georgians are generally refused any protection status (but their applications were generally not considered manifestly unfounded in 2015).

HFHR has documented SG practices in establishing the identity of asylum seekers. There were cases of Iranian, Vietnamese and Belarusian asylum seekers who were asked to meet the representatives from their country of origin consulates in order to confirm their identity. According to Polish authorities, such activities did not involve disclosing the information that the person concerned applied for asylum and there was therefore no infringement of Article 9 of the Law on Protection.<sup>150</sup>

However in the opinion of HFHR, organising a meeting itself poses a threat to the asylum seeker or his relatives in the country of origin. One example of this issue is highlighted in the case of **Vietnamese** citizens seeking asylum. On 23 April 2014, there was a visit by representatives of Vietnam's authorities to the guarded centre in Białystok. The purpose of the visit was to confirm the identity of detained foreigners believed to be Vietnamese nationals. HFHR was concerned because Vietnamese officials actually met asylum seekers. This issue was raised in a request submitted to the SG by HFHR. In response, the SG emphasised that, in accordance with the principle set out in law, asylum seekers are not interrogated unless they submitted their asylum applications after the list of people was already transferred by the SG to the Vietnamese authorities for the purposes of confirming identity. At the same time, the SG denied that actions taken by the SG on 23 April 2014 breached the rights of third country nationals. In another request, the HFHR referred to explanations of the SG and indicated at least two cases known to the HFHR concerning asylum applicants whose asylum examination had lasted for a long time and who were interrogated by representatives of the authorities of Vietnam on 23 April 2014 in the guarded centre in Białystok.<sup>151</sup> The problem was described in HFHR report published in December 2014.<sup>152</sup>

In recent years concerns were expressed with regard to the standards of reasoning in the decisions concerning **Russian citizens of Chechen nationality**.<sup>153</sup> HFHR practice in granting legal assistance to asylum seekers in Poland served as one of the sources of information. Generally, the situation in Chechnya has been considered stable for some time and it happens that country of origin information is taken into account only selectively. The authorities' position is that if there were no persecutions in the

<sup>149</sup> Whether under the "safe country of origin" concept or otherwise.

<sup>150</sup> Information concerning a foreigner cannot be made available to authorities or public institutions in their country of origin which would make it possible to determine that: (a) an asylum procedure of the foreigner is pending or has ended; (b) the foreigner has been granted or refused the refugee status or subsidiary protection.

<sup>151</sup> The request is on the website, accessible at: <http://bit.ly/1RBYHzf>.

<sup>152</sup> J. Białas, *Potwierdzenie tożsamości cudzoziemców w trakcie procedur uchodźczych (Confirming identity of foreigners during asylum procedures)*, in Helsinki Foundation for Human Rights, *W poszukiwaniu ochrony. Wybrane problemy dotyczące realizacji praw cudzoziemców ubiegających się o nadanie statusu uchodźcy i objętych ochroną międzynarodową w latach 2012-2014. Obserwacje Programu Pomocy Prawnej dla Uchodźców i Migrantów Helsińskiej Fundacji Praw Człowieka*, 2014, accessible in Polish at: <http://bit.ly/1eiVxDF>, 20.

<sup>153</sup> ECRE, *Guidelines on the treatment of Chechen internally displaced persons (IDPs), asylum seekers and refugees in Europe*, revised March 2011, accessible at: <http://bit.ly/1Yk1Qc8>; Dublin Transnational Project-Part 1, Final Report from May 2011, accessible at: <http://bit.ly/1SKXtDj>.

past, it cannot be argued that there can be a well-founded fear of persecutions upon return. Witness statements of other Chechens are not taken into account, as they are found not credible, since the members of the community are generally willing to testify in favour of one another. The Internal Flight Alternative (existing possibility to live in another part of Russian Federation) is raised in negative decisions, without giving due consideration of the personal situation of an applicant (vulnerable persons: elderly persons, single women with children). The Refugee Board in its report for 2014 admits that until 2009 the proven fact of living in Chechnya resulted in obtaining protection status. After finishing military action, there is no justification of granting protection only because of the general situation in the region and this has been confirmed by the numerous judgements of the Voivodeship Administrative Court. The Refugee Board expresses the opinion that the most instable situation can be observed in Dagestan.<sup>154</sup>

In 2014 the number of **Ukrainian** asylum seekers increased significantly. Ukrainians constituted 34 % of all asylum claims (there were 8,195 asylum applications, out of which 2,318 were citizens of Ukraine). With regard to these 2,318 applications lodged in 2014, the Office for Foreigners issued 645 negative decisions and 372 cases were discontinued. Subsidiary protection was granted in only six cases, and eleven applicants were issued a “tolerated stay” permit (a form of limited national protection). The remaining number are either pending, or there is no data on the result. In the first 6 months of 2015, 1,345 citizens of Ukraine applied for asylum in Poland. They constituted 33% of all asylum applicants. In the reporting period none of the Ukrainians were granted refugee status by the Head of the Office for Foreigners (first instance authority) and only 2 persons were granted subsidiary protection. 925 citizens of Ukraine were refused protection and 440 had their cases discontinued. As a result of appeal proceedings held by the Refugee Board, 2 Ukrainians were granted refugee status and altogether 8 were granted subsidiary protection. 475 persons had their decision upheld and 28 quashed. The main reason for rejection mentioned in the negative decisions concerns the Internal Flight Alternative (IFA). Contrary to political statements and actions, in the decisions Polish authorities express the opinion that the situation in the western part of the country is stable, so Ukrainians from conflict zones in the east could settle there safely and legally and have access to the necessary facilities.<sup>155</sup> As supporting evidence they point to the new law on internally displaced persons adopted in Ukraine.<sup>156</sup> In case of Crimea the Refugee Board in its decisions expresses the opinion that Ukraine is the only country of origin of the persons coming from this region (it is important as permanent inhabitants of Crimea acquired Russian citizenship *ex lege*).<sup>157</sup>

When asylum seekers are identified as **Syrian** nationals, they are granted refugee status or subsidiary protection. According to the official statistics of the Office for Foreigners for the first half of 2015, 27 Syrians were granted refugee status and cases of 35 persons were discontinued (no subsidiary protection and no negative decisions). This is mostly due to departure from Poland. The number of the asylum applicants from Syria is not high. In the first half of 2015 it was 57 asylum seekers, which is 1.5% of all applications during this period of time. No policy on “freezing” or postponing the examination of the applications was adopted. According to the Office for Foreigners, these applications are considered well-founded and subject to priority examination (the average processing time is 94 days compared to the regular processing time of 161 days).

As of mid-2015 no returns are carried out to the following countries: Syria, Central African Republic, Central and South Somalia, South Sudan, Yemen and Iraq.<sup>158</sup>

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<sup>154</sup> Report on the activities of the Refugee Board for 2014 (*Sprawozdanie z działalności Rady do Spraw Uchodźców za 2014 r.*), Warsaw, January 2015 (not available online).

<sup>155</sup> Report on the activities of the Refugee Board for 2014 (*Sprawozdanie z działalności Rady do Spraw Uchodźców za 2014 r.*), Warsaw, January 2015 (not available online).

<sup>156</sup> Information based on numerous cases handled by HFHR in 2014 and 2015.

<sup>157</sup> Report on the activities of the Refugee Board for 2014 (*Sprawozdanie z działalności Rady do Spraw Uchodźców za 2014 r.*), Warsaw, January 2015 (not available online).

<sup>158</sup> Letter from the Border Guard Headquarters to HFHR from 18 August 2015 no MAIL KG-OI-614/III/15.

## Reception Conditions

### A. Access and forms of reception conditions

#### 1. Criteria and restrictions to access reception conditions

##### Indicators: Criteria and Restrictions to Reception Conditions

1. Does the law make material reception conditions to asylum seekers in the following stages of the asylum procedure?
- |                           |   |  |  |
|---------------------------|---|--|--|
| ❖ Regular procedure       | <input checked="" type="checkbox"/> Yes | <input type="checkbox"/> Reduced material conditions | <input type="checkbox"/> No            |
| ❖ Dublin procedure        | <input checked="" type="checkbox"/> Yes | <input type="checkbox"/> Reduced material conditions | <input type="checkbox"/> No            |
| ❖ Admissibility procedure | <input checked="" type="checkbox"/> Yes | <input type="checkbox"/> Reduced material conditions | <input type="checkbox"/> No            |
| ❖ Accelerated procedure   | <input checked="" type="checkbox"/> Yes | <input type="checkbox"/> Reduced material conditions | <input type="checkbox"/> No            |
| ❖ First appeal            | <input checked="" type="checkbox"/> Yes | <input type="checkbox"/> Reduced material conditions | <input type="checkbox"/> No            |
| ❖ Onward appeal           | <input type="checkbox"/> Yes            | <input type="checkbox"/> Reduced material conditions | <input checked="" type="checkbox"/> No |
| ❖ Subsequent application  | <input checked="" type="checkbox"/> Yes | <input type="checkbox"/> Reduced material conditions | <input type="checkbox"/> No            |
2. Is there a requirement in the law that only asylum seekers who lack resources are entitled to material reception conditions?  Yes  No

Asylum seekers are entitled to material reception conditions to the same extent during all asylum procedures in Poland (there is no difference between regular, accelerated and admissibility procedures, as well as during first appeal).<sup>159</sup>

Asylum seekers are entitled to material reception conditions after claiming asylum, from the moment they register in one of the first reception centres. They should register here within two days after applying for asylum, otherwise their procedure will be discontinued.<sup>160</sup> Only medical assistance can be granted from the moment of claiming asylum (i.e. before registration in a first reception centre) in special situations, in case of threat to life and health.<sup>161</sup> Proof of an asylum application is confirmed by the temporary ID issued by the SG after submitting the claim. However, according to the Office for Foreigners, the lack of such a document is not a problem for registering at the reception centre.<sup>162</sup> For instance, such a situation occurred in practice in Dublin procedures – when asylum seekers were returned and their case was reopened, the SG did not issue the temporary ID and directed asylum seekers to the reception centre. From 13.11.2015 asylum seekers are entitled to temporary ID also when they are returned to Poland on the basis of the Dublin Regulation, if they claimed for asylum before departing from Poland and they state that they want to continue the asylum procedure in Poland.<sup>163</sup>

As a general rule, reception conditions (material assistance, accommodation, medical care) are provided up until 2 months after the decision on the asylum application becomes final (either positive or negative).<sup>164</sup> However, when the procedure is terminated with the decision on discontinuing the procedure (e.g. in admissibility procedures), reception conditions are provided until 14 days after the decision becomes final.<sup>165</sup> Moreover, from 1 May 2014 reception conditions are not provided, if the term in which an asylum seeker was obliged to leave Poland voluntarily has passed.<sup>166</sup> Asylum seekers as a rule are

<sup>159</sup> Article 70 Law on Protection.

<sup>160</sup> Article 42(1)(1a) Law on Protection.

<sup>161</sup> J. Białas, *Niezgodność zasad pomocy socjalnej zapewnianej osobom ubiegającym się o nadanie statusu uchodźcy z wyrokiem Trybunału Sprawiedliwości UE (Incompatibility of social assistance granted to foreigners applying for a refugee status with CJEU judgement)*, in Helsinki Foundation for Human Rights, *W poszukiwaniu ochrony. Wybrane problemy dotyczące realizacji praw cudzoziemców ubiegających się o nadanie statusu uchodźcy i objętych ochroną międzynarodową w latach 2012-2014. Obserwacje Programu Pomocy Prawnej dla Uchodźców i Migrantów Helsińskiej Fundacji Praw Człowieka*, 2014, accessible in Polish at: <http://bit.ly/1eiVxDF>, 52-53.

<sup>162</sup> Information obtained from Department for Social Assistance, Office for Foreigners, 25 March 2014.

<sup>163</sup> Article 55(2) and (3) Law on Protection, as amended in November 2015.

<sup>164</sup> Article 74(1)(2) Law on Protection.

<sup>165</sup> *Ibid.*

<sup>166</sup> Article 74(2)(2) Law on Protection.

obliged to leave Poland in 30 days from the day when the final decision of the Refugee Board was delivered or in 30 days from the moment when decision of Office for Foreigners becomes final (if they do not appeal).<sup>167</sup> In practice it means that the most often the reception conditions are provided only for 30 days, not 2 months, in case of negative decision. Reception conditions are provided in practice in this time frame.

In principle, during the onward appeal procedure before the Voivodeship Administrative Court in Warsaw,<sup>168</sup> asylum seekers are not entitled to material reception conditions. Although in practice, when the court suspends enforcement of the contested decision of the Refugee Board for the time of the court proceedings, asylum seekers are re-granted material reception conditions to the same extent as during the administrative asylum procedure, until the ruling of the court.<sup>169</sup> The problem is that the court sometimes suspends enforcement of the decision after 2-3 months<sup>170</sup> from the moment of submitting the complaint, which leaves an asylum seeker without assistance for some time. Moreover, after the amendment of the law from 1 May 2014, the Court is now less willing to suspend an enforcement of the contested decision made in a refugee procedure. These decisions do now not contain a direct return order. Return and the refugee procedure are disconnected. For this reason, the Court sometimes refuses to suspend enforcement of the asylum decision for the time of the court proceedings, which leaves asylum seekers without any material reception conditions for this time.

Good practice reported by some asylum seekers is that they were allowed to stay in the centre even though the period during which they were entitled to assistance had ceased after the above mentioned timeframes. On the other hand, some asylum seekers living outside the centres were afraid to go to the office or the centre to get the benefits they were entitled to after the negative decision became final, due to controls by the SG on the days when benefits are given. This practice was reported by asylum seekers in the specialised reception centre for women and children and in the centre in Linin.

The provision of reception conditions does not depend on the financial situation of asylum seekers.<sup>171</sup>

Some asylum seekers are not entitled to material reception conditions in an asylum procedure e.g. beneficiaries of subsidiary protection, applying for asylum again,<sup>172</sup> humanitarian stay or “tolerated stay”, TCNs staying in Poland on the basis of temporary stay permit, permanent stay permit or long-term residence permit, TCNs staying in youth care facilities or detention centres or pre-trial custody or detention for criminal purposes.<sup>173</sup> Beneficiaries of subsidiary protection, foreigners staying in Poland on the basis of permanent stay permit, long-term residence permit or – in some cases – temporary stay permit are entitled to state benefits (general social assistance system) to the same extent as Polish citizens. Foreigners who were granted humanitarian stay or tolerated stay are entitled to state benefits only in the form of shelter, food, necessary clothing and a benefit for specified purpose.<sup>174</sup>

There are some practical obstacles reported in accessing material reception conditions. Asylum seekers can apply to change assistance granted in the centre to assistance granted outside of the centre. If the Office for Foreigners agrees then in practice an asylum seeker is entitled to stay in the centre until the end of the month and from the next month they are entitled to financial allowance. The problem is that in law and in practice the financial allowance is not paid on the first day of the month, but by the fifteenth of

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<sup>167</sup> Article 299(6)(2) Law on Foreigners.

<sup>168</sup> After the administrative appeal procedure before the Refugee Board, there is a possibility of an onward appeal before the Voivodeship Administrative Court in Warsaw, but only points of law can be litigated at this stage.

<sup>169</sup> This is the interpretation of the Legal Department of the Office for Foreigners.

<sup>170</sup> Letter from the President of the Voivodeship Administrative Court in Warsaw to HFHR Prez-060/7/14 from 18 April 2014.

<sup>171</sup> Articles 70-74 Law on Protection.

<sup>172</sup> In practice some foreigners after the end of the asylum procedure, in which they were granted subsidiary protection, ask for asylum again in order to be granted refugee status.

<sup>173</sup> Article 70(2) Law on Protection.

<sup>174</sup> Article 5(2) Law of 30 August 2002 on social assistance (Ustawa z dnia 30 sierpnia 2002 r. o pomocy społecznej).

each month.<sup>175</sup> It means that foreigners have to move from the centre at the end of the month, but do not get any financial resources to rent an apartment or even buy food for a couple days or even weeks – such cases were reported to the HFHR.<sup>176</sup> The Office for Foreigners claims that asylum seekers can stay in the reception centre until the first day of the payment, but then the monthly payment is smaller, so asylum seekers decide themselves to get allowance for a whole month and not only for the part during which they were not living in a centre.<sup>177</sup>

Another problem reported is that if an asylum seekers cannot come to the centre to collect the monthly financial allowance on the appointed day (i.e. because they are ill), they will only be able to get the allowance the following month, with a new payment. If they do not have additional sources of income, they are left without assistance for one month.

A further obstacle to receiving support is encountered by formerly detained asylum seekers. Those who have been detained are not entitled to support after being released from the detention centre. They are granted material reception conditions only from the moment of registration in a reception centre, which is very often located far away from the detention centre. As a result asylum seekers have problems covering the cost of transport to the reception centre.<sup>178</sup>

Moreover, it was reported that asylum seekers in the process of appealing a decision were sometimes not granted social assistance, for the simple reason that the Office for Foreigners' system had no record that their appeal had been lodged.<sup>179</sup>

Dublin returnees, if they ask for asylum in Poland (in case if they did not claim for asylum in Poland before) or if they ask to re-open their asylum procedure (when it was discontinued because of their departure from Poland), are entitled to reception conditions on the same rules as mentioned above.

Asylum seekers, who are subject to a Dublin transfer from Poland, are entitled to additional assistance, upon request. The assistance in case of the transfer to other EU country covers: travel costs, administrative payments for travel document or visas and permits, cost of food and medical assistance during the travel.<sup>180</sup> Reception conditions are provided for such asylum seekers as long as they should leave Poland to other EU country;<sup>181</sup> it is an exception from the general rules concerning the period in which reception conditions are provided described above. Request for this assistance has to be made in a specific term (30 days from the moment when the final decision on transfer is delivered to the asylum seeker). After this time, demand of the asylum seeker is left without consideration.<sup>182</sup>

## 2. Forms and levels of material reception conditions

### Indicators: Forms and Levels of Material Reception Conditions

1. Amount of the monthly financial allowance/vouchers granted to asylum seekers as of 30 September 2015 (in original currency and in €):
  - ❖ Accommodated, incl. food 50 PLN / €12
  - ❖ Private accommodation 775 PLN / €185

<sup>175</sup> Section 3(6) Regulation on amount of assistance for asylum seekers, current schedule of payments, accessible at: <http://bit.ly/1kKb6s3>.

<sup>176</sup> HFHR, Letter to the Office for Foreigners from 9 September 2013, accessible at: <http://bit.ly/113dogZ>.

<sup>177</sup> Letter from Office for Foreigners from 23 September 2013, accessible at: <http://bit.ly/1OhAO2W>.

<sup>178</sup> J. Białas, *Niezgodność zasad pomocy socjalnej zapewnianej osobom ubiegającym się o nadanie statusu uchodźcy z wyrokiem Trybunału Sprawiedliwości UE*, 53.

<sup>179</sup> M. Łysienia, *Prawidłowe funkcjonowanie systemu POBYT jako gwarancja przestrzegania praw cudzoziemców (Proper functioning of POBYT system as a guarantee for respect of foreigners' rights)*, in Helsinki Foundation for Human Rights, *W poszukiwaniu ochrony*, 2014, 49.

<sup>180</sup> Article 75a(2) in conjunction with Article 75(2) Law on Protection.

<sup>181</sup> Article 74(3)(2) Law on Protection.

<sup>182</sup> Article 75a(2) in conjunction with Article 75(3) and (3a) Law on Protection.

The Regulation on amount of assistance to asylum seekers sets the level of financial allowances for all amounts related to reception conditions. In the law there are 2 forms of reception conditions:<sup>183</sup>

### Assistance granted in the centre

Material conditions	Financial level (where applicable)
Accommodation	
Provision of all meals in the centre or its financial equivalent	PLN 9 / €2.15 per day
Allowance for personal expenses	PLN 50 / €11.93 per month
Permanent financial assistance for purchase of hygienic articles or hygienic utilities <sup>184</sup>	PLN 20 / €4.77 per month
One-time financial assistance or coupons for purchase of clothing and footwear	PLN 140 / €33.42
Polish language course and basic materials supplies necessary for the course	
Supplies for school for children enjoying education and care of public institutions, primary schools, gymnasia or grammar schools and covering, as far as possible the expenses of extra-curricular classes and sports and recreational classes	
Financing of tickets for public transport <ul style="list-style-type: none"> <li>- In order to take part in the proceedings for granting the refugee status;</li> <li>- In order to attend medical examinations or vaccinations;</li> <li>- In other particularly justified cases.</li> </ul>	
Medical care	

### Assistance granted outside the centre

Material conditions	Financial level (where applicable)
Financial allowance for all costs of stay in Poland (amount per person) <ul style="list-style-type: none"> <li>❖ Single adult</li> <li>❖ Two family members</li> <li>❖ Three family members</li> <li>❖ Four or more family members</li> </ul>	PLN 25 / €5.97 per day PLN 20 / €4.77 per day PLN 15 / €3.58 per day PLN 12.50 / €2.98 per day
Polish language course and basic materials supplies necessary for the course	
Supplies for school for children enjoying education and care of public institutions, primary schools, gymnasia or grammar schools and covering, as far as possible the expenses of extra-curricular classes and sports and recreational classes <sup>185</sup>	
Financing of tickets for public transport <sup>186</sup> <ul style="list-style-type: none"> <li>- In order to take part in the proceedings for granting the refugee status;</li> <li>- In order to attend medical examinations or vaccinations;</li> <li>- In other particularly justified cases.</li> </ul>	
Medical care	

<sup>183</sup> Article 71 Law on Protection.

<sup>184</sup> From 13 November 2015 it is possible not only to provide asylum seekers with permanent financial assistance for purchase of hygienic articles, but also with hygienic utilities themselves: Article 1(30) Law amending the Law on Protection.

<sup>185</sup> The Office for Foreigners claims that it includes also financing tickets for public transport.

<sup>186</sup> From 13 November 2015 it is possible also to finance the purchase of the tickets for public transport in case of assistance granted outside the centre: Article 1(30) Law amending the Law on Protection.

Under the law, the assistance granted in the centre is a rule and it is granted to all asylum seekers. An asylum seeker can obtain assistance granted out of the centre upon request, examined by the Head of the Office for Foreigners. It can be granted for organisational, safety or family reasons or to prepare asylum seekers for an independent life after they have been granted any form of protection.<sup>187</sup>

All of the above mentioned reception conditions are used in practice. As of 31 July 2015, 1,315 asylum seekers benefited from assistance in the centres and 2,460 asylum seekers were granted assistance outside the centres.<sup>188</sup> In the first half of 2015, on average 1,267 asylum seekers benefited from assistance in the centres and 2,585 asylum seekers were granted assistance outside the centres.

The amount of social assistance that asylum seekers receive is generally not sufficient to ensure an adequate standard of living in Poland. With only PLN 750-775 per month, it is very difficult to rent an apartment or even a room in Warsaw, where most asylum seekers stay during the procedure.<sup>189</sup> As the amount of financial allowance is not enough to rent separate accommodation, asylum seekers are often forced to live in overcrowded and insecure places. Many of them sleep in overcrowded apartments, where they have to share beds with other people or where living conditions do not provide privacy and personal safety.<sup>190</sup> Social assistance for families of four members amounts to PLN 1,500 per month and in practice is enough only to rent an apartment. Insufficient amounts of social assistance forces asylum seekers to work in Poland illegally in order to maintain and pay the rent.<sup>191</sup>

The amount of social assistance is below the so called “social minimum” (indicator which evaluates the cost of living in Poland). The asylum seeker receives from one and half to two times less than what is essential according to the “social minimum”. The amount of social assistance for asylum seekers was not increased from 2003, even though the costs of living in Poland have enlarged by 35 to 50% depending on the type of the household.<sup>192</sup>

As a result, material reception conditions are considered insufficient to ensure a decent standard of living as highlighted in the CJEU judgment in *Saciri*.<sup>193</sup> The amount of social assistance that asylum seekers receive is not adjusted to their state of health, their age or disability, which is incompatible with *Saciri* and *Others*.<sup>194</sup>

Asylum seekers are not required to contribute to the costs of reception.

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<sup>187</sup> Article 72(1) Law on Protection.

<sup>188</sup> Accessible in Polish at: <http://bit.ly/1GQaELC>. Information provided by the Office for Foreigners, e-mail from 26 January 2015.

<sup>189</sup> N. Klorek, *Ochrona zdrowia nieudokumentowanych migrantów i osób ubiegających się o ochronę międzynarodową w opinii cudzoziemców (Healthcare of the undocumented migrants and persons seeking international protection in the opinion of foreigners)*, in A. Chrzanowska, W. Klaus, ed., *Poza systemem. Dostęp do ochrony zdrowia nieudokumentowanych migrantów i cudzoziemców ubiegających się o ochronę międzynarodową w Polsce (Outside the system. Access to health care of undocumented migrants and foreigners seeking international protection in Poland)*, Stowarzyszenie Interwencji Prawnej, 2011, 56.

<sup>190</sup> K. Wysińska, *Gdzie jest mój dom? Bezdomność i dostęp do mieszkań wśród ubiegających się o status uchodźcy, uchodźców i osób z przyznaną ochroną międzynarodową w Polsce (Where is my home? Homelessness and access to housing among asylum seekers, refugees and persons granted international protection in Poland)*, UNHCR, 2013, 14, accessible in Polish at: <http://bit.ly/1CMmGFb>, 14.

<sup>191</sup> Stowarzyszenie Interwencji Prawnej, A. Chrzanowska, I. Czerniejewska, “Mieszkamy tutaj, bo nie mamy innego wyjścia... Raport z monitoringu warunków mieszkaniowych uchodźców w Polsce” (“We live here, because we have no other choice... Report from the monitoring of housing conditions of refugees in Poland”), *Analizy, raporty, ekspertyzy* Nr 2/2015, 55, accessible in Polish at: <http://bit.ly/1Lq2Hie>.

<sup>192</sup> M. Jaźwińska, M. Szczepanik, “All quiet on the Eastern front: asylum trends and reception of refugees in Poland during the 2013-2015 Europe’s migration crisis” in Corvinus Society for Foreign Affairs and Culture, *(Biztpol Affaires 2015 Summer Vol. 3 No 2)*, accessible at: <http://bit.ly/1OiDPgX>.

<sup>193</sup> CJEU, Case C-79/13 *Saciri*, Judgment of 27 February 2014; J. Białas, *Niezgodność zasad pomocy socjalnej zapewnianej osobom ubiegającym się o nadanie statusu uchodźcy z wyrokiem Trybunału Sprawiedliwości UE*, 52.

<sup>194</sup> *Ibid.*

According to the law, in case an asylum seeker performs cleaning work for the centre, provides translation or interpretation that facilitates communication between the personnel of the centre and asylum seekers, or provides cultural and educational activities for other asylum seekers who stay in the centre, the amount of the allowance for personal expenses may be raised to PLN 100 (e.g. in the first half of 2015, such an increased allowance was paid in 367 cases).<sup>195</sup>

The system of granting material reception conditions for asylum seekers is separate from the general social assistance rules applicable to nationals and therefore these two are not comparable. Social assistance for nationals is provided on individually based assessment of needs, asylum seeker's reception material conditions are provided to every asylum seeker, generally to the same extent.

### 3. Types of accomodation

Indicators: Types of Accommodation	
1. Number of reception centres: <sup>196</sup>	11
2. Total number of places in the reception centres:	1,980
3. Total number of places in private accommodation:	Not known
4. Type of accommodation most frequently used in a regular procedure:	<input type="checkbox"/> Reception centre <input type="checkbox"/> Hotel or hostel <input type="checkbox"/> Emergency shelter <input checked="" type="checkbox"/> Private housing <input type="checkbox"/> Other
5. Type of accommodation most frequently used in an accelerated procedure:	<input type="checkbox"/> Reception centre <input type="checkbox"/> Hotel or hostel <input type="checkbox"/> Emergency shelter <input checked="" type="checkbox"/> Private housing <input type="checkbox"/> Other

In Poland there are eleven reception centres which altogether provide 1,980 places.<sup>197</sup> Two centres serve for first reception<sup>198</sup> (asylum seekers are directed there after applying for asylum in order to register and carry out medical examinations). The other nine are accommodation centres.

Centres are located in different parts of Poland. Some of them are located in cities (**Warsaw, Biała Podlaska, Białystok, Lublin**), but most of them are located in the countryside. Some are located far away from any towns (**Bezwola, Dębak, Czerwony Bór**).<sup>199</sup>

There is no problem of overcrowding in these centres; as of 31 July 2015 in first reception centres there was 59% occupancy rate and in other centres: 68%.<sup>200</sup>

The Head of the Office for Foreigners is responsible for the management of all the centres. This authority can delegate its responsibility for managing the centres to social organisations, associations, etc.<sup>201</sup> Currently 7 reception centres are managed by private contractors (private owners and companies).<sup>202</sup> The Office for Foreigners monitors the situation in centres managed by private contractors e.g. by unexpected

<sup>195</sup> Letter from the Head of the Office for Foreigners from 27 August 2015 no BSZ-0811/1429/15/RW. List of the reception centres, accessible at: <http://bit.ly/1JzdU5c>.

<sup>196</sup> Both permanent and for first arrivals. In general both in the accelerated and regular procedure TCNs choose to receive social assistance outside the centre rather than to stay in a reception centre.

<sup>197</sup> Letter from the Head of the Office for Foreigners from 27 August 2015 no BSZ-0811/1429/15/RW. In 2013 the number of asylum seekers in Poland significantly increased (from a total of 10,753 applications for refugee status in 2012 to 10,407 applications only in the first 6 months of 2013). In total it was 15,253 asylum applications in Poland in 2013. The Office for Foreigners had to open two new centres (both in **Bezwola**) and buy more places for foreigners in existing centres: Office for Foreigners' letter DPS-WPS-510-3590/2013/MRS from 24 September 2013. In 2014 there was again smaller amount of applications: 6,621.

<sup>198</sup> N. Klorek, *op. cit.* See also Letter from the Head of the Office for Foreigners from 27 August 2015 no BSZ-0811/1429/15/RW.

<sup>199</sup> List and map of reception centres accessible at: <http://bit.ly/1JzdU5c>.

<sup>200</sup> Letter from the Head of the Office for Foreigners from 27 August 2015 no BSZ-0811/1429/15/RW.

<sup>201</sup> Article 79(2) Law on Protection.

<sup>202</sup> Urząd do Spraw Cudzoziemców, *Informator Departamentu Pomocy Socjalnej*, 21 January 2013 and 25 March 2014.



visits.<sup>203</sup> Asylum seekers can complain to the Office for Foreigners on the situation in the centres and they use this opportunity in practice.<sup>204</sup>

Other types of accommodation such as hotels can be used only in emergency situations, for short periods of time (e.g. when staying in the centre would put an asylum seeker at risk, e.g. in case of a serious conflict with other asylum seekers staying in the centre). This possibility has not been used in practice yet.<sup>205</sup>

There are no specific facilities for asylum seekers who apply at the borders or in transit zones.

#### 4. Conditions in reception facilities

##### Indicators: Conditions in Reception Facilities

1. Are there instances of asylum seekers not having access to reception accommodation because of a shortage of places?  Yes  No
2. What is the average length of stay of asylum seekers in the reception centres? Not known
3. Are unaccompanied children ever accommodated with adults in practice?  Yes  No

The location of some of the reception centres is criticised by NGOs. Centre in Bezwola, Dębak, Grupa and Linin are located in the woods. The centre in Warsaw (for single women with children) is situated far away from the city centre, near factories and a construction company. Nearby there are no shops or other service points, to get to the centre asylum-seeking women have to walk through densely tree-lined road and this road is not illuminated enough. This raises concerns with regard to safety of single women living there.<sup>206</sup>

Living conditions differ in reception centres. In the centres managed by private contractors ensuring certain minimum living conditions standards is obligatory on the basis of agreements between these contractors and the Office for Foreigners e.g. centres have to have furnished rooms for asylum applicants, a separate common-room for men and for women, kindergarten, space to practice religion, a recreation area, schoolrooms, specified number of refrigerators and washing machines.<sup>207</sup> Other conditions are dependent on the willingness and financial situation of the contractor.<sup>208</sup>

Asylum seekers are responsible for cleaning their rooms and common areas such as kitchens and bathrooms.<sup>209</sup> In all centres there is a problem with insects. During the monitoring in reception centre in

<sup>203</sup> European Migration Network, *The Organisation of Reception Facilities for Asylum Seekers in different Member States. National Contribution of Poland*, 2013, 24-25, and information obtained from Department for Social Assistance, Office for Foreigners, 25 March 2014.

<sup>204</sup> Information obtained from Department for Social Assistance, Office for Foreigners, 25 March 2014; Para 17 of the Annex to the Regulation on rules of stay in the centre for asylum seekers.

<sup>205</sup> Information obtained in Department for Social Assistance, Office for Foreigners, 7.02.2013 and 25.03.2014, also: Letter from the Head of the Office for Foreigners from 27 August 2015 no BSZ-0811/1429/15/RW.

<sup>206</sup> Centrum Pomocy Prawnej im. Haliny Nieć, K. Przybyłowska (Ed.), "Raport: Przemoc seksualna i przemoc ze względu na płeć w ośrodkach dla osób ubiegających się o nadanie statusu uchodźcy 2012-2014" ("Report: Sexual and Gender - Based Violence in Centers for Asylum Seekers 2012-2014"), (December 2014), 8-10, accessible in Polish at: <http://bit.ly/1L1SxFG>.

<sup>207</sup> Office for Foreigners, Brochure of the Department for Social Assistance (*Informator Departamentu Pomocy Socjalnej*), 2014, also European Migration Network *The Organisation of Reception Facilities for Asylum Seekers in different Member States. National Contribution of Poland*, (2013), 13.

<sup>208</sup> Rzecznik Praw Obywatelskich (Polish Ombudsman), *Realizacja prawa małoletnich cudzoziemców do edukacji. Raport RPO (PL) (Implementation of the right to education for foreign minors. Polish Ombudsman report)*, (2013), 22, accessible at: <http://bit.ly/1Hz4N4a>.

<sup>209</sup> Information obtained from the Department for Social Assistance, Office For Foreigners, 25.03.2014.

Warsaw,<sup>210</sup> all women pointed out that there is a lot of insects in the centre and even showed bites. Women claimed that pest control procedures are occasionally carried out but they are not effective. The problem with insects was also mentioned by asylum seekers during the monitoring in 2015 (centres in **Bezwola** and **Białystok**).<sup>211</sup>

Rooms in the centres are designed for 2, 4 or more people depending on family's needs.<sup>212</sup> Single adults can share a room, but in practice in the centre in Bezwola, Grotniki and Grupa they are accommodated in single rooms.<sup>213</sup> The Office for Foreigners claims that the amount of toilet facilities and showers is sufficient, although some people complained that it is not the case.<sup>214</sup> NGOs point that some of the bathrooms are common for all asylum seekers (they are not situated in the rooms but on the corridor), which increases the risk of sexual-based violence.<sup>215</sup>

Only in one centre (**Czerwoný Bór**) asylum seekers have to cook for themselves. In other centres asylum seekers receive food from the centre (three meals per day), although there is a kitchen in all centres and asylum seekers can also cook for themselves. Asylum seekers who require specific dietary requirements do receive them (i.e. vegetarian, adapted to their religion or health state, for pregnant women and children). The food provided has to be in accordance with the Act of 25 August 2006 on food safety and nutrition.<sup>216</sup> The nutritional values are checked by the Office for Foreigners from time to time.<sup>217</sup> Accordingly to the legislation food and drinks should be prepared – as far as it is possible – by taking into account religious and cultural requirements. Hours of the meals can be changed by employees of the centre, in accordance with religious practices of asylum seekers.<sup>218</sup>

Polish language courses were organised in first half of 2015 in all reception centres, also for children. Different workshops are organised in the centres by NGOs, although it is dependent on their financing. Not all centres have a library. In 9 centres there is Wi-Fi available and in 4 centres there are computer rooms with access to internet.<sup>219</sup>

Asylum seekers can go outside from the centre whenever they want, during the day, but they should be back before 11pm.<sup>220</sup>

At present, one employee is in charge of approximately 100 asylum seekers (staying in and out of the centres) and 39 asylum seekers (if only those staying in the centres are taken into account).<sup>221</sup> There are not enough employees in the centres (2-5 workers per centre).<sup>222</sup> As of August 2015 there are 34 employees working in all the centres (number does not include technical-administrative workers like

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<sup>210</sup> Monitoring concluded in September 2013 in reception centre in Warsaw by different NGOs, the Office for Foreigners and UNHCR, accessible at: <http://bit.ly/1LJlgSQ>.

<sup>211</sup> Monitoring concluded in August 2015 in reception centre in Bezwola and Białystok by UNHCR, different NGOs (incl. HFHR) and public authorities.

<sup>212</sup> EMN, *The Organisation of Reception Facilities for Asylum Seekers in different Member States. National Contribution of Poland*, 2013, 17, accessible at: <http://bit.ly/1eIFxAS>.

<sup>213</sup> Centrum Pomocy Prawnej im. Haliny Nieć, K. Przybysławska (Ed.), "Raport: Przemoc seksualna i przemoc ze względu na płeć w ośrodkach dla osób ubiegających się o nadanie statusu uchodźcy 2012-2014" ("Report: Sexual and Gender - Based Violence in Centers for Asylum Seekers 2012-2014"), December 2014, 10.

<sup>214</sup> During the monitoring in reception centre in Warsaw concluded in September 2013, women living in the centre claimed that one of the bathrooms is closed for longer period of time because of a damage. As a result they could use only one bathroom, which ended up with very long queues, accessible at <http://bit.ly/1LJlgSQ>.

<sup>215</sup> Centrum Pomocy Prawnej im. Haliny Nieć, K. Przybysławska (Ed.), *Report: Sexual and Gender - Based Violence in Centers for Asylum Seekers 2012-2014*, December 2014, 10.

<sup>216</sup> Letter from the Head of the Office for Foreigners from 27 August 2015 no BSZ-0811/1429/15/RW.

<sup>217</sup> Information obtained from Department for Social Assistance, Office For Foreigners, 25.03.2014. See also EMN, *The Organisation of Reception Facilities for Asylum Seekers in different Member States. National Contribution of Poland*, 2013, 21.

<sup>218</sup> Para 10.3 and 4 of the Annex to the Regulation on rules of stay in the centre for asylum seekers.

<sup>219</sup> Letter from the Head of the Office for Foreigners from 27 August 2015 no BSZ-0811/1429/15/RW.

<sup>220</sup> Para 10.3 Regulation on rules of stay in the centre for asylum seekers.

<sup>221</sup> Letter from the Head of the Office for Foreigners from 27 August 2015 no BSZ-0811/1429/15/RW.

<sup>222</sup> Letter from the Head of the Office for Foreigners from 27 August 2015 no BSZ-0811/1429/15/RW, 23, 35, accessible at: <http://bit.ly/1GQqTza>.

cleaners).<sup>223</sup> The amount of staff and guards working in the centres is not sufficient in NGOs opinion. Staff of the centre is working from Monday to Friday from 8:00 to 16:00. At night and on weekends only guards are present in the centre, which is not sufficient.<sup>224</sup>

In 2013 and 2014 no protests or hunger strikes in centres were reported.<sup>225</sup> However, in March 2014 a group of Ukrainian asylum seekers had numerous concerns about the conditions in the reception centre in Debak – Podkowa Lesna, which were reported by the media. Those concerns related mostly to the presence of insects and the unsanitary conditions.<sup>226</sup> At the end of 2014 one of the buildings in this centre was completely renovated, from July 2014 – the second building is renovated.<sup>227</sup>

In all centres there is a special room designed for religious practices.<sup>228</sup> If asylum seekers want to participate in religious services outside of the centre, they have such a right, although in practice remoteness from the closest place of worship can prevent them from participating in such services.

## 5. Reduction or withdrawal of reception conditions

### Indicators: Reduction or Withdrawal of Reception Conditions

1. Does the law provide for the possibility to reduce material reception conditions?  
 Yes  No
2. Does the law provide for the possibility to withdraw material reception conditions?  
 Yes  No

The law provides for a possibility to withdraw material reception conditions, if an asylum seeker grossly violates the rules in the centre or acts violently towards employees of the centre or other foreigners staying there.<sup>229</sup> The decision on depriving reception conditions is issued by the Head of the Office for Foreigners. It can be re-granted to the same extent as previously, but if the violation occurs again, it can be re-granted only in the form of a payment of half of the regular financial allowance provided to asylum seekers.<sup>230</sup>

If an asylum seeker seriously breaches the rules in the centre, in practice they receive three warnings before any further consequences. If they still breach the rules after those warnings, they can be deprived of material reception conditions. Other sanctions are not applied.<sup>231</sup>

Social assistance can be reduced to half of the financial allowance provided to asylum seekers also in case of a refusal to undergo medical examinations or necessary sanitary treatment of the asylum seeker themselves and their clothes.<sup>232</sup>

The above mentioned rules of withdrawal and reduction of social assistance are used in practice very rarely (around 5 times in 2013, in 2014 there was only one case of withdrawal, in a first half of 2015 no

<sup>223</sup> Letter from the Head of the Office for Foreigners from 27 August 2015 no BSZ-0811/1429/15/RW.

<sup>224</sup> Centrum Pomocy Prawnej im. Haliny Nieć, K. Przybysławska (Ed.), *Report: Sexual and Gender - Based Violence in Centers for Asylum Seekers 2012-2014*, December 2014), 12-13.

<sup>225</sup> Information obtained from Department for Social Assistance, Office for Foreigners, 25 March 2014.

<sup>226</sup> Polskie Radio, "Brud i smród" - uchodźcy z Ukrainy skarżą się na warunki w polskim ośrodku ("Dirty and stinky" - refugees from Ukraine complain about the conditions in a Polish reception centre), 27 March 2014, accessible at: <http://bit.ly/NY8bKX>.

<sup>227</sup> Letter from the Head of the Office for Foreigners from 27 August 2015 no BSZ-0811/1429/15/RW.

<sup>228</sup> Letter from the Head of the Office for Foreigners from 27 August 2015 no BSZ-0811/1429/15/RW.

<sup>229</sup> Article 76(1) Law on Protection, as amended in November 2015. Before the amendment it was possible to withdraw material reception conditions in cases where an asylum seeker grossly violates the rules of social co-existence in the centre.

<sup>230</sup> Articles 76 and 78 Law on Protection, as amended in November 2015. Before the amendment, it was possible to reduce material reception conditions in this situation to one third of the regular payments.

<sup>231</sup> Information obtained from Department for Social Assistance, Office for Foreigners, 25 March 2014.

<sup>232</sup> Article 81(3) Law on Protection, as amended in November 2015. Until 12 November 2015 it was possible to reduce material reception conditions in this situation to one third of the regular payments.

such decision was issued).<sup>233</sup> In 2013 the 5 people concerned asked to be re-granted social assistance and it was re-granted to them.<sup>234</sup> No information is available about the specific reasons of such a withdrawal or reduction.

Moreover, in case an asylum seeker benefiting from social assistance in the centre stays outside this centre for a period exceeding two days, granting such assistance should be withheld by law until the moment of his return.<sup>235</sup>

Decisions on reduction and withdrawal of reception conditions are made on an individual basis. Asylum seekers have a possibility under the law to appeal a decision on reduction and withdrawal of reception conditions. Free legal assistance is provided by NGOs only under the general scheme (see section on Legal aid under the regular procedure).

Since 1 January 2012, the Ministry of Interior has a possibility to reduce asylum seekers' social assistance and/or medical care, if the limit of expenses allocated for this assistance per year (PLN 100,000,000) is likely to be exceeded or if, in a certain period of time, expenses exceed the forecasted amount for this period by at least 10%.<sup>236</sup> Such situation can occur in the case of an increased number of asylum seekers arriving to Poland. The Ministry has not used this opportunity yet.

Asylum seekers are not asked to refund any costs of material reception conditions.

## 6. Access to reception centres by third parties

### Indicators: Access to Reception Centres

1. Do family members, legal advisers, UNHCR and/or NGOs have access to reception centres?  
 Yes                       With limitations                       No

Asylum seekers staying in the centres have the right to be visited by family members, legal advisers, UNHCR, NGOs, etc. in the rooms intended for that purpose.<sup>237</sup>

Asylum seekers may receive visits in the centre from 10:00 to 16:00 in a place indicated by the employee of the centre. In particularly justified cases the visiting hours in the centre may be prolonged upon permission of the director of the centre, till no later than 22:00.<sup>238</sup>

Each entry of a non-resident into the premises of the centre requires the permission of:<sup>239</sup>

- (a) The employee of the centre in the case of asylum seekers receiving social assistance, other than living in this centre;
- (b) The Head of the Office for Foreigners in other cases.

The Head of the Office for Foreigners or an employee of the centre can refuse to give permission to enter the centre or withdraw it, if this is justified with regards to the interest of the third country national or necessary to ensure the safety or for epidemiological and sanitary reasons.<sup>240</sup>

<sup>233</sup> Letter from the Head of the Office for Foreigners from 27 August 2015 no BSZ-0811/1429/15/RW.

<sup>234</sup> Information obtained in Department for Social Assistance, Office for Foreigners, 7 February 2013 and 25 March 2014. No such cases in 2014 and first half of 2015.

<sup>235</sup> Article 77 Law on Protection.

<sup>236</sup> Article 19 Law of 28 July 2011 on the legalisation of the stay of certain foreigners on Polish territory, Journal of Laws 2011 no 191 position 1133 (*Ustawa z dnia 28 lipca 2011 r. o zalegalizowaniu pobytu niektórych cudzoziemców na terytorium Rzeczypospolitej Polskiej oraz o zmianie ustawy o udzielaniu cudzoziemcom ochrony na terytorium Rzeczypospolitej Polskiej i ustawy o cudzoziemcach, Dz. U. 2011 nr 191 poz. 1133*), accessible at: <http://bit.ly/1NyZMY8>.

<sup>237</sup> Paras 7-9 of the Annex to the Regulation on rules of stay in the centre for asylum seekers.

<sup>238</sup> Para 9 of the Annex to the Regulation on rules of stay in the centre for asylum seekers.

<sup>239</sup> Para 7.2 of the Annex to the Regulation on rules of stay in the centre for asylum seekers.

The above mentioned rules do not apply to the representative of the UNHCR, who may enter the centre anytime provided that the director of the centre was notified in advance.<sup>241</sup> In the case of NGOs, whose tasks include the provision of assistance to asylum seekers, and entities which provide legal assistance to asylum seekers, the Head of the Office for Foreigners may issue a permit to enter the centre for the period of their activities performed for the asylum seekers residing in the centre.<sup>242</sup>

During their stay in the centre, asylum seekers communicate with legal advisers, UNHCR or NGOs mainly by phone, fax, e-mail, etc. Eight out of the eleven centres are located in small villages, far away from big cities, where most of the legal advisers, UNHCR and NGOs in Poland have their premises, and accessing them can be an obstacle. As a result, asylum seekers are often contacted only remotely, especially when NGOs do not have the funds for travelling to these centres. Thus contact cannot be said to be effective (see section on Regular Procedure: Legal Assistance).<sup>243</sup> In 2015 the situation worsened because of the lack of funding of the NGOs' activities from the EU funds (NGOs had to diminish or terminate most of their activities in the centres).<sup>244</sup>

## 7. Addressing special reception needs of vulnerable persons

### Indicators: Special Reception Needs

1. Is there an assessment of special reception needs of vulnerable persons in practice?  
 Yes  No

In Polish legislation until 13 November 2015 there were only four categories of asylum seekers that are considered vulnerable: unaccompanied children; disabled people; victims of violence and, to some extent; single women (including with children). Elderly people, who are not seriously ill, pregnant women, if were are not single and single fathers with children were not considered vulnerable by law and in practice.<sup>245</sup>

From 13 November 2015 foreigners, who need special treatment, are defined particularly as:<sup>246</sup>

1. Minors
2. Disabled people
3. Elderly people
4. Pregnant women
5. Single parents
6. Victims of human trafficking
7. Seriously ill
8. Mentally disordered people
9. Victims of torture
10. Victims of violence (psychological, psychical, including sexual).

<sup>240</sup> Para 7.5 of the Annex to the Regulation on rules of stay in the centre for asylum seekers.

<sup>241</sup> Para 7.6 and 7.7 of the Annex to the Regulation on rules of stay in the centre for asylum seekers.

<sup>242</sup> Para 7.4 of the Annex to the Regulation on rules of stay in the centre for asylum seekers.

<sup>243</sup> A. Gutkowska, *Ewaluacja funkcjonowania poradnictwa prawnego dla uchodźców – analiza prawna i praktyczna (Evaluation of the functioning of legal counseling for refugees- legal and practical analysis)* in J. Frelak, W. Klaus, ed., *Słabe ogniwa. Wyzwania dla funkcjonowania systemu ochrony uchodźców w Polsce (Weak links. Challenges for the functioning of the system of refugee protection in Poland)*, Instytut Spraw Publicznych, 2011, 146-147.

<sup>244</sup> In 2015 NGOs who financed their legal assistance from EU had to reduce or cease their assistance granted in reception centres. NGOs informed about that Polish authorities, accessible at: <http://bit.ly/1Cd5nSW>. Some NGOs, like Legal Intervention Association, had to reduce their activities from 1.01.2015, accessible at: <http://bit.ly/1j98zXB>, some from 1 July 2015 (like HFHR). Even though results of call for proposals for AMIF were announced only on 16 September 2015 – two and half months after the end of all NGOs projects for asylum seekers financed from ERF.

<sup>245</sup> Information obtained from Department for Social Assistance, Office for Foreigners, 25 March 2014.

<sup>246</sup> Article 68(1) Law on Protection.

An asylum seeker is considered as a person who needs special treatment in the field of social assistance (material reception conditions), if there is a need to:

- (1) Accommodate him or her in a reception centre adapted to the needs of the disabled people or ensuring a single room or designed only for women or women with children;
- (2) Place him or her in special medical premises (like a hospice);
- (3) Place him or her in a foster care corresponding to the psychophysical situation of the asylum seeker;
- (4) Adapt his or her diet to his or her state of health.<sup>247</sup>

If an asylum seeker is a person who needs special treatment, his needs concerning accommodation and alimentation are taken into account when providing material reception conditions.<sup>248</sup> An asylum seeker who needs special treatment should be accommodated in the reception centre by taking into account his special needs.<sup>249</sup>

From 13 November 2015 the SG ensures transport to the reception centre and – in justified cases – food during the transport after claiming for asylum only to: disabled or elderly people, single parents and pregnant women.<sup>250</sup> Prior to this even these groups of vulnerable asylum seekers had to organize this travel themselves.

Some of the reception centres are adapted to the needs of disabled asylum seekers. Three centres have special entrance for disabled foreigners and a room with a bathroom adapted to the needs of the asylum seeker on wheelchair. Four other centres have some conveniences for such asylum seekers.<sup>251</sup>

### Women and children

Only one centre is designed to host a special group of asylum seekers, i.e. single women or single women with children. It is located in **Warsaw** and is managed by a private contractor.<sup>252</sup>

To prevent gender based violence the Office for Foreigners concluded a special agreement with the Police, UNHCR, “La Strada” Foundation and Halina Niec Legal Aid Centre, in 2008, aiming to better identify, prevent and respond to gender-based violence in reception centres.<sup>253</sup> In all reception centres special teams have been created, consisting of one representative from the Office for Foreigners, the Police and an NGO. Their task is to effectively prevent acts of violence in reception centres and respond to any which do occur quickly. In 2012-2014, 51 cases of violence were reported by the teams (mainly domestic violence).<sup>254</sup>

### Unaccompanied children

The only safeguards related to special reception needs of unaccompanied children are those referring to their place of stay (youth care facilities, separated from adults). Unaccompanied children are not accommodated in the centres. The custody court places them in a youth care facility, so unaccompanied

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<sup>247</sup> Article 68(2) Law on Protection, as amended in November 2015.

<sup>248</sup> Article 69a Law on Protection, as amended in November 2015.

<sup>249</sup> Para 5.3 of the Annex to the Regulation on rules of stay in the centre for asylum seekers.

<sup>250</sup> Article 30(1)(8) Law on Protection, as amended in November 2015.

<sup>251</sup> Letter from the Head of the Office for Foreigners from 27 August 2015 no BSZ-0811/1429/15/RW.

<sup>252</sup> Urząd do Spraw Cudzoziemców, *Informator Departamentu Pomocy Socjalnej*, 2014, accessible at: <http://bit.ly/1C1A5Ov>.

<sup>253</sup> *Porozumienie w sprawie standardowych procedur postępowania w zakresie rozpoznawania, przeciwdziałania oraz reagowania na przypadki przemocy seksualnej lub przemocy związanej z płcią wobec cudzoziemców przebywających w ośrodkach dla osób ubiegających się o nadanie statusu uchodźcy* (Agreement on standard procedures to identify, prevent and respond to incidents of sexual violence or gender-based violence against foreigners staying in reception centres), 25 March 2008.

<sup>254</sup> *Realizacja Porozumienia w sprawie przemocy seksualnej lub przemocy związanej z płcią - 2013* (Enforcement of the Agreement on sexual violence or gender-based violence - 2013), (2013), (PL), accessible at: <http://bit.ly/1FUf0kj>. Also: Centrum Pomocy Prawnej im. Haliny Nieć, K. Przybyławska (Ed.), *Report: Sexual and Gender - Based Violence in Centers for Asylum Seekers 2012-2014*, December 2014, 21.

children are not accommodated with adults in practice. Until the court makes a decision on placing a child in a regular youth care facility, an unaccompanied child can stay with a professional foster family functioning as emergency shelter or in a youth care facility for crisis situations.

The law also refers to the qualified personnel that should undertake activities in the refugee status procedure concerning unaccompanied children (a defined profile of higher education, 2 years of relevant experience).<sup>255</sup>

When providing material reception conditions to minors, the necessity to safeguard their interests should be taken into account, especially taking into consideration family unity, best interests of the child and their social development, security and protection (particularly if they are a victim of human trafficking) and the minor's opinion according to his age and maturity.<sup>256</sup>

Social assistance may be granted outside of the centre when it is necessary in order to ensure the safety of the asylum seeker, with special consideration to the situation of single women.<sup>257</sup> There is also one reception centre for single women and single women with children.<sup>258</sup>

There are no other specific measures provided by law or provided in practice for vulnerable groups or people with special needs to address their needs (e.g. separate accommodation for traumatised asylum seekers, specific reception centres for unaccompanied asylum seeking children, etc.).<sup>259</sup> According to the Office for Foreigners, staff of the centres monitor the asylum seekers' needs, so as to react properly if they appear during the asylum procedure.<sup>260</sup>

## 8. Provision of information

The provisions in law on information for asylum seekers concerning social assistance are formulated in a general way. The SG, upon admitting the asylum application, has to inform the applicant in a language understandable to him or her and in writing about i.e. the asylum procedure itself, the asylum seeker's rights, obligations, and the legal consequences of not respecting these obligations, as well as the extent of the material reception conditions. It also provides the asylum seeker with the address of the centre to which they have to report.<sup>261</sup>

Upon admission to the centre, asylum seekers receive (in writing or in the form of an electronic document, in a language understandable to them) the rules of stay in the centre (set in law), information about their rights and obligations (which includes all the basic information, including on access to the labour market or on their legal status), information on regulations governing the provision of assistance for asylum seekers and about procedures used in case of the person has been subjected to violence, especially against minors.<sup>262</sup> Moreover, the rules of stay in the centre shall be displayed in a visible place in the premises of the centre, in Polish and in languages understandable to the asylum seekers residing in the

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<sup>255</sup> Article 66 Law on Protection.

<sup>256</sup> Article 69b Law on Protection, as amended in November 2015.

<sup>257</sup> Article 72(1)(1) Law on Protection.

<sup>258</sup> Urząd do Spraw Cudzoziemców, *Informator Departamentu Pomocy Socjalnej*, 2014.

<sup>259</sup> UNHCR National Office Poland notes that in 2008 UNHCR, Office for Foreigners, Police, Halina Niec Legal Aid Centre and La Strada Foundation signed an Agreement introducing the Standard Operating Procedures on sexual and gender-based violence ("SOPs on SGBV") in order to prevent and, if need be, respond to SGBV risks and incidents in the given reception facility.

<sup>260</sup> Information obtained from Department for Social Assistance, Office for Foreigners, 25 March 2014.

<sup>261</sup> Article 30(1)(5) Law on Protection, as amended in November 2015.

<sup>262</sup> Para 3 of the Annex to the Regulation on rules of stay in the centre for asylum seekers. The Office for Foreigners published a guide for asylum seekers "First steps in Poland" (updated in 2015 in 5 languages), which is handed to them upon admission to the centre. Accessible in English, Arabic, Chechen, French, Georgian, Polish, Ukrainian and Russian, accessible at: <http://bit.ly/1IsLwQG>.

centre.<sup>263</sup> In the reception centres in Biała Podlaska and Dębak new-coming asylum seekers also participate in a course on basic information about Poland and the asylum procedure.<sup>264</sup>

It is not envisaged in the legislation which languages the rules of stay in the centre, information about rights and obligations and on regulations governing the provision of assistance for asylum seekers should be translated into. It states that information has to be accessible "in an understandable language". The rules of stay in the centre and above-mentioned information issued on the basis of the law applicable until 12 November 2015<sup>265</sup> were translated in practice into English, Russian, Arabic, French, Georgian, Chechen and Ukrainian.<sup>266</sup> No information is available about the translation of the new rules of stay.

## 9. Freedom of movement

### Indicators: Freedom of Movement

1. Is there a mechanism for the dispersal of applicants across the territory of the country?  
 Yes  No
2. Does the law provide for restrictions on freedom of movement?  Yes  No

Officially there is no restriction to the freedom of movement of asylum seekers: they can travel around Poland wherever they want. However, when an asylum seeker accommodated in a centre stays outside this centre for more than 2 days, the assistance will be withheld by law until the moment of their return.<sup>267</sup> Asylum seekers should inform the employees of the centre if they want to leave for a longer period and then the assistance will still be granted.<sup>268</sup>

The Office for Foreigners decides in which reception centre asylum seekers will be allocated. Decisions are made taking into consideration family ties (asylum seekers should be allocated in the same centre as their families), vulnerability (e.g. asylum seekers with special needs can be allocated only to the centres which are adapted to their needs), continuation of medical treatment (when it cannot be continued in other premises), safety of the asylum seeker and capacity of the centres.

Asylum seekers can also apply to be allocated in a centre of their choice, but such a request has to be justified. In March 2014 a group of Ukrainians complained about the conditions in the reception centre in **Podkowa Lesna Debak** and as a result were moved to another one in **Lukow**.<sup>269</sup> The possibility for nuclear families to stay in the same centre is not a problem in practice.<sup>270</sup>

Under the law an asylum seeker staying in one centre can be required to move to another facility if this is justified for organizational reasons.<sup>271</sup> Polish authorities in practice interpret such rule as applying only to transfers from first-reception centres to an accommodation centre.<sup>272</sup> As a result asylum seekers are

<sup>263</sup> Para 18 of the Annex to the Regulation on rules of stay in the centre for asylum seekers.

<sup>264</sup> Letter from the Head of the Office for Foreigners from 27 August 2015 no BSZ-0811/1429/15/RW.

<sup>265</sup> Ordinance of the Ministry of Interior of 6 December 2011 on the rules of stay in the centre for foreigners seeking refugee status (Journal of Laws 2011 no 282 position 1654).

<sup>266</sup> Letter from the Head of the Office for Foreigners from 27 August 2015 no BSZ-0811/1429/15/RW.

<sup>267</sup> Article 77 Law on Protection.

<sup>268</sup> Information received from UNHCR National Office Poland and Office for Foreigners, Department for Social Assistance, 25 March 2014.

<sup>269</sup> Polskie Radio, "Brod i smród" - uchodźcy z Ukrainy skarżą się na warunki w polskim ośrodku ("Dirty and stinky" - refugees from Ukraine complain about the conditions in a Polish reception centre), 27 March 2014, accessible at: <http://bit.ly/NY8bKX>.

<sup>270</sup> Information obtained from the Department for Social Assistance, Office for Foreigners, 25 March 2014; EMN, *The Organisation of Reception Facilities for Asylum Seekers in different Member States. National Contribution of Poland*, 2013, 6.

<sup>271</sup> Article 82(1)(6) Law on Protection.

<sup>272</sup> EMN, *The Organisation of Reception Facilities for Asylum Seekers in different Member States. National Contribution of Poland*, 2013, 19.



forced to move only from a first reception centre to the other centres. In practice it can take a few to several days (depending on how long the epidemiological filter procedure lasts and whether the interview is conducted in this reception centre – as a rule it should be conducted there in the first asylum procedure).<sup>273</sup> Afterwards if they are allocated to one centre they are very rarely moved to another. If so, it happens only upon request of the asylum seeker. There is no decision concerning transfers from one centre to the other so it cannot be appealed. Reasons of public interest and public order do not have any impact on the decision on an asylum seeker's place of stay.<sup>274</sup>

## B. Employment and education

### 1. Access to the labour market

Indicators: Access to the Labour Market	
1. Does the law allow for access to the labour market for asylum seekers? ❖ If yes, when do asylum seekers have access the labour market?	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No 6 months
2. Does the law allow access to employment only following a labour market test?	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
3. Does the law only allow asylum seekers to work in specific sectors? ❖ If yes, specify which sectors:	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
4. Does the law limit asylum seekers' employment to a maximum working time? ❖ If yes, specify the number of days per year	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
Are there restrictions to accessing employment in practice?	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No

The law allows for access to the labour market for asylum seekers after six months from the date of submission of an asylum application if a first instance decision has not been given within this time and if the delay is not attributed to any fault of the asylum seeker.<sup>275</sup> The Head of the Office for Foreigners upon the asylum seeker's request, issues a certificate, which accompanied by a temporary ID document entitles the asylum seeker to work in Poland.<sup>276</sup> The certificate is valid during the appeal procedure (first appeal only), when it was issued during the first instance procedure.

Access to employment is not limited to certain sectors, but can be problematic in practice. Many employers do not know, that the above mentioned certificate with a temporary ID document gives an asylum seeker a right to work or do not want to employ a person for such a short time (i.e. 6 months, as the employers are unaware that the procedure will actually take longer than the validity of a single ID). Secondly asylum seekers often live in centres which are located far away from big cities, which makes it difficult in practice to find a job. Moreover, most asylum seekers do not know Polish well enough to get a job in Poland.<sup>277</sup>

<sup>273</sup> Letter from the Head of the Office for Foreigners from 27 August 2015 no BSZ-0811/1429/15/RW.

<sup>274</sup> Information obtained from the Department for Social Assistance, Office for Foreigners, 25 March 2014. See also Rzecznik Praw Obywatelskich, (Polish Ombudsman), *Realizacja prawa małoletnich cudzoziemców do edukacji. Raport RPO (Implementation of the right to education for foreign minors. Polish Ombudsman report)*, 2013, accessible at: <http://bit.ly/1Hz4N4a>, 38.

<sup>275</sup> Article 35 Law on Protection, as amended in November 2015.

<sup>276</sup> *Ibid.*

<sup>277</sup> M. Abdouvakchabova, *Problemy cudzoziemców w Polsce w świetle funkcjonowania Fundacji Ocalenie (The problems of the foreigners in Poland in light of functioning of the Ocalenie Foundation)*, in M. Duszczyk, P. Dąbrowski (ed.), *Przestrzeganie praw cudzoziemców w Polsce. Monografia (Respect for the rights of foreigners in Poland. Monograph)*, Rzecznik Praw Obywatelskich, 2012, accessible at: <http://bit.ly/1RTIHbU>, 46.

Experts point out that the fact that asylum seekers cannot work for the first 6 months of the refugee procedure is one of the factors which leads to a lack of independence and reliance on social assistance.<sup>278</sup>

## 2. Access to education

### Indicators: Access to Education

1. Does the law provide for access to education for asylum-seeking children?  Yes  No
2. Are children able to access education in practice?  Yes  No

All children staying in Poland have a constitutional right to education. Education is mandatory until the age of 18. It is provided to asylum-seeking children in regular schools and it is not limited by law. Monitoring took place by the Polish Ombudsman in 2011-2013 and it was determined that in most of the centres all children were attending schools regularly. Only in four centres some children were not attending school (mostly because they were admitted to the centre at the end of a school year or they were still waiting to be enrolled to the school).<sup>279</sup> In NGO research conducted in 2012-2013, 17 schools from 146 researched admitted asylum seeking children (130 minors).<sup>280</sup>

There are different obstacles in practice for asylum seeking children to access education. The biggest problem is a language and cultural barrier. Children do not know Polish, but they are obliged to participate in classes in Polish. However, in all centres except the reception centre in Biała Podlaska, there are courses of Polish language for children being organised<sup>281</sup> and social assistance includes providing children with basic supplies necessary for learning Polish.<sup>282</sup>

Moreover, children are entitled to additional, free Polish language classes, which should be organised by the authority managing the school, which asylum seekers are attending.<sup>283</sup> Children can also participate in additional lessons on other subjects if their education level is different from this of the class. Both forms of assistance can be granted for a maximum of twelve months.<sup>284</sup> Preparatory lessons and additional Polish language classes can last for a maximum of five hours per week for one child. In practice, schools organise two to ten hours of additional Polish language lessons per week (most of the times it is 2 hours per week which is not sufficient).<sup>285</sup> In some schools they are not organised at all.<sup>286</sup> Children have also a right to assistance of a person who knows the language of their country of origin, which can be employed as a teacher's assistant by the director of the school. This help is limited to a maximum of twelve months. During the Polish ombudsman monitoring held in 2011/2012, only six schools (from sixteen schools visited) employed such "cultural assistant".<sup>287</sup> Moreover schools are not aware of the above mentioned

<sup>278</sup> K. Wysińska, *Gdzie jest mój dom? Bezdomność i dostęp do mieszkań wśród ubiegających się o status uchodźcy, uchodźców i osób z przyznaną ochroną międzynarodową w Polsce (Where is my home? Homelessness and access to housing among asylum seekers, refugees and persons granted international protection in Poland)*, UNHCR, 2013, 14.

<sup>279</sup> Rzecznik Praw Obywatelskich, (Polish Ombudsman), *Realizacja prawa małoletnich cudzoziemców do edukacji. Raport RPO (PL) (Implementation of the right to education for foreign minors. Polish Ombudsman report)*, 2013, accessible at: <http://bit.ly/1Hz4N4a>, 22-23.

<sup>280</sup> Fundacja na rzecz Różnorodności Społecznej, K. Kubin, E. Pogorzała "Raport z badania systemu nauczania dzieci cudzoziemskich języka polskiego jako drugiego/obcego w szkołach w Polsce" ("The report on the research on the education of foreign children of Polish language as a second/foreign language in schools in Poland"), May 2014, accessible in Polish at: <http://bit.ly/1ywuQW>, 25.

<sup>281</sup> Letter from the Head of the Office for Foreigners from 27 August 2015 no BSZ-0811/1429/15/RW.

<sup>282</sup> Article 71(1)(1f) Law on protection.

<sup>283</sup> Article 94a(4) Law of 7 September 1991 on the education system, Journal of Laws 2004 no 256 position 2572, (Ustawa z dnia 7 września 1991 r. o systemie oświaty, Dz. U. 2004 nr 256 poz. 2572), accessible at: <http://bit.ly/1NzbqBG>.

<sup>284</sup> Article 94a(4a) and (4c) Law of 7 September 1991 on the education system.

<sup>285</sup> Fundacja na rzecz Różnorodności Społecznej, *op. cit.*, 29, 78.

<sup>286</sup> Polish Ombudsman, *op. cit.*, 32.

<sup>287</sup> *Ibid.*

legal possibilities to support education of children from third countries. During the monitoring held by NGO in 2012-2013, half of the responding schools did not know about the possibility to employ teacher's assistant, the other half did not ask for financial means for that purpose or received a rejection from local authorities to grant such financial means.<sup>288</sup>

The above mentioned measures are not considered sufficient by the teachers and directors of the schools concerned. In particular, they criticise the limitation to five hours of preparatory and additional Polish language lessons per week, as their practice showed the additional classes should take at least six hours per week. NGOs criticise the automatic limitation of the duration of provision of additional assistance to twelve months, as it should be adjusted individually.<sup>289</sup> Moreover additional Polish language classes do not meet its goal.<sup>290</sup> In some schools, additional Polish language lessons are organised, but it often happens that the teachers have not received training in teaching Polish as a second language, nor have experience in working in a multicultural environment.<sup>291</sup> During the Polish ombudsman monitoring held in 2011-2012, these classes were taught by teachers trained to learn Polish language as a second language only in four schools.<sup>292</sup> During the monitoring held by NGO in 2012-2013, in 64% of responding schools (65 schools) teachers were not qualified properly to teach Polish language as a second language (only in 14 schools participating in the research specially qualified teachers were conducting these classes).<sup>293</sup>

The Minister of National Education said in September 2015, that Polish schools are prepared to teach asylum seeking and refugee children. This resulted in a protest of Polish Teachers Union and NGOs, who send a letter to Polish Prime Minister, in which they disagreed with this statement and accused Polish authorities to fail to create the concept of the education of these children and cooperation with their parents. They stated that it is essential to prepare trainings for teachers from schools to which asylum seeking children will be attending and to design activities aimed at local communities in a place, where these schools will be situated.<sup>294</sup>

Asylum seekers benefit from education in public secondary schools under the same conditions as Polish citizens until the age of 18 or completion of secondary school.<sup>295</sup> Currently all children in Poland (Polish and non-polish) have a problem with pre-school learning – there is not enough places for them in public kindergartens, so it is difficult to enrol a child there.<sup>296</sup> As a result in most of the centres some form of kindergarten is organised (by three kindergarten teachers hired by the Office for Foreigners, the TCNs themselves – in two centres - or by NGOs – in remaining centres).<sup>297</sup>

If the child cannot enter the regular education system (e.g. because of illness) their special needs are addressed by the Office for Foreigners, e.g. by placing a child in special school, or by NGOs (there was a case when one NGO gave lessons for asylum seekers who were disabled in the centre).<sup>298</sup>

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<sup>288</sup> Fundacja na rzecz Różnorodności Społecznej, "Rekomendacje z badań Fundacji na rzecz Różnorodności Społecznej dotyczące sytuacji dzieci cudzoziemskich w szkołach w Polsce" ("Recommendations from the study of the Foundation for Social Diversity on the situation of foreign children in schools in Poland"), 2014, accessible in Polish at: <http://bit.ly/1MRrH45>.

<sup>289</sup> W. Klaus, *Prawo do edukacji cudzoziemców w Polsce (Foreigners' right to education in Poland)*, Stowarzyszenie Interwencji Prawnej, 2011, accessible at: <http://bit.ly/1GQW4ng>, 8.

<sup>290</sup> Fundacja na rzecz Różnorodności Społecznej, K. Kubin, E. Pogorzała "Raport z badania systemu nauczania dzieci cudzoziemskich języka polskiego jako drugiego/obcego w szkołach w Polsce", May 2014, 77.

<sup>291</sup> *Ibid.* See also A. Kosowicz, *Access to Quality Education by Asylum-Seeking and Refugee Children. Poland Country Report*, Situational Analysis, Polskie Forum Migracyjne, 2007, accessible at: <http://bit.ly/1FUXw7j>, 3.

<sup>292</sup> Polish Ombudsman, *op. cit.*, 32.

<sup>293</sup> Fundacja na rzecz Różnorodności Społecznej, *op. cit.*, 32.

<sup>294</sup> Polish Teachers Union (Związek Nauczycielstwa Polskiego), Polish Humanitarian Action (Polska Akcja Humanitarna) and Foundation for Social Diversity (Fundacja na rzecz Różnorodności Społecznej), Letter to Prime Minister from 21 September 2015, accessible in Polish at: <http://bit.ly/1S8Bx59>.

<sup>295</sup> Article 94a(1a) Law of 7 September 1991 on the education system.

<sup>296</sup> Information obtained from the Department for Social Assistance, Office for Foreigners, 25 March 2014.

<sup>297</sup> Polish Ombudsman, *op. cit.*, 23. See also Letter from the Head of the Office for Foreigners from 27 August 2015 no BSZ-0811/1429/15/RW.

<sup>298</sup> Information obtained from the Department for Social Assistance, Office for Foreigners, 25 March 2014.

There is no access to vocational training for asylum seekers provided under the law. The only educational activities, that adults have access to, are courses of Polish language organised in the first half 2015 in all centres except the reception centre in Biała Podlaska, where asylum seekers mostly stay for a short amount of time. The course's level is considered insufficient by some NGOs.<sup>299</sup> From 2014 in all centres there are organised "Open days", during which asylum seekers can present their culture and customs to Polish society.<sup>300</sup> There are some initiatives by NGOs, organising other courses in the centres, including vocational training. These courses are sometimes publicly funded to a certain extent.<sup>301</sup> Problems with AMIF diminished the presence of NGOs in the centres in 2015. Most of the NGOs ceased their activities in the centres with the end of the projects financed from EU funds (from 30 June 2015). New activities are at a planning stage.<sup>302</sup>

## C. Health care

### Indicators: Health Care

1. Is access to emergency healthcare for asylum seekers guaranteed in national legislation?  
 Yes       No
2. Do asylum seekers have adequate access to health care in practice?  
 Yes       Limited       No
3. Is specialised treatment for victims of torture or traumatised asylum seekers available in practice?  
 Yes       Limited       No
4. If material conditions are reduced or withdrawn, are asylum seekers still given access to health care?  
 Yes       Limited       No

Access to health care for asylum seekers is guaranteed in the national legislation to the same extent as for Polish nationals, who have health insurance.<sup>303</sup> Health care for asylum seekers is publicly funded. Basic health care is organised in medical offices within each of the reception centres. Moreover, asylum seekers can benefit from medical assistance provided from 1 July 2015 by a private contractor,<sup>304</sup> with whom the Office for Foreigners has signed an agreement to coordinate medical care for asylum seekers. Before, for many years this medical assistance was granted in institutions contracted by the Central Clinical Hospital of the Ministry of Interior.<sup>305</sup>

Health care for asylum seekers includes treatment for persons suffering from mental health problems. Currently, psychologists work in all the centres at least for 4 hours a week for every 120 asylum seekers (it is extended for 1 hour for every 50 asylum seekers more).<sup>306</sup> Their help is limited though to basic consultations.<sup>307</sup> Asylum seekers can also be directed to a psychiatrist or a psychiatric hospital. According

<sup>299</sup> M. Abdoulvakchabova, *op. cit.*, 45. Office for Foreigners claims that asylum seekers are generally not interested in Polish language lessons. Those asylum seekers who participate in classes are assessing them positively (based on Department for Social Assistance in Office for Foreigners' own research), accessible at: <http://bit.ly/1RTIHbU>.

<sup>300</sup> Letter from the Head of the Office for Foreigners from 27 August 2015 no BSZ-0811/1429/15/RW.

<sup>301</sup> Information obtained in the Department for Social Assistance, Office for Foreigners, 7 February 2013, also EMN, *op. cit.*, 40.

<sup>302</sup> Letter from the Head of the Office for Foreigners from 27 August 2015 no BSZ-0811/1429/15/RW.

<sup>303</sup> Article 73(1) Law on Protection.

<sup>304</sup> Information from the Office for Foreigners website: <http://bit.ly/1XqYMIQ>.

<sup>305</sup> K. Maśliński, *Prawne regulacje w zakresie dostępu do ochrony zdrowia nieudokumentowanych migrantów i cudzoziemców ubiegających się o ochronę międzynarodową w Polsce (Legal regulations on access to health care of undocumented migrants and foreigners seeking international protection in Poland)*, in A. Chrzanowska, W. Klaus, ed., *Poza systemem. Dostęp do ochrony zdrowia nieudokumentowanych migrantów i cudzoziemców ubiegających się o ochronę międzynarodową w Polsce*, 2011, accessible at: <http://bit.ly/1T8OU8n>, 30.

<sup>306</sup> Letter from the Head of the Office for Foreigners from 27 August 2015 no BSZ-0811/1429/15/RW. See also EMN, *op. cit.*, 39.

<sup>307</sup> The Office for Foreigners claims that those psychologists' assistance concentrates on psychological support and counseling and also on diagnosis of mental disorders, including PTSD.

to some experts, specialised treatment for victims of torture or traumatised asylum seekers is not available in practice.<sup>308</sup>

The biggest obstacle in accessing health care that asylum seekers face is the lack of knowledge of foreign languages amongst doctors and nurses.<sup>309</sup> Polish authorities do not provide interpretation free of charge and most of the asylum seekers are not able to pay for such assistance on their own. Accordingly, with regards to the newest agreement with a private medical contractor, concluded in June 2015, the contractor is obliged to ensure a translation during the medical and psychological consultation, if it is needed.<sup>310</sup> During the monitoring in **Bezwola** and **Białystok** held in 2015, Russian speaking asylum seekers confirmed that doctors and psychologists working in these centres know the Russian language.

The second problem is the fact that some of the clinics and hospitals, providing medical assistance to asylum seekers, are situated far away from the centres, so an asylum seeker cannot be assisted by the closest medical facility (except for emergency situations).<sup>311</sup> Another problem identified by the experts is a lack of intercultural competence amongst doctors.<sup>312</sup>

If an asylum seeker is deprived of material reception conditions or they are limited, they are still entitled to health care.<sup>313</sup>

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<sup>308</sup> M. Książak, *Dostęp do pomocy medycznej i psychologicznej osób ubiegających się o status uchodźcy w Polsce (Access to medical and psychological care of asylum seekers in Poland)*, in A. Chrzanowska, W. Klaus, *Poza systemem. Dostęp do ochrony zdrowia nieudokumentowanych migrantów i cudzoziemców ubiegających się o ochronę międzynarodową w Polsce*, 180-182. This opinion is contested by the Office for Foreigners, claiming that psychological diagnosis and diagnosis of PTSD are provided to asylum seekers, accessible at: <http://bit.ly/1T80U8n>.

<sup>309</sup> *Ibid*, 174-176.

<sup>310</sup> Letter from the Head of the Office for Foreigners from 27 August 2015 no BSZ-0811/1429/15/RW.

<sup>311</sup> N. Klorek, *op. cit.*, 93-94.

<sup>312</sup> H. Grzymała-Moszczyńska, *Uchodźcy jako wyzwanie dla polskiego systemu opieki zdrowotnej (Refugees as a challenge for the Polish health care system)*, in A. Chrzanowska, W. Klaus, *Poza systemem. Dostęp do ochrony zdrowia nieudokumentowanych migrantów i cudzoziemców ubiegających się o ochronę międzynarodową w Polsce*, 2011, 143.

<sup>313</sup> Articles 76(1) and 70(1) Law on Protection.

## Detention of Asylum Seekers

### A. General

#### Indicators: General Information on Detention

1. Total number of asylum seekers detained in 2015:	Not available
2. Number of asylum seekers in detention at the end of 2015:	Not available
3. Number of detention centres:	6
4. Total capacity of detention centres:	558

Statistical data for the number of asylum seekers detained in 2014 and 2015 is not available, as the SG does not gather these statistics separately from the number of other detained foreigners. In 2013, 1,119 foreigners were detained in relation to the asylum procedure, out of which 799 actually applied for asylum before entering detention.<sup>314</sup> Given that 15,177 persons applied for asylum in Poland in 2013, it cannot be said that the majority of asylum seekers in Poland were detained. There were no cases of overcrowding in detention centres that year.<sup>315</sup>

However, what is worth noting is that many of the detainees are children. In early 2014, when the NGO monitoring of detention centres was conducted, there were 347 persons in all the detention centres – out of which 84 were children, approximately 1/4.<sup>316</sup>

In 2014, according to SG, 1,323 TCNs were detained.<sup>317</sup> In the first half of 2015, in total, 547 TCNs were detained (amongst whom 115 were children), including asylum seekers and irregular migrants. During the stay in a detention centre in this period, 120 TCNs applied for asylum,<sup>318</sup> but it is not a full number of the detained asylum seekers in the first half of 2015, because some of them were detained after applying for asylum.

No data was made available by the SG for the legal grounds for detention. Generally it can be said that the use of specific grounds depends on the particular centre – e.g. the majority of asylum seekers placed in detention in **Ketrzyn** are those returned to Poland within the Dublin proceedings. In this case, the basis is irregular border crossing while leaving Poland.

According to the Office for Foreigners, the asylum cases of asylum applicants placed in detention are examined more quickly.<sup>319</sup> The interview is conducted through videoconference. If a vulnerable person is in detention, the interview is conducted in person and in the presence of a psychologist. The Head of the Office for Foreigners is planning to sign an agreement with the SG, to enable a psychologist to take part in the interview in detention centres via videoconference.

<sup>314</sup> J. Bialas, W. Klaus (eds), *Wciąż za kratami. Raport z monitoringu strzeżonych ośrodków dla cudzoziemców przeprowadzonego przez Helsińską Fundację Praw Człowieka i Stowarzyszenie Interwencji Prawnej*, (Still behind the bars. Report from the monitoring of the guarded centres for foreigners conducted by the Helsinki Foundation for Human Rights and Legal Intervention Association), 2014, available in Polish at: <http://bit.ly/1JBxxXm> and in English at: <http://bit.ly/1OfIJJD>, 11.

<sup>315</sup> Letter from the Border Guard KG-OI-124/III/13 from 8 February 2013.

<sup>316</sup> J. Bialas, W. Klaus, (eds), *op. cit.*, 10-11.

<sup>317</sup> Centrum Pomocy Prawnej im. Haliny Nieć, K. Przybyłowska (eds), *Monitoring powrotów przymusowych obywateli państw trzecich do krajów pochodzenia. Raport lipiec 2014 - czerwiec 2015 (Monitoring of Forced Returns from Poland July 2014-June 2015)*, accessible in Polish at: <http://bit.ly/1PEaINH>, 39.

<sup>318</sup> Letter from the Border Guard MAIL-KG-OI-614/III/15 from 18 August 2015.

<sup>319</sup> Letter from the Head of the Office for Foreigners from 27 August 2015 no BSZ-0811/1429/15/RW.

## B. Legal framework of detention

### 1. Grounds for detention

#### Indicators: Grounds for Detention

1. In practice, are most asylum seekers detained
  - ❖ on the territory:  Yes  No
  - ❖ at the border:  Yes  No
2. Are asylum seekers detained in practice during the Dublin procedure?  Frequently  Rarely  Never
3. Are asylum seekers detained during a regular procedure in practice?  Frequently  Rarely  Never

Prior to the amendment of the Law on Protection, asylum seekers could only be placed in a detention centre if it was necessary to: (a) establish their identity; (b) prevent them from abusing the asylum procedure; (c) prevent them from constituting a threat to other people safety, health, life or property; or (d) protect the defence or safety of the state or public order and safety.<sup>320</sup> Moreover asylum seekers could be placed in detention, if: (a) they had illegally crossed or attempted to cross the border, unless they were coming directly from a territory of persecution or serious harm, submitted an application for asylum immediately and showed good cause for illegal entry; or (b) their conduct posed a threat to the safety, health or life of other foreigners staying in the reception centres or employees of the centre.<sup>321</sup> They could also be detained for not fulfilling their duties foreseen in a decision to apply alternatives to detention.<sup>322</sup>

As of 13 November 2015, the grounds for detention have changed in the amended Law on Protection. Asylum seekers are now placed in a detention centre, if the alternatives to detention cannot be used and:<sup>323</sup>

- (1) In order to establish or verify their identity;
- (2) To gather information – with the asylum seeker’s cooperation – connected with the asylum application, which cannot be possessed without detaining the applicant and where there is a significant risk of absconding;
- (3) In order to make or execute the return decision, if an asylum seeker had a possibility to claim for asylum previously and there is a justified assumption that the asylum applicant claimed for asylum to delay or prevent the return;
- (4) When it is necessary for security reasons;
- (5) In accordance with Article 28 of the Dublin III Regulation, when there is significant risk of absconding and immediate transfer to another EU country is not possible.

A “risk of absconding” of the asylum seekers exists particularly if they:<sup>324</sup>

- (a) Do not have any identity documents when they apply for asylum;
- (b) Crossed or attempted to cross the border illegally, unless they are so called “directly arriving” (i.e. arrived from the territory where they could be subject to persecution or serious harm) and they submitted an application for granting refugee status immediately and they explain the credible reasons of illegal entry;
- (c) Entered Poland during the period for which their data were entered to the list of undesirable foreigners in Poland or to Schengen Information System in order to refuse entry.

<sup>320</sup> Article 87(1) Law on Protection (applicable until 12 November 2015).

<sup>321</sup> Article 87(2) Law on Protection (applicable until 12 November 2015).

<sup>322</sup> Article 88(2) Law on Protection (applicable until 12 November 2015).

<sup>323</sup> Articles 87(1) and 88a(1) Law on Protection, as amended in November 2015.

<sup>324</sup> Articles 87(2) and 88a(1) Law on Protection, as amended in November 2015.

Asylum seekers are not automatically detained on the territory of Poland or at the Polish border, although in some cases TCNs asking for asylum at a border were detained in order to prevent them from abusing the asylum procedure (which applied to first-time applicants).<sup>325</sup> According to an NGO report, in 2012 1% of the applicants who asked for refugee status at the Polish border in Terespol were detained on the basis of the abuse of the asylum procedure, upon the request of the Head of the Office for Foreigners.<sup>326</sup> In 2013 there were 640 cases in which the Head of the Office requested detention because of a risk of abuse of the asylum procedure. From 13 November 2015 the risk of abusing the asylum procedure is no longer a reason, explicitly specified in law, to detain an asylum applicant.

Currently the Office for Foreigners claims that they are not gathering statistical data concerning the requests on detention of asylum seekers.<sup>327</sup>

Detention is possible (in law and in practice) in all asylum procedures (admissibility, accelerated, Dublin procedure) especially in the case of illegally crossing the border and being transferred under Dublin. In the first half of 2015, all asylum seekers sent from Poland under a Dublin procedure were detained before a transfer.<sup>328</sup>

There are concerns that detention is not used as a measure of last resort and is often prolonged automatically, but the number of applicants and the number of detainees show that there is no systematic detention of asylum seekers as such.

**2. Alternatives to detention**

**Indicators: Alternatives to Detention**

1. Which alternatives to detention have been laid down in the law?  Reporting duties  
 Surrendering documents  
 Financial guarantee  
 Residence restrictions  
 Other

2. Are alternatives to detention used in practice?  Yes  No

Until 1 May 2014, there was only one alternative to detention provided under Polish law.<sup>329</sup> An asylum seeker (or a person on whose behalf an application for asylum was made) could be ordered, by means of the decision rendered by the Head of the Office for Foreigners, to stay in a specified place, which they could not leave without permission. An asylum seeker could also be required to report to the authority indicated in the decision at specified intervals of time. The above mentioned decision could be issued if:

- a) An asylum seeker had not been placed in the detention centre because it could cause a serious threat to his or her life or health; or
- b) An asylum seeker was released from the detention centre on the basis of the Head of the Office for Foreigners’ decision issued because the evidence of the case indicated that the asylum seeker meets the conditions for being recognised as a refugee or for being granted subsidiary protection.<sup>330</sup>

<sup>325</sup> T. Sieniow, *op.cit.*, 57.

<sup>326</sup> *Ibid.*

<sup>327</sup> Letter from the Head of the Office for Foreigners from 27 August 2015 no BSZ-0811/1429/15/RW.

<sup>328</sup> Letter from the Border Guard MAIL-KG-OI-614/III/15 from 18 August 2015.

<sup>329</sup> Article 89c Law on Protection (applicable until 1 May 2014).

<sup>330</sup> *Ibid.*



The problem with this measure was that detention was a measure “of first resort” and only if deemed impossible could the above mentioned alternative be applied instead. Moreover it was not used in practice.<sup>331</sup>

The above mentioned alternative is still applicable, but the Law on Protection, in force since 1 May 2014, introduces additional alternatives to detention for asylum seekers. These include:

- An obligation to report;
- Bail options;
- The obligation to stay in a designated place.

SG can use more than one alternative in the case of any TCN.<sup>332</sup> Alternatives can be applied by the SG which apprehended the asylum seeker concerned or by the court (subsequent to a SG’s decision not to apply alternatives and who have submitted a motion for detention to the court).<sup>333</sup> Until 12 November 2015 the law did not explicitly require a proof that alternatives to detention cannot be effectively applied before asylum seekers can be detained. From 13 November 2015 an asylum seeker can be detained only if the alternatives to detention cannot be applied.<sup>334</sup>

In the second half of 2014, alternatives to detention were used in the case of 394 TCNs (including asylum seekers and returnees),<sup>335</sup> in the first half of 2015 in the case of 124 asylum seekers.<sup>336</sup> HFHR observes in practice that sometimes fulfilment of the obligations resulting from used alternatives is very problematic for asylum seekers, especially in case of regular reporting to SG. Often the place where an asylum seeker should report is situated far from their place of living, so travelling there every time is costly and time-consuming.

### 3. Detention of vulnerable applicants

#### Indicators: Detention of Vulnerable Applicants

1. Are unaccompanied asylum-seeking children detained in practice?  Frequently  
 Rarely  
 Never  
  
❖ If frequently or rarely, are they only detained in border/transit zones?  Yes  No
2. Are asylum seeking children in families detained in practice?  Frequently  
 Rarely  
 Never

According to the law, asylum seekers, whose psychophysical state leads to believe that they are victims of violence or have a disability or are unaccompanied minors are not placed in detention centres. This is also applicable to asylum seekers whose detention causes a serious threat to their life or health.<sup>337</sup> Under the law, an asylum seeker should be released, if further detention constitutes a threat to their life or health.<sup>338</sup> In practice it happens that those vulnerable asylum seekers are detained, even when they were diagnosed as having mental health problems as a result of past events.<sup>339</sup> Indeed, a poor mental

<sup>331</sup> Letters from the Head of the Office for Foreigners BWM-08-502/2012/AWJ from 1 August 2012 and BWM-08-03/2013/RW from 10 January 2013.

<sup>332</sup> Article 88(1) of the Law on Protection, as amended in November 2015.

<sup>333</sup> Articles 88(2) and 88b(2)-(3) Law on Protection, as amended in November 2015.

<sup>334</sup> Article 88a(1) Law on Protection, as amended in November 2015.

<sup>335</sup> Centrum Pomocy Prawnej im. Haliny Nieć, K. Przybysławska (Ed.), *Monitoring powrotów przymusowych obywateli państw trzecich do krajów pochodzenia. Raport lipiec 2014 - czerwiec 2015 (Monitoring of Forced Returns from Poland July 2014-June 2015)*, 39, accessible in Polish at: <http://bit.ly/1PEalNH>.

<sup>336</sup> Letter from the Border Guard MAIL-KG-OI-614/III/15 from 18 August 2015.

<sup>337</sup> Article 88a(3) Law on Protection, as amended in November 2015.

<sup>338</sup> Article 406(1)(2) Law on Foreigners.

<sup>339</sup> T. A. Dęboczyk, J. Oleszkowicz, *Praktyka sądowa stosowania detencji cudzoziemców w Polsce (The jurisprudence of the use of foreigners’ detention in Poland)* in T.Sieniow *op. cit.*, 38.

condition is hardly ever accepted by courts as sufficient grounds for not placing in or releasing an asylum seeker from detention. Courts do not accept psychological opinions submitted by independent psychologists (e.g. from NGOs).<sup>340</sup> In practice, only courts of higher instance call on experts to give evidence. This makes proceedings last up to a couple of weeks.<sup>341</sup>

Until 12 November 2015 Polish legislation did not include any provisions concerning effective methods of identification of vulnerable applicants. There was no definition of a “vulnerable person” in law. From 2014 SG applied a policy document titled “Algorithm for a SG’s conduct with foreigners belonging to the groups of special care”,<sup>342</sup> which defined aims, ways and rules for the SG actions in case of identifying a vulnerable person and defined a vulnerable person. The objective was to ensure optimal conditions guaranteeing the assistance of medical personnel and psychologists whenever needed.<sup>343</sup> According to an NGO report,<sup>344</sup> the SG was implementing the above mentioned procedure and looking for financial means for that purpose (from AMIF).

In October 2015 the SG informed that the above mentioned algorithm no longer applies and was replaced with a new document: “Rules on SG’s conduct with foreigners needing special treatment”.<sup>345</sup> It was implemented on 18 September 2015. In the document the SG defined a third-country national needing special treatment, indicated personnel essential to identify a vulnerable person (social assistant – employee of the SG, psychologist, therapist) and the course of action to take where the vulnerable applicant is placed in detention.

From 13 November 2015 foreigners, who need special treatment, are defined particularly as:<sup>346</sup> minors, disabled people, elderly people, pregnant women, single parents, victims of human trafficking, seriously ill, mentally disordered people, victims of tortures and victims of violence (psychological, psychical, including sexual). Despite this amendment in law, still some vulnerable asylum seekers (even those mentioned above) can be detained, because only those foreigners seeking asylum cannot be detained whose psychophysical state leads to believe that they are victims of violence, disabled, unaccompanied minors and asylum seekers whose detention cause a serious threat to their life or health.<sup>347</sup> It means that, for example, minors, if they stay in Poland with parents or other legal guardians, can still be detained, as can pregnant women if they are healthy.

In practice, vulnerable applicants are placed in the detention centres. SG claims it does not happen (SG admitted only that 8 pregnant women and 53 children were detained in the first half of 2015),<sup>348</sup> but NGOs report such cases e.g. Halina Nieć Legal Aid Centre counted that just from January to April 2013 there were 85 vulnerable asylum seekers in detention centres.<sup>349</sup>

Apart from the provisions on vulnerable asylum seekers, generally no detention of a TCN should be ordered by a judge if it may cause a serious threat to their life or health<sup>350</sup> (in the first half of 2015 22 TCNs were released from detention centre on basis of their poor health).<sup>351</sup> However, as the experience of some NGO lawyers shows,<sup>352</sup> the physical rather than the psychological condition is taken into account

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<sup>340</sup> Supreme Court, Judgment from 4 February 2015 no. III KK 33/14, accessible at: <http://bit.ly/1OipPZE>.

<sup>341</sup> Legal Intervention Association, information obtained during an interview.

<sup>342</sup> The document is not public. It has not been assessed by any objective entity yet, so it hard to assess its effectiveness.

<sup>343</sup> Letter from the Border Guard FAX-KG-CU-5944/IP/15 from 24 August 2015.

<sup>344</sup> Centrum Pomocy Prawnej im. Haliny Nieć, K. Przybysławska (Ed.), *op. cit.*, 26.

<sup>345</sup> Letter from the Border Guard FAX-KG-CU-6765/IW/15 from 6 October 2015.

<sup>346</sup> Article 68(1) Law on Protection, as amended in November 2015.

<sup>347</sup> Article 88a(3) Law on Protection, as amended in November 2015.

<sup>348</sup> Letter from the Border Guard MAIL-KG-OI-614/III/15 from 18 August 2015.

<sup>349</sup> Centrum Pomocy Prawnej im. Haliny Nieć [Halina Nieć Legal Aid Centre] *Cudzoziemcy szczególnej troski w Polsce: identyfikacja, detencja, orzecznictwo. Analiza 2012-2013* [Vulnerable foreigners in Poland: identification, detention, jurisprudence. Analysis 2012-2013], accessible at <http://bit.ly/1dxieU4>, 21.

<sup>350</sup> Article 400(1) Law on Foreigners.

<sup>351</sup> Letter from the Border Guard MAIL-KG-OI-614/III/15 from 18 August 2015.

<sup>352</sup> For example from the Legal Intervention Association (*Stowarzyszenie Interwencji Prawnej*).

by the judges. Analysis of the justifications of the courts' rulings concerning detention leads to the conclusion that in a large number of cases mental health is not considered by judges or there is no reference to the health of the TCNs at all.<sup>353</sup>

In 2013 a family was transferred from Germany to Poland on the basis of the Dublin Regulation. In Germany the man was diagnosed with PTSD and had rich supporting documentation, preceded by a clinical examination. The family was placed in the detention centre in Ketrzyn on 28 November 2013.<sup>354</sup> Although in the appeal the lawyer mentioned the father's PTSD and presented the medical documentation, the father was not released. A motion for release from 3 January 2014 also did not succeed. On 22 January 2014 their detention was prolonged.<sup>355</sup> The psychiatrist in Ketrzyn did not confirm the diagnosis for PTSD. Moreover, the family was issued a negative decision from the second instance authority very promptly.<sup>356</sup> The decision was delivered to the applicants on Friday 14 February 2014 and they were deported on Monday 17 February 2014, on the day which the lawyer received the decision.<sup>357</sup>

According to the law, unaccompanied asylum-seeking children should not be detained,<sup>358</sup> but in practice it happens when there are doubts as to their age or if they were placed in detention as irregular migrants (which is possible under the law) and only then applied for international protection. Unaccompanied children are placed only in a detention centre in Ketrzyn, where adequate rooms are separated.

Asylum seeking children who are with the members of their family can be placed in detention centres together with accompanying adults.<sup>359</sup> In the first half of 2015, 53 asylum-seeking children accompanied by adults were placed in detention centres. In 2015 children were placed in detention centres in Kętrzyn, Biała Podlaska and Przemyśl. Accordingly to data presented by the SG to the Polish Ombudsman, the introduction to the law of the alternatives from 1 May 2014 to the detention diminished the number of detained children (all, not only asylum-seeking) by over 40%.<sup>360</sup> Accordingly to data presented to one of the NGOs,<sup>361</sup> there is a significant decreasing tendency in the number of detained children. In the detention centre in Ketrzyn, in the first half of 2014 104 minors (6 unaccompanied) stayed in the centre, in the same period in 2015 there were 49 (9 unaccompanied). In the centre in Biała Podlaska in the first half of 2014 there was 106 minors and in the same period in 2015 – 26. Despite this decline, the best interest of the child is not considered in decisions concerning detention.<sup>362</sup>

In 2011 a coalition of Polish NGOs started a public campaign to stop the detention of children in Poland.<sup>363</sup> The Polish Ombudsman (*Rzecznik Praw Obywatelskich*) also got involved in the matter and made numerous interventions in front of the Ministry of Interior.<sup>364</sup> The Ministry of Interior declared at the end of 2012 that their priority was to reduce to the minimum the period during which children are detained and to further adjust the detention conditions in the two guarded centres so that they are more suitable for

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<sup>353</sup> T. A. Dęboczyk, J. Oleszkowicz, *op. cit.*, 35.

<sup>354</sup> District Court for Szczecin Prawobrzeżei Zachód, Ruling no VI Ko/Cu 64/13.

<sup>355</sup> District Court in Ketrzyn, Ruling no II Ko 176/14.

<sup>356</sup> The decision of the Head of the Office for Foreigners was issued on 17 January 2014, while the decision of the Refugee Board, after appeal – on 11 February 2014.

<sup>357</sup> Information obtained from lawyers of the Helsinki Foundation for Human Rights.

<sup>358</sup> Article 88a(3) Law on Protection, as amended in November 2015.

<sup>359</sup> Although it happens in practice that some members of the family are placed in the reception centre and some in the detention - T. Sieniow, *Wnioski z monitoringu wraz z rekomendacjami (Conclusions from monitoring with recommendations)* in T. Sieniow ed., *op. cit.*, 50, 59.

<sup>360</sup> Rzecznik Praw Obywatelskich (Polish Ombudsman), K. Łakoma (Ed.), *Działania Rzecznika Praw Obywatelskich na rzecz ochrony praw migrantów w latach 2010 - 2015 - wyzwania i osiągnięcia (Activities of Polish Ombudsman to protect migrants rights in 2010-2015 – challenges and achievements)*, 2015, accessible in Polish at: <http://bit.ly/1L1KEQg>, 10.

<sup>361</sup> Centrum Pomocy Prawnej im. Haliny Nieć, K. Przybysławska (Ed.), *Monitoring of Forced Returns from Poland July 2014-June 2015*, 31.

<sup>362</sup> *Ibid*, 34.

<sup>363</sup> Information about a coalition of NGOs against the detention of child migrants at: <http://bit.ly/1UcHfoY>.

<sup>364</sup> More information: Biuletyn Rzecznika Praw Obywatelskich nr 11, Warszawa 2012, available <http://bit.ly/1RTIHbU>.

children, but the Ministry will not introduce a general legal ban on the detention of children.<sup>365</sup> NGOs continue to advocate for the general ban on detention of children in 2015. The Law amending the Law on Protection, applicable from 13 November 2015, does not include the general ban on detention of the children.

From 13 November 2015 if the Head of the Office for Foreigners issues a decision to release a TCN from the detention centre and this asylum seeker is disabled, elderly, pregnant or single parent, SG is obliged to organise the transport to the reception centre, and – in justified cases – alimentation during the transport.<sup>366</sup>

#### 4. Duration of detention

##### Indicators: Duration of Detention

- |  |          |
|--|----------|
| 1. What is the maximum detention period set in the law (incl. extensions): | 6 months |
| 2. In practice, how long in average are asylum seekers detained?           | 66 days  |

The decision to detain an asylum seeker is issued for a period up to 60 days by a court, upon the motion of the SG.<sup>367</sup> If a TCN claims asylum during the stay in the detention centre (so he was initially detained as an irregular migrant), the period of his detention is prolonged only if the conditions to detain an asylum seeker mentioned before are met (e.g. it is necessary to verify or establish identity of the applicant). If so, then the applicant's stay in the detention centre is prolonged up to 90 days from the day of filing the asylum application.<sup>368</sup> The period of a stay in a detention centre can also be prolonged if before the end of the previous period of detention, the final decision concerning international protection was not issued and the reasons to detain the applicant still exist. In this case, detention can be prolonged by a court for a specified period of time (no timeframes set in law other than the maximum total period of asylum seekers' detention – 6 months).<sup>369</sup> Prolongation is not possible, if the procedure concerning reasons of detention still lasts (e.g. the identity of the asylum seeker still is not verified) and this delay cannot be attributed to any fault on the part of the applicant.<sup>370</sup>

The above mentioned rules on detention are partially new in Poland. Until 12 November 2015 the prolongation of the stay of an asylum seeker was possible only if a negative decision issued by the first instance authority was delivered to the asylum seeker prior to the expiry of the previous period of his detention.<sup>371</sup>

Until 1 May 2014, the period of stay in the guarded centre or in the detention centre for the purpose of expulsion could not exceed one year. This was the total time-limit of detention for all migration-related purposes, regardless of the proceedings a third country national was subject to.

From 1 May 2014 the maximum detention period for asylum seekers is 6 months.<sup>372</sup> For failed asylum seekers and other migrants in return procedures it is 12 months, but detention can be prolonged for another 6 months if the person concerned submits a complaint to the administrative court against a return decision.<sup>373</sup>

<sup>365</sup> Ministry of Interior's statement available at: <http://bit.ly/1f5pS9Z>.

<sup>366</sup> Article 88cb Law on Protection, as amended in November 2015.

<sup>367</sup> Article 89(1) Law on Protection, as amended in November 2015.

<sup>368</sup> Article 89(2)-(3) Law on Protection, as amended in November 2015.

<sup>369</sup> Article 89(4)-(5) Law on Protection, as amended in November 2015.

<sup>370</sup> Article 89(4a) Law on Protection, as amended in November 2015.

<sup>371</sup> Article 89(2) of the Law on Protection (applicable until 12 November 2015).

<sup>372</sup> Article 89(5) Law on Protection, as amended in November 2015.

<sup>373</sup> Article 404(5) Law on Foreigners, as amended in November 2015.

In the first half of 2015 the average period of the TCNs' stay in detention centres was 65.77 days, although this number includes the stay of all TCNs: asylum-seeking and returnees.<sup>374</sup> Data for the average duration of detention of asylum seekers is not available.

All the decisions concerning detention (placing in the detention centre or prolonging stay there) made by courts or the SG can be appealed by the asylum seeker to the higher instance authority.

Asylum seekers have a right to request their release from detention anytime, by submitting a "motion for release". A release motion is directed to the SG managing the centre. Their decision can be appealed to the respective District Court, but only if the motion for release was submitted at least one month after the issuance of the decision on the application or prolongation of detention (up until one month's placement in detention an asylum applicant can ask for a release, the SG has to make a decision, but there is no possibility to appeal). The District Court has 7 days to examine it.<sup>375</sup> This procedure generally focuses not on the lawfulness of detention but rather on changes in the person's personal situation (e.g.: the person becomes ill while in detention and a longer stay could put their life and health at risk).

Asylum seekers can also be released from a detention centre *ex officio* (e.g. on the basis of Polish authorities' decision). Moreover, the Head of the Office for Foreigners can release (*ex officio* or on motion) an asylum seeker from detention if his application for refugee status will be considered with a high probability as justified.<sup>376</sup>

According to an NGO report,<sup>377</sup> detention orders lack individual reasoning and sometimes are brief, containing only two sentences. The Court assessment is generally based on the information provided by the Office for Foreigners and the SG relating mostly to the matter of illegal crossing of the border. The risk of absconding is assessed by the Court only when ruling on detention of irregular migrants, not asylum seekers. The necessity and proportionality test is not implemented.

Generally, most asylum seekers are unlikely to spend the whole status determination procedure in detention. However, if they apply for asylum from detention, their stay in detention can be prolonged for 90 days and if their application is considered negatively, their stay in detention can be prolonged even if they lodge an appeal against the negative asylum decision. If the asylum proceedings will end with a final decision in 6 months from applying for refugee status, asylum seekers will spend their whole asylum proceedings in detention, but it is hard to say that this is the case for most of them.

## C. Detention conditions

### 1. Place of detention

#### Indicators: Place of Detention

1. Does the law allow for asylum seekers to be detained in prisons for the purpose of the asylum procedure (i.e. not as a result of criminal charges)?  Yes  No
2. If so, are asylum seekers ever detained in practice in prisons for the purpose of the asylum procedure?  Yes  No

There are two types of detention centres in Poland, both used to detain asylum seekers and foreigners subject to return procedures

<sup>374</sup> Letter from the Border Guard MAIL-KG-OI-614/III/15 from 18 August 2015.

<sup>375</sup> Article 406 Section 2, 3, and 4 of the new Law on Foreigners.

<sup>376</sup> Article 89b of the Law on Protection.

<sup>377</sup> Sieniow Tomasz (ed.) Fundacja Instytut na rzecz państwa prawa [Rule of Law Institute] *Stosowanie detencji wobec cudzoziemców. Raport z monitoring i rekomendacje* [Detention of foreigners. Monitoring report and recommendations], 2013, 51-52, available in Polish at: <http://bit.ly/1f5q9QS>.

## Guarded centres for asylum seekers

These are 6 such centres with a total capacity of 510 places for foreigners, located in: Detention centres are situated in: **Biała Podlaska, Białystok, Lesznowola, Kętrzyn, Krosno Odrzańskie** and **Przemyśl**. The centre in **Lesznowola** was being renovated during 2015 and is planned to start operating again at the end of 2015.<sup>378</sup>

### “Rigorous detention centres” (*areszt dla cudzoziemców*)

The term, literally translated as “arrests for foreigners”, replaced that of “pre-removal centres” as of 1 May 2014. These impose more rigorous conditions of detention than guarded centres.<sup>379</sup> Until mid-December 2012 there were 5 such centres. Currently, there are two centres with a capacity of 48 places:<sup>380</sup> **Białystok** and **Przemyśl**.

An asylum seeker can be placed in a more rigorous detention centres for TCNs only if there is a risk that they will not obey the rules in force in a guarded centre or the applicant has already disobeyed these rules.<sup>381</sup> These detention centres are more prison-like than guarded centres. An asylum seeker placed in such a centre cannot freely move around (he or she is closed in the ward), cannot go outside for a walk whenever he wants (he is entitled only to two hours walk per day), etc.<sup>382</sup>

All detention centres are for migration-related purposes and the SG is in charge of their management. Asylum seekers are never placed in regular prisons with ordinary prisoners, but stay together with migrants in an irregular situation. There is no special facility where only asylum seekers are detained. The SG officers who run the centres are trained and there are no major issues reported concerning the staff behaviour. It was reported that in 2013 and in 2014 in some centres the SG addressed foreigners by numbers assigned to them in their administrative files or used bad language.<sup>383</sup> NGOs visiting detention centres notice a positive change in that matter, although the continuous calling asylum applicants by numbers and not by their names is a problem.

The design and layout of some of the centres create the impression of a very prison-like environment: thick walls, bars in the windows and on the corridors. In addition all centres are surrounded by high walls topped with barbed wires. In 2015 the Polish authorities decided to remove bars in the windows in the detention centres and install special secure windows, but this renovation is planned to end by 31 December 2017.<sup>384</sup>

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<sup>378</sup> Letter from the Border Guard MAIL-KG-OI-614/III/15 from 18 August 2015.

<sup>379</sup> Order no 23 of the Ministry of Interior of 1 July 2014 on the designation of areas in which the arrest for foreigners is executed, available (*Zarządzenie nr 23 Ministra Spraw Wewnętrznych z dnia 1 lipca 2014 r. w sprawie wyznaczenia pomieszczeń, w których jest wykonywany areszt dla cudzoziemców*).

<sup>380</sup> Letter from the Border Guard MAIL-KG-OI-614/III/15 from 18 August 2015.

<sup>381</sup> Article 88a(2) Law on Protection, as amended in November 2015.

<sup>382</sup> Centrum Pomocy Prawnej im. Haliny Nieć, K. Przybysławska (Ed.), *Monitoring of Forced Returns from Poland July 2014-June 2015*, 35-36.

<sup>383</sup> HFHR, SIP, *Wciąż za kratami* (Still behind the bars), 2014, accessible at: <http://bit.ly/1JBxxXm>, 24.

<sup>384</sup> Paras 6 and 26 of the Regulation on detention centres.

## 2. Conditions in detention facilities

### Indicators: Conditions in Detention Facilities

- |   |   |  |
|---|---|--|
| 1. Do detainees have access to health care in practice? | <input checked="" type="checkbox"/> Yes | <input type="checkbox"/> No                                  |
| ❖ If yes, is it limited to emergency health care?       | <input type="checkbox"/> Yes            | <input checked="" type="checkbox"/> No                       |
| 2. Is access to detention centres allowed to            |   |  |
| ❖ Lawyers:  | <input checked="" type="checkbox"/> Yes | <input type="checkbox"/> Limited <input type="checkbox"/> No |
| ❖ NGOs:   | <input checked="" type="checkbox"/> Yes | <input type="checkbox"/> Limited <input type="checkbox"/> No |
| ❖ UNHCR:  | <input checked="" type="checkbox"/> Yes | <input type="checkbox"/> Limited <input type="checkbox"/> No |
| ❖ Family members:                                       | <input checked="" type="checkbox"/> Yes | <input type="checkbox"/> Limited <input type="checkbox"/> No |

The Law on Foreigners, which entered into force on 1 May 2014, contains a section on detention conditions, rights and obligation of TCNs.<sup>385</sup> It is much more detailed than the previous regulations. Some practices relating to the functioning of the centres have now been framed into the legal provisions. Below we present how the conditions are in practice.

Four centres (**Białystok, Ketrzyn, Biała Podlaska, Przemysl**) are relatively new and in good condition (they were built after 2008), and the one in Lesznów (closed from 1 July 2014) is being renovated.

Rooms are not sufficiently furnished: the main equipment consists of beds, small wardrobes and a small table. As a result, people placed in the centres cannot have all their belongings in their room, and have to place them in external storage space in the centre. Some of their belongings are also placed there for safety reasons and can be accessed only upon request. A sufficient space between beds is provided. As for privacy matters, the rooms cannot be locked at night and in some centres the SG checks per night if the detainees are present. There were also concerns about privacy in sanitary facilities in the men's part of the building in some centres.

In 2013 the detention centres' system was amended after the protest which took place in 4 out of 6 detention centres in October 2012 and subsequent monitoring held by the Ministry of the Interior and NGOs. Currently in two detention centres (**Białystok, Krosno Odrzańskie**) only men are held and in another two (**Kętrzyn, Biała Podlaska**) only families with children who are at a school age are held. In the detention centre in Przemysl families with children (not at a school age) and single men are placed. They are located in separated wings. In one of the centres (**Ketrzyn**), there is a separate part for unaccompanied irregular migrant children.<sup>386</sup> Families are placed together in one room as far as possible both under the law<sup>387</sup> and in practice.<sup>388</sup> There is no separate space for other vulnerable persons.

In all guarded centres there is a sport and recreation space.<sup>389</sup> In 2013 a number of significant changes were introduced. Previously, the time that detainees could spend outside generally did not exceed one or two hours per day and depended on the weather. The regime changed in 2013: freetime outside is no longer strictly limited. The open-air space is of adequate size and sufficient recreational facilities are provided (e.g. playing field for volleyball or basketball, in Białystok there is an open-air gym and in Ketrzyn a well-equipped playground for children). In practice the detainees have the possibility to take part in outdoor exercises on a regular basis. There are no additional restrictions. In 2014 video game consoles were bought and provided to the detainees (Kętrzyn, Biała Podlaska, Białystok). In all centres there is access to the internet<sup>390</sup> and in all of them there are computers which can be used by detainees. Detainees can watch television without any limitations, even until late at night.

<sup>385</sup> Articles 410-427 Law on Foreigners.

<sup>386</sup> Letter from the Border Guard MAIL-KG-OI-614/III/15 from 18 August 2015; Article 414(4) Law on Foreigners.

<sup>387</sup> Article 414(3) and (5) Law on Foreigners.

<sup>388</sup> HFHR, SIP, *Wciąż za kratami* (Still behind the bars), 2014, 17.

<sup>389</sup> Paras 2 and 9 of the Regulation on detention centres.

<sup>390</sup> HFHR, SIP, *Wciąż za kratami*, 2014; Letter from the Border Guard MAIL-KG-OI-614/III/15 from 18 August 2015.

The detainees have access to reading and leisure materials. There are libraries - with a number of books and newspapers in several languages – Russian, English, French. New books or newspapers are provided regularly in some centres (**Ketrzyn, Bialystok**). They also have popular games to play (e.g. chess, cards). Concerts and sport competitions are organised for adults and children in **Ketrzyn** take part in cultural activities and prepare shows for their parents.

Detention centres provide rooms for religious practices.

In all centres, in the corridors of each floor there are boards which provide information in at least 1 or 2 main foreign languages (Russian and/or English). They provide information on the asylum applicants' rights and/or the rules of stay in the detention centre, meal times, contact details of NGOs and – depending on the centre – on access to the doctor and psychologist.

In some centres (**Ketrzyn, Bialystok**) each asylum applicant has an officer appointed to their case with a scheduled meeting to discuss their case. The rules of stay in the detention centres are available in 16 languages: Arabic, English, Ukrainian, Russian, French, Armenian, Chinese, Georgian, Hindi, Spanish, Mongolian, Turkish, Persian, Urdu, Bengali and Vietnamese.<sup>391</sup> Not all the language versions are displayed, as the vast majority of asylum seekers are Russian-speaking. Depending on the centre they are available on each floor of the detention centre or in the common-rooms, etc.

## Education

Children staying in the guarded centres are – like all other children staying on the territory of Poland – subject to obligatory education until they are 18. However, this obligation, set in the Polish Constitution, is not fulfilled in the case of children staying in guarded centres.<sup>392</sup> None of the children staying there regularly attends school. Schools near the detention centres in **Ketrzyn** and **Biala Podlaska**, where the children in school age are placed, delegate teachers to work in detention facilities. In these centres special classrooms are prepared. This is the result of agreements between the SG, educational institutions and local authorities. However, education is limited in time to a couple of hours per week (e.g. in **Ketrzyn** eight hours a week) and teachers are not sufficiently prepared to work with TCNs children, so it mainly concentrates on Polish language lessons and arts activities. In both centres where the school children are placed (**Biala Podlaska** and **Ketrzyn**) the organization of activities is the responsibility of the teachers and directors of the schools and each time the programme is adapted to the children who are currently in the detention centre. Classes are carried out jointly for all children, regardless of their age, level of education, or fluency in Polish. This means that children aged 6 can be placed in school in the detention centre alongside others aged 17. The school certificates are not issued to children, only the overall certificate upon request. Children are not subject to the system of classification, or promotion, they do not take any external exams. The lessons for children who speak only their mother language is limited to arts activities. Polish language lessons are conducted also for adults.

Generally the right to education for children in detention centres for asylum applicants is not properly implemented. Topics and activities offered to children do not meet the requirements of the general education curriculum. There are no legal regulations that specify the obligations of the SG, educational authorities and schools themselves in teaching children in detention centres. The law does not indicate, in particular, on what basis such teaching is to be executed or who should finance the lessons. The Ombudsman stated that the right to education of children placed in detention centres is not observed and they should have the possibility to attend public schools. The Ombudsman stressed that the SG should also ensure that classes are conducted by qualified teachers and that the curriculum be implemented. The programme must include lessons of Polish as a foreign language as well as lessons concerning other topics.<sup>393</sup>

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<sup>391</sup> Letter from the Border Guard MAIL-KG-OI-614/III/15 from 18 August 2015.

<sup>392</sup> HFHR, SIP, *Wciąż za kratami*, 2014, 46.

<sup>393</sup> Polish Ombudsman, *Raport RPO (Implementation of the right to education for foreign minors. Polish Ombudsman report)*, 2013, 55.



In February 2015 the Polish Ombudsman wrote to Ministry of Education in purpose of improvement of the education system for TCNs in Poland, also for children placed in detention centres.<sup>394</sup> As a result, a meeting with the Ministry of Education, SG, the Polish Ombudsman and directors of the schools was organised in April 2015, during which Ministry declared that they will create the law concerning the education of minors in detention centres.<sup>395</sup>

## Health care

According to the law, all detainees have access to regular health care.<sup>396</sup> In all centres, medical staff are present and working, there is at least one physician and one nurse, but there are often more. In case of an emergency or the need for a specialist (e.g. gynaecologist), detainees are transferred to hospitals or clinics. The doctors present in the detention centres generally know some foreign languages (Russian, English). According to SG, every doctor hired in the centres has to know at least one foreign language.<sup>397</sup> In practice if they do not know the patient's mother tongue, an interpreter is made available. The interpreter is usually a SG employee working in the education section in the centre. In some centres (**Ketrzyn, Przemysl**) it was stressed by the SG that they provide translation for rare languages, but there has been no possibility to confirm it in a concrete case.

There is also access to psychological care (according to SG in all centres there is an external psychologist hired who works at least two times a week for two hours and one psychologist from SG),<sup>398</sup> but no therapy for serious disorders is provided. Accordingly to SG, every psychologist hired in the centres has to know at least one foreign language, if there is a problem with communication – an interpreter is made available.<sup>399</sup>

In all detention centres information on the availability of medical and psychological care is displayed on boards in the corridors,<sup>400</sup> but in practice sometimes detainees do not know about that.

In some detention centres, the food is prepared on site, by external providers. In others, it is prepared in the centres. There are several specific diets e.g., vegetarian, vegan, adapted to Muslims, adapted to pregnant or breastfeeding women, diabetic. Other diets can be respected on prescription of the physician.<sup>401</sup>

## Access and contacts

The law allows for lawyers, NGOs or UNHCR to have access to detention centres.<sup>402</sup> Detained asylum seekers are entitled to maintain contact with UNHCR and organisations dealing with asylum issues or granting legal assistance (directly and by means of correspondence and telephone calls). Direct contact with UNHCR and organisations can be limited or restricted completely<sup>403</sup> by the head of the detention centre if it is necessary to ensure safety and public order or to observe the rules of stay in the detention centre. The decision of the head of the centre is final. The Head of the Office for Foreigners and UNHCR

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<sup>394</sup> Letter from Polish Ombudsman to Ministry of Education from 9 February 2015, accessible in Polish at: <http://bit.ly/1FSiCtT>.

<sup>395</sup> Rzecznik Praw Obywatelskich (Polish Ombudsman), K.Łakoma (ed.), *Działania Rzecznika Praw Obywatelskich na rzecz ochrony praw migrantów w latach 2010 - 2015 - wyzwania i osiągnięcia* (Activities of Polish Ombudsman to protect migrants rights in 2010-2015 – challenges and achievements), 2015, accessible in Polish at: <http://bit.ly/1L1KEQg>, 7.

<sup>396</sup> Articles 415(1)(5) and 417 Law on Foreigners.

<sup>397</sup> Letter from the Border Guard MAIL-KG-OI-614/III/15 from 18 August 2015.

<sup>398</sup> *Ibid.*

<sup>399</sup> *Ibid.*

<sup>400</sup> *Ibid.*

<sup>401</sup> *Ibid.*

<sup>402</sup> Article 415(1)(2), (3), (19) Law on Foreigners and Article 89a(1)(2) Law on Protection.

<sup>403</sup> According to the amended Law on Protection, it will be a possibility only to limit such contact.

should be informed about it.<sup>404</sup> This provision is not used in practice. NGOs provide legal assistance, but unfortunately not on a regular basis. In 2015 some of the NGOs had to diminish their assistance (also legal) in the detention centres, because of lack of financial means as a result of delay in the implementation of AMIF.

As a general rule, NGOs have to ask for the consent of a manager of the detention centre to meet with a specific asylum seeker. Lawyers, family members and friends, or NGOs can meet with a detainee during visiting hours. There are no limitations concerning the frequency of such visits. UNHCR Poland notes that they are not limited in accessing detention centres. The media and politicians have access to detention centres under general rules; they have to ask for the consent of the SG unit managing the detention centre.

In practice, NGOs who want to meet with more than one or with unspecified asylum seekers, monitor conditions in a detention centre etc. must ask the SG Commander in Chief in writing for permission to visit a detention centre. Since March 2013 such consent is given by the Commander of the Regional Unit of the SG.<sup>405</sup> In this situation, visits are generally not limited to visiting hours. Non-governmental organisations generally do not face problems in accessing the centres.

Visits from relatives, friends or religious representatives are authorised. Any one visit should not last more than 90 minutes, but it can be prolonged in justified cases by the manager of the centre. Two adults have a right to take part in the meeting. The number of children is not limited.<sup>406</sup> Non-scheduled visitors as a rule do not have a possibility to meet with the asylum applicant (but the manager of the detention centre can make exceptions from the above mentioned rules, especially when it is needed to maintain family ties and care over a children).<sup>407</sup>

Detainees are able to maintain regular contact with people outside the centre. There is no limitation in using cell phones (without audio- and video recording system) or public phones. The SG's have several hundreds of substitute cell phones without a camera which they provide to foreigners in case they only have smartphones. The cell phones are handed over for the whole day for free. The foreigners can also use public phones, sufficient privacy is provided. In both cases detainees themselves pay for the calls. There is a possibility to order a phone card. The SG officers go and do shopping for detainees usually twice a week. If the asylum applicant does not have money to buy a telephone card, there is a possibility of using the SG's equipment in justifiable cases.

The Law on Foreigners which came into force on 1 May 2014 introduced a legal possibility to impose a sanction on a detainee who does not obey the rules in the detention centre.

There are two possibilities:

- Banning participation in sport and leisure activities (except for using the library) or;
- Banning the purchase of food and cigarettes from outside the centre.<sup>408</sup>

When deciding upon the application of either of these two sanctions, the SG Regional Commander takes into account the general behaviour of the detainee, the level of disobedience, cultural background, etc. Before adopting the law, such punishments were applied in practice without any legal basis. In the first half of 2015, such punishment was used five times (3 times by banning participation in sport and leisure activities for 7 days and 2 times by banning the purchase of the food and cigarettes for 7 days).<sup>409</sup>

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<sup>404</sup> Article 89a(1) and (2) Law on Protection.

<sup>405</sup> Letter from Border Guard Commander in Chief FAX-KG/CU/1981/IW/13 from 13 March 2013.

<sup>406</sup> Para 21 of the Rules of foreigners' stay in guarded centre and arrest for foreigners (Annex to the Regulation on detention centres).

<sup>407</sup> Para 23 of the Rules of foreigners' stay in guarded centre and arrest for foreigners (Annex to the Regulation on detention centres).

<sup>408</sup> Article 421(2) Law on Foreigners.

<sup>409</sup> Letter from the Border Guard MAIL-KG-OI-614/III/15 from 18 August 2015.

## D. Procedural safeguards

### 1. Judicial review of the detention order

#### Indicators: Judicial Review of Detention

1. Is there an automatic review of the lawfulness of detention?  Yes  No
2. If yes, at what interval is the detention order reviewed?

Detention is ordered by the District Court upon request of the SG on specific grounds (see section on grounds for detention). Prolongation of the detention is also ordered by the District Court upon request of the SG. Asylum seekers stay in the detention centre can be prolonged if before the end of the previous period of the detention, the final decision concerning the application for international protection is not issued and the reasons to detain the applicant still exist.<sup>410</sup>

Asylum seekers are informed of the reasons of their detention, legal remedies and their rights. Information on the reasons for detention is given first in the court, orally, translated into a language understandable for the asylum applicant. From 1 May 2014 the court has a clear obligation to hear the person concerned before rendering a decision.<sup>411</sup> In some guarded centres, when the person is admitted to the centre, there is a meeting during which a detainee is given basic information about the centre and his situation.

The national legislation provides for a judicial review of the lawfulness of detention.<sup>412</sup> Asylum seekers can appeal against a District Court ruling to the Regional Court within 7 calendar days from the day the ruling is pronounced (in prolongation cases it is 7 days from the delivery of the ruling to an asylum seeker).<sup>413</sup> In this appeal the detainee can dispute the grounds of their detention. Asylum seekers receive rulings in the language they understand (it is a literal translation of a ruling rendered in Polish). Until 1 May 2014, there were no specified time limits for the Regional Court to decide on the appeal, but it should have been done “immediately”.<sup>414</sup> In practice there were no legal consequences for not examining the appeal immediately. Sometimes the appeals were not even examined before the period for which an asylum seeker was placed in a detention centre finished.<sup>415</sup> The Law on Foreigners envisages 7 days for the examination of the appeal.<sup>416</sup>

Some courts – although they have such a legal obligation – do not provide information about the right to appeal in the judgement or, indeed, write that the judgement cannot be appealed.<sup>417</sup> Automatic periodic review of the detention is ensured by limiting the period of time within which a ruling on detention is issued (up to 90 days or up to 60 days). The rule that the prolongation of the stay in the detention centre cannot exceed 90 days, no longer applies. Currently a stay can be prolonged for a time needed to issue a final decision concerning the application for international protection, no longer than in total 6 months. Previous practice of the courts and the SG raises concerns that prolongation will be judged for a maximum possible period (so for 6 months in total). A monitoring of the legality and correctness of the detention is carried out by a penitentiary judge of the regional court from 1 May 2014.<sup>418</sup> A penitentiary judge can visit the detention centre any time, without limits, view documents and talk with TCNs staying in the detention centre.<sup>419</sup>

<sup>410</sup> Article 89(4) Law on Protection, as amended in November 2015.

<sup>411</sup> Article 88b(1) Law on Protection.

<sup>412</sup> Article 88b(3) Law on Protection; Article 403(8) Law on Foreigners.

<sup>413</sup> Courts interpret differently the law in this matter – some claim that 7 days should be counted from the day of the pronouncement of the court ruling about placing the foreigner in the detention centre, some that it should be counted from the day the translated ruling is delivered to a foreigner in writing – T. Sieniow, *op. cit.*, 54.

<sup>414</sup> Article 106 Law on Foreigners (applicable until 1 May 2014).

<sup>415</sup> T. Sieniow, *op. cit.*, 56.

<sup>416</sup> Article 88b(3) Law on Protection; Article 403(8) Law on Foreigners.

<sup>417</sup> T. Sieniow, *op. cit.*, 53.

<sup>418</sup> Article 426 Law on Foreigners.

<sup>419</sup> Article 426(3) Law on Foreigners.

The court procedure concerning detention orders is not considered effective. Courts are very often deciding on detention of asylum seekers without an in-depth analysis of their personal situation, and reasons for detention mentioned in the judgment are indicated very generally - without direct reference to a personal situation. The court's approval of the SG's request to detain a TCN is often automatic, and TCNs are not heard in the appeal procedure before the Regional Court.<sup>420</sup>

NGOs have highlighted this problem for some time, but in 2013 the President of the District Court in Biała Podlaska, which handles a lot of asylum seekers' detention cases (Terespol border crossing point is covered by this court's jurisdiction) addressed a letter to the SG Commander in Chief about cases concerning prolongation of detention. The President of the Court noted in her letter,<sup>421</sup> that the SG often submits the motions for extending the detention of asylum seekers on the last day of their stay, which does not give the court enough time to look into the case and analyse all the circumstances, inform the legal representative of the prolongation of detention for the asylum seeker, hear the person concerned, etc. In the opinion of the President of the Court, this may infringe the right to a fair trial.<sup>422</sup> In 2015 it is still a problem.

Every TCN is entitled to compensation and redress for wrongful detention from the State Treasury.<sup>423</sup>

The basic problem concerning grounds of detention is an automaticity applied by courts in all TCN detention cases.<sup>424</sup> In practice courts accept SG applications to detain all TCNs without an in-depth analysis of the individual situation of the asylum seeker and the law in force. The following examples illustrate this practice.

There was a case of an asylum seeker being detained even during the first appeal procedure (even though she stayed legally on the territory of Poland). She was detained during the appeal procedure, because her appeal, although lodged within the time-limits, was not entered into the registration system in a timely fashion. As a result she was mistakenly considered as an irregular migrant. Even though it was a mistake, neither the second instance administrative court, nor the Head of the Office for Foreigners agreed to release her from the detention centre. She was only released after being granted a tolerated stay permit (which was granted within the asylum procedure until 1 May 2014). She spent more than five months in the detention centre. HFHR lawyers lodged a complaint to the ECtHR on her behalf.<sup>425</sup> In September 2013 the Polish Government was informed about the complaint.<sup>426</sup> In February 2014 the government offered to settle the case and pay the amount requested by the applicant, which was accepted by the applicant.<sup>427</sup>

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<sup>420</sup> P. Nikiel, *Raport o stosowaniu detencji wobec osób starających się o nadanie statusu uchodźcy w Polsce. Analiza orzecznictwa sądów (Report on detention of asylum seekers in Poland. Analysis of the jurisdiction)*, Centrum Pomocy Prawnej im. H. Nieć, 2010, 20, available at: <http://bit.ly/1JA4RAR>; T. Sieniow, *op. cit.*, 49-50, 54-55.

<sup>421</sup> The letter of the President of the District Court in Biała Podlaska to the Border Guard Commander in Chief from 12 April 2013 nr adm. 5102-8/2013/K/VII. The letter was also sent to other institutions, including HFHR.

<sup>422</sup> See also T. Sieniow, *op. cit.*, 60.

<sup>423</sup> Article 407 Law on Foreigners.

<sup>424</sup> J. Bialas, *Automatism in foreigners' detention in: In search of protection. Selected problems concerning the enforcement of rights of foreigners who apply for refugee status and are under international protection in the years 2012-2014. Observations of the Legal Assistance for Refugees and Migrants Programme of the Helsinki Foundation for Human Rights*, 2014, accessible in Polish at: <http://bit.ly/1eiVxDE>, 61-63; Centrum Pomocy Prawnej im. Haliny Nieć, K. Przybyławska (Ed.), *Monitoring of Forced Returns from Poland July 2014-June 2015*, 25.

<sup>425</sup> J. Białas, *Sprawa D.D. (D.D. Case)*, Kwartalnik o prawach człowieka Helsińskiej Fundacji Praw Człowieka, no. 1, Warszawa 2012.

<sup>426</sup> Letter to HFHR from the European Court on Human Rights from 13 September 2013.

<sup>427</sup> ECtHR *Dagirat Dzhabrailova v Poland*, Application No 78244/11, Judgment of 9 September 2014. See also J. Bialas, *Automatism in foreigners' detention in: In search of protection. Selected problems concerning the enforcement of rights of foreigners who apply for refugee status and are under international protection in the years 2012-2014. Observations of the Legal Assistance for Refugees and Migrants Programme of the Helsinki Foundation for Human Rights*, 2014, 61-63.

In another case, an asylum seeker from Iran was detained directly after being sent back to Poland in a Dublin procedure. The court claimed that detention is justified because an asylum seeker crossed a border illegally (even though it was a Dublin transfer) and there is a need to confirm her identity. The asylum seeker did not have a passport, but she had other documents confirming her identity. Moreover her personal data had already been confirmed by the authorities in the context of the Dublin procedure. The applicant spent 2 months in a detention centre. HFHR prepared the motion for compensation for wrongful placement in detention,<sup>428</sup> which was awarded in its entirety by the court.

## 2. Legal assistance for review of detention

### Indicators: Legal Assistance for Review of Detention

1. Does the law provide for access to free legal assistance for the review of detention?  
 Yes  No
2. Do asylum seekers have effective access to free legal assistance in practice?  
 Yes  No

The law provides for access to free legal assistance for the review of detention before the courts, but it is hardly ever exercised in practice.<sup>429</sup> Asylum seekers can ask the court to grant them free legal assistance, if they duly prove that they are not able to bear the costs of legal assistance, without harm to the necessary maintenance of themselves and their families.<sup>430</sup> From 13 November 2015 the court has a clear obligation to inform asylum seekers in a language understandable to them about the right to ask for legal assistance.<sup>431</sup> Most asylum seekers do not know about such a possibility or do not know how to fill in the form in Polish. As a result they are dependent on legal assistance granted by NGO lawyers, most of whom are not entitled to represent them before courts and do not visit detention centres on a regular basis to provide such assistance whenever needed.

It can be said that generally legal assistance in detention centres is not effective because of the lack of a centralised or well-managed system of granting it. NGOs pay visits to the detention centres mostly depending on the project they currently implement.

The Law amending the Law on Protection has created a state legal aid system. It includes lawyers' visits to the detention centres. A State legal system for asylum seekers is planned to start operating from 1 January 2016.<sup>432</sup>

<sup>428</sup> J. Bialas, *op cit.*, 61-63.

<sup>429</sup> Articles 78 and 87a Law of 6 June 1997 on the Code of Penal Proceedings, Journal of Laws 1997 no 89 position 555, available at: <http://bit.ly/1UcJEO3> (Ustawa z dnia 6 czerwca 1997 r. Kodeks Postępowania Karnego, Dz. U. 1997 nr 89 poz. 555).

<sup>430</sup> Article 78 and 87a Code of Penal Proceedings.

<sup>431</sup> Article 88b(4) Law on Protection, as amended in November 2015.

<sup>432</sup> Article 69(c)-(m) Law on Protection, as amended in November 2015.

## ANNEX I – Transposition of the CEAS in national legislation

### Directives and other CEAS measures transposed into national legislation

Directive	Deadline for transposition	Date of transposition	Official title of corresponding act	Web Link
<b>Directive 2011/95/EU</b> Recast Qualification Directive	21 December 2013	30 August 2014	Ustawa z dnia 26 czerwca 2014 r. o zmianie ustawy o udzielaniu cudzoziemcom ochrony na terytorium Rzeczypospolitej Polskiej oraz niektórych innych ustaw (Dz.U. 2014, poz. 1004)	<a href="http://bit.ly/1dBH7hj">http://bit.ly/1dBH7hj</a> (PL)
<b>Directive 2013/32/EU</b> Recast Asylum Procedures Directive	20 July 2015 Article 31(3)-(5) to be transposed by 20 July 2018	13 November 2015	Ustawa z dnia 10 września 2015 r. o zmianie ustawy o udzielaniu cudzoziemcom ochrony na terytorium Rzeczypospolitej Polskiej oraz niektórych innych ustaw	<a href="http://bit.ly/1SHTI1B">http://bit.ly/1SHTI1B</a> (PL)
<b>Directive 2013/33/EU</b> Recast Reception Conditions Directive	20 July 2015	13 November 2015	Ustawa z dnia 10 września 2015 r. o zmianie ustawy o udzielaniu cudzoziemcom ochrony na terytorium Rzeczypospolitej Polskiej oraz niektórych innych ustaw	<a href="http://bit.ly/1SHTI1B">http://bit.ly/1SHTI1B</a> (PL)
<b>Regulation (EU) No 604/2013</b> Dublin III Regulation	Directly applicable 20 July 2013	13 November 2015	Ustawa z dnia 10 września 2015 r. o zmianie ustawy o udzielaniu cudzoziemcom ochrony na terytorium Rzeczypospolitej Polskiej oraz niektórych innych ustaw	<a href="http://bit.ly/1SHTI1B">http://bit.ly/1SHTI1B</a> (PL)