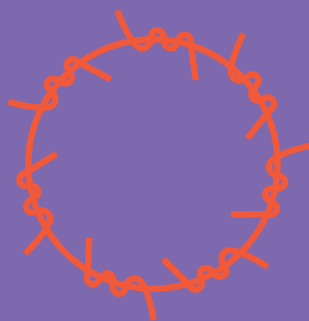


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# AT THE BORDER

Report on monitoring of access to the  
procedure for granting international  
protection at border crossings in Terespol,  
Medyka, and Warszawa-Okęcie Airport



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# 1. Introduction and monitoring methodology

Member States of the European Union are facing an unprecedented since World War II influx of persons seeking international protection. The year 2015 observed a peak with 1 321 600 asylum applications filed in all Member States. The number doubled compared with 2014, when 626 960 persons applied for international protection, and trebled compared with 2013<sup>1</sup>. In respective periods, the number of applications lodged in Poland reached 12 325, 6 621 and 15 253 persons<sup>2</sup>. EU-wide, Poland was 15th.

The influx of asylum-seekers has highlighted the inefficiency of the Common European Asylum System, while intermediate measures

taken on EU level, relocation programs in particular, can hardly be considered an appropriate response to the humanitarian crisis taking place in Europe and on its fringes. The political debate revolves more around strengthening EU's external borders and constructing „Fortress Europe” rather than assistance to persons seeking international protection. The discussion on refugees has been dominated by issues of security and public order, and Poland, alongside the Czech Republic, Hungary and Slovakia, is actively following this approach. Although in autumn of 2015 Poland declared to receive 7,000 refugees, there are more distinct voices, which emerge with the election of new government representatives, trying to undermine the commitment made by the previous government. Irrespective of future decisions regarding resettlement and relocation, an increased influx of migrants into Poland cannot be ruled out. This requires examining the efficiency of the reception system and integration of persons seeking international protection. To this end, in the period from January to the end of April 2016, the Association for Legal Intervention (SIP), in cooperation with the Panoptikon Foundation, the Institute of Public Affairs Foundation, and the Polish Migration Forum Foundation conducted the

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1 Eurostat statistical data for the day of 18.03.2016 r., Asylum and first time asylum applicants by citizenship, age and sex, Annual aggregated data, [http://ec.europa.eu/eurostat/statistics-explained/index.php/Asylum\\_statistics](http://ec.europa.eu/eurostat/statistics-explained/index.php/Asylum_statistics), (access: 15.04.2016).

2 Office for Foreigners data on the number of proceedings involving foreigners in 2013, 2014, and 2015, <http://udsc.gov.pl/statystyki/raporty-okresowe/zestawienia-roczne>, (access: 15.04.2016).

project “They are coming! How to give them a welcome? „(Co-financed by the EEA), comprising several independent activities aimed at understanding those areas concerning reception of asylum seekers in Poland which, despite repeated examination, require improvement. SIP carried out monitoring activities at the border, and within its framework, examined how well the Border Guard is prepared for a massive influx of asylum seekers, the legality of applicable procedures, and how well facilities at border crossings are adapted to these regulations. Of particular interest was access to the asylum procedure and the procedure of refusing the entry to Poland. This was because non-governmental organisations have been repeatedly informed about refusing entry to persons who had declared the intention to apply for international protection. The study also analysed a number of aspects related to processing applications for international protection and the degree to which border crossing facilities are adapted to meet the needs of asylum seekers. Three border crossings were monitored: Medyka, Terespol and Warszawa-Okęcie. The crossing in Medyka, the largest border crossing with Ukraine, was the subject of research because there is potential for a massive influx of Ukrainian citizens to Poland, as a result of the ongoing armed conflict. Warszawa-Okęcie was monitored as this checkpoint is likely to be the point of reception for resettled and relocated persons. Meanwhile, Terespol is a place where large numbers of applications for international protection have been regularly lodged for many years, and where the most applications have been rejected. NGOs have also been

receiving alarming information from this border crossing regarding informal measures applied by the Border Guard comprising initial evaluation of validity of foreigners’ accounts of persecution and refusing entry to Poland to a significant number of persons stating they intend to apply for international protection.

In order to conduct the study, two monitoring teams consisting of SIP staff were formed. Due to the nature of activities performed by each of them, every person worked on the basis of a distinct methodology. The common element in both teams’ work was the analysis of existing laws and regulations, and statistical data regarding monitored border crossings, as well as synchronising other measures.

The first team, consisting of three researchers: Katarzyna Słubik, Joanna Subko, and Anna Trylińska, conducted monitoring of the three border crossings (Terespol on 2–3 March; Medyka on 23–24 March; Warszawa-Okęcie on 5 April 2016). Commander in Chief of the Border Guard had been given advanced notice of the monitoring and gave the researchers permission to access the three border crossings and conduct these activities. This part of the study was carried out on the basis of a uniform methodology, so that measures and practices for each of the monitored border crossings could be compared. In the course of this stage of the monitoring the following activities were carried out:

- field visit with Border Guard officials
- casual chats with Border Guard officials
- interviews with nine Border Guard officials

In the case of the border crossing in Terespol the monitoring team were denied entry to the check-in hall and thus observed the procedure only through the glass walls of the room. Meanwhile, at the Medyka and Warszawa-Okęcie airport crossings the procedure failed to be observed because of the scarcity of asylum applications. For this reason, additional interviews were conducted with eight foreigners who'd applied for asylum at one of the border crossings (with three people who had applied for international protection at the airport Warszawa-Okęcie and 5 people who had applied for protection at the Medyka international land crossing).

Another interview was conducted with the Family Court Judge of the District Court in Biała Podlaska. The judge gives rulings in cases involving unaccompanied minors who arrive at the border crossing in Terespol. The reason for this interview was the need to clarify the information provided by Border Guard officials at the facility in Terespol.

Due to its distinctive character, the border crossing in Terespol became the subject of particular interest during the project. The second monitoring team, whose members were Aleksandra Chrzanowska, Olga Hilik and Patrycja Mickiewicz, focused mainly on visits to Brest, in order to interview the persons whose applications were rejected by Border Guard officials, as this is the place these persons come from and are returned to. There were three 3-day visits planned, involving two researchers in the course of three months. The first visit took place on February 4–7, the

second on 7–9 March 2016, and the third, scheduled for early April, did not take place as a result of refusal to grant the researchers visas to Belarus. Due to the very short duration of the project, it was not possible to equip another group of researchers and prepare formalities to enable them to enter Belarus. Moreover, there were concerns that once their connections with SIP were revealed, they would be denied visas. In addition, research material collected during the first two visits was so extensive that cancelling the third did not affect meeting the aims of the project. Instead, a decision was made to visit Terespol and participate in the procedure for lodging applications by two families. One of the researchers took power of attorney to represent them in the procedure. There were also two visits to Biała Podlaska in order to interview two persons, encountered earlier in Brest, who were able to enter Poland after the researcher's assistance. In addition, the researchers reviewed files kept at the Border Guard outpost in Terespol, which document administrative proceedings relating to a total of 137 decisions to refuse the entry to the territory of the Republic of Poland issued to nine foreigners, who "bounced off" the border between 13 and 19 times before being allowed to lodge applications for protection, and who authorised SIP's staff to access their files. The aim of this stage of the monitoring was mainly an attempt to verify contradictory information concerning the reasons for refusing entry to Poland collected from Border Guard officials and returned foreigners. Because all the foreigners claimed not to

have been given the entry refusal decision by officials, and indeed, none of the interviewees encountered by the researchers in Brest was in possession of such a document, there was no other way to review the decisions than to access the archive of the Border Guard outpost in Terespol.

Apart from issues related to availability of the asylum procedure and proceedings concerning entry refusal, the researchers attempted to observe the attitude of the Border Guard towards persons seeking international protection, transparency of border procedures, and the preparedness of these facilities at this border crossing to receive a large number of persons seeking international protection. The researchers were also interested in the conditions in which persons who had repeatedly been returned from Poland travel<sup>3</sup>.

To achieve the aforementioned objectives, the following steps were taken:

- interviews with people who had been refused entry into the territory of Poland, which included informing them on their rights and the organizations operating in Poland which provide free assistance to asylum seekers,
- analysis of travel documents carried by foreigners who had been refused entry to the

territory of the Republic of Poland,

- interviews with people who host foreigners who had been refused entry to the territory of the Republic of Poland,
- observation of travel conditions of foreigners who had been refused entry to the territory of the Republic of Poland,
- observation of the reception conditions for people who attempt to enter Poland without required documents,
- observation of conditions in which applications for international protection are processed, and in order to do that, taking power of attorney to represent foreigners who declare the intention to apply for international protection at the border crossing in Terespol,
- analysis of records of proceedings concerning refusal of entry into the territory of Poland,
- interventions regarding people who have been refused entry into the territory of Poland – a number of letters addressed to the Border Guard Commander in Terespol,
- assistance in preparing appeals against entry refusal decisions and consecutive monitoring of appeal proceedings.

The study was also going to include monitoring of border control procedures. This action proved to be impossible because the researchers were refused visas to enter Belarus for the third time. It did not allow the researchers to proceed with the plan to produce to the Border Guard a letter of attorney to represent select foreigners in the international protection procedure and to accompany the foreigners in

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3 On this occasion it was, to some extent, possible to witness living conditions of foreigners who are returned from Terespol many times, which served as additional background to highlight negative effects of Polish border guards conduct.

the asylum procedure at the border crossing outpost in Terespol from start to end. It was the only opportunity to observe border control procedures, as the Border Guard consistently refused access to the procedure to NGOs as well as international organisations. It was planned for the culmination of the project, to ensure that specific research instruments are not revealed to Border Guard officials at Terespol too soon.

Before the first visit, the researchers conducted an in-depth preliminary study, searching for information in various sources. They were told by SIP clients that all persons who intend to apply for international protection in Poland arrive with the first train from Brest<sup>4</sup>, which

reaches Terespol at 6:48 am, while those who have been refused entry return on the first train to Brest at 11:25 am. They are awaited at the railway station in Brest by Belarusians who take the foreigners by taxis to their accommodation. Therefore, the round trip was planned to ensure maximum observation and establish contact with foreigners as early as possible. It proved impossible to talk with foreigners on the way to Brest, though, because persons who were denied the entry to Poland are taken by Border Guard officials to a separate locked carriage (or carriages, if there are many travellers). The first interaction could, therefore, take

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4 Foreigners arrive in Terespol in order to apply for international protection only on the first (morning) train from Brest, even though there are three connections both ways throughout the day (excluding long distance trains from Moscow to Paris). It has not been established why they always take the first train. Many people did not know there are other connections. Individual respondents claimed that the other connections are too late, Polish Border Guard doesn't work anymore, and if someone without a visa came on a later train, he/she would be sent back to Brest without passport control. One person reported such a case from recent past. Another claimed that these situations don't take place because, perhaps on the grounds of some agreements, Belarusian Border Guard does not allow persons without

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visas travel on later trains. Meanwhile, one Belarusian said that Belarusian border guards always let people without visas through ("*they don't care*") regardless of which train someone wishes to take. The research team conducting interviews with Border Guard officials at the border were not able to gather unambiguous information. According to the Border Guard Headquarters "for the last 15 years foreigners have been choosing to cross the border at this hour because the train from Moscow to Brest gets there in the early hours, which allows the foreigners to catch a connecting train to Brest-Terespol" (from the comments sent by the Border Guard following the submission of the preliminary version of the report). This still does not explain why the foreigners, having been refused entry multiple times and already in Brest, undertake an identical attempt every day.



place at the railway station in Brest. On the first day, the researchers approached persons who had arrived from Terespol, and on the remaining days, returned to the station to interview those who had been refused entry again. Despite the initial assumption that many people returned from Terespol may be wary of strangers and refuse to talk with the researchers, it transpired that foreigners were particularly interested in sharing their experiences from the border crossing in Terespol and learning what kind of procedures should be applied to them. Most of the interviews took place at the railway station in Brest. The researchers approached people / families on the way from the check-in to the waiting room, and initially interviewed them individually. In time, more people appeared interested in sharing the information which the researchers wanted to collect and gathered in groups of a few to over a dozen people. The waiting room did not offer comfortable conditions for these interviews, but it was the only opportunity to establish at least initial contact with the foreigners. Belarusians who rent out accommodation to those who were returned from the border crossing with Poland often implied that they were in a hurry and rushed their lodgers, who seemed to be completely dependent on the landlords. It also seemed that some of the hosts were sceptical towards what the researchers had to communicate in terms of rights applying to foreigners and perceived them as a kind of competition. Only a few brought hosted families to the researchers and asked for help. In the case of a few other people it was only possible to conduct interviews

after they have entered Poland. In addition, it was virtually impossible to meet refugees in places other than the railway station in Brest at certain times. They hardly ever left their accommodation. As they reported to the researchers, they would rather be napping after an early rise, cooking, and getting ready for further attempts to cross the border.

Nevertheless, on both visits to Brest the researchers were able to interview a total of over 60 people, talked to many interviewees repeatedly, and with 16 of them (also after their successful entry to Poland) in-depth, unstructured interviews were conducted. The interviews were held in Russian and by principle were not recorded because it had been concluded that they concern such sensitive topics and take place in such uncomfortable conditions that a recording device could effectively deter potential interviewees. Therefore, very detailed notes were made after each interview. The interviewees were asked about the following issues:

- how long and how many times they had been trying to cross the border,
- why they went to Poland, what they had told Border Guard officials,
- whether and how Border Guard officials justified refusing the entry to the territory of the Republic of Poland,
- how the procedure of entry refusal was formalized: relevant stamps in passports,
- whether Border Guard officials had given the foreigners any documents to sign in connection with the refusal, and if so, which language were they in and if copies were provided.

Foreigners were also asked to describe in detail the different stages of attempting to cross the border; what happened to them from the moment they got on the train in Brest to de-training in Terespol, how would they rate the behaviour of Polish border guards, and, above all, their conduct towards themselves and other travellers. In addition, foreigners were asked about the costs of their extended stay in Brest. The study conducted in Brest was certainly innovative, since no one so far has applied this method to monitoring the access to the Polish territory and refugee procedure in our country.

The results of the monitoring conducted by both teams are presented in this report. Its core is the information gathered during visits to border crossings made by the first research team. This information was supplemented with data obtained from foreigners who „bounced off” the Polish border in Terespol and observations made by the researchers working in the second monitoring team, as well as information from interviews with eight asylum seekers who lodged applications for international protection at border crossings in Medyka and Warszawa-Okęcie airport.

The description of the monitoring results is preceded by an analysis of legal provisions. Each of the sections / subsections ends with recommendations on any changes which would need to be introduced in order to better implement the obligations which Poland is under with regard to receiving refugees. Implementation of some of the recommendations requires systemic changes, others are

purely organisational, but they all seem necessary in order to better protect the rights of people who lodge or intend to lodge applications for international protection on the territory of Poland.

We would like to thank the Border Guard Headquarters' Chief Officer, Border Guard Colonel Andrzej Jakubaszek, for allowing to carry out the monitoring, as well as the Commanders of individual institutions: Border Guard Lt.-Col. Artur Barej from Border Crossing in Terespol, Border Guard Lt.-Col. Jacek Szczańchor from Border Crossing in Medyka, and border guard Lt.-Col. Robert Kulus from border crossing Warszawa-Okęcie – for the opportunity to make a site visit and interview subordinate officers/officials. We would also like to thank the judge of the District Court in Biała Podlaska Robert Lukijaniuk for providing his time and valuable information, Katarzyna Przybysławska of the Halina Nieć Legal Aid Centre (CPPHN), Maria Pamuła of UNHCR Warsaw office. We also wish to give thanks to the Border Guard officials from posts at Terespol, Medyka, and Okęcie, who were interviewed, and all the foreigners who agreed to share their experiences with us.

## 2. Analysis of legal provisions

### 2.1. Access to the procedure for granting international protection

Poland, as a party to the Geneva Convention and New York Protocol<sup>5</sup> concerning the status of refugees, as well as in accordance with European Union law forming the Common European Asylum System<sup>6</sup>, or complying with

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5 Convention on the status of asylum seekers adopted in Geneva on 28 July 1951 (Journal of Laws 1991.119.515) and Protocol regarding the status of asylum seekers drafted in New York on 31 January 1967 (Journal of Laws 1991.119.517)

6 Common European Asylum System consists of a collection of legal acts:

1. European Parliament and Council Directive 2013/32/UE of 26 June 2013 on common procedures of granting and revoking international protection (revised version) – so called Asylum Procedure Directive
2. European Parliament and Council Directive 2013/33/UE of 26 June 2013 on establishing norms on receiving applicants for international protection (revised version) – so called Reception Conditions Directive
3. European Parliament and Council Directive

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2011/95/UE of 13 December 2011 on norms for qualifying third country citizens and persons without citizenship as international protection beneficiaries, uniform status of refugees and asylum seekers and the scope of international protection (revised version) – so called Qualification Directive

4. European Parliament and Council Regulation (EU) No 604/2013 of 26 June 2013 on setting criteria and mechanisms of establishing the State responsible for examining an application lodged in a Member State by a third country citizen or a person without citizenship – so called Dublin III regulation

5. European Parliament and Council Regulation (EU) No 603/2013 of 26 June 2013 on creating the Eurodac system for comparing fingerprints in order to effectively apply Regulation (EU) 604/2013 on setting criteria and mechanisms of establishing the state responsible for examining an application lodged in a Member State by a third country citizen or a person without citizenship, and filing for fingerprints comparison with Eurodac by law enforcement and Europol in order to protect public order, and modifying regulation (EU) No 1077/2011 forming the European Agency for the operational management of large-scale IT Systems in the area of freedom, security and justice (revised version) – the so called Eurodac Regulation

the rules set out in the Charter of Fundamental Rights of the European Union (Article 18 – right to asylum), is obliged to, under certain conditions, grant international protection to persons fleeing from their countries of origin to avoid persecution or serious harm. The right to apply for asylum is also guaranteed by the Constitution of the Republic of Poland<sup>7</sup> stipulating in Article 56 (2) that a foreigner who seeks in Poland protection from oppression may be granted refugee status in accordance with international agreements by which Poland is bound. According to Article 6 of the Asylum Procedure Directive, Member States are obligated to ensure that persons who have declared their intention to apply for international protection are able to lodge such applications, and the authorities the person addresses transfer the applications to relevant authorities. The Asylum Procedure Directive (point 27 of the preamble) introduces a very important rule that an applicant is a person who only declared the intention to apply for international protection, and not a person who has effectively lodged such application, meaning whose application has been accepted by appropriate authorities of the respective Member State. It is a consequence of the fact that rights under the procedural directive are granted to persons expressing their intention to file the application. This rule is verified by the European Asylum Support Office

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7 Constitution of the Republic of Poland of 2 April 1997 (Journal of Laws 1997.78.483)

guidelines, which state precisely that a foreigner's declaration of the intention, delivered in any form, to apply for international protection is equivalent to filing such application. It should, therefore, be immediately dealt with by appropriate authorities (without any assessment done by the authorities) and forwarded to competent authorities responsible for processing asylum applications.<sup>8</sup>

In Poland, the Border Guard is responsible for processing refugee status applications (Act on Foreigners, Article 24<sup>9</sup>), while the Head of the Office for Foreigners considers its merits. This means that the Border Guard is the intermediary between the applicant and the respective authority, and its powers should be limited to accepting applications, without any assessment of legitimacy of the circumstances indicated by an applicant as the grounds for applying for international protection, and submitting it to the Head of the Office for Foreigners. Applications from persons who stated reasons other than fear of prosecution (on the grounds of race, religion, nationality, political views, or belonging to a certain social

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8 European Asylum Support Office Reference document regarding the application of Article 6 of Reception Conditions Directive 9(revised version) available online: <https://easo.europa.eu/wp-content/uploads/Art-6-APD-background-document-August-2015.pdf>

9 Act of Granting Protection to Foreigners within the Territory of Poland of 13 June 2003 (Journal of Laws 2012.680)

group) or threat of serious harm, or those who have not provided any information with this regard, should be considered in accelerated mode (Act on Foreigners, Article 39) The legislation guarantees, therefore, that every application from persons declaring the intent to apply for international protection, even those which could be identified as clearly unfounded, should be processed by appropriate authorities. In addition, it needs noting that neither Act on Granting Protection to Foreigners, nor UE directives it institutes, recognise “refusal to process an application for international protection.” The aforementioned confirms that foreigners should be granted the right to international protection the moment they express the will to file such application, and the state of Poland is obligated to consider such application, via its authorities (although it has the right to diversify procedures and can process some applications by means of the accelerated procedure).

Access to the procedure, during which foreigner’s concerns about returning to their country of origin are evaluated, cannot be dependent on whether the foreigner meets the conditions to enter the territory of Poland, i.e., for example whether they hold an appropriate visa. Therefore, regulations in the Act on Foreigners exclude the possibility of refusing a foreigner the entry to a country after an application has been lodged or the foreigner has expressed the intention to lodge such application in the case when lodging the application was not possible for reasons on the part of the Border Guard (Act on Foreigners, Article 28

(2) (2). Moreover, in order to provide international help to persons who need it, the legislation guarantees foreigners access to information, in a language they understand, regarding the possibility to lodge an application for international protection, and request services of an interpreter, which is displayed at border crossings, guarder centres and detention centres for foreigners (Act on Foreigners, Article 29).

Therefore, the provisions of the Act on Foreigners explicitly exclude the possibility of a decision to refuse entry to a foreigner who has lodged an application for international protection or declared the intention to lodge an application for international protection, if the reasons for which the Border Guard request on to appear on the border it was not possible (Act on Foreigners, Article 28 (2) (2)<sup>10</sup>). Furthermore, to ensure availability of procedures for granting international protection to those who need it, the law guarantees foreigners access to information in a language they understand regarding submitting the application for international protection and, for this purpose, requesting the assistance of an interpreter. This information is displayed at border crossings, guarded centres and detention centres for foreigners (Act on Foreigners, Article 29)

In the light of these provisions, some guidelines of the Foreigners’ Authority of the Border

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10 Act on Foreigners of 12 December 2013 (Journal of Laws 2013.1650)

Guard Headquarters included in the document “Allowing Foreigners Entry to Poland in Order to Seek International Protection<sup>11</sup> (see Annex)” addressed to border guards conducting border checks at border crossings need to be recognised as against the law. Along undoubtedly advisable guidelines (“It is not up to a border guard to evaluate to what extent a foreigner’s fears are credible” and “all interviews need to be conducted allowing them [foreigners] to speak freely”), it also advises that “If a foreigner expresses the will to lodge an application for international protection, but without substantiating the grounds, further inquiry is needed. When a foreigner does not state a reason pointing to fear from returning to their country of origin, it needs to be assumed they are using the notion of “protection” with the sole purpose of crossing the border (...), (excluding cases when a foreigner’s appearance and behaviour suggest that their mental and physical state do not allow for proper communication, which can be the result of e.g. traumatizing experiences). In our assessment, the additional procedure of „further inquiry” about the foreigner before

allowing them to lodge the application for international protection and assessment of indicated circumstances carried out by Border Guard officials as to whether they point to the fear of returning to the country of origin, interfere with the right of access to the procedure to much too wide an extent. Such proceedings of Border Guard officials are de facto substantive assessment of the application and, therefore, the action in the context of the competences conferred by statute to another body – the Head of the Office for Foreigners – which constitutes a serious violation of the law, because it violates Polish constitutional principles, in particular as expressed in Article 7 of the Constitution the principle of functioning of public authorities on the basis of and within the law.

In the comments to the preliminary version of the report the Border Guard Headquarters inform that the „above algorithm was devised in order to draw border guards’ attention to an individual approach to people who, lacking the right to enter the territory of Poland, may find themselves forced to apply for international protection. Taking into account the above, the said algorithm has been stripped of “keywords”, which are indeed merely a key allowing automatic access to the right to enter the territory of the Republic of Poland, as well as other Schengen areas, and undertakes to take a more in-depth look at the provided information in order to establish whether a person is not using the expressions in a parrot-like fashion for a situation that does not justify the need to grant international protection. (...) The

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11 Document dated 8 January 2016 signed by Director and Council of the Foreigners’ Authority of the Border Guard Headquarters, made available to SIP as part of procedure on access to public information as an attachment from Border Guards Headquarters Office for Data Protection of 18 February 2016, sign. KG-OI-III.0180.13.2016.JB-I.

algorithm is a testament to a tendency whereby border guards are encouraged to adopt an individual approach to a foreigner and the risk of the violation of the rule of *non-refoulement* is minimised.” As for the quoted explanations, it needs to be emphasised with full force that Polish law does not authorise Border Guard officials to verify at any stage or to any extent the conditions for applying for international protection. Moreover, as the further sections of this report demonstrate, not even minimal privacy standards are secured during the passport control and the preliminary questioning of foreigners. It is to be expected, then, that the more concerned about persecution a given person is, the less willing they are to speak in such circumstances. Paradoxically, the good intentions that seemed to be the rationale behind the Border Guard Headquarters’ guidelines may lead to a situation where refugee procedure is denied to the most vulnerable and needy individuals.

## 2.2. Accepting applications for international protection

Application for international protection is made in person at the Border Guard outpost, through the Commander in Chief of the Border Guard division or the Commander in Chief of the relevant Border Guard outpost (Act on Foreigners, Article 24). It is not possible to do so by proxy. The law, however, allows

the applicant to apply not only on behalf of themselves, but also the persons who accompany the applicant and who are dependent on the applicant due to economic reasons, health condition or age. The application can include a marital spouse, as long as the marriage is recognized under Polish law, as well as an unmarried minor child of their own or their spouse’s (including relatives under adoption), (Act on Foreigners, Article 25). Lodging an application for international protection on behalf of a spouse or minor child requires written consent of the spouse, which is tantamount to granting the power of attorney to act on the applicant’s behalf. To submit an application on behalf of a minor child the applicant’s consent is not required, because they acts as a legal representative of the minor. It is vital that the spouse who from that moment on will be represented by the applicant, and so will be the less active party to the proceedings (e.g. as a rule only one applicant is interviewed in the proceedings), make the decision with full awareness of all associated consequences. For this reason it is a legal requirement for the Border Guard to inform the spouse, on behalf of whom the applicant intends to make an application, on the procedural consequences of such a step and the right to request a hearing, and the right to submit a separate application for international protection. This should be done in private, before the application is registered.

Lodging an application for international protection should take place without the participation of other people, whose presence the applicant did not agree to, in circumstances



ensuring an appropriate degree of confidentiality and allowing the applicant to comprehensively present the reasons for the request for international protection (Act on Foreigners Article 30 (2)).

In the course of processing the application, the identity of the person who filed it is determined first, because, in accordance with Article 33 of the Act on Foreigners, requests without the applicant's name or nationality are left without consideration. In determining the necessary information, the Border Guard authority may not share or obtain information from entities committing persecution against foreigners, therefore mainly from the authorities, of their country of origin. This prohibition applies, amongst others, to providing information, on the basis of which it would be possible to establish that there were pending proceedings for granting refugee status (Act on Foreigners, Article 9). It needs to be remembered that any contact with the embassy of their country of origin in order to confirm their identity discloses the person's whereabouts to the authorities of their country of origin. For some regimes such information, although not directly suggesting the purpose for which the foreigner is staying in Poland, may, in consequence, endanger the foreigner or their family members.

The application for international protection is lodged on a form with a specified, format<sup>12</sup>.

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12 Ministry of Internal Affairs regulation of 4

In order to submit an application, the applicant may ask for an interpreter's assistance. This information should be available at the border crossing (Act on Foreigners, Article 29). Although the law stipulates that „the applicant completes the application form” and the form contains questions in three languages: Polish, Russian and English, in most cases it is not possible for the applicant to fill it in person, even with the help of an interpreter, because the answers may only be given in Polish. In fact, the request is filled in by Border Guard officials, on the basis of the answers given by the foreigner. Part I of the application includes questions about the applicant and the person on whose behalf the application is submitted, as well as their personal or demographic (education, employment, language skills) information. In Part II, the applicant responds to questions about the circumstances of leaving the country of origin by them and members of their family, as well as arrival in Poland, including previous stays in Poland. Part III should include information concerning the applicant's state of health and the person on whose behalf the application is filed, and the violence they had suffered. Questions about experienced violence are open-ended<sup>13</sup>, the applicant should

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13 “Have you, or the person you are representing, ever experienced physical violence, including sexual violence, and based on gender, sexual orientation, or gender identity? Have



describe in detail the most important circumstances of violent events such as the perpetrator, time and place of the event, the reasons for surrender of violence, and other relevant circumstances. Only part IV of the application includes questions about the reasons for applying for international protection in Poland. In this part questions are again mostly open, and the applicant is encouraged to provide all relevant information regarding concerns over returning to the country of origin and their causes. Questions in Part V apply to remaining issues, such as possible criminal proceedings conducted against a foreigner in Poland and previous requests for international protection, which could be submitted by the applicant or any member of their family in Poland or another EU country. The applicant may attach any documents necessary to confirm the data contained in the application and the circumstances justifying the application for international protection.

The application also includes direct questions to the officer registering the request, as to whether the applicant or any person on whose behalf the request is made, may „qualify as a victim of trafficking or a person who was subjected to torture.” The law does not say on what basis the officers are to make such an assessment. It is, therefore, inferred that it

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you, or your relatives, ever been in a life-threatening situation or a situation hazardous for (your) health?”

should be done on the basis of an interview with the applicant or presented documents, and presumably of the information guidelines on how such a person particularly sensitive to identify. At the same time, the law does not oblige officials receiving requests to receive training, which would give them the power/ability to identify victims of torture or victims of trafficking based on the interview with the applicant, which is an obligation that exists, e.g. in the case of the Office for Foreigners officials conducting hearings in the course of the proceedings for international protection (Act on Foreigners Article 44 (4) (1)).

If, for reasons attributable to the Border Guard, the application cannot be filed on the application form, although a foreigner arrived at the border with the intent to lodge such an application, the Border Guard record the declaration in the register of international protection cases, informing the foreigner, in a language they understand, about the date and place of the application will be received, as well as the draft minutes of this process. The reason attributable to the Border Guard can be e.g. the inability to provide an interpreter on the day when the applicant arrived at the border crossing in order to file the application. The wording of the provision of Article 28 of the Act on Foreigners indicates that whenever an application cannot be filed on the same day, it should be only recorded in the register. It is, therefore, not justified to detain a foreigner at a border until the next day in order to wait for an interpreter. In such cases, there

is also no ground to issue the decision to refuse entry to the territory of the Republic of Poland (Act on Foreigners, Article 28 (2) (2) (a)). When an application is accepted, after the foreigner is granted entry to the territory of Poland, the application must be accepted and registered immediately, but no later than within 3 working days, and in case of a massive influx of asylum seekers to the territory of the Republic of Poland, within 10 working days (Act on Granting Protection to Foreigners, Article 28 (5)).

Upon applying, the foreigner is obliged to deposit their travel document to the Head of the Office for Foreigners, through the authority admitting the application (Act on Granting Protection to Foreigners, Article 31 (1)). Such obligation does not apply to a foreigner with a temporary or permanent residency permits. The applicant is also required to undergo proceedings carried out by the Border Guards such as photographing and fingerprinting (Act on Granting Protection to Foreigners, Article 30 (5)). The applicant is also obligated to provide the Border Guard with all information necessary to fill out the application form.

It is the Border Guard's duty to provide an interpreter for an applicant (Act on Granting Protection to Foreigners, Article 119 (1) (1)) and immediately, no later than within 48 hours, forward the application to the Head of the Office for Foreigners. The Act also requires the Border Guard to perform a medical examination of the applicant – the wording of Article 30 (1) (7) of the Act on Granting

Protection to Foreigners is firm and states that the Border Guard „provides” such examination, and regardless of the circumstances, there is no possibility to waive it. The law also obligates the applicant to undergo such examination. When they refuse, a health inspector is informed. To ensure this condition is met, a foreigner who has not been examined at the border, and refuses to undergo tests upon arrival at the reception centre, has their social benefits decreased by half. (Act on Granting Protection to Foreigners, Article 81 (3)) The medical examination, which includes an overall review of the foreigner's condition, is based on the provision of medical examinations as well as hygienic treatment of the body and clothing of foreign nationals applying for refugee status<sup>14</sup>. If, during the test, the doctor deems it necessary, the foreigner must also be provided: access to showers with hot and cold water, hygienic procedures, the necessary measures to maintain cleanliness of the body, and even a haircut.

The Border Guard should provide an applicant with a written instruction, in a language they understand, which includes: the principles and mode of proceedings on granting international protection, their rights, obligations (including

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14 Ministry of Health regulation of 1 March 2011 on medical examination and sanitary proceedings of body and clothing of persons applying for refugee status (Journal of Laws 2011.61.313)

the consequences of implicit withdrawal of the application), social support and medical care, the rules of admission to the reception centre. In addition, the instruction should include information about free legal aid (granted on the basis of the provisions of Chapter 4a of the Act on Granting Protection to Foreigners), non-governmental organizations providing assistance to foreigners, and the possibility to consent to the involvement of the Office of the United Nations High Commissioner for Refugees (UNHCR) in the case of a foreigner. The foreigner should also be instructed about the consequences, their rights and obligations arising from the Dublin III Regulation, and so the consequences of lodging another application in a different Member State, as well as the consequences of transferring from one Member State to another, and the criteria for establishing the State competent to deal with applications for international protection (Act on Granting Protection to Foreigners, Article 30 (1)).

Besides providing a written instruction, the Border Guard should carry out a personal interview with the foreigner, in order to determine the specific State where the application for international protection should be considered, but also to facilitate the applicant's understanding of the information on the Dublin system (Article 5 (1) of the Dublin III Regulation) contained in the written instruction. The latter purpose of the conversation in particular indicates that it must not be an interaction with the characteristics of

an interrogation, since it is characterized by one-sided flow of information. Referring to the colloquial meaning of the term (due to the absence of such measures in Polish law), one can imagine that the „conversation” will be a two-way exchange of information, in which a Border Guard official will obtain from the foreigner the information needed to determine the State responsible for examining their application and the foreigner will gain information about the provisions which, with the help of the Border Guard, can be adapted to their specific situation. Pursuant to Article 5 of the Dublin III Regulation, a Member State conducting this personal interview should make its written summary including at least the most important information supplied by the applicant during the interview. In Polish conditions, information obtained from the foreigner is entered in the international protection application form (Part V).

In cases justified on the grounds of public security and order, the Border Guard can conduct so called detailed examination of the person concerned (Act on Granting Protection to Foreigners, Article 30 (3) and (4)). This procedure involves examination of body and clothing, underwear and footwear, and other possessions. These activities (except for checking possessions) are carried out in a separate room without the presence of unauthorized persons, persons of different gender, and with respect for the dignity of the person being examined. The measure above ultimately bears the qualities of a search and the foreigner does not have the right to appeal against it.

Upon application, a foreigner is obliged to arrive within 2 days in the reception centre<sup>15</sup>, whose address is provided by the Border Guard in the written instructions, unless the foreigner indicated a different address. If the applicant has not specified a different address in the application and did not arrive in the centre within the specified timeframe, the application for international protection is deemed implicitly withdrawn, which is a reason to redeem the proceedings for international protection (Act on Granting Protection to Foreigners, Article 40 (1) (2)). The proceedings cannot be dismissed even if a foreigner has not arrived within 2 days, if it goes against public interest. A foreigner travels to the reception centre at their own expense. Transport to the centre and, if necessary, catering for the journey, is provided only for people with disabilities, the elderly, single parents, and pregnant women (Act on Granting Protection to Foreigners, Article 30 (1) (8)).

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15 Reception centre – centre for foreigners serving as reception point for foreigners who lodged applications for international protection (Act of Granting Protection to Foreigners Article 2 (1)( 9aa))

## 2.3. Fingerprinting

As mentioned above, the applicant's fingerprints are collected with a fingerprint card<sup>16</sup> or device for taking fingerprints electronically. This obligation stems from the Eurodac Regulation creating a centralized database, where all fingerprint data from the Member States are recorded, in order to facilitate the procedure of determining the Member State responsible for hearing the application for international protection on the basis of the Dublin III Regulation. A foreigner whose fingerprints are taken, should be informed in writing, in a language they understand, (the Eurodac Regulation provides that the instruction is to be held at the time of collection of the person's fingerprints) about, amongst others, the purpose for which the fingerprints are taken, and the rights connected with it: the right of access to data relating to the applicant, the right to request that inaccurate data be corrected, or deletion of data processed unlawfully, as well as the right to receive information on the procedures for exercising those rights. In connection with this latter privilege, the instruction should also contain contact details of

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16 Fingerprint card's standard is described in the Ministry of Internal Affairs' regulation of 23 July 2014 on standards for fingerprint card used to fingerprint foreigners who filed applications for refugee status or asylum, or are under temporary protection (Journal of Laws 2014.1014).

the administrative organ fingerprint data and national authorities supervising the Eurodac<sup>17</sup> (Act on Granting Protection to Foreigners, Article 30 (1) (5) (d), in conjunction with Article 29 (1) of the Eurodac Regulation).

Fingerprint data is automatically compared with the data stored in the central system. Next, the system sends information on whether the foreigner in question is registered in the system, and provides the data (Article 9 of the Eurodac Regulation). This means that Polish authorities receive information about the entire history of migration to the EU of the person concerned. The register fingerprint data is maintained by the Police Commander in Chief (Act on Granting Protection to Foreigners, Article 120, (4)), to whom the Border Guard provide fingerprints, as well as information on the legal basis of fingerprinting and basic data on the foreigner: name and surname, date and place of birth, and citizenship.

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17 The role of the Eurodac national supervisory body is performed by data protection authorities – in Poland it is the Inspector General for the Protection of Personal Data

## 2.4. Unaccompanied minors

The Act on Granting Protection to Foreigners within the territory of the Republic of Poland contains the definition of an unaccompanied minor. This is a person who has not attained the age of 18 and arrives in Poland or stays within its territory unaccompanied by an adult guardian responsible for the minor in accordance with Polish law (Act on Foreigners, Article 2, It. 9, letter a). It is a very broad definition and includes not only minors traveling alone, but also children accompanied by guardians or relatives exercising their custody, unless it can be shown that, under the applicable law in Poland, they are entitled to exercise the custody over the minor similar to parental authority.

The term „under the law in force in Poland” does not mean, of course, only rulings granting adults custody issued by Polish courts on the basis of the Family and Guardianship Code<sup>18</sup>. The law in force in Poland includes, according to the hierarchy of sources of law, international agreements, such as e.g. the Hague Convention<sup>19</sup>, to which Poland is a party,

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18 Act of 25 February 1964. Family and Guardianship Code (Journal of Laws 2015.2082).

19 Convention on parental responsibility and protection of children formed 19 October 1996

and which sets out rules on jurisdiction and recognition in the field of parental custody, among others, where a minor foreigner is in the Polish territory. Pursuant to Article 6 of the Convention, the jurisdiction to take measures to protect asylum seekers' children or children who have been transferred abroad due to disturbances occurring in their country, as well as their property, is within the authorities of the country where children are present (Article 6 in connection with Article 15 of the Convention). On the other hand, the Convention requires recognition of the ruling made by authorities of the minor's country of origin with regard to measures taken to protect the person or property of the child by operation of law. This means that the final decision of Ukrainian or Russian courts<sup>20</sup> concerning custody or care over a child should be recognised in Poland without the need to issue any additional ruling by a Polish court. Only in special cases may the Polish court refuse to recognize the decision of the country of origin in relation to a minor, for example, if the decision was made by the authorities against the properties specified in the Hague Convention, if the decision was made (except in cases of urgency) without hearing the child or the person

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in the Hague (Journal of Laws 172.1158).

20 Or another relevant authority, including administrative authority or *quasi-judicial*, if according to the law in the country of origin, it is responsible for processing cases involving minors.

who has the parental responsibility, or if such recognition is manifestly contrary to Polish public order. This assessment should take into account the child's wellbeing.

Thus, the appropriate proceeding in cases when a minor arrives at the border traveling with an adult who is not their parent should be to determine whether the adult has the documents entitling them to care for the minor, and if so, whether they were issued by an appropriate authority. Next, the scope of entrusted care should be confirmed. It seems that a declaration regarding foster care is not enough to recognize that the adult is a person responsible for the minor (and consequently will not initiate the procedure involving an unaccompanied minor). This is because the very fact that the adult has custody of the child does not grant the right to representation (compare Article 112 of Family and Guardianship Code). Thus, the minor continues to be without a legal representative, who will be able to submit on their behalf the application for international protection. Thus, after establishing that the document concerning the custody of the minor grants the accompanying an adult permission reflecting the scope of custody in Poland, the Border Guard should allow submitting the application on behalf of the minor and exercising the custody within the territory of Poland. If the adult does not have appropriate documents or the extent of its mandate does not allow for the representation of a minor, a special procedure is provided for in Chapter 4 Section II of the Act on Granting Protection to Foreigners within the territory of the Republic

of Poland should be initiated, recognising the foreigner as an unaccompanied minor.

The rules provide for a special procedure in relation to an unaccompanied minor who arrives at the border, committing Border Guards to take additional steps to protect their welfare. A minor foreigner cannot act alone, on their own behalf, therefore the application for international protection can be submitted on their behalf by the legal guardian (established by the guardianship court), or a representative of an international organization or a selected non-governmental organization<sup>21</sup>. After accepting the minor's declaration of their intention to file an application for international protection, the competent authority of the Border Guard prepares the protocol on registering the application of a minor, records it in the register of cases concerning granting or denying international protection, and addresses the guardianship court with a request to appoint the minor a legal guardian. Their task will be to represent the minor in the proceedings on granting international protection and, depending on the situation, transfer to another Member State under the Dublin III Regulation, provide social support and assist

in the voluntary return to their country of origin. The role of the superintendent is understood here strictly in procedural terms – this is a person representing a minor only in specific administrative law proceedings in which it is a party. The appointment of a trustee is determined by the guardianship court with jurisdiction over the place of residence of a minor and should make such a decision within three days.

Provisions of the Act on granting protection do not indicate who may be appointed legal guardian of a minor. General provisions of the Family and Guardianship Code in this area may be applied. It can, therefore, be concluded that a person who does not have full legal capacity, or has been deprived of public rights, or in relation to whom it is likely that they will fail to fulfil the duty of a legal guardian cannot be granted legal guardianship (Article 148 § 1 and 2 of the Family and Guardianship Code in conjunction with Article 178 § 2 of the Family and Guardianship Code). The reception directive states more vaguely and recommends carrying out these duties in accordance with the principle of the best interests of the child, and that the guardian has expertise required for this purpose. It is also recommended that organizations or persons whose interests conflict or may conflict with the interests of the child be not appointed guardians (Article 24 of EU Directive 2013/33/EU).

Apart from representing a minor in the procedure for granting international protection,

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21 This is granted only to organizations which provide assistance (including legal assistance) to foreigners, if, on the basis of an individual assessment of the situation of unaccompanied minor, the organization considers that the minor may need such protection.



it is extremely important where and under whose custody they will be until their status in Poland is established. Immediately after registering the minor's declaration of their intention to file an application for international protection, the Border Guard should therefore take them to a foster professional performing the function of a family emergency, or a special educational care facility. Minors stay with an institution or foster family until the release of the first order regarding foster care by the guardianship court. The Border Guard may apply to the court to issue such an order only after accepting from an authorized person (that is the guardian or representative of an NGO) the application for international protection on behalf of a minor (Article 62 (6) of the Act on Granting Protection to Foreigners). Within 10 days the court issues its ruling as to where and under whose custody the minor should be placed. A much quicker solution, and one that does not require a sitting, is to process the request under the securing procedure and grant the custody of the minor to the accompanying adult for the duration of the court proceedings (Art. 755 §1 (4) of the Code of Civil Procedure<sup>22</sup>). The condition for avoiding the hearing and to secure an immediate ruling is for the applicant to prove that it is an act of utmost urgency (Art. 755 (1) of the Code of Civil Procedure).

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22 Act of 17 November 1964, Code of Civil Procedure (Dz.U.2014.101).

If there is a person in Poland who has a relationship with the minor e.g. it can be an adult who accompanied the minor during the journey, who has not previously been granted legal custody of the minor, the court may entrust the custody of such person, provided that they will guarantee it will be exercised properly (Article 42, Par.1, It. 1 of the Act on Supporting Family and Foster Care System)<sup>23</sup>. If it is the minor's ancestor (grandfather, grandmother, grandfather or grandmother), or adult siblings, the court may even establish a foster family with other relatives (Article 1125 § 1 of the Family and Guardianship Code). All other persons may apply for entrusting them with temporary foster care for a period of 6 months (Article 1125 § 2 of the Family and Guardianship Code), if this is justified from the point of view of the minor's wellbeing. In both cases, the person granted custody does not have to meet the necessary conditions for received training regarding foster families, provided in the regulations on family support and foster care system.

Although the Act allows the court to grant custody of the child to the applying adult practically with immediate effect, in reality, if only because of the need to appoint a guardian for the minor, a temporary separation of the minor from the accompanying adult guardian cannot be avoided. Such a regulation is in

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23 Act of 9 June 2011 on supporting the family and foster care system (Dz.U.2016.575).



conflict with Article 24 (2) (a) of the reception directive, which requires Member States to place minors with adult relatives from the moment of entry into the territory of a Member State.

In the case of unaccompanied minors, who were transferred to Poland based on the Dublin III Regulation, the Border Guard's proceedings are similar, except that the right to submit applications to the guardianship court is granted to the commanding officer of the Border Guard according to the properties of transferring a minor, and their actions are not dependent on the acceptance of the minor's declaration of intention to apply for international protection or the application for such protection.

If the Border Guard division has doubts as to whether the minor has not yet reached the age of 18, it ensures medical examinations to determine the actual age of the applicant (Article 32 of the Act on Foreigners). As a general rule, the examination requires the consent of the applicant claiming to be an unaccompanied minor or their legal representative. However, if the applicant does not give consent to the examination, they are regarded as an adult. Tests must be conducted in a manner that respects the dignity of the applicant, using the least invasive screening techniques. Before examining the applicant claiming to be a minor, they must be informed, in a language which they understand, on how the examination will be conducted, the importance of the result in

the proceedings on granting international protection, and the effect of refusing to submit to a medical examination. In the event when the results of the medical examination are not clear, the applicant is considered a minor.

## 2.5 Detention and placing applicants in guarded centres for foreigners

As a rule, people seeking international protection are not detained and placed in guarded centres for foreigners. The mere fact that the applicant has applied for international protection cannot be the reason to deprive them of liberty. Detaining foreigners after they have declared the intention to file an application for international protection is permitted in specific cases described in Article 87 (1) of the Act on Granting Protection to Foreigners.

- to establish or verify their identity,
- when it is required on the grounds of national defence or national security or the protection of public safety and order,
- if the foreigner is to be transferred to another country on the basis of the Dublin III Regulation, and immediate transfer to the competent Member State is not possible, but there is a high probability the applicant will flee,
- in order to issue or execute the decision

obliging the foreigner to return, when there are pending proceedings on the obligation to return regarding the applicant or the person on whose behalf the applicant is acting, or the decision to oblige them to return has been issued, and the applicant or the person on whose behalf the applicant is acting, had prior opportunity to lodge an application for international protection, and there is reason to believe that the request was made only in order to delay the release or prevent the execution of the decision obliging the foreigner to return,

- to collect from their information on the circumstances on whose grounds the application for international protection is lodged, if acquiring it would not be possible otherwise, and there is a high probability the applicant will flee.

The Act lists a few examples of situations where escape is likely, but the use of the phrase „in particular” indicates that it is possible to recognize that this condition is also applied in other cases. According to Article 87 (2) of the Act on Granting Protection to Foreigners, the probability of escape occurs when an applicant or persons on whose behalf they acts are not together at the time of applying for identity documents or crossing or attempting to cross the border illegally (unless they come directly from a territory where their life or freedom were threatened by persecution or the risk of serious harm, and provided a valid reason for illegal entry into the territory of the Republic

of Poland and lodged an application for international protection immediately after crossing the border, or entered Poland while being listed in the register of foreigners whose stay in Poland is undesirable, or in the Schengen Information System (SIS) for the purpose of refusing entry. It is important that the risk of flight, and thus e.g. the lack of documents proving identity does not constitute independent evidence to detain such individuals to be able to stop a foreigner who does not carry a passport, there must be at least one of the basic premises of detention, i.e. the foreigner is to be transferred to another Member State, or information regarding the reasons for seeking international protection needs to be collected. As in the case of each measure aimed at detention, the rules should be interpreted very narrowly, e.g. if the foreigner provided in the application all relevant information and evidence they has, and the remaining information may be gathered by the authorities without them, there are no grounds to detain this foreigner.

The applicant may be detained for a period not longer than 48 hours. The decision about their detention is made by the authority of the Border Guard, and the foreigner may appeal against the validity and lawfulness of detention based relevant provisions of the Criminal Procedure Code (Article 246 in conjunction with Article 398 of the Act on Foreigners).

Since May 1, 2014 the Polish law provides for

so called alternative measures to detention.<sup>24</sup> They are *quasi*-preventive measures, not related with detention, which should be applied against the applicant or of the person concerned first, in the case when there are the above-mentioned reasons for detention, but 48-hour detention is not sufficient to carry out activities involving the foreigner or security proceedings. The Act provides for three alternatives: reporting at specified intervals to the designated authority, financial security (not less than twice the minimum wage), and the obligation to reside in a designated place (Article 88, Act on Granting Protection to Foreigners). Measures imposed on the foreigner apply until the time when the decision on granting international protection becomes final. The ruling on measures imposing one or more obligations on the foreigner is issued by the authority of the Border Guard who detained the foreigner. The decision can be appealed against to a district court. It is worth noting that each of these measures may be applied in relation to a foreigner requesting international protection at the border crossing. The fact that a foreigner does not have a place of residence in Poland certainly is not an obstacle to imposing on a foreigner the obligation to reside in a specified place. These means influence the foreigner's future situation so it

is important that upon entering Poland they reside in the place where they pledged to do so (e.g. a refugee centre specified by the Office for Foreigners).

If using alternatives to detention is not possible, the applicant or the person on whose behalf the applicant is acting in a guarded centre or in a detention centre for foreigners (Article 88a in conjunction with Article 87 (1) of the Act on Granting Protection to Foreigners). The placement is decided upon by the competent district court at the request of the Border Guard, which should include a detailed justification of why the use of alternative measures to a specific person is not possible. Similar conditions should be met by the justification for the court's decision on placing a foreigner in a guarded centre or in a detention centre for foreigners (Article 251 § 3 of the Code of Criminal Procedure in conjunction with Article 398 of the Act on Foreigners). The court may administer detention of a foreigner after hearing them in a meeting, when the possibility of using non-custodial measures is also reassessed. If it is concluded that an alternative to detention is sufficient, such decision should be issued.

The following persons are not placed in guarded centres: unaccompanied minors (regardless of age) or disabled persons and persons whose mental and physical state could justify the presumption that they were subjected to violence, as well as those for whom being placed in the centre could mean putting their life or health

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24 Change introduced with new act on foreigners of 12 December 2013 (Act on Foreigners, Article 484) (Journal of Laws 2013.1550).

under threat (Article 88a (3), Act on Granting Protection to Foreigners). In many cases, 48 hours (the time in which the Border Guard must apply to court to place a foreigner in a guarded centre for foreigners) is not sufficient to exclude the existence of evidence pointing otherwise. Despite the lack of regulations for the Border Guard to facilitate at the border crossing rapid detection of those applicants who cannot be placed in a guarded centre for foreigners, this body is responsible to establish facts with all available means. Gathering sufficient information should be facilitated by the questions included in the application for international protection, relating to health and violence suffered by a foreigner. It also seems that the provision of Article 88a (3) of the Act on Granting Protection to Foreigners forces the court issuing a decision to exclude the existence of these conditions and to reflect these negative findings in the grounds of the provision every time.

## 2.6. Entry refusal procedure

The procedure for entry refusal at the border crossing is regulated by domestic law only in part (Article 28 to 36, Act on Foreigners for the remainder used directly for the provisions of the Schengen Borders Code (Article 13 Annex V (A))). The decision to refuse entry is issued to a foreigner who does not meet the conditions for entry into the territory of Poland, namely the person:

- does not have a valid travel document, a valid visa or other valid documents entitling to enter the territory of the Republic of Poland, and to stay in that territory,
- does not have the required health insurance or sufficient financial resources,
- has not produced sufficient documents to confirm the purpose and conditions of the planned stay in Poland,
- used the permissible period of stay on the territory of the Schengen states of 90 days per period of 180 days,
- appears in one of the registers: the list of undesirable aliens in Poland or the Schengen Information System for the purpose of refusing entry,
- uses counterfeit or altered documents (e.g. passport, visa).

The basis for entry refusal may also be security considerations; if the foreigner's entry would threaten public health, defence or state security or public order. The decision to refuse entry is mandatory in any of these circumstances. However, the decision to refuse entry is not issued if a foreigner crossing the border, notwithstanding the fulfilment of one or more of these conditions, has lodged an application for international protection, or, if it was not possible on a given day for reasons attributable to the Border Guard, declared their intention to file such application (Act on Foreigners, Article 28 (2)).

In other cases the procedure for entry refusal is initiated against the foreigner. In the course

of action, if the circumstances do not raise doubt, it may be sufficient to check the documents carried by the foreigner. In more complex cases an inquiry should be conducted consisting: interrogating the foreigner, checking the documents they is carrying, the questioning of persons accompanying them, review of available records and inventories, and to obtaining the necessary information from other institutions, organizations and individuals (Act on Foreigners, Article 34). The decision is issued on a standard form, whose format is attached as Annex V (B) of the Schengen Borders Code. A foreigner signs the form, and then receives a copy (Annex V (A) (1) (a) of the Schengen Borders Code). If the foreigner refuses to confirm with a signature that they have been given the decision on entry refusal, a Border Guard official takes note of this fact on the form under the section „comments.” The foreigner must also be instructed about the possibilities and procedures of appeal against this decision to the Commander in Chief of the Border Guard, and written indication of contact points in possession of information on representatives competent to act on behalf of a citizen of a third country in accordance with national law (Article 13 (3) of the Schengen Borders Code). The latter information is intended to allow an appeal against the decision after the foreigner has left the border, as that the appeal does not suspend the procedure. A foreigner intending to appeal against the decision to refuse the entry may contact a selected entity and authorize it to represent them on appeal. The decision is recorded in the

foreigner’s travel document by punching the entry stamp and crossing it, and writing the legal basis for that decision.<sup>25</sup> Any decision to refuse entry must be registered in the register of cases concerning refusals of entry carried out on the basis of Article 428 (1) (2) of the Act on Foreigners.

A particular situation concerns persons who came to Poland by air or sea and were refused the entry on the grounds of any circumstances to refuse the entry. In such situations, the law imposes on the carrier<sup>26</sup> who brought the foreigner to Poland to immediately transport the foreigner to the border of the country the person came from, and if this is impossible, to the country where travel documents carried by the foreigner were issued, or any other country that declares the person will be allowed entry (Act on Foreigners, Article 460). This obligation stems from the particular carrier’s liability for inspection of foreigners’ documents before they board an aircraft or ship. The carrier should ensure that a foreigner carries travel documents and a valid visa or a Polish residence permit (Act on Foreigners, Article 459). Until the next departure of the aircraft or ship, which can take the foreigner back, the cost of

25 Internal Affairs Ministry regulation of 19 August on the method of recording in a travel document carried by a foreigner who has been refused entry.

26 Carrier – physical person or organizational unit without legal personality

their stay in Poland is covered by the carrier. To prevent foreigners from entering the Polish territory illegally, the commanding officer of a Border Guard outpost may require them to reside in a specified place until leaving the Polish territory, prohibit leaving an aircraft or vessel, order to leave the Polish territory on board of the same aircraft/vessel in which the person arrived, or order to leave the Polish territory on board of another aircraft or vessel than the one the person came in (Act on Foreigners, Article 461).

## 2.7. Proceedings involving vulnerable persons

The definition of an applicant with „special needs in respect of reception” is introduced in the Reception Conditions Directive, which specifies this group as people with special needs who need special guarantees to exercise the rights and fulfil the obligations referred to the above directive (Article 2 (k) of the reception directive). Persons listed as vulnerable are: minors, unaccompanied minors, disabled people, elderly people, pregnant women, single parents with minor children, victims of trafficking, persons suffering from serious illnesses, people with mental disorders, and persons who have been subjected to torture, rape or other serious forms of psychological, physical or sexual violence, such as victims of female genital mutilation (Article 21 of the Reception

Conditions Directive). The Directive requires consideration of each particular situation of the persons mentioned above, imposing additional obligations on Member States, in particular as regards the adoption of minors (Article 23) and unaccompanied minors (Article 24). Particular attention is given to the conditions of reception for victims of torture and violence, requiring Member States to provide them with the necessary treatment required due to the damage caused by such acts, in particular access to adequate medical and psychological care, and ensuring that people working with these applicants are adequately trained (Article 25 of the Reception Conditions Directive).

Particularly vulnerable groups are mentioned in the other directives forming the Common European Asylum System. Paragraph of the 29 preamble to the procedural directive states that some applicants may need special procedural provisions, among other things, due to their age, gender, sexual orientation, gender identity, disability, serious illness, mental disorder or consequences of torture, rape or other serious forms of psychological violence, physical or sexual. Applicants belonging to vulnerable groups should be provided with adequate support to create the conditions ensuring effective access to procedures and provide enough time to prepare for the present circumstances justifying their request for international protection. Article 15 of the directive also requires states to ensure that interviews determining status are conducted by persons

competent to take account of the personal and general circumstances surrounding the application, including cultural origin, gender, sexual orientation, gender identity, or special needs of the applicant.

The consequence of recognising that some applicants for international protection should be given specific support to be able to use the procedures and powers provided for by the law is the obligation for the Member States to identify such persons. European regulations do not specify at which stage it should be identified. It should, however, take place within a reasonable time after the request for international protection (Article 24 (1) of procedural directive and Article 22 (1) of the Reception Conditions Directive). However, Article 22 (2) of the Reception Conditions Directive obligates the State to ensure that the aid granted to applicants with special needs take into account their special needs throughout the proceedings, and thus identification must be made as soon as possible, preferably immediately after registering a foreigner's intention to apply for international protection.<sup>27</sup>

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27 UNHCR also point to the necessity to identify vulnerable persons as soon as possible: Ch. Katsapaou, Response to Vulnerability in Asylum. Report on project, UNHCR, Budapest 2013, [http://www.unhcrcentraleurope.org/\\_assets/files/content/what\\_we\\_do/pdf\\_pl/caring\\_for\\_vulnerable\\_groups/UNHCR\\_RVA\\_Final%20report%202013\\_PL\\_WEB.pdf](http://www.unhcrcentraleurope.org/_assets/files/content/what_we_do/pdf_pl/caring_for_vulnerable_groups/UNHCR_RVA_Final%20report%202013_PL_WEB.pdf)

The Directive does not specify what kind of mechanisms should be used for identification, noting that there has to be an administrative procedure (Article 22 (2) of the reception directive). The Directive indicates The Istanbul Protocol – Manual developed in the Office of the United Nations High Commissioner for Human Rights<sup>28</sup> (UNHCR) – as one of the recommended tools only in order to identify victims of torture or other serious acts of physical or mental violence, including acts of sexual violence.

In Polish law the list of persons who may require special protection, is consistent with the directive reception.<sup>29</sup> The Act uses the term „in particular”, which means that other people also may also be considered as requiring special protection. Assessment as to whether the person who made the request needs special treatment due to their vulnerable situation is made by the Head of the Office for Foreigners. This in turn means that not every

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28 Handbook on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment Committee Human Rights, New York-Geneva 2004, <https://www.msz.gov.pl/resource/dcc5b19e-eeeb-40ed-892b-362d4d1a0faa:JCR>

29 Polish regulations classify as vulnerable persons bedridden persons, in place of “seriously ill” in the directive, which can be considered a more narrow category.



representative of these groups will be granted the right to special treatment. The consequence of classifying the applicant or the person to whom the request relates to a group of vulnerable persons is to ensure specific conditions in the course of operations of its participation in the procedure for granting international protection (e.g. In the course of the hearing) and social support, e.g. in relation to accommodation (Article 69 to 69b of the Act on Granting Protection to Foreigners). The Head of the Office for Foreigners makes assessment immediately after the application for international protection has been lodged, and at any time up to the end of the proceedings, when there is evidence of new circumstances. The Head of the Office for Foreigners may order a medical or psychological examination in order to assess the circumstances. However, it seems that in the absence of other tools<sup>30</sup>, the assessment will be based largely on the filled

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30 It is worth to mention the procedure for identification of vulnerable persons among the persons applying for refugee status on the territory of the Republic of Poland developed by the Różnosfera Foundation and Academic Centre for Psychotherapy and Development in Social Psychology at the request of the Office for Foreigners in the framework of project No 5/14 / ERF „Improving the identification of persons with special needs in the procedure for granting refugee status” co-financed by the European refugee Fund – Annual Programme 2013 and the state budget.

application for international protection (Part III of the form) and the documents submitted by the Border Guard. Thus, the body receiving the request is responsible for gathering the necessary information meticulously so as to the Head of the Office for Foreigners could immediately make assessment without direct contact with the person concerned, which the law does not provide for.

## 2.8. NGO and UNHCR involvement

A non-governmental organization (but only one which provides assistance to foreigners, including legal assistance) is acts in a number of roles in the procedure for granting international protection. When the intention to apply for international protection is declared by an unaccompanied minor, a representative of such an organization may apply on behalf of the minor's application for international protection when, on the basis of individual assessment of the unaccompanied minor, this organization considers that they may need such protection (see above, section 2.4). Non-Profit Organizations, after meeting the statutory conditions, may also be included on the list of providers of free legal aid to asylum protection under the provisions of section 4a Act on Granting Protection to Foreigners. In addition to these specific tasks, representatives of non-governmental organizations in the course of the entire procedure for international protection (and its revocation) can support



foreigners in various ways. For this purpose, applicants shall be ensured the right to freely communicate with the representatives of non-governmental organizations (Act on Granting Protection to Foreigners Article 54f (1)) and includes the address data organization in the instructions given to the foreigner with the application (Act on Granting Protection to Foreigners Article 30 (1) (5) (f)). The term „free contact” means interaction undertaken by foreigner and does not have to mean personal contact, it can be, for example, a phone call or sending an email or fax.

Additional rights apply to organizations in relation to foreigners expressing the intention to apply for international protection at border crossings. In such circumstances, the Border Guard has a duty to ensure that representatives of the organization can access the foreigner at their request or with their consent (Act on Granting Protection to Foreigners Article 29 (2)). Literal reading of the above provision would indicate the duty of the authority to allow organizations access to a foreigner applying for protection only after submitting the request. However, the provision must be interpreted in the light of Article 8 of the Asylum Procedure Directive. This regulation does not introduce such limitation, stating directly that organizations and individuals providing assistance and advice to applicants are to have real access to the applicants present at border crossings (Article 8 (2) of the Asylum Procedure Directive). At the same time, it should be remembered that under the Directive, the applicant is not only a foreigner,

whose request for international protection was accepted, but also a person who in any way declared the intention to apply for such protection (see point 2.1). The Directive allows restricting access of representatives of the organization only when, under the national law, it is objectively necessary for reasons of security, public order or administrative management of the data and the border crossings are provided that access is not thereby severely limited or rendered impossible. Access of the organization may possibly be dependent on the conclusion of a relevant agreement with the competent authorities of the Member States (Article 8, (2) in fine). This means that the directive guarantees the representatives of non-governmental organizations access to foreigners at border crossings since the moment the intention to apply for international protection is declared. Bearing in mind that the directive in this regard has not been fully implemented by the Polish legislature, and its provisions are clear, precise, and do not require issuing lower-order regulations, it is acceptable to use the direct provision of Article 8 (2) of the procedural directive.<sup>31</sup>

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31 The possibility of direct application of regulations is allowed by the European Court of Justice in the ruling C-41/74 of 4 December 1974 in Yvonne van Duyn v Home Office [http://curia.europa.eu/arrets/TRA-DOC-PL-ARRET-C-0041-1974-200406990-05\\_01.html](http://curia.europa.eu/arrets/TRA-DOC-PL-ARRET-C-0041-1974-200406990-05_01.html)

Pursuant to Article 54f of the Act on Foreigners in the proceedings on granting international protection to foreigners, a foreigner is provided free contact with a representative of UNHCR or an organization operating on the territory of the Polish Republic on behalf of UNHCR<sup>32</sup>. In turn, UNHCR and the above organizations have the right to access the foreigner. Although literal reading of the regulations also suggest that foreigners are entitled to the above only after submitting their application for international protection („the proceedings on granting protection”), the interpretation of Article 54f of Act on Granting Protection to Foreigners in accordance with the provisions of Article 29 (1) of the procedural Directive leads to the same conclusion as in the case of rights of non-governmental organizations: the freedom to contact the foreigner with the representatives of UNHCR and access to them should include the step of declaring their intention to lodge an application for international protection at the border.

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32 Based on agreement between UNHCR and the Republic of Poland.

## 3. Access to the refugee procedure

### 3.1. Terespol

For years NGOs have been receiving information from foreigners travelling from Brest (Belarus) to the Polish border crossing in Terespol, complaining that border guards at this outpost reject applications for international protection, sometimes over a dozen, and in extreme cases dozens of times. SIP has been receiving frequent accounts of foreigners who claim that their stories of persecution in their country of origin were deemed by the Terespol Border Guard officials as not grave enough to be allowed entry into the territory of Poland in order to apply for international protection. Statistics show that indeed many more persons arrive at the border without travel documents or documents granting permission to enter than there are processed asylum applications. In 2015, at the Terespol border crossing, applications for international protection were lodged by only 8,250 persons, while 24,980 times such applications were rejected due to the lack of visas or residence permits<sup>33</sup>.

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33 Data gathered from the Border Guard under the Access to Public Information Act (annex to letter dated 27 January 2016 FAX KG CU 570/V/JS/16.)

It might indicate that persons who arrived at the border without documents and with the intention to file for international protection were not granted access to this procedure.<sup>34</sup> Interviews conducted with Border Guard officials serving at the border crossing in Terespol confirm that the decision on which asylum applications are going to be registered on a given day is made after very brief interviews conducted with foreigners after passport control, and sometimes without such interviews at all. Officials confirm it is not enough to declare the intention to apply for international protection (e.g. by saying “I’m asking for asylum” or “I’m asking for refugee status”). As statements made by some of the officials suggest, it is also insufficient to refer to persecution in the country of origin and indicate the kind of persecution (e.g. political). Foreigners are expected to briefly recount at the border after passport checks what specific threat they are facing in their country of origin and only when the situation has been initially evaluated as warranting international protection in Poland is the

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34 See more in Chapter 7. Capacity and readiness for increased influx of refugees

application accepted. The practice of rejecting applications from person who only declare the intention to file for international protection on the grounds of the persecution they are subject to, but are unable to sufficiently support it, are corroborated by internal guidelines drawn up in the Border Guard Headquarters (see Ch. 2.2 and Annex). Meanwhile, some officials declare that if foreigners do not use the phrase “refugee status” or “asylum”, but clearly present their situation in the country of origin as life-threatening, applications for international protection are accepted.

The chiefs of the outpost did not allow the monitoring team to observe the procedure above, however, even based only on the description provided by Border Guard officials, it can be concluded that conditions in which foreigners are interviewed do not allow for free account of the circumstances they have found themselves in.

**As it has been reported by border guards, after getting off the train and waiting in a glass corridor until persons with visas have gone through passport control, groups of foreigners without relevant travel documents are allowed to enter the room where passport control and customs checks, as well as interviews with foreigners take place. There, the foreigners are interviewed on the circumstances of their arrival in Poland. In threes (or groups of three families), they approach small tables standing in close proximity to one another without any dividing walls and answer the officers’ questions.**

**Meanwhile, the other foreigners are waiting for their turn, a few metres away. It seems impossible to share personal or painful details in such conditions. What also needs to be considered is that the information the foreigners are expected to reveal would often place them in a difficult position or could even threaten their or their families’ safety. This is, however, when foreigners’ future is determined. Depending on whether they manage to persuade Border Guard officials, they might be allowed entry or denied, usually on the grounds of lacking relevant travel documents.**

### 3.1.1. Conditions around declaring the intention to apply for international protection

This situation is corroborated by numerous reports provided by foreigners interviewed by SIP researchers in February and March 2016 in Brest, and some of them also later in Poland, when, after a series of attempts, they managed to lodge their applications and have been placed in one of the centres for foreigners in Poland. According to their accounts, there are three, sometimes two tables, no more than a meter apart. One of them is longer and resembles a school desk. At these tables, officials interview a few people at once: *you can hear everything very well; what other people say when*

*they beg for help, how officials shout at us to hurry up and that they aren't going to let us in anyway.*<sup>35</sup>

One of the interviewees reported that when he asked to provide conditions in which he could talk about the reasons he came to Poland in private, the official leaned on his arm on the table, implying this is the most intimacy he can be granted.

Some, according to one of the interviewees, despite great discomfort do describe their problems in detail:

*I begged (them), I'd told them everything (...), just like a thousand times before, that I'm threatened from two sides, that I'm applying for asylum, I've been coming here for a fortnight already. I begged them on my knees, in front of everyone. And they say: "Yeah, you all say so – either someone got killed, this happens, that. (...) Where were you before?" But I've explained a thousand times. Yes, I was in Germany, I had a daughter to save, she had cancer, her life was at stake, it was about saving her. Why do you make me tell you all that again, in front of other people? I came back because my mother had died, but I didn't even see her and had to bury her. After she died, there was no one to look after the kids. I had to take them. We couldn't stay there ... But it was all for*

*nothing. They just taunt me; the whole room listened to me today, when I cried in front of them on all fours.*

Most interviewees admitted, however, that they were unable to describe in such conditions anything beyond the fact that fearing persecution or other life-threatening situations they would like to lodge for international protection on the grounds of widely known facts about the situation in their country of origin, and not individual circumstances.

### 3.1.2. Rejecting applications

On two visits to Brest the researchers interviewed over 60 persons who “bounced off” the border crossing in Terespol several, more than dozen, or even dozens of times. A few of them indicated clearly economic reasons for coming to Poland (e.g. I'd like to take up study, but it's impossible in my country, that's why I decided to come to Poland; we're in a very difficult situation, we can hardly make ends meet, there's no work, no help for the children, we'd like to work and live a normal life. We sold everything and have nothing to come back to) and admitted telling this to border guards in Terespol. For the vast majority of interviewees the declared reason for leaving were life-threatening circumstances and risk of losing basic liberties. A few people, with whom the researchers were able to arrange meetings in private, and not only in the waiting lounge, were open about torture and other inhumane treatment

35 All quotes are in italics and unless otherwise stated are from interviews conducted by the researchers with foreigners encountered in Brest who had been refused entry at least once. The interviews were conducted in Russian and immediately written down in Polish.

they were subjected to for political reasons. According to their accounts, this is what they had had tried to convey to border guards. It clearly is not possible to determine on this basis the ratio of migrant declaring fear of persecution versus economic migrants who arrive at the border without visas, as the research has not been conducted on a representative sample. Due to the characteristics of the project, the researchers interviewed random persons who agreed to share their experiences. What is puzzling is the fact that members of both groups of migrants faced the same resistance from border guards. They all claimed that officials “did not want to hear them out.” While it is understood that foreigners who want to take up studies or work and do not have relevant travel documents are refused the entry, it is unacceptable to deny the entry on any grounds, including the lack of visa, to persons declaring the intention to apply for international protection. This was, however, the legal ground recorded in most passports of those interviewees who asserted they had asked for international help: a “C” symbol next to a crossed stamp<sup>36</sup>. The phrase “They don’t want to hear us out” seems to be the key here. Throughout years of everyday work, SIP employees have repeatedly contacted the border crossing in Terespol, prompted by foreigners who called the office from Brest and reported that despite having declared the intention to apply for international protection, they were not allowed to

lodge the applications. In response to our letters, it was stated that the given person indeed arrived at the border without the required documents, but never declared the intention to apply for international protection, whereas the day after our intervention the person did declare such intention and therefore was granted entry. At times, such persons were denied the entry and border guards claimed in their replies that applications had not been filed, and it did not lie within the officers’ duties to inform people they have the right to do so. It was always perplexing, considering how hard to fathom it would be for foreigners who inform us about the need for international protection, and are reaffirmed that they should be allowed entry in this case, would tell border guard officers something that goes against their interest. Moreover, even if before contacting us, those foreigners had referred solely to the persecution they were facing, without using the expressions “refugee status” or “asylum”, but it would have been clear from the interviews that they were referring to circumstances in accordance with the Geneva Convention, it would have been found absolutely natural to inform them that they should clearly declare the intention to apply for international protection, not only describe their circumstances, in order to avoid misunderstanding.<sup>37</sup> It is

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36 See more in Chapter 5: Procedure for Entry Refusal

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37 To be precise, there are purely theoretical considerations, because SIP has never received a phone call from someone who only implied persecution and did not declare the need for

therefore even less probable that after contacting an NGO, they would still not declare the will to file for international protection.

The researchers who went to Brest did not have the opportunity to observe situations when foreigners declared the reasons they wanted to enter Poland without relevant travel documents. They did, however, manage, thanks to ongoing monitoring, to conduct face-to-face interviews with a few dozens of people who had been refused the entry to Poland, for 2–3 consecutive days. Such situations help collect much more reliable data than interviews over the phone, when one can never be completely sure who they are talking to. Undoubtedly, the persons who reported to the researchers that they were applying for refugee status on the grounds of life-threatening circumstances needed to have articulated this reason to

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refugee status. There were only three such cases in Brest (later in this chapter). Similarly, SIP has never been contacted by foreigners who would give reasons for attempting to enter Poland without relevant documents other than those described in the Geneva Convention. Had this happened, we would not have instructed them what they “should say” to enter Poland, just as the researchers did not do it in Brest. Those few persons claimed economic reasons, were informed by the researchers that entry refusal is legal and, even though they have the right to appeal against it if they disagree with this decision and what are other options to enter Poland.

Border Guard officials, or at least attempted to communicate it. Talking with foreigners at the railway station in Brest, the researchers assured them that, according to the letter of law, such declarations should suffice to have their applications accepted and in addition, explained applicable laws, what regulations they can refer to, and how to formulate the message even more clearly, as well as their rights applying after the applications have been rejected. Regardless, the same persons were refused the entry into Poland both on the following as well as on consecutive days, despite having relied on information provided by the researchers. That was when the researchers were told most often that Border Guard officials do not want to hear out what people have to say, interrupt and not let people speak, do not let them finish, only take passports and return them with entry refusals. It also concerned the people on behalf of whom the researchers addresses the Border Guard in Terespol only to be told that the foreigners did not apply for international protection, but declared the will to better their economic situation. It can hardly be concluded that they would tell one version of the story to the researchers, and had another for Border Guard officials as it seems to contradict logic and common sense, since conveying the message to officials in a way differing from the one provided to researchers, would work against the foreigners’ own interest. Additionally, because in the end, albeit preceded by numerous attempts, the foreigners were able to enter Poland, after lodging applications for international protection, which means they were



had the grounds to enter the country from the very beginning.

The following case is a vivid illustration of how officials, for some reason, “do not want to hear” that foreigners declare the intention to lodge for international protection. One of the foreigners, who had tried to enter into Poland over 30 times, with no success, stated:

*“I apply for asylum in Terespol on political grounds. Officials tell me I that I’m not going to be allowed entry because I had been in Poland and left for Austria, which violated the law, and then came back to Chechnya. I’m not denying, it all happened, I had my reasons and I could explain them, had I been given the chance. That was some time ago, though. I came back because I thought I could live in my place safely. Turns out it isn’t so, my life is still threatened so I had to flee again. At some point I couldn’t take it, I broke down and told them [Border Guard officials in Terespol]: people, please, you have to understand, there really isn’t a way back for me and I will keep coming here until you let me in. I want nothing more. All I want is to get protection and be safe. I am young, healthy, I’m an athlete, I can work, I’ve got friends living in Warsaw, they’d help me out at the beginning, I wouldn’t be a burden to your country.”*

Having been interviewed by the researchers, the man was refused the entry into Poland several times more and he claimed that after SIP had issued an intervention letter the officials’ attitude worsened significantly. He wouldn’t be allowed to speak, only his passport would be taken and returned with a crossed stamp

and he was warned he’d never be let in. Below is a quote from the Border Guard’s reply to our letter:<sup>38</sup>

*“(…) please be advised that the foreigner between 23.12.2015 and 09.02.2016 arrived 32 times to undergo border control at the rail border crossing in Terespol without relevant travel documents. During the control he claimed he had been in Poland and Austria, currently wishes to enter into Poland because he has friends, and intends to live with them and find employment. Moreover, the foreigner claims he would keep arriving at the border until he is granted permission to enter. The aforementioned has not declared the intention to apply for international protection on the territory of Poland, and it was not clear there is a viable threat in his country of origin. Thus, he did not meet the conditions to enter and stay in the territory of the Republic of Poland and was refused entry.”*

All but one detail is true; when interviewed by the researchers, the foreigner expressed the need for protection immediately. The supporting details were of secondary importance. He had no gain in omitting such a crucial detail during the interview with Border Guard officials, who could determine his future. Similar accounts were given by more than a dozen persons. In several cases SIP decided to take action

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38 E-mail of 10 February 2016 from the Foreigners’ Authority of the Border Guard Headquarters’ official.



and received a written response from border guard, in which all information was corroborated by foreigners' accounts with the exclusion of the fact that the foreigners had asked for refugee status.

### 3.1.3. Border Guard officials' assessment of grounds for applying for international protection

According to asylum seekers, Border Guard officials, upon hearing a plea for asylum, assume the competences of the Head of the Office for Foreigners and make initial assessment of the validity of applications for international protection. In order to be allowed to lodge the application for international protection it is not sufficient to declare the intention to apply for refugee status (foreigners usually use Russian expressions *азуль, политическое убежище, статус беженца* or simply say they "came here as *беженцы*"). What needs to be substantiated is that fear of persecution is realistic. Interviewees from Brest also reported that border guards frequently questioned them on the reasons they don't have visas, and when foreigners replied "*who'd give us visas, we're refugees, we don't simply want to come here, we have to flee so we don't need visas, do we?*" – the officers inquired further about the reasons, and, when refusing entry, often mention that such problems should be addressed to the

authorities of their respective countries or the foreigners ought to seek protection elsewhere. For instance, a Chechen who declared that she was fleeing from violence on cultural grounds was told to report it to Chechen police.<sup>39</sup>

It also seems that officials frequently make arbitrary assessment of the reasons for seeking international protection given by foreigners. Such assessment is done on the basis of very short interviews conducted in conditions which do not provide any intimacy and these reasons are often proclaimed untrue. Foreigners interviewed by the researchers, provided the following examples of statements utterances by Border Guard officials: "*Poland isn't the Red Cross! Why don't you find work in Turkey or Russia, or stay in Belarus? Why are you coming to Poland? Because you don't want to work!*" A few people mentioned as well that officials demand evidence corroborating their testimony on the dangers they face.

There are strong indications that it is not sufficient to clearly present the background of persecution or life-threatening circumstances.

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39 Many Russian reports (e.g. of the "Memorial" Association) and international organisations state that women facing violence in Chechnya cannot rely on any help from local or federal authorities. See. E.g. W. Refortowicz, *Kulturowo uwarunkowana przemoc ze względu na płeć wobec kobiet z Północnego Kaukazu*, in: W. Klaus (ed.), *Bezpieczny dom? Przemoc fizyczna i symboliczna wobec uchodźczyń i uchodźców*, SIP 2014

Unless the plea for asylum is clearly formulated, risk arises that the application for international protection will be rejected, even in situations when otherwise the circumstances would be positively verified. This conduct not only violates the law, but is also against internal guidelines issued by the Border Guard Headquarters. It is difficult to stipulate to what extent this is a rule, and how much depends on a specific official, because the researchers have not heard many similar accounts. In one case, they interviewed a woman who, together with her family, was refused entry in Terespol “only” for the first time, and the reasons she referred to were firmly grounded in the Geneva Convention. Because within a few minutes of the interview she did not use any expressions like “asylum”, the researchers inquired further as to whether she asked for asylum when describing her problems to the officers, the woman reacted with surprise as she did not know such term.

*My husband told the officials why we now have to flee with the whole family, I didn't talk to them. You know what Chechen men are like, they don't like to talk about problems, they're ashamed, perhaps he didn't say enough, and nobody asked me. I'm going to talk to them tomorrow and tell them everything.*

The researchers are not certain whether this family succeeded in lodging their application after learning that, apart from giving account on their history of persecution, it is important to articulate the plea for international protection. They certainly did not see the family at the railway station in Brest neither the following day, nor the day after that.

In another case, the researchers interviewed two families, who were refused entry over a dozen of times. They fled from Chechnya because of the violence they had experienced and persecution on political grounds, which they reported in detail. They claimed to have given the reasons to the officials in Terespol (although certainly not in that much detail, as the interview with the researchers took two hours), but indicating the most significant threats. The families admitted, however, that, even though they had declared they were fleeing from life-threatening circumstances, not once did they articulate the plea for asylum. These families were informed in detail on the procedure of applying for international protection, and their rights. Both families informed later that officials had registered their application with the first attempt after talking to the researchers.

### 3.1.4. Expenses made by foreigners caused by long-term denial of access to refugee procedure

All interviewees from Brest agreed upon one point; every day, out of 50–70 (in February) and 100–150 (in March) only 2–3 families on average are granted entry (a dozen to twenty persons) and it seldom happens the number is higher. These accounts are corroborated by statistical data provided by the Border

Guard.<sup>40</sup> In the period January–March 2016 in Terespol a total of 2010 applications were registered, which makes an average of 22 persons a day. In January it was 14 persons on average, in February 23 persons daily, and in March, when, compared with February, the researchers observed an increase in the number of persons who were returned from the border daily because they did not have visas or other relevant travel documents – on average, 29 persons a day.

Some of the interviewees thought that perhaps officials were not allowed to allow more persons at once due to logistic constraints, especially because they often heard after having “bounced off” another time that “it’s not today yet. You need to wait” which on the one hand raised hope that if they keep trying, they might be able to enter Poland (You have to try many times, then they let you in.), but on the other, caused fear they would run out of money for the journey and they wouldn’t be able to pay for accommodation in Brest and train tickets from Brest to Terespol and back. These costs are quite significant. According to foreigners, the average price for a room/apartment is 10 Euros per person, or 20–40 Euros per night, depending on family size and how much empathy their landlords show. A return ticket between Brest and Terespol costs 8–9 Euros. Additionally, they need to pay for

the taxi from the station to rented accommodation and back, as well as meals. Taking for example a family of four who were returned from Terespol 15 times, pays 30 Euros for accommodation, their travel and accommodation costs alone amount to around 1000 Euros. The researchers heard many stories involving people whose money run out and who had to squat for a few night in the waiting room at the railway station, who couldn’t afford a visit to the doctor when a child got sick, or couldn’t pay for prescribed medicine. The researchers saw toddlers woken up long before sunrise and who were weak from exhaustion and were falling asleep on hard benches at the station upon returning to Brest. It is in this context that local “*babushkas*” are mentioned – women who brought food, tea, or medicine for free, and took in families without charging them.

Belarusians renting out rooms in Brest had the same theory. They believed the Border Guard has other duties, apart from receiving asylum seekers, and are not allowed to grant entry to more persons than a specified limit. They also told the researchers a number of times that their lodgers won’t make an attempt to cross the border on a given day, and possibly consecutive days, because they ran out of money and were waiting for money transfers from their relatives.

Foreigners also had trouble understanding why they would need to attempt crossing the border fewer or more time. They seemed disoriented as to why officials would allow entry to some applicants, and deny it to others, and let some people right away, and some after

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40 Data collected from the Border Guard (annex to letter from the Border Guard no KG-OI III.0180.31.2016.JB-I dated 22 April 2016),

numerous attempts. They admitted that various people who did not necessarily have reasons to apply for international protection, but most of them know it's necessary to apply for asylum to be granted entry without a visa:

*Almost everyone here asks for refugee status, but it doesn't work at all. Border guards allow 2–3 families enter Poland, but it doesn't seem to follow any logic. As if they let in those who win their approval at a given moment. Sometimes it is the first or second time, and sometimes over a dozen or even more.*

Certain patterns do emerge from foreigners' accounts. First, single people, single men in particular (*одиночки* in Russian) find it more difficult to enter Poland than whole families, and are on average refused entry more times. Second, people who have relatives in Poland are allowed to enter Poland more often, sometimes with the first attempt, whereas, if someone admits they has family members in another EU country, they can be almost sure to be refused entry multiple times. Third, persons who had applied for international protection before, in Poland or another EU country, but for various reasons decided to return or were expelled from the country, will also face difficulties in lodging an application for international protection. Even if less than a few years since leaving EU have passed, and at present the person is fleeing either on completely new grounds, or for related reasons because, upon returning to their country of origin it turned out they are still not safe, even though they had hoped so:

*Every time they tell me: "Why did you break our law? We won't let you in again!" So I explain to them that my father was dying, I left everything and went there. But it's still dangerous, we can't stay there. I keep telling them, but they don't let us in anyway.*

It is evident from interviews with foreigners conducted in Brest that also persons who went to Poland for the first time and declared they were facing persecution in their country of origin were not allowed to enter Poland multiple times. Some interviewees even suggested that persons about whom it was known they had serious problems in their country of origin "bounced off" the border many times, while those who mention economic reasons are sometimes let in at their first attempt.

Foreigners could not see any pattern other than the need for a lawyer in order to be allowed to enter Poland. There is a belief that anything is possible if only a lawyer is contacted. Various sums are given as to how much lawyers charge for describing a family's history to indicate the need for international protection, sending a letter to the Border Guard officials in Terespol, or even appearing in person and "guiding" the family across the border. There is a widespread belief that connections are vital and that otherwise there is no chance to enter Poland. Belarusians who "look after" asylum seekers in Brest are also convinced that lawyer's assistance is necessary. Some of them without a doubt make money not only off rented out accommodation, and transporting on the afternoon train the luggage of people who managed to enter Poland that day, but also

being intermediaries in contacts with mysterious lawyers. One of them was clearly annoyed when the researchers informed all her interviewees that neither SIP nor any other NGO charges for the help provided. The man also tried to play down the effectiveness of such services.

In two cases which occurred when monitoring was being conducted, after the researchers came back from Brest, and addressing the Commander in Chief of the Border Guard outpost in Terespol by SIP proved to be futile, and persons who had reported threat of persecution in their country of origin still were not able to enter Poland – SIP decided to take power of attorney to represent them in the proceedings to apply for international protection. None of SIP staff were able to go to Terespol overnight and take active part in filing documents, therefore a copy of the letter of attorney along with relevant information was sent to the Commander in Chief of the Border Guard outpost in Terespol. For reasons unclear to anyone, applications were not accepted from any of those persons on the day they arrived at the border with the original letter of attorney. It was done only at the next attempt to lodge the application, which put them under prolonged stress and further travel and accommodation expenses arising in Brest.<sup>41</sup> Nevertheless, power of attorney to

represent foreigners in the asylum procedure, proved to be more effective than emergency faxes sent to the Commander in Chief of the Border Guard outpost in Terespol. We do not know, however, how effective paid services provided by professional agents are in such cases. A situation when the possibility to lodge an application to be granted refugee status is determined by whether a foreigner manages to contact a person who agrees to represent them, for free or for a fee, in the procedure for granting international protection from the very moment filing the application, for free of being paid, must be deemed unacceptable.

It also seems that some persons trade contact numbers to NGOs whose assistance is free of charge. Whereas the researchers were certain that persons they had contacted directly in Brest were clearly informed that assistance offered by SIP is free of charge, they could not guarantee that those who called later because they had been given the number “by the people they had helped earlier” did not have to pay for this information.

Recurring and prolonged denial of access to the refugee procedure not only places foreigners under immense stress and triggers traumatic experiences they had gone through in their country of origin. They sometimes additionally escalate the fear that they can easily be tracked down in Brest by their aggressors (from Chechnya in particular), as soon as it is discovered they have fled the country. What

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41 In two other cases one of the researchers took power of attorney and participated in Terespol in the procedure for accepting foreigners' applications – see more in Chapter 4

is more, depleting financial resources result in decreased quality of living conditions. Large families with small children are in the worst situation. Every meal and journey one way is for them a serious expense.

### 3.1.5. Border Guard officers' attitude towards foreigners

Many foreigners mentioned shouting, rushing, laughter, mocking, taunting (Rus. *издевательство, издеваться*) by officials: 'they boss us around, give orders, shout "don't talk when I don't ask you, answer questions, do this, don't do that...'" Many people, in particular those who had attempted to cross the border before, reported that border guards would not let them talk freely, would often interrupt and shout at them as if they were "herding sheep." The following examples were quoted: "Go away! Don't say anything else. You're not going to get through yet, not today." Polish border guard are seen as rude, impatient, full of contempt towards others and lacking respect and not paying any attention, treating foreigners like "a worse kind of people" and having fun at their expense.

There have been, however, individual voices trying to justify this behaviour: "*many of us come every day, they have other work too.*" One of the interviewees mentioned a Border Guard official who seemed to be bothered by returning passports with stamps refusing entry, and

said – according to this account – "*I'm sorry, that's our job.*" Most reports were similar to the following:

*What I went through in Terespol, I'll never forget it... They just torture us all... Later they started to recognise me, called out my surname, looked down and mocked: "Oh, you again? Aren't you bored going back and forth? Is it worth spending money? We're not going to let you in anyway."*

Many people who "bounced off" the border crossing in Terespol around February and March 2016 remembered distinctly how a man in a wheelchair had been treated by Border Control officials. There were over a dozen accounts, below is the most moving one.

*He's in a wheelchair with two small children, riding the train back and forth every day, he's been refused entry a few times already. Until one day they tell him "in half an hour we're taking you to the first floor." He was so happy! We were all happy about that. And then they come later and with a smirk say "Kidding" ... and he starts to cry. He's a man, he's not supposed to cry. I don't know why they're so cruel.*

Even assuming that some foreigners' accounts are exaggerated, perhaps due to strong emotions and critical life circumstances, many of them corroborated stories told by a few or more people. It is therefore hard to imagine that unrelated persons would come up with the same answers or behaviour of border



guards. Irrespective of officials' real conduct towards those refugees who "bounce off" the border, the very situation that persons who ask for asylum at the border, or clearly describe life-threatening situations they had faced in their country of origin are not allowed to lodge applications for international protection is not only against the law, but also blatantly inhumane. The experience from Terespol seemed to be particularly traumatic for persons whose accounts included stories of mental and physical abuse, or even torture, they had experienced, and who were not expecting being treated this way in a situation when they thought they were safe.

In addition, if Border Guard officials in Terespol had registered applications from all persons seeking international protection at the border, as they should according to the letter of law, many foreigners, children included, would not have risked declining health, both physical and mental, and bearing vast expenses to cover the costs of living in Brest, train journeys made in vain, and (often too high) legal fees which should not even be necessary in this situation. Still, those hard conditions are nothing compared with the moral loss described by interviewees.

Towards the end of February 2016, irrespective of monitoring conducted by SIP, one of the researchers was contacted by an old SIP client asking for intervention in Terespol. She was on her way back from Belarus to Poland, taking the morning train from Brest and

witnessed a situation where, after detrainning, a large group of refugees was locked in a glass gate in an underground passage between the platform and the check-in hall, and made to wait for passport control. The division for "better" and "worse" people made immense impact on her. Isolation in a locked out tunnel – she considered physical and symbolic torture over the sick, the disabled, women with children. What is more, both at the railway station, and later on the train to Terespol, the client talked to those people and was told that Border Guard officials hardly let anyone in. Having been among the "better" group, she accidentally heard how a travelling Belarusian, pointing his head towards refugees outside, asked an official if all those people would be allowed entry. In response he was told *"No way, we're going to let in one, maybe two families."* Our client was outraged that a public official would say something like that on any grounds. On what ground, even before talking to those people, before inquiring why they are travelling without visas, can they assess how many people are going to be eligible to enter the country?

In conclusion, it needs to be stated that at the border crossing Brest–Terespol, an unprecedented limitation of foreigners' right to seek international protection takes place almost every day. Poland is obligated to grant this right to person fleeing from persecution as a result of the following binding agreements: the Geneva Convention and New York Protocol, EU Charter of Fundamental Rights (right to asylum) as well as Article 56 (2) of



the Constitution of the Republic of Poland. The practices described above violated Article 6 of the procedural directive (the obligation to immediate registration upon a foreigner's application for international protection) and the provisions of Article 28 (2) (2) of the Act on Foreigners (prohibition of refusing entry to persons who apply for international protection at a border) and Article 13 (1) (2) of the Schengen Borders Code (refusing entry under the condition of respecting the right to international protection and asylum). The Border Guard's conduct seriously violates Article 7 of the Constitution because it goes against the rule that public authorities act on the basis and within the law, which should not take place in a democratic country.

## 3.2. Medyka and Okęcie

Compared with the border crossing in Terespol, the situation of persons applying for refugee status at the border crossings in Medyka and Warszawa-Okęcie is completely different.

According to the information obtained from Border Guard officials in Medyka, foreigners who intend to apply for international protection should declare such intention. If foreigners declare they "want refugee status" or use the word "asylum" the situation is clear and the claim is registered immediately. This

practice has been corroborated by interviewees who crossed the border in Medyka, none of whom, as opposed to interviewees from the border crossing in Terespol, mentioned refusal to register applications for international protection. Neither any alarming signals have ever reached SIP.

Officials claim that if the declaration of intention to apply for protection is not stated directly, there is a more detailed interview with the foreigner in order to establish the circumstances of their arrival in Poland without documents allowing entry. The person does not need to provide the details, the perception of threat is sufficient. One of the interviewed officials stated that "if [foreigner] says they feel threatened, there is conflict in their country, international protection is understood."

In response to the question regarding situations when reasons given by foreigners do not provide a rationale for granting international protection or are of economic character, officers replied their responsibility is only to register applications, not to evaluate them. One of the officials pointed out that sometimes "foreigners are guided." If they lack travel documents and want to apply for international protection on the grounds of reasons not granting international protection, the regulations and applicable laws are explained. According to officials, it has not happened that a foreigner intending to file for asylum decided not to.

A different picture is revealed in a number of interviews conducted with foreigners who lodged applications in Medyka. A woman claimed she had been told by Border Guard officials that she does not want to apply for asylum but to pursue work. Officials ignored the circumstances described by the foreigner, the fact that her mother is seeking asylum in Poland as well, and the medical documentation she produced. One of the officials commented “It’s clear she’s coming for work.” Another foreigner claimed that officials were trying to discourage him from lodging the application, suggesting that he would have to wait long, and is not eligible for protection anyway: They told me I’d be last in line, to consider if I’m sure I want to apply. They said I didn’t stand a chance to be granted refugee status. (...) They were much nicer to my wife than me. They told me there was no point in lodging the application, they could register it, but it would most probably be rejected. It needs to be emphasised that, even though the aforementioned comments are highly inappropriate and should definitely not have taken place – in none of the cases were the foreigners refused entry to Poland, which, according to alarmed foreigners arriving in Terespol is common practice there.

What has also been pointed out was the rule stating that if a foreigner speaks a language the official does not have a command of, an interpreter needs to be called. Border Guard officials in Medyka claimed that whenever it is impossible to communicate with foreigners who

do not have the required travel documents, a sworn interpreter is called in. Foreigners who arrive at the border late at night usually wait for the interpreter’s arrival until the following morning.

Equally, for the Border Guard officials at Warszawa-Okęcie it is sufficient for a foreigner to declare the intention to seek protection to be allowed to lodge the application. All interviewed border guards, confirmed they register every application stating: “it’s not up to Border Guard to evaluate the grounds for the application. The Office for Foreigners deals with it” or “it’s our job to register applications, it’s evaluated by the Head of the Office for Foreigners.” It is enough for a foreigner to use the words “refugee status,” “refugee,” “asylum,” or to indicate in any other way that the foreigner is feeling persecuted in their country of origin. Interviews conducted with officials suggest that applications were registered after such requests.

In conclusion, it needs to be highlighted that Border Guard officials, regardless of circumstances, are expected to refrain from comments on the grounds for asylum applications. According to current laws and regulations, as well as self-proclaimed practice, their role should be limited to registering applications, and assessment is left to the Head of the Office for Foreigners.

## 4. Procedure for granting international protection

### 4.1. Information on possibility of submitting application, information on non-governmental organisations

The monitoring team noticed at all the monitored crossings the absence of notices in languages understandable for foreigners informing about the possibility of submitting application for international protection and the availability of an interpreter ready to assist in the process, which is a violation of Article 29 of the Act on Granting Protection to Foreigners on the territory of the Republic of Poland. The information on non-governmental organisations providing free help to foreigners was also scant and of poor quality, if present at all.

At the border crossing in Terespol, one column in the clearance hall featured a poster for the International Organization for Migration with two numbers to call to obtain information about the stay in Poland. In reality, the hall is the area for people have not met the requirements allowing them to enter the territory of

Poland and are waiting for their entry refusal to be issued. The rooms where applications for international protection are accepted had leaflets from UNHCR and CPPHN. At the border crossing in Medyka there is no information on either the possibility of applying for international protection or access to free legal help from non-governmental organisations. However, the foreigners have access to information about Fundacja La Strada (La Strada International Association), which offers support to victims of human trafficking. Those foreigners who have been refused entry to Poland are waiting for the decision about entry refusal in the waiting room in which, as a rule and according to the information supplied by the officials, there is a steady supply of IOM's leaflets. During the monitoring there weren't any, though. The border crossing in Warszawa-Okęcie also lacks information on the possibility of applying for international protection or general information about non-governmental organisations specialising in helping foreigners.

According to regulations, all border crossings should display with due promptness and in languages understood by foreigners, the information about the possibility of applying for international protection and the availability of

an interpreter for this very purpose. The foreigners should also have access to information about non-governmental organisations offering free legal assistance to migrants.

## 4.2. Filling in application form, interpreter, individual approach to foreigner

Applications for international protection are accepted by the officials of the Border Guard. However, the monitored border crossings not seem to have a consistent mode of practice in this respect. The specificity of the crossing as well as the logistic support available at the specific time have a lot to answer for. Some Border Guard outposts (Terespól and Warszawa-Okęcie) have two separate teams – one which deals with the preliminary questioning during passport control and then accepting applications for international protection and the second, which deals with issuing decisions about entry refusal. At Medyka border crossing the team for border procedures deal with both accepting applications and issuing decisions about entry refusal.

As a rule, applications for international protection are accepted in a separate room dedicated to this particular purpose. In Terespól, where there are no conditions ensuring privacy while accepting the declaration of desire to apply for protection, foreigners may submit the

application in better conditions. Officials accept the application in two separate rooms and make sure that they do it behind closed doors. Officials at Medyka border crossing accept applications from several people simultaneously in a common administrative room with several desks, where each official has their own workstation. However, if the conditions in the room compromise the process of accepting the application, due to the buzz, noise or lack of privacy, it is moved to a separate room. According to interviewed officials, with respect to special needs of applicants (e.g. a family with many children, some sleeping) the application can be processed in a social room. Applications for international protection at Warszawa-Okęcie airport are accepted in a separate room, in the so called “foreigners’ facility”.

The monitoring team had the opportunity to participate in the process of accepting a few applications for international protection only during the monitoring of the outpost in Terespól. The officials accepting the applications were helpful in trying to establish the reason for applying for protection and explained phrases which the applicant had difficulty understanding, e.g. the experience of physical or emotional abuse. During the monitoring of Medyka and Warszawa-Okęcie border crossings, there happened to be no individuals applying for international protection. There is no standardised practice for informing foreigners about the procedure for granting international protection and fingerprinting. Medyka’s Border Guard officials’ good practice involves giving a foreigner written

instruction as well as verbal explanation of the ensuing procedures and the foreigner's rights and obligations. There is also no standardised procedure concerning instructing a spouse about the possibility of submitting a separate application. One official at Medyka border crossing claimed he always informed the wife in private. Another official expressed surprise with the question and answered, when confronted with it: *'Whatever for?'*<sup>42</sup>

The officials at Warszawa-Okęcie crossing issue written instructions to foreigners, including the instruction for the spouse, informing about the possibility of submitting a separate application for international protection. This instruction had been drawn up by the outpost's officials in Polish, English and Russian, and is not employed universally.

Terespol border crossing has a yet different practice. Before the application is submitted, they deliver instructions to foreigners *'to familiarise themselves with'*. One interviewed official stated that a foreigner *'is shown'* the instruction, which they can familiarise themselves with. Later he added that *'if they want to, they can have it'*. Clearly, there is lack of unambiguous information on whether the foreigner can keep the instruction or not. Moreover, in the social room for women there is a cabinet with a notice instructing how the procedure for granting international protection works.

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42 According to received information the official in question no longer deals with applications for international protection

Based on the observation of one case of accepting the application, it transpired that foreigners received the instruction, moved away to read it and were supposed to return to sign the application but it was impossible to observe whether they took the instruction with them. It is hard to establish what the practice is as far as informing the spouse about the consequences of joint application for granting international protection is concerned. One official claimed that *'there was little possibility of doing that'* and *'the women would never agree to have their cases dealt with separately anyway'*. It was also added that if the woman was acting strange, the officials were trying to identify the reasons. A different official admitted that *'we first deal with the woman separately and then the man'*. In reality, it is usually the man who is the applicant. The monitoring team observed that just before the application was signed the whole family was summoned, without the woman having been informed about anything prior to that.

If the foreigner speaks a language that the official accepting the application does not know, the interpreter is summoned. Each outpost has its own practice in this respect. According to testimonies from border guards in Terespol, the interpreter is summoned sporadically. Most foreigners applying for international protection speak Russian, which the officials know. It is also the language of the applications for international protection.

Border Guards in Medyka speak Russian and Ukrainian, some of them also English and German. Most individuals expressing the

desire to apply for international protection also speak Russian and/or Ukrainian. A sworn interpreter is summoned most often in the case of Turkish people applying for international protection, whose presence at borders has become relatively more prominent at this border crossing recently<sup>43</sup>. According to officials' statements, it does not matter whether a given person intends to apply for international protection or not – the sworn interpreter's services are engaged in any case when officials are unable to communicate with a foreigner. Sometimes, as is the case with Turkish people arriving by a night train, they spend the whole night waiting for the interpreter in the social room. As one official pointed out while talking to the monitoring team: *'It's important they feel at home'*.

Border guards at Warszawa-Okęcie border crossing declare that they always accept the application for international protection in the presence of the interpreter. The outpost employs three interpreters full time. Both of them speak English and Russian and the third one speaks English, Urdu and Bengali. During the monitoring, there was one interpreter on the premises, two others were on holiday.

In order to have a thorough understanding of

how applications of asylum-seekers are processed at Brest–Terespól border crossing, at the end of March 2016 one of the researchers accepted two powers of attorney. One of them was granted by a Chechen family with seven children, who were denied entry into Poland and who claimed having experienced persistent political persecution, including torture. The second one was from a Chechen woman travelling on her own, who reported a dramatic history of culturally motivated abuse which she'd undergone for years while still being denied entry into Poland several times. Naturally, it is difficult to generalise about the course of such proceedings or border crossing's officials' attitude towards foreigners based on two cases of applications only, therefore we treat them exactly as such – a study of two cases.

The first problem we encountered, though, was the sole execution of the power of attorney given to the representative by the principals applying for international protection. The day before the planned arrival she'd sent a fax to the Chief of The Border Guard in Terespól with attached copies of the power of attorney along with the information that those specific people would arrive at the border crossing in order to apply for international protection and she would participate in the process as well. In the afternoon she made a phone call to make sure that the documents had got through. It was then that she was told there was little point in her arriving, as she would not be allowed to participate in the application process of the foreigners. During the conversation Article 26, paragraph 1 was quoted, as well as

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43 According to the Border Guard's statistics (see Fn. 37), in the first quarter of 2016 there were 57 Turkish nationals applying for refugee status. A possible attempt to sound out new transit routes after the closing of borders in the Balkans.

Article 29 (2) of the Act on Foreigners, which state, respectively, that the applicant submits the application for international protection in person and that the Border Guard authority ensures that representatives of non-governmental or international organisations have access to the applicant who has applied for international protection. The Border Guard official emphasised the phrase ‘has applied’, arguing that that representatives of non-governmental organisations could access foreigners only after all the procedures concerning the process of applying for international protection had been terminated and the applicants had left the building of the Border Guard at the station in Terespol. Judging the argument as inapplicable, the researcher (and representative) arrived in Terespol before 9 am the following morning. Her intention was not to monitor random applicants on behalf of an NGO or give counsel<sup>44</sup>, but to accompany, based on the code of administrative proceedings, in the representative role, parties in the administrative proceedings who are initiating the procedure of applying for international protection<sup>45</sup>.

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44 Although SIP maintains that – in accordance with the procedures directive – an applicant is the individual who expresses the desire to apply for international protection and from this moment should be granted access to representatives of NGOs (see Ch. 2.1 for more on the subject).

45 Occasionally, SIP representatives are present, in the capacity of representatives, when

Her arrival came as a surprise for the officials and for approximately 30 minutes telephone consultations were being held to determine whether she should be allowed to participate in the proceedings. Numerous attempts were undertaken with a view to discouraging her from participating<sup>46</sup>, arguing as follows:

- these are technical procedures, like fingerprinting, which are time-consuming and with a queue of 50 people waiting already there is no possibility of dealing with those who have a representative first; the whole thing is likely to last all day and there is no point wasting the time waiting;
- during the proceedings involving foreigners ‘a lot of unexpected things might happen; like, it may turn out the person is sought after, which means we need to inform the prosecutor’s office and what then?’;
- there are often lawyers representing foreigners submitting applications who do not participate in the procedures instead waiting for the principals to leave the building – ‘What would happen if 500 people turned up and each had a representative? How would we go about it logistically? We’ll take their applications, let them out and you can do whatever you want with them afterwards.’

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foreigners apply for international protection in the Border Guard outpost in 33 Taborowa Street, which has never been questioned by the Border Guard.

46 Periphrasis and quotes from a statement by a Border Guard official in a telephone conversation held in Terespol



In the end, we managed to negotiate that the representative would be waiting outside the building for the signal from the officials and would be summoned when the application for international protection was being filled in. She was waiting until about 1.30 p.m.

The application forms for both applicants that the researcher was representing were filled in by two different female officials in two different rooms behind closed doors. In both cases the foreigners received a leaflet in Russian about the refugee procedure and were informed that the main interview concerning their status would be conducted by the Head of the Office for Foreigners, that for the duration of the proceedings their passports would be kept and in return they would be given a temporary identity certificate, that they were not to leave Poland and after leaving the Border Guard outpost they were to head to the refugee centre in Biała Podlaska. Both officials spoke Russian communicatively. Neither of them read the information from the application for international protection back to the applicants, to verify it before signing. They only did it following the representative's request.

The official interviewing the family delegate was very matter-of-fact and kind, patiently repeating the questions if they were not understandable for the foreigner. After he confessed to having been subjected to emotional and physical abuse, she became even more attentive. Her body language suggested it was safe for him to talk about what he'd been through. She also told him in advance that

she was only making selective notes of their conversation and writing down the most important facts and he would be given the opportunity to provide more details during the interview concerning his status. The notes she made were indeed crucial for the story he'd told.

A completely different approach was demonstrated by the other official, who was interrogating the victim of emotional and physical abuse. The official was initially concerned only with the fact that the foreigner had been in Poland twice before and had gone to a different country on both occasions having violated the regulations, which she was most likely trying to do again. When asking about the current reason for leaving her country she was mainly focusing on dates and insisted on the woman to say which month or day specific events had happened, despite having been told multiple times the subject had problems with memory and was in a state of shock after what she'd been through, barely escaping alive the dramatic circumstances, after which she was unable to provide specific dates, only rough ones. The official paid no attention to the dire mental state the woman was in, shaking, crying and at times unable to breathe. She had extreme difficulty relating the scale of the experienced abuse, the words got stuck in her throat and she looked as if she was about to faint. The official was impatient and kept asking the questions or moved to another question without allowing the subject to finish her thought. She was smiling condescendingly and her body language made it clear she did

not believe a word of what the foreigner was saying. When, at one point, the interrogated woman said she couldn't go on any more and needed a psychologist, the official ignored the request entirely and proceeded to the next question. The information provided by the woman was written down very sketchily. Without doubt a border crossing is not the place where one can register the story of a foreigner's lifetime of persecution. Nevertheless, the application forms need to be completed conscientiously and contain key factual data<sup>47</sup>, which the official, unlike her colleague, failed to put down, making notes in quite a random fashion. When the representative pointed it out and requested that selected vital facts be recorded (making sure she'd understood her principal correctly), the official assumed it had

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47 It's not a coincidence lawmakers assumed that writing down the story might require additional sheets of A4 paper, if the space provided in the form was not enough. It is of crucial importance in the further proceedings on granting international protection. SIP lawyers are often confronted with the accusations from the Head of the Office for Foreigners concerning the credibility of foreigners' testimonies. He assumes that if an applicant mentions certain events only during the refugee status interview and not back at the border crossing, it must mean they've concocted the story of persecution in Poland, likely with the help of the representative or NGOs' employees.

been an attempt to influence the foreigner's testimony and expressed her objection to the validity of the representative's presence while processing the application.

Apart from the researcher participating in the above interrogations as a representative, we additionally analysed the copies of applications filled in by Border Guard officials concerning two people who, during the research, managed to successfully, albeit after multiple attempts, apply for international protection. One of the applicants reported many inaccuracies between what she'd said and what had been written down. Having been read back the application she stated:

*I never said that... I don't know why they wrote it down like that... I couldn't have given such a number here, that's impossible. To be honest they don't ask about a lot of stuff at all; just complete the form as they please. For instance, I came to Brest by car, I'd hired a driver, but they never verified that and simply wrote that I'd come by train, because most people do.*

None of the individuals whose documents were verified by the researchers (who had not been their representatives during the application process) recalled being instructed about the refugee status procedure or receiving any written information on the subject or on the subject of non-governmental organisations offering assistance to refugees. The man claimed the only information of the type that he'd ever received were the details of several organisations that he was allowed to take a photograph of with his mobile, after many failed requests

and yet another refusal to enter when he asked, unsuccessfully, for a copy of the document refusing his entry into the Republic of Poland. When he was taking a picture of the sheet of paper with the details of the organisations, he was convinced that he was actually photographing the document refusing his entry, as both papers were in Polish.

Interestingly, both people emphasised a radical change in the attitude of the officials towards them after they submitted the application for asylum, compared to how they behaved prior to the foreigners' entry to Poland.

*The same official who used to bully and disrespect me for days on end, while refusing to let me in, all of a sudden transformed into this nice guy offering hot water, tea and asking if I needed anything. Once they let me in, suddenly everyone became kind. They wished me good luck, shook my hand to say 'goodbye' and underlined how important it was for the kids to learn languages... The only unkind people were these two ladies who processed my application – one was writing by hand and the other one was typing on the computer – they were more interested in each other and talking about food than in what I had to say. They barely asked questions or listened to my answers. But that aside, I finally felt I was treated like a human being.*

*Once they let me in, they started treating me decently. They'd completely changed their attitude and behaviour, as if they were not the same people I had been seeing for the last three weeks. They wished me good luck and were really nice.*

Summing up, it's worth bearing in mind that the above data, collected during individual application processes and analyses of single files, is not enough to draw general conclusions. It does show, however, how much depends on the officials, their empathy, attitude and manners. It also proves how important the presence of a psychologist is during the process of application for international protection or at least the presence of adequately trained personnel, capable of identifying victims of abuse and managing the conversation accordingly.

All the above leads to the conclusion that border guards should place great emphasis on adequately instructing foreigners applying for international protection. Medyka border crossing should serve as an example of good practice, with its officials not only providing written instructions but also explaining verbally the meaning of undertaken steps. A vital, yet seemingly neglected question is that of instructing the spouse in private about the possibility of submitting a separate application as well as the implications of submitting the application jointly.

Employing interpreters by the Border Guard in Warszawa-Okęcie is a commendable initiative, as it facilitates and speeds up processing the applications.

All the border crossings should ensure that foreigners submit the application in absolute privacy. This aspect requires immediate rectification at Medyka border crossing.

The reports pertaining to unprofessional conduct of some officials accepting applications from foreigners in Terespol are alarming. The

behaviour should be sympathetically neutral, regardless of the migration history of the foreigner.

### 4.3. Fingerprinting

At Terespol and Medyka border crossings fingerprints are taken by an official of the Border Guard. At Warszawa-Okęcie, however, fingerprints are taken by a criminology technician, while the instruction is handed in by a border guard. All Border Guard officials at all border crossings reassured the researchers that the instruction was issued in two copies at all times – one, signed by the foreigner, ended up in their file, and the other one was taken by the foreigner.

According to the accounts given by five foreigners who applied for international protection at Medyka border crossing, though, no instruction was issued at the time of fingerprinting. One foreigner admitted not remembering exactly if he'd taken the instruction with him, he did remember, however, that when applying for international protection, he was warned by the border guards not to leave Poland, as *'his fingerprints would be travelling all over Europe.'* Another foreigner claimed that she had received the instruction. From the conversations with foreigners applying for international protection at Okęcie it would transpire that not all of them received any instruction while their fingerprints were being taken. One of the foreigners remembered receiving the instruction in the language she

understood, which was Russian, however two other foreigners claimed never to have received any such document.

Fingerprints are taken from foreigners, after they've submitted their application for international protection, by means of an electronic scanner in a special room. The person taking the fingerprints enters into the computer system the personal data of the foreigner, such as the name(s), surname(s), date and place of birth as well as nationality. The fingerprints, together with the personal data, are passed on to the Chief of Police, who verifies whether the details of the particular foreigner feature in the following registers: SIS, Eurodac and the register of foreigners whose stay in Poland is undesirable. Border Guard officials in Terespol and Medyka explained that because of the time Chief of Police took to reply the foreigners were forced to wait several hours before being transferred from the Border Guard outpost to the reception facility. In Terespol, the waiting time for register check may even reach 5 hours, in Medyka it's 3–4 hours, whereas in Okęcie the officials get the feedback immediately. While visiting the outpost in Terespol and Medyka, the researchers were unable to determine the reason behind the hours of waiting pending the feedback from the system. According to information sent by the Border Guard Headquarters in response to the preliminary version of the report it might have had something to do with "a temporary glitch in the system", which resulted in the application of a traditional and time-consuming method involving ink, instead of the standard

procedure with the use of Live Scanner technology. Still, it is noteworthy that neither the officials in the monitored facilities, nor the interviewed foreigners seemed to perceive the waiting process stretching for hours as exceptional. Rather, they referred to it as a norm. It requires emphasising that the Border Guard has a legal obligation to inform the foreigner whose fingerprints are taken, in writing and in a language they understand, about the reason the fingerprints are taken and the consequent rights (the right to access the details concerning the foreigner, the right to obtain information about the procedure of executing the rights) as well as the consequences of fingerprinting resulting from the European regulations concerning their further movement on the EU territory.

## 4.4. Unaccompanied minors

The following chapter concentrates mostly on findings made during the monitoring of the outpost in Terespol, as well as the interview with the family court judge of the District Court in Biała Podlaska responsible for appointing a guardian and a place of residence for an unaccompanied minor arriving at the Border Guard outpost in Terespol.

We decided to interview the judge because Terespol is the biggest transit place for unaccompanied minors applying for refugee status. At the border crossings in Medyka and

Warszawa-Okęcie the cases of unaccompanied underage asylum-seekers are very rare – in Medyka two cases were recalled in the last year and no cases like that took place in Warszawa-Okęcie in the last year. The other reason was the recent change in the law regarding these procedures<sup>48</sup>, resulting in the lack of developed practice and preventing the team from obtaining a clear picture of the current practice regarding unaccompanied minors in various facilities. Only in Terespol did the officials have the opportunity to execute the new regulations.

What all the facilities have in common is the conviction of Border Guard officials that adults accompanying minors, even if they produce the power of attorney from the minor's parents or a court ruling from the country of origin granting them custody of the child, according to Polish law they cannot be assumed

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48 The act of 10 September 2015 on amendments to the act on granting protection to foreigners on the territory of the Republic of Poland, as well as some other acts (Dz.U.2015.160), which came into force on 13 November 2015; the act amends, among others, the procedure for submitting the application by an unaccompanied minor. Before the amendments, it was possible to accept the application from an unaccompanied minor before a guardian was appointed and non-governmental organisations had no right to submit the application for international protection on their behalf.

to be the child's guardians. Officials claim the presented documents only allow the adults to leave the country, but they are not legally binding when crossing the Polish border. Consequently, in each case of a minor arriving at the border without parents or documents issued by a Polish court, the foreigner is treated as an unaccompanied minor. In the circumstances the Border Guard files a request for appointing a guardian for the minor (Terespól – District Court in Biała Podlaska, Medyka – District Court in Przemyśl, Warszawa-Okęcie – District Court for the Capital City of Warsaw). In Terespól there is sometimes the opportunity to accept the request submitted by a non-governmental organisation on behalf of the minor, on condition the organisation's employee and the minor manage to synchronise their presence at the crossing. In other facilities this solution has not been tested yet. In the meantime, the minor is referred to an interventional education and care facility, since the specific *poviats* (counties) are suffering from a shortage of professional foster families trained to look after children of foreigners.

On 11 of January 2016 The Border Guard Headquarters have sent an official letter to all the divisions of the Border Guard, containing arrangements regarding the practical implementation of some of the regulations of the Act on Granting Protection to Foreigners on the territory of Poland, in connection with the amendment of 13 November 2015 (see the Annex). The document also contains detailed guidelines for the handling of unaccompanied

foreign minors who travel in the company of a family member who is not their legal guardian. The recommended course of action in each case prescribes that the minor and the actual accompanying guardian (unless not a family member) not be separated and be referred to the reception facility together. To optimise such an outcome, it is recommended that a representative of an international organisation or an NGO apply for international protection on behalf of the minor, a court request be lodged for temporary substitutive custody to an accompanying adult family member under the securing procedure and that the said family member should be assisted in drawing up the required request.

The conducted monitoring revealed that the above guidelines are, conditions permitting, implemented at the outpost in Terespól. To prevent the separation of the child with likely the only person they know in Poland, at Terespól border crossing officials are trying to orchestrate a scenario whereby the minor arrives at the crossing on the same day as the representative of the non-governmental organisation, so that all the formalities are dealt with in one day, i.e. accepting the application for international protection and granting temporary substitutive custody to the adult travelling with the minor by the court. The officials stated that in order to facilitate the process of the adult applying for custody of the minor, the Border Guard officials assist them in drawing up the court request for temporary substitutive custody under the securing procedure. The judge from the District Court in

Biała Podlaska confirmed the practice and also admitted that in almost all cases of unaccompanied foreign minors that the court dealt with, three requests appear before the court: two from the Border Guard – for a guardian for the minor and temporary substitutive custody of the minor granted to the accompanying adult, as well as one from the adult guardian themselves requesting custody of the minor. In such a situation, if court sitting is scheduled for the same day (the Border Guard and court cooperate closely in this matter), the minor may not have to end up in a socialisation education and care facility, is allowed to enter Poland together with the guardian and under the guardian's protection await the result of their application being processed. The above practice could serve as a model for dealing with an unaccompanied minor arriving at the border crossing if it wasn't for the fact that, according to the border guards themselves, outside the days when the procedure can be swiftly executed thanks to the presence of an NGO's representative, any other day a minor arriving at the crossing will be discouraged using all possible means from submitting the application. The adult guardian is, to all ends and purposes, intimidated by visions of separation from the child for an indefinite time. As Border Guard officials admit themselves, most foreigners, especially Chechen women, resign from submitting the application on such days. During the monitoring the researchers witnessed one case of minors trying to cross the border in Terespol, accompanied by an aunt, who had documents issued by local authorities

of a Chechen city confirming that she was indeed the legal guardian of her three nephews (the fourth brother travelling with them was already an adult). Additionally, she was in possession of a document confirming posthumously the fatherhood of her brother, birth certificates of the children, death certificates of their parents and some other additional documents, all confirming the close kinship and her legal custody. A few of the most important documents had been translated into English. When the researchers met them for the first time, they had already unsuccessfully tried to enter Poland a dozen times. According to the foreigner, the officials of the Border Guard had not questioned her concerns about persecution in Chechnya, which she had managed to communicate to them. They said, however, that they wouldn't let her in as she had tried to lie to them claiming initially the children were hers. The woman explained to the researchers that since the children were orphans, and she was their nearest kin, her conscience and the Chechen way made her feel she was, in fact, both a mother and a father to them. In her opinion that was enough to justify an affirmative response when asked whether the children were hers. In the situation where all the documents she had confirmed her legal custody, a different answer had not even crossed her mind. In her words: *'Although I didn't give birth to them, they are mine nevertheless, what with them being orphans and me fostering them.'* She believed the whole situation was a misunderstanding as she hadn't meant to deceive anyone, which she tried to explain



to the officials, who, she felt, had treated her very unfairly. From what she said, the officials had been adamant and would not even look at her documents: *“They keep saying, ‘For us these documents are invalid, because they were issued in Russia, submit documents in Polish, please.’”*

Despite being instructed by the researchers about their rights, the family were still prevented from applying for international protection. Even sworn translation of the documents confirming her custody of the nephews into Polish did not further the case. Her account of how the officials behaved: *“They told me that even if they let me in, the kids would go to a children’s home. I can’t let that happen, can I? It’s my obligation to look after them. I pleaded with them on my knees, in front of everyone. And they go “It’s always the same with you lot, either they kill someone or something or other is happening to you...” So I tell them, that you can verify everything, can you not? You can screen us and check that there’s really no way we can go back to our homes, isn’t that right?”*

The researchers suggested that the foreigner wait for an upcoming visit of lawyers from CPPHN, who could apply for international protection on behalf of the minors. The solution did not work out initially, due to the scale of distrust the officials exhibited towards the aunt of the minors. The Border Guard officials proposed in the end, that the oldest brother become the guardian of the minors and that they would arrange in advance all the formalities with the court in Biała Podlaska, including the date on which the family is to arrive, so that all the necessary procedures are dealt

with in one day, preventing the children from being put in an interventional education and care facility. It was only four days later, in the presence of an NGO’s workers, that the family finally managed to apply for international protection.

It is difficult to assess the attitude of the Border Guard unequivocally in this case. Their concern for the well-being of the minors is commendable, as is the eventual outcome of their proceedings that saw the children not separated from the family. Inevitably though, there are a number of questions and doubts that need to be addressed, with regard to the overall handling of the case. If the protection of the minors from danger was of primary importance, then the steps taken could have paradoxically exposed them to an even bigger threat – had the misgivings of the officials proven true and the guardian of the children had intended to abuse them, then it would have made more sense to let them all in and, say, separate them from the guardian whose behaviour puts the children’s safety at risk. Supposing it had been the case of child trafficking, which the Border Guard officials should by all means take into account, then denying the trafficker entry into the country and leaving the children under their care did nothing to prevent them from harm.

The example described above illustrates that the already existing procedure (included in the letter from the Border Guard Headquarters, dated 11 January 2016) for dealing with unaccompanied minors arriving at the border

in the company of a family member who is not their legal guardian must be promptly refined, to ensure its effectiveness in each case. The conduct of the Border Guard officials in Terespol substantially limits the access to refugee procedure for the most vulnerable group – the minors, who should be given extra protection from the state and therefore violates not only the Geneva Convention and the New York Protocol, the Charter of Fundamental Rights of the European Union and the Constitution of Poland, but also the Convention on the Rights of the Child from 1989 (Dz.U.1991 [Journal of Laws], No. 120 (526)), which demands that all actions undertaken by private or public bodies with regard to children be done with primary concern for their best interest. It would be difficult to agree that refusing a minor entry into Poland and exposing them to the hardship of multiple journeys to the border and leaving them in a state of legal limbo on the territory of a third country has the best interest of the child at heart, especially that until the case is processed, Polish authorities have no way of telling whether the adult that accompanies the child is in fact who they claim to be during the brief questioning at the crossing. It is then in the best interest of the child to give them a sense of security as swiftly as possible by providing shelter, medical care and for the relevant authorities to urgently decide who has custody of the child (giving precedence to custody by family members over institutional care) until the decision regarding international protection is made.

At the border crossing in Medyka an unaccompanied minor that arrives at the border is taken to a socialisation education and care facility, and, at the same time, a request is lodged to appoint a guardian from among the employees of the District Court in Przemyśl. Since the border crossing in Medyka does not cooperate with any NGO, there have been no cases of an NGO's worker applying on behalf of the minor. Only one Border Guard official claimed that if the minor is accompanied by a kin, he informs them about the possibility of requesting temporary custody of the minor. The remaining officials did not mention this option. This way, minors entering Poland through the border crossing in Medyka will be separated from the accompanying adult in each case, at least at the initial stage of the proceedings. Meanwhile, it seems that in a situation where the employees of the court become guardians of the minors and the cooperation between the Border Guard outpost in Medyka and the District Court in Przemyśl allows for a quick appointment of dates of court sittings, it's there exactly where processing requests for establishing a guardian, accepting the application for international protection and granting temporary custody to the accompanying adult should be dealt with without unnecessary delay, so that the minors avoid being placed in a socialisation education and care facility even temporarily.

Only at the border crossing in Warszawa-Okęcie have there been cases of foreign minors crossing the border unaccompanied, without adult kin or an appointed guardian. It's

because at Medyka and Terespol border crossings the preliminary “selection” of minors is carried out by the Border Guard in Ukraine and Belarus, who do not allow any unaccompanied minors out of their country. At Okęcie airport, Border Guard officials mentioned two cases of unaccompanied minors travelling on their own – these were individuals on the verge of adulthood. Since the individuals crossed the Polish border under previous law, their cases have been deemed irrelevant for the sake of this report. The outpost at Warszawa-Okęcie cooperates with non-governmental organisations as far as appointing guardians for the minors is concerned. The minors are placed in an intervention education and care facility. During the monitoring, the team were unable to determine a specific course of action for an unaccompanied minor applied by the facility, due to the sporadic incidence of minors arriving at the crossing and the fact that under the current law there have not been such cases. Border Guard officials declared that the moment a minor arrives at the border, the officials will act strictly according to law. No doubt it’s worth preparing for such an eventuality and establishing a precise course of action for dealing with unaccompanied minors factoring in the current law and the specificity of the outpost so that when an unaccompanied minor arrives at the border, steps are taken swiftly, effectively and with the best interest of the minor at heart.

To sum up, all the monitored Border Guard outposts need to take a more rational approach to dealing with documents certifying

the custody of minors issued in the countries of their origin. It would be difficult to rationalise the approach of the Border Guard that the guardian be appointed each time by the Polish court’s ruling. Existing solutions for establishing governing law pertaining to custody and care of minors must be applied and only when the adult is not eligible to represent the minor should the procedure for unaccompanied minors be launched.

Furthermore, it is necessary to fully implement the guidelines by the Border Guard Headquarters with regard to unaccompanied minors travelling with adult family members who are not their legal guardian, by establishing cooperation with international or non-governmental organisations, which could apply for international protection on behalf of the minors, to enable the finalisation of all the proceedings concerning the minor on the same day as they arrived at the border, without the need to send them away. In the facilities other than Terespol it is necessary that the Border Guard and relevant district courts develop a single standardised procedure – one which will facilitate the finalisation of all formalities necessary to process an unaccompanied underage foreigner’s application for international protection in one day. If the minor travels in the company of an adult who guarantees proper level of care then necessary steps should be taken to settle all the remaining issues regarding the care of the minor (even if temporary), to avoid separating children from the only close people they might know in Poland, in accordance with Article 24 (2) (a) of the Reception Directive.

## 4.5. Identification and support procedure for vulnerable individuals

The range of people identified as vulnerable and requiring special treatment is quite wide. Among them are unaccompanied minors, the disabled, the ill, as well as victims of abuse. A detailed analysis of the position of unaccompanied minors was presented in Chapter 4.4 of the report. The issues concerning the disabled and the ill were discussed in the chapter on the availability of refugee procedure (Chapter 3) and the chapter on granting international protection (Chapter 4.2), as well as in the chapter on satisfying needs at border crossings (Chapter 6). As far as the recognition of needs of particularly vulnerable people is concerned, the key element that is lacking is the preliminary identification of victims of abuse. Since 2015 the officials are obliged to follow the guidelines outlined in the document *The Border Guard's code of conduct for handling special needs foreigners*<sup>49</sup>, which identifies the following groups of people as requiring special treatment: minors, unaccompanied minors, the disabled, the elderly, pregnant women, women

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49 The document *The Border Guard's code of conduct for handling special needs foreigners* was approved by the Deputy Chief of the Border Guard on 17 September 2015 (extract from the document in the annex).

raising children single-handedly, torture, rape and other abuse survivors, witnesses/survivors of human trafficking as well as persons requiring support as a result of their health or specific personal situation. Unfortunately, the tools indispensable to identifying such individuals by border guards during the first contact at the border are missing. The guidelines only outline the course of action in the case of detaining a foreigner and applying for their referral to a guarded centre for foreigners – it demands that circumstances or lack of thereof for opting out of detention be established in each case (e.g. the history of abuse that the foreigner experienced) and that the relevant information be included in the application sent to court.

Border Guard officials from the border crossing in Terespol testified during the interviews with the monitoring team that the working conditions did not allow them to instantly single out a person in need of specialist care, unless the problem is clearly evident. The officials point out that whether a person is a victim of abuse or suffers from PTSD can be established during the questioning. On closer inspection it becomes transparent that the questioning takes place in circumstances that render the identification impossible (see Chapter 3.1). Officials admitted that identification would be facilitated if there was a questionnaire with closed questions about risk of violence to the foreigner or its presence in the country of the applicant's origin.

Similarly, at the border crossing in Medyka, according to the information provided by the officials, there have been no cases of foreigners

who could qualify as vulnerable. It must be emphasised, however, that when asked about using procedures for early identification of abuse victims and PTSD sufferers, the officials had trouble providing an answer. They claimed that ‘such cases’ do not occur. One of the officials added that to be able to declare a person as a victim, the said person had to say anything at all on the subject. The officials also maintained that they did not encounter people requiring special treatment in their work. Having said that, officials admitted that if such foreigners did appear, they would require an individual approach. In the meantime, Medyka is a border crossing that witnesses the passage of many victims of abuse, as a result of hostilities in the east of Ukraine as well as Crimeans, who ran for their lives after the annexation of the peninsula by Russia. Many of these people are currently being offered psychological or psychiatric support in Poland. The monitoring team interviewed a few of the people who entered Poland using Medyka border crossing. One of them, a victim of sexual abuse, stated that the extent of support she experienced at the border came down to allowing her to ‘let it all out’ once she started crying.

At the border crossing in Warszawa-Okęcie, as it was the case with the other monitored crossings, there are no specific procedures in place aimed at identifying the abuse victims or PTSD sufferers.

None of the monitored border crossings had a psychologist available to assist foreigners applying for international protection. Border Guard officials at all crossings claimed they

had never witnessed an applicant in a physical and mental disposition so poor that it would prevent them from submitting the application. The officials in Terespol went even so far as to claim that ‘there is no need for a psychologist at a border crossing’. They hastened to add that they themselves had been trained how to accept the applications, handle the interviews with foreigners and been informed about the situation in the countries the foreigners had come from. Therefore, if there is such a need, the officials don’t interfere ‘if the applicants feel like crying’. One official, who’d been questioning migrants for eight years, asserted that he’d never come across a migrant that would qualify as vulnerable, since ‘vulnerable groups were a real rarity’, he emphasised. Meanwhile, the studies prove that approximately 80% of refugees suffer from PTSD<sup>50</sup>. Correspondingly,

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50 Life under constant threat has serious psychological consequences. It can also result in post-traumatic stress disorder (PTSD). The condition is quite widespread among refugees – in Sweden it was diagnosed in 79% of asylum-seekers and in 60% of Chechens in Austria. After: K.A. Ratkowska, D. De Leo, *Suicide in Immigrants: An Overview*, „Open Journal of Medical Psychology” 2012, No 2, p. 130). See also: M. Książak, *Dostęp do pomocy medycznej i psychologicznej osób ubiegających się o status uchodźcy w Polsce*, in: A. Chrzanowska, W. Klaus (ed.), *Poza systemem. Dostęp do ochrony zdrowia nieudokumentowanych migrantów i cudzoziemców ubiegających się o ochronę międzynarodową w Polsce*, Warsaw

the experience of the researchers interviewing foreigners in Brest demonstrated that the presence of a psychologist at the crossing was a pressing matter. Moreover, it is vital that border guards be thoroughly trained in preliminary recognition of individuals with special needs (especially victims of abuse). The interviews with foreigners proved that not all officials are competent enough to handle the task, a fact that was borne out by the researchers during their 3–4–day stays, who identified several such officials at crossings that supposedly had never had to deal with cases of special needs foreigners.

The officials declared that should medical help be needed during the process of applying for international protection, they called the ambulance. There is a doctor's surgery at the crossing; however it had no permanently employed doctor on site. The officials admitted that finding a person willing to do the job presented a challenge. They also maintained that it was possible to apply for international protection while in hospital, which was later confirmed by one of the respondents in Brest. He also recalled a case of a woman who, due to the stress of endless rejections she'd experienced at the border, passed out on one occasion and was taken to hospital by the officials, where her application for international protection was immediately accepted. The man seemed to recall that it all happened in hospital, according to the woman.

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2011, p. 168.

If the information obtained from officials at Medyka border crossing is to be believed, the outpost rarely has to deal with people who are ill, in urgent need of medical help or are victims of abuse. When a case like that occurs, the officials summon relevant services. One official recalled a case of a badly burnt child and the ambulance that was called to help them. According to officials, special treatment of the vulnerable was manifested through delegating a female official to deal with the application from a woman or making a note in the application that a given person was a victim of abuse. The officials emphasised the importance of 'the human factor'. One person handling the applications admitted that she didn't take into consideration just the papers but also the migration situation in the country of the foreigner's origin. This helps them to adopt an appropriate manner in which to address the foreigner, culture-wise. The officials of the Border Guard in Medyka highlighted on numerous occasions the fact that they had participated in trainings on cultural differences of foreigners from outside the European Union. Such trainings had not been offered to officials at the Border Guard outpost in Warszawa-Okęcie (as claimed by them). One official indicated that the foreigners underwent a medical check-up, so following a brief interview the doctor could alarm them if the person needed special treatment.

Border Guard officials at all the monitored border crossings declared that if the need arose they transported foreigners to relevant reception facilities. An example of good



practice was observed at Medyka, where officials inform a reception centre in advance that a foreigner in need of special support is on their way, including the information about the extent of support required. The officials also claimed the foreigner in a situation like that would have been equipped with packed lunch. From the interview with a foreigner who'd submitted her application at Medyka border crossing, a different scenario transpired. The woman reached the border in the state of physical exhaustion and mental distress resulting from the abuse experienced in her home country. Having completed her application process, on Friday at around 8 p.m. she was transported to the railway station in Przemysl and left there to her own devices. The foreigner had no funds, which meant she had to wait for a money transfer from her sister until Monday, sleeping at the railway station until then. She needed the money to travel to the reception centre in Dębak, near Warsaw. The quoted information and examples go to prove that the system of preliminary identification of abuse victims and PTSD sufferers is still to be working reliably. Although a lot of border guards declare that they have attended trainings on identifying and handling members of this vulnerable group, the comments quoted above, together with the accounts of the foreign respondents suggest that the acquired knowledge often fails to be implemented. It refers both to the stage when passports are controlled and to the process of processing the applications for international protection. Therefore, it would be worth considering

the provision of more thorough trainings<sup>51</sup> on the one hand, and on the other hand monitoring to what extent they execute the acquired knowledge and skills in their everyday work. Also, it might be a good idea to establish cooperation with psychologists, who could assist officials at the border in identifying less obvious cases and could provide adequate support for individuals identified tentatively by the guards.

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51 The Border Guard Headquarters have assured us in their comments to the preliminary version of this report that the Border Guard "have been systematically organising training courses and workshops aiming at improving the skills of the officials and employees of the Border Guard (including the employed psychologists) in the area of identifying individuals who require special support result of experienced abuse, torture, rape or other forms of extreme psychological, physical or sexual abuse". Also, we've been informed that "a platform for cooperation between the Border Guard, the Office for Foreigners, the Różnosfera Foundation and a medical entity was established, in order to foster initiatives developing the competences of border guards in the area of identifying individuals from the vulnerable group (the working group includes a representative of the Border Guard outpost in Terespol)."



## 4.6. Placement in guarded centre for foreigners

There is a lack of standardised procedure concerning the Border Guard with regard to lodging a request to place an asylum seeker in a guarded centre. Each outpost where the monitoring was carried out had its own procedure. Before lodging a request for placing a foreigner in a guarded centre, officials in Terespol interrogate the foreigner with a view to finding out their history of residence in the European Union and their financial status. As a rule, the officials send a request to court to place the foreigner in the centre in three cases: when they feature in the SIS database, their identity cannot be determined or they provided falsified data. The officials pointed out that in reality they had no alternatives to detention since *“foreigners have no place of residence in Poland”* and they have no sufficient means of subsistence. The officials that were interviewed could not recall any rejected request for placing in a guarded centre. They also underlined that they *“felt sorry”* for the families with children who were referred there.

During the monitoring carried out in Brest, the researchers witnessed several times the officials’ attempts to intimidate those foreigners who declared a desire to apply for refugee status by threatening them with a referral to a guarded centre if they did that. They recounted that following yet another withdrawal of their application, when SIP officially applied

for international protection on their behalf, the officials proposed to accept the application on condition the foreigners “agreed” to be placed in a guarded centre. It does not sound too credible since we have not heard of cases when the Border Guard officials would request the opinion of foreigners in this respect. If, according to the Border Guard, there are enough indications to place someone in a guarded centre, then a request is simply filed with a court to issue a decision in the case. However, the accounts of foreigners claiming the officials asked them whether they “agreed” to be placed in a guarded centre had come from several different people. Several other foreigners remembered the officials warning them rather that once they were let in, a request to be placed in a guarded centre would follow. It concerned people whose passports, apart from a crossed stamp, had a letter “C” written down (entry refusal due to the lack of a valid visa or residence permit), with an unsuccessful history of applying for international protection in Poland that led to leaving the country for another EU Member State and a consequent return to the country of origin. In such a situation, there are no legal grounds for placing the foreigner in a guarded centre. In some of the above cases the foreigners were further denied access into Poland several or more times, but in none of the cases did the Border Guard eventually request detention after accepting the application for international protection. Only once during the monitoring period did we encounter Chief of the Border Guard in Terespol requesting the detention of a woman

with five children, whose data featured in the SIS. Such a fact indeed forms a basis for a request for detention, however, in accordance with Article 88a (3) (2) of the Act on Granting Protection to Foreigners you don't detain a person whose physical and mental state might suggest a history of abuse, both physical and psychological, experienced in or outside the country of origin. The foreigner applying for international protection testified that both she and her children had been subjected to psychological abuse before fleeing to Poland, which the official recorded in the application form that was later passed on to the Head of the Office for Foreigners. In such a situation the circumstances justify applying an alternative to detention in a guarded centre. The Border Guard failed to do that, arguing in the application to court that *"the foreigner has no permanent place of residence in Poland and no sufficient money on her"*. It is, in the opinion of SIP, a baseless argument, since every foreigner whose application for international protection was accepted in Terespol is referred to the reception facility for foreigners in Biała Podlaska run by the Office for Foreigners, and later to one of residence centres located in the country. Therefore, it would pose no difficulty whatsoever to establish the place of residence of the foreigner if an alternative to detention was used. Additionally, it is increasingly worrying that the reported abuse was utterly ignored – if the statement itself was insufficient, a specialist opinion of a psychiatrist or psychologist should have been solicited. Neither the Border Guard nor later the District Court

in Biała Podlaska did that, the latter simply repeating the Border Guard's justification for the detention of the family, namely, that the foreigner *"was a healthy woman, which eliminates any concern that her stay in a guarded centre could pose a threat to her life or health"*. The foreigner herself, in the conversation with one of the researchers, recounted that during the trial the judge did not inquire about the experience of abuse at all, pronouncing her healthy on visual inspection.

The situation at the crossing in Medyka looks similar. The officials don't use solutions alternative to detention in a guarded centre. They also do not ask foreigners whether they have funds to stay in Poland. The reason for lodging a request for detention is, for example, an illegal crossing of the border. One official said that he consults the decision about placing someone in detention in a guarded centre with the judge on duty. He also stated that for some foreigners it was a far better solution, since the accommodation, food and psychological assistance were provided and the question of language barrier is addressed. According to one official *"a foreigner is safer in a guarded centre"*. Meanwhile, under the act on granting protection to foreigners on the territory of the Republic of Poland, applicants and their families are entitled to accommodation in a centre for foreigners, food and financial allowance, if necessary, to cover life expenses outside the centre and the cost psychological help. The outpost at Warszawa-Okęcie applies a yet different approach. According to what they reported during interviews with the

monitoring team, border guards try not to request detention in a guarded centre as a rule. One official claimed that the request is only referred to court when dealing with a person who'd crossed the border illegally multiple times or used forged documents. Often, the Border Guard will use an alternative solution instead of detention in a guarded centre, like obliging the foreigner to report at the Border Guard outpost, which is a commendable example of good practice.

The above differences in approaches of Border Guard officials offer enough clues to justify a claim that clear guidelines on when to apply detention should be formulated. The guidelines should give precedence to alternative solutions and, in the case of families with small children, an obligation to primarily secure the best interest of the child in each case. The guidelines should also include – in accordance with regulations in force – a overt prohibition to request detention in a guarded centre for people whose psychological or physical state suggests (not necessarily guaranteeing) a history of abuse. In this case a more effective procedure for preliminary identification of abuse victims among people applying for international protection should be implemented.

## 4.7. Arrangement of transport from border crossing to reception centre

At each of the monitored border crossings the officials provided the foreigners with the address of the reception facility they should go to, which is a go-to place for foreigners applying for international protection. There are two such facilities in Poland – in Dębak-Podkowa Leśna and in Biała Podlaska. The foreigners who crossed the border in Terespol are referred to Biała Podlaska (around 35 kilometres) and those who crossed the border in Medyka are referred to either Biała Podlaska (around 330 km) or Dębak (around 360 km). Those foreigners who applied for international protection in Warszawa-Okęcie are referred to Dębak (around 30 km). All the interviewed officials claimed that in the case of disabled, ailing or frail foreigners the Border Guard will provide transport to the centre.

At Terespol border crossing the foreigners usually leave the building in the evening, between 6p.m and 8 p.m. The officials equip the foreigners with a map containing directions to the centre in Biała Podlaska, the price of the train ticket and the directions from the train station to the centre. The maps are available in Polish, Russian and English. However, the officials claim that foreigners prefer to take a taxi or a private bus, which park in front

of the building in the evening hours waiting for the potential passengers. One official described the manner in which foreigners leave the Border Guard outpost; *“They are all very protective, look out for one another and will not leave anyone behind, the whole group travel to the centre together.”*

One researcher who was representing two applicants for international protection on 24 March 2016 and was waiting for them to leave the building of the Border Guard confirms these observations. The whole group of around 40–50 people whose refugee applications were accepted on the given day was released around 6.30 p.m. and proceeded to the taxis that had been there since around 5 p.m. The researcher was trying to convince “her” group (10 people in total, accompanied by two more) to use the bus or train and quoting financial reasons. However, the bus or train would require an additional hour of waiting, and everyone, children especially, was very tired and hungry after a whole day of “roughing it” at the crossing. In the end, a decision was made to take a taxi van, although the number of passengers exceeded the allowed minimum, which did not seem to bother the driver.

One of the respondents in the monitoring, who had entered Poland on a different occasion, to explain why, in his opinion, the foreigners opt for a taxi: *“People don’t usually take the bus or train. The officials give them this completely illegible map, plus you have to exchange the money, buy the tickets, find out this and that, and there’s the language barrier. And anyway, there are so many taxis parking there, not only Polish,*

*but ours as well, who will charge you in euros and take you wherever you want.”* Interestingly, the respondent mentioned that taxi drivers, especially the compatriots of the foreigners, very often talk them out of staying in Poland. They say the situation in our country is hopeless, no one ever gets positive decisions, there is nothing to do, nowhere to work, while in Germany, for example, it’s much easier to obtain all the papers and the living conditions are much better. In his own words:

*The taxi drivers will say that they will take them to Biała Podlaska or straight to Germany, if they want to. They don’t rush them; they give them time to think. At the same time, they are trying to convince them that it doesn’t really matter, as it one Europe anyway, without borders. The people are often so confused that if it is their first experience of border crossing they will often act on this advice. They once tried to talk me into it as well but I told them that I knew more or less how things looked and that they should look for other fools. I wasn’t as lost as the first time I did it, but not confident enough to take the bus or train, so I took a taxi, but bargained a lower price, because I knew that 40 euros was much.*

At the border crossing in Medyka foreigners are informed orally where to go. Only if there is such a need is the map with addresses and train connections between Przemysl and Biała Podlaska provided. What is not without significance is that there is no direct train connection between Przemysl and Biała Podlaska. The foreigners that the researchers had spoken to admitted that reaching the centre was quite

a challenge. It is true that Border Guard officials equipped them with the address written on a piece of paper, but provided no further information. One of the foreigners who was supposed to leave the building at 11 p.m. asked the officials for permission to spend the night on the premises until the first morning train, but they refused point blank.

It may happen that the journey from Medyka to the reception centre turns out to be a traumatic experience for foreigners. A case of a 60-year-old woman from Ukraine is a case in point. Here's her story: *"I was never given a map, only the address and they dropped me off to Przemysl. It was at 8 p.m. on a Friday and I had no money for the journey. My sister lives in Germany so I asked her to send me some. I got the transfer on Monday, until which time – from Friday till Monday – I stayed at the train station, without food or drink. When I told Border Guard officials I had no money, they shouted at me. I went to Dębak on Monday, only after I got the money from my sister".* Yet another interviewee reported that border guards assisted her with the bus journey to Lublin, but she had to travel from there all the way to Biała Podlaska on her own.

At the border crossing in Warszawa-Okęcie foreigners receive a map with directions to Dębak. The officials claim that they take it upon themselves to inform the foreigners how to get to the centre near Warsaw; however the foreigners' reports contradict that. The foreigners report that they ask passers-by for help in getting there. The way to the centre is quite complicated, there's only one

suburban train leaving from the central station in Warsaw and the rest of the journey from Otrębusy, which is around three kilometres, has to be continued on foot, which takes around 40 minutes. The facility itself is situated in the forest and completely isolated from the local community.

In the opinion of the researchers, the maps – irrespective of the language in which they are produced – are illegible and barely possible to decipher. Each foreigner leaving the Border Guard outpost must be given a clear and legible map explaining how to get to the reception facility, written in the language that they understand. The map should include the following information: the location of the reception facility, available means of transport, each stop on the way, points where tickets can be purchased (as well as their prices), average time of travel, detailed directions from the last stop to the centre (which is especially important for foreigners on the way to Dębak).

## 4.8. Involvement of non-governmental organisations and UNHCR

Non-governmental organisations helping refugees in Poland do not hold regular surgeries at border crossings in Poland. Their representatives participate in sporadic interventions (mostly in Terespol) and on request

of foreigners, who declare the will to apply for international protection but the Border Guard still refuse their entry into Poland. The organisations sometimes apply for international protection on behalf of unaccompanied minors. The experience of SIP shows that the interventions on behalf of foreigners who have been denied the right to apply for international protection are enjoying mixed popularity. While until spring this year there was no problem obtaining relatively detailed information about the reasons behind the refusal concerning a given foreigner, during the monitoring, practically overnight, the officials of the Border Guard began refusing to disclose any information, quoting the lack of power of attorney from foreigners<sup>52</sup>.

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52 SIP's representative in charge of sending intervention faxes/emails started receiving the following replies from the Foreigners' Authority of the Border Guard Headquarters: "(...) following the decisions made in the meeting of 3-4 June 2014 in Zamość, I kindly request that you send the suitable power of attorney granted by the foreigner, appointing a person representing them in the case under consideration. The above will authorize the Foreigners' Authority of the Border Guard Headquarters to pass on the information concerning the current legal and actual status concerning the person in question." Indeed, during the quoted meeting the Border Guard informed non-governmental organisations that without a power of attorney no information concerning foreigners will be divulged to NGOs' employees. Despite that,

The only organisation that visits the border crossing in Terespol regularly is CPPHN. The representatives of CPPHN appear there once a month as a rule, but they may also drop by unannounced<sup>53</sup>. The presence of CPPHN in Terespol is connected with the status of UNHCR's executive partner in Poland and the conditions of the agreement between the Chief of the Border Guard and the regional representative for UNHCR in Central Europe, which pertains to conditions of cooperation and coordination with regard to people's access to the procedure enabling application for international protection on the area of the Republic of Poland. According to the agreement's resolutions, the Chief of The Border Guard allows UNHCR's officials or UNHCR-nominated NGO to monitor the process of foreigners applying for international protection on the territory of Poland, as well as the execution of their right to access the procedure in this respect. Thus authorised partner is appointed by the regional representative for UNHCR in cooperation with the Chief of the Border Guard. The agreement also assumes an

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until March this year, we did get informed about the situation of foreigners trying to apply for refugee status who were the subjects of our interventions.

53 They make a much rarer appearance at the border crossing in Medyka. The information in this and the next paragraph comes from a CPPHN's representative.

annual tripartite meeting to discuss the most important issues relating to the results of the monitoring for the given period. What's important, all the reports during the monitoring by CPPHN are confidential and administered by UNHCR.

According to information obtained from CPPHN, the agreement does not have a legally binding nature, and its provisions are rather general. When there is an intensification of complaints on the part of foreigners whose application for refugee status have been rejected, objections have been voiced concerning the extent of the allowed monitoring. The divisive question was the possibility of observing the work of officials on "the first line of defence", which is the most sensitive moment of the whole procedure. Almost all complaints from foreigners concerned this stage of the application process and the withdrawal of their application for international protection. In the past, because of recurring complaints, a practical solution was put into place – if the number of complaints would go up in the given period, then the Border Guard would conditionally consider allowing CPPHN insight into the procedure at that stage. Recently, the organisation has been receiving signals that it is not going to be possible any more. The lawyers working for CPPHN claim, however, that they are still given a free pass to observe the procedure of applying for international protection. They are also allowed access to information explaining the reasons behind the negative decision pertaining to a given foreigner who asked the organisation for intervention, although the

obtained information may have varying level of detail.

What needs to be emphasised is that according to the procedures directive the applicant is the person who expressed the will for obtaining international protection, hence there are no legal grounds for the Border Guard to refuse UNHCR representatives or NGOs' representatives access to foreigners during the first stage of the control. Especially in the context of an increasing number of complaints being reported not only to UNHCR or CPPHN but also SIP and other non-governmental organisations, lodged by foreigners who feel their access the procedure for international protections has been compromised by Border Guard officials. The persistent obstinacy of the Border Guard in this respect makes it impossible for outsiders to confront the foreigners' accounts with the claims of officials asserting that only those who don't express the will to apply for international protection are denied access. This, in turn, undermines the credibility of Border Guard officials and lends weight to a suspicion that lack of transparency is the result of systematic violations of the law in place.



## 5. Procedure for entry refusal

Among the people who receive a negative decision of entry at the border there may be foreigners who are fleeing their home country as a result of persecution or threat to life. It may happen when a foreigner makes a decision not to apply for refugee status in Poland. It also happens, albeit against the law, when the authority obliged to accept the application for international protection from a foreigner refuses to do so (see Ch. 3.1). In both cases the procedure to refuse the foreigner entry into the Republic of Poland will be initiated, based on Article 28 (1) (1) of the Act on Foreigners. From this moment, their status is equal to that of any foreigner who, while trying to cross the Polish border, has not been positively verified during border control. For these reasons, the procedures were also included in the monitoring.

The procedure concerning refusal of entry on the territory of the Republic of Poland is handled by officials from administrative procedures teams, therefore they are not the same officials who accept applications for refugee status or deal with preliminary questioning about the reason for entry. Medyka border crossing is an exception to this rule, having the same officials deal with entry refusals and accept applications for international protection. Only at Terespol border crossing are there separate procedures to deal with those who have been denied entry because of the lack of

required documents (which often means people whose applications for international protection have been rejected on a given day) and those who have been refused entry for all the other reasons, e.g. because of lack of insurance or funds. The proceedings in the case of the former begin only after all the other people who'd arrived at the border on the day had left the facility. In all the other outposts, all the proceedings connected with entry refusal are carried out in the same way, regardless of the reason behind the refusal.

In Terespol and Medyka the proceedings are carried out without the presence of foreigners, who await the result in a separate room. In Warszawa-Okęcie on the other hand, the foreigner is present in the room in which the proceedings concerning the decision to refuse entry take place. Once the decision is issued in Medyka and Warszawa-Okęcie alike, the foreigner is presented with one copy of the decision, together with the instruction in the language they understand. The instruction contains information about the possibility of appeal, as well as the date and procedure for lodging it. Additionally, there is contact information to several non-governmental organisations operating in Poland, under the heading: "contact points able to provide information on representatives competent to act on behalf of the third-country national". After foreigners sign the decision and the instruction on the

copy of these documents, which will then be in the possession of the Border Guard. If the foreigner refuses to sign the documents, a special annotation is made on the document, which is then signed by border guards.

According to border guards in Medyka and Warszawa-Okęcie, most foreigners take the documents with them. The monitoring team had the opportunity to observe the above procedure and confirm its consistency with the regulations at the airport. In the case of Medyka border crossing, the team failed to observe the procedure of issuing the refusal or talk to a person who'd been refused entry in the outpost.

Officials of the Border Guard in Terespol observed a yet different practice. During the interview with the monitoring team, they stated that foreigners crossing the border are not in the least interested in any documents drawn up by the facility and in every case refuse to collect the issued decisions and instructions. The officials justified it with the specific attitude of foreigners, who are known to throw the temporary identity certificate into the bin in the clearance hall as soon as their application for international protection has been accepted. Since the monitoring team were not allowed to observe the procedure of entry refusal and the ensuing issuing of documents, observations were made through the glass wall of the outpost in Terespol. It was noticed that the formalities were exceptionally short and general. The foreigners approach the desk, sign several documents and quickly proceed to a corridor leading to the platform, where they will await

a train to Brest. The monitoring team failed to notice any attempt on the part of the officials in charge of the process to hand in any copies of signed documents or at least encourage the foreigners to take them. Understandably, there were also no occurrences of foreigners refusing to accept any papers handed to them. The above observations justify a conclusion that in Terespol foreigners are not clearly informed about the possibility of obtaining a copy of the refusal to enter the territory of the Republic of Poland together with the instruction about the possible appeal against the decision.

An example of good practice during entry refusal was observed during the monitoring at the airport in Warszawa-Okęcie. During the proceedings, the official allowed the foreigner to use the landline phone to get in touch with her embassy in Poland. The conversation was not limited in any way and allowed the foreigner to understand her situation better.

The issue of refusals to enter the territory of the Republic of Poland, specifically the question of legality of the proceedings presented special interest to the researchers from SIP who interviewed people who failed to enter Poland in Brest. In everyday work, SIP has had to deal with the Border Guard in Terespol many times, intervening in the case of people who were refused entry despite their declared desire to apply for international protection. Those people have told us multiple times that they do not receive a copy of the negative decision from Border Guard officials. The same information has circulated independently throughout the whole period of the

monitoring and we have heard it from all the foreigners who were denied entry into Poland. All our interlocutors claimed unanimously that Border Guard officials in Terespol do not give them the copies of the documents that they signed. Some of them were even unaware that among those documents was the actual decision to refuse them entry on the territory of Poland. All the interviewed foreigners claimed unanimously that the officials gave them some document to sign<sup>54</sup>, one that they did not understand because it was written in Polish, and then put it away. When some foreigners inquired about its contents, the officials would say it was the confirmation that their passport was returned to them or the information that they had been trying to enter Poland without visa. According to the accounts, many interviewees requested a copy of the documents but the officials refused. Two foreigners testified they'd been told they wouldn't receive the decision as they might "*want to do something with it, complain or something*". Many people told the researchers that they asked for the translation of the document as they would like to know what they were signing but met with refusal or were informed that the translation would be supplied during the next attempt to enter Poland. The translated document was never provided, however.

A lot of foreigners asked the researchers whether they should sign the document whose

contents they didn't understand. A lot simply declared they didn't sign anything. Most interlocutors showed great interest in learning whether the decision not to sign had any impact on the course of their case, most importantly, whether the lack of their signature equated to refusal to enter the country at the next attempt. The researchers informed them that from the legal point of view it was completely irrelevant since the officials make a note of the fact the foreigner refused to sign the document and their status is exactly the same as if they had. Interestingly, the interlocutors were less interested in the legal aspect than in the "human" consequences of the refusal to sign. In the course of the conversations with the foreigners the researchers had the impression that a lot of them, especially women, adopt a very cautious approach towards Border Guard officials, making sure that they do not annoy them unnecessarily. Taking into account the legal systems and political regimes of their countries of origin, it should not come as a surprise.

During their stays in Brest, the researchers had the opportunity to meet foreigners who tried to 'fight' for the right to obtain the documents. One interviewee was very insistent in his demand and succeeded in receiving a document, which, as it turned out, was not the entry refusal but the instruction saying that one can appeal against the decision with details of non-governmental organisations that provided free assistance to foreigners. Although the instruction was in Russian, hence understandable for the foreigner, he was convinced it was

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54 Some spoke of one document, other mentioned a few.

the refusal, because it was what the officials had told him. A similar situation happened to another interviewee, who upon persistent demands to be given a copy of the signed documents was allowed to take a photograph of it. However, it later turned out that the document in question was in fact the instruction containing information on the possibility of appealing against the decision.

The conversations with the foreigners revealed a rudimentary awareness of their rights. During the monitoring not a single person having knowledge of the binding procedure in Poland was identified. The few who knew the refusal to enter the territory of Poland should take the form of a decision and demanded that it be issued, were informed in return that the negative decision came in the form of a stamp in their passports. To confirm their version, the foreigners showed the researchers their travel documents with entry stamps crossed out and a letter “C” written in the bottom right corner (only in a few cases did the researchers see the letter “H” next to the stamps). Stamps do not constitute an administrative decision and only serve as a confirmation of the negative decision issued concerning the passport holder and are placed on documents based on Annex V (B) Regulation (EC) No 562/2006 of the European Parliament and of the Council of 15 March 2006 establishing a Community Code on the rules governing the movement of persons across borders (Schengen Borders Code). The letters of the alphabet featuring next to the stamps (from A to I) correspond to the reason behind

the negative decision, with “C” standing for a missing valid visa or residence document and “H” denotes refusal of entry due to the person featuring in the SIS or the national register.

During both visits in Brest the researchers were trying to explain to their interlocutors how the procedure for entry refusal should look. They informed the foreigners that the refusal necessitates the issuing of an administrative decision which, in order to be legally binding, must be delivered to them. They instructed the foreigners that they had the right to appeal against the decision, provided them with the time frames for doing so and the form the appeal should take. Most of all, they tried to make the foreigners aware that Border Guard officials have no right to refuse issuing the decision to them and if they do so, then they blatantly violate the Polish law. The researchers also took time to instruct the foreigners that next time their entry to Poland was denied they should demand categorically a copy of the negative decision, and if that failed, they should demand to speak to the person in charge of the facility. One of the foreigners informed her at this point that once they asked to speak to “the manager” and it did nothing to help. According to him, *“The manager’ arrived and told them that ‘None of you will enter.’”* All the foreigners the researchers spoke to seemed very keen to learn more. One person asked for specific regulations that gave them the right the researchers were talking about, as she intended to show border guards that she knew her rights. Sadly, it turned out that even decent knowledge of

the procedures and quoting specific regulations were not enough. The respondents continued to return to Terespol without the documents, despite using the newly acquired knowledge and demanding that their rights be respected, which they assured the researchers they had done. The researchers were under the impression, however, that at least some of the foreigners were reluctant to appeal against the decision or argue with the officials for fear of provoking negative consequences, which in their opinion was a likely scenario. From a lot of conversations in Brest it transpired that foreigners would avoid at all cost situations in which they could antagonise the guards. They try to “ingratiate” themselves with the officials, trusting that the subdued approach towards the authority will get them further than the execution of their rights.

In the end, only three people decided to appeal against the negative decisions to allow entry on the territory of Poland. In the first case, the officials of the Border Guard accepted the appeal document but refused to confirm its occurrence, despite the foreigner demanding it. The information about lodging the appeal was also passed on to the representative for UNHCR in Poland, and the Chief of the Border Guard in Terespol, as well as the Chief of the Foreigners’ Authority of the Border Guard Headquarters were informed about the refusal to issue the confirmation that the document had been lodged. Further investigation revealed that the files of the foreigner lacked the information about the appeal he’d filed. Upon his request for explanation, the Chief of the Border Guard in Terespol informed the

foreigner in a letter dated 21 April 2016 that in the time specified by him there was no appeal against the decision to refuse his entry, nor any other document concerning his case. SIP will undertake an intervention in this case, to clarify the situation in detail.

In the second case Border Guard officials in Terespol, according to information supplied by the foreigner, refused to accept her appeal against the decision to refuse entry to the Republic of Poland, claiming no responsibility of this sort and informing her that she could send it by post to Brest. Such a situation is unacceptable in the light of the existing law. Finally, the appeal was sent from Biała Podlaska by one of SIP’s researchers on 25 March 2016, after the foreigner entered Poland. She is still awaiting the decision of the appeal authority. In the light of the knowledge we have, the appeal is awaiting the ruling in the second instance, therefore the procedure would seem to be in accordance with the existing regulations<sup>55</sup>. It is difficult not to doubt

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55 From the data obtained under the Access to Public Information Act it transpires that in the first quarter of 2016 no appeal against the decision about refusing entry into the territory of Poland was lodged with the Border Guard outpost in Terespol. The files of the foreigner that the researchers analysed contained no documents pertaining to the decision against which an appeal was lodged. However, the researchers were informed by a Border Guard official that the foreigner’s files had been

whether the course of action in this case was not different only because the claimant had a confirmation of sending the appeal, which was missing in the first case. The appeal procedure will be monitored by our organisation in this case as well, despite the project having come to an end. The details of the third case remain incomplete. The foreigner only told us that when she attempted to appeal against entry refusal during one of the attempts to cross the border into Poland, she was told by the officials that she needn't have contacted the lawyer and it would have been enough if she'd simply been more vocal about her concerns about being persecuted in her home country and she would have surely been granted international protection. All the same, the foreigner was allowed to enter Poland.

The monitoring also covered the analysis of documents pertaining to proceedings for entry refusals on the territory of Poland. During their stay in Brest the researchers from SIP managed to conduct 16 detailed interviews with foreigners who "bounced off" the border crossing. A few of them agreed to have their files investigated and gave the researchers the necessary power of attorney. The interlocutors always did it under one condition – they only agreed to present the power of attorney after they'd managed to enter the territory of Poland.

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transferred to the appellate body (which was later confirmed in a letter from the Border Guard Headquarters, dated 22 April 2016, ref. KG-OI-III.0180.31.2016.JB-I)

Analysing the files took place on 13 April 2016. The researchers from SIP analysed the files of 137 proceedings on refusal to enter the territory of the Republic of Poland in total pertaining to 9 people, only one of whom was a single person (a man), the remaining ones travelled with at least one child. The files comprised, as a rule, 4–5 pages containing: the decision issued on a standardised form for entry refusal at a border crossing, which is Appendix V (B) of the Schengen Borders Code, notice of enforcing administrative proceedings on refusing entry into the territory of Poland, instruction about the right of appeal together with the list of non-governmental organisations offering free legal assistance to foreigners and a copy of a travel document page with the personal data. Each of the documents (with the exception of the passport copy) contained confirmation of delivery by the foreigner or an annotation by a Border Guard official about the refusal to sign the document. In the case of an obvious factual mistake on the entry refusal document, the file contained a decision to correct the obvious mistake. Such files, due to the lack of person authorised to collect correspondence in Poland and the resulting inability to deliver the decision to the party in the proceedings, contained two copies of the decision. In the case when the name of the foreigner featured in the SIS, the file contained an official memo about entry refusal as well as the information about the SIS entry in the language understandable for the foreigner, accompanied, as in the case of previous documents, by a confirmation of delivery or an annotation about the refusal to sign

the document by the party in the proceeding. As has been already suggested, in the files analysed by SIP researchers, official memos were only to be found in the cases of the foreigners being the subject of an alert in the SIS. It is interesting then, how the facts pertaining to the circumstances that the foreigners trying to enter Poland recall are collected. Based on our experience so far, we'd assumed the files would contain an exhaustive account on the subject, since every time we inquired about a person who'd "bounced off" the border we got a very thorough description of their case from the Border Guard, including the number of entry refusals and presenting the circumstances raised by the foreigners in their conversations with the officials. Taking into account the sheer number of people passing through Terespol border crossing daily, memorising all the "histories" does not seem a viable option, so we'd assumed we would find records of them in the files. Such information does not feature in the files, however, so it is safe to assume it must be collected otherwise.

Another interesting question which emerged after files with refusals to enter the territory of Poland had been analysed was the way in which minor children accompanying parents or guardians were handled. In the files at the disposal of the researchers from SIP there was no information about children accompanying adults, despite the fact that 8 of the people who had agreed to have their files examined travelled with children. The only exception were the files of the last of the 13 proceedings concerning entry refusal of a woman, who was

the subject of an alert in the SIS. The files contained an official memo concerning the travelling underage children, though it needs to be emphasised that none of the refusals included the said children. None of the official memos enclosed with the previous 12 proceedings contained any mention of underage children. The Border Guard official asked about the children's files explained that they did not exist, since children were "attached" in the system to their parents. Curiously, that did not transpire from the files we'd had a look at. One might wonder on what basis are underage children accompanying parents refused entry on the territory of Poland if the administrative decision does not concern their case, although the law clearly demands that. (Article 33, Act on Foreigners).

The conclusions that can be drawn from the interviews conducted by the researchers in Brest, as well as the monitoring of the appeal cases launched on their return to Poland present a cause for considerable concern. Whereas a lot of information the researchers heard was taken with the proverbial pinch of salt due to emotions and subjective perceptions involved, in the case of entry refusals issued by Border Guard officials in Terespol and concerning the territory of Poland there are no doubts whatsoever. The researchers heard too many identical, consistent stories and in spite of them not being able to participate in the procedure of entry refusal, it would be too difficult to imagine that a few dozen strangers would deliberately report the same untrue version of events on the two occasions the researchers visited



the outpost. We should therefore assume that the foreigners who are refused entry into Poland at the border crossing in Terespol often do not receive a copy of the decision with accompanying instructions from Border Guard officials. The findings are borne out by previous information on the subject<sup>56</sup>

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56 During the monitoring of the border crossing in Terespol on 29 October 2013, conducted by the representatives of the Helsinki Foundation for Human Rights and SIP, the monitoring team talked to a family that had been refused entry to Poland nine times. According to the foreigners, they didn't receive any document confirming the decision about entry refusal but were presented with some sort of document in Polish to sign. See: J. Białas, M. Fagasiński, M. Górczyńska, M. Jaźwińska, M. Łysienia, E. Ostaszewska-Żuk, K. Rusiłowicz, D. Witko, *W poszukiwaniu ochrony. Wybrane problemy dotyczące realizacji praw cudzoziemców ubiegających o nadanie statusu uchodźcy i objętych ochroną międzynarodową w latach 2012-2014. Obserwacje Programu Pomocy Prawnej dla Uchodźców i Migrantów Helsińskiej Fundacji Praw Człowieka*, Helsinki Foundation for Human Rights, Warsaw 2014, pp. 17-19, available at: [http://www.hfhr.pl/wp-content/uploads/2014/12/HFPC\\_w\\_poszukiwaniu\\_ochrony.pdf](http://www.hfhr.pl/wp-content/uploads/2014/12/HFPC_w_poszukiwaniu_ochrony.pdf) [access: 22.04.2016]. Based on the information obtained from a CPPHN it would seem that few foreigners who asked the organisation for intervention with regard to entry refusal in Terespol had

Initiating proceedings for entry refusal concerning people who have declared a will to apply for international protection at the border crossing in Terespol is in stark contrast with the rule of access to refugee procedure (see Ch. 2), as well as Article 28 (2) (2) of the Act on Foreigners (entry refusal concerning people applying for international protection). Also, the execution of the procedure of entry refusal itself cannot be deemed adequate, the refusal to issue a copy of the decision to the party in the proceedings being the most obvious violation. Such conduct renders appealing against the decision based on Article 33 (2) of the Act on Foreigners (the right to appeal against the decision to refuse entry with the Commander in Chief of the Border Guard) and violates Article 14 (2) of the Schengen Borders Code (the foreigner must be handed in a copy of the decision to refuse entry), as well as the

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a copy of the decision, although they were often late to inform about that. A situation like that never occurred with respect to foreigners contacting SIP during the monitoring or earlier (at least none of the foreigners admitted to having received such a document, though all of them were asked). Only after the monitoring ended and a number of interventions had been undertaken with the Border Guard Headquarters pertaining to the failure to issue the copy of the entry refusal document did we observe that foreigners asking us for assistance in Terespol began attaching a copy of this document as well.

primary rule of the Polish administrative procedure, as expressed in Article 15 of the code of administrative proceedings, i.e. the two-tiered consideration and decision of cases. The conduct of Border Guard officials in Terespol constitutes a serious infringement of international obligations undertaken by Poland in the area of securing the safety of asylum-seekers and deals a major blow to the democratic rule of law, therefore urgent steps need to be taken in order to eliminate the indicated anomalies and adapt the practice to the existing law.

## 6. Satisfying needs of foreigners at border crossing

### 6.1. Prior to border control

The waiting time for verification of conditions for entering the territory of the Republic of Poland depends on the means of transport that the foreigner selected for his journey, as well as the type of border crossing. The quickest procedure is applied towards people who have been diverted back to Poland based on the Dublin III procedure and land at Warszawa-Okęcie. Border Guard officials are informed in advance about their arrival by the authorities of other Member States and are ready to escort foreigners from the plane straight to a special facility in the heart of the airport where all the administrative procedures involving them take place. The remaining people who land in Warsaw to apply for international protection only wait a short moment for passport control after which, if they declare their intention in front of the Border Guard official, they will be also escorted to the already mentioned facilities.

The initial phase of the control has an equally brief course in the case of people who arrive at Medyka border crossing by train. On getting off the train they are transferred to a special

Border Guard facility by a special shuttle bus, where they await further procedures. The procedure lasts longer if foreigners cross the border in Medyka on foot – after going through immigration on the Ukrainian side they have to wait on a roofless strip of land between the Ukrainian and Polish outpost, which is still on the Ukrainian side. On the day of the monitoring the research team observed a crowd of people waiting to be allowed to enter the Polish territory. It was obvious the queue was moving very slowly, while a lot of people looked very tired. All the people crossing the border wait outside without shelter from rain or cold. Only in Brest–Terespól is there a clear distinction between foreigners with valid documents allowing them entry to Poland and those who do not have said documents and are on their way to Poland mostly with the intention of applying for international protection. When the train from Brest arrives in Terespól, those in possession of documents allowing entry go through immigration first, while the remaining ones wait for their turn on the train. Only after the former close behind them the glass door in a small “waiting room” between the subway leading to the platform and the stairs leading to the immigration hall are the refugees allowed into a closed glass “sluice”. They

can enter the waiting room after remaining travellers have climbed the stairs and are behind another glass door in the immigration hall. The waiting time for passport control is 40 minutes at the most, according to the officials. According to travellers, on the other hand, depending on the number of people crossing the border on a given day, it's between 1 and 1,5 hour. They are waiting in the glass corridor in a big group usually, while the subway leading from the platform has no heating or benches to sit on. On the monitoring day it was cold both outside and in the corridor. It was equally cold there in February and in March, when the researchers visited the outpost. In February the refugees were forced to wait at least fifteen minutes in the cold before being let into the “waiting room”, while in March, when fewer people with visas undertook the journey, they were allowed inside almost immediately. Although the “waiting room” was much warmer, there were only 16 chairs available, all fixed to the floor. There is no possibility of purchasing water or food, and there are no restrooms, although, as Border Guard officials declared and the interviewees confirmed, if a foreigner signals the need, they will be allowed to use the toilet in the immigration hall.

The rooms at the border crossings where people applying for international protection are waiting should secure the basic needs of people waiting for immigration control – protection from rain, snow and cold, a possibility to sit down, access to toilets and a water dispenser. It is advisable that the procedures in place

allow Border Guard officials to identify and give precedence to clearing especially vulnerable people – the elderly, the ill and children.

## 6.2. Waiting for admission of application for international protection

The procedure for granting international protection at each of the monitored border crossings lasts at least several hours. It's the consequence of having to fill in a 22-page form with the foreigner, taking their fingerprints and issuing the temporary identity certificate. Sometimes, waiting for the interpreter only can last up to a few hours, especially if crossing the border occurs at night – then the interpreter arrives in the morning (this happens in Medyka). What makes the procedure longer in Terespol and Medyka is the waiting time for the results of fingerprints verification in the Eurodac database. Only at the airport in Warszawa-Okęcie are the results available almost immediately after taking the fingerprints and registering them in the database.

Each outpost has special rooms where the refugees stay for the duration of the whole procedure. In Terespol it's a separated section on the first floor, where the refugees have at their disposal two rooms, a kitchen where they can make some tea or warm the food (if they have any) and restrooms. One of the rooms is for

mothers with children, though there is no space in it for cots or a changing table. The rooms have no proper beds, only sofas, which can be explained by the mode in which the outpost operates – admitting applications once a day, after the morning train from Brest arrives. In this way the procedures end in the evening and foreigners do not spend the night in the facility. Foreigners are allowed to move freely between the rooms in the part of the hall made available for them. Applications are accepted in administrative rooms in the same part of the hall. When it comes to leaving the building before the night, an exception is made with respect to people who are waiting for the decision of the district court concerning placement in a guarded centre for foreigners. According to a woman who was detained with her five children in order to be then referred to a guarded centre for foreigners, she spent the night in Terespol, waiting for her case. She reported that the officials were very considerate, making sure she had tea and everything that she or her children needed: *“I spent the first night in Terespol – there were two convertible beds in this room and the officials also brought mattresses so that there were enough for everyone. And pillows. They asked if I had any money and they took me, two officials escorted me, to exchange money and to a shop so I could buy something for the children. They said they weren’t supposed to be doing that but they felt sorry for the children.”*

At the outpost in Medyka there are two rooms where the foreigners can be placed for the duration of the proceedings. One room has a few

chairs and a small table. When the foreigners want to use the toilet, they need to ask an official to escort them to the bathroom located in a different part of the building. The section for foreigners has no access to drinking water (Border Guard officials declared that they would install a new dispenser in the nearest future). According to the Border Guard, the room is primarily used by people who are waiting for the decision on entry refusal, while the people applying for international protection are in a different building, equipped with mattresses, toys and cots for children, with a free access to a toilet and a bathroom with a shower. Although the monitoring team were given the opportunity to see the very room, foreigners themselves fail to support the version of the officials. Four out of five people applying for international protection in Medyka and who took part in the research testified that they had spent more than 10 hours in a room with hard chairs bolted to the floor while waiting for the finalization of the procedure. Three of them travelled with children. They reported as follows:

*I was so annoyed that I had to ask the office worker to open the door when I wanted to use the bathroom. There was nothing for the children. One table and plastic chairs. If you asked, the officials would bring you hot water for the child.*

*This room is this tiny thing, no toys for the kids; your arse hurts because the plastic chairs are so uncomfortable. You can go to the toilet only if you ask the official, 'cos you need to have those chip cards and only the employees have them*<sup>57</sup>.

At the airport in Warszawa-Okęcie, the foreigners who apply for international protection have two social rooms with bunk beds and small tables at their disposal. There are two toilets and a shower in the hall. Each room is closed (according to one foreigner) and if you want to use the bathroom, you have to shout or bang on the door, so that the official in the hall lets you out. During the monitoring Border Guard officials declared that foreigners had free access to the kitchen located in the same facility and that a foreigner spending more than 6 hours in the place received something to eat. Unfortunately, the subjects of our research who'd applied for international protection at Okęcie did not confirm that. The two men, one of whom spent more than 10 hours in the social room and the other more than 24 hours, claimed that they had not received any food or drink from border guards and could not use the kitchen. One of them recalls: *"I'd had nothing to eat so I was hungry. I had one chocolate bar that I'd brought from France. Nobody*

*gave me anything."* Meanwhile, a woman travelling with an underage daughter reported the following: *"I got canned soup and water and I warmed up some food for my daughter on a hob."* It would then seem that the Border Guard at the airport in Okęcie have an inconsistent practice with respect to securing food for people waiting to apply for international protection. It's possible that whether a person receives food or not depends on whether they are accompanied by an underage child.

The procedures for handling applications for international protection by the Border Guard should be designed in a way that allows as swift proceedings as possible. This concerns mainly procedures involving contact with interpreters (which is the case in Okęcie, or employment of interpreters speaking the most common languages used by foreigners, as is the case in Terespol). The time it takes to wait for the response from the Eurodac database in Terespol and Medyka should be shortened as well, to match that of the outpost at Warszawa-Okęcie.

Applicants must have unlimited and free access to drinking water and a possibility of purchasing and heating food or receiving it free of charge, whenever they have no way of paying for it. Special care should be taken of minors – providing them with food, drink and bedding should be a standard procedure.

The Border Guard outpost in Medyka should provide applicants with a social room as a rule, and only in special circumstances, in the case of a big influx of refugees, should other rooms be made available, with priority to use the social room given to families with children.

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57 In response to the preliminary version of the report the Border Guard Headquarters deny that border guards in Medyka refused foreigners access to the rooms dedicated to people applying for international protection, using the rooms for persons who had been refused entry instead.

### 6.3. Waiting for decision on entry refusal

At Medyka border crossing, individuals waiting for the decision concerning entry refusal are placed in a room equipped with a few plastic chairs and table (see above). It is the only outpost where the people who have been refused entry share the room with those who declare the desire to apply for international protection.

As has been mentioned already, Terespol has a very particular organisation of the flow of people – the procedure for entry refusal concerning people who arrived at the border with the intention of applying for international protection but failed to convince the questioning officials are carried out separately from the procedures concerning people who, as a result of immigration control, failed to meet the requirements for entry into the territory of Poland. With regard to the extent and goal of the study, the researchers only examined the former group. Foreigners wait (up to 4 hours) in a glass clearance hall, where they can use 16 wooden chairs fixed to the floor and restrooms. There is no possibility of purchasing or receiving food or drink, nor is it possible to warm the food up for a child. The foreigners complained to the researchers that the border guards ignore the pleas for hot water for the babies.

Not all foreigners wait in the clearance hall.

Since a secretly filmed footage of pushing and shoving between foreigners and border guards in Terespol went viral in autumn of 2015, at the early stage of the preliminary questioning of foreigners about the purpose of their travel, a selection is made and those who will be awaiting the decision refusing them entry are ushered to a separate room on the first floor of the facility. In practice, these are usually young men travelling on their own. The Border Guard officials claim that they single out people who raise reasonable suspicion that they might be troublemakers. However, in the course of conversations with officials and foreigners, the researchers failed to establish clear-cut criteria that determine which men get to be sent to the upper room and which ones get to stay in the clearance hall. One respondent, a single man in his prime who had “bounced off” the border crossing multiple times, claimed that during some attempts to cross the border he would be taken upstairs, while at other times he stayed downstairs.

The room upstairs has two rooms and the toilet. According to border guards, the room is supplied with as many chairs as many people there are in it. However, the observations made during the monitoring, as well as the accounts of the foreigners prove otherwise – the men are forced to sit on the floor or lean against the wall, if they wish to, because the number of chairs is insufficient. They are not allowed to sit on the window sill. The respondents who'd found themselves in the described room claimed that during the stay their mobile phones had been confiscated, which version



was not borne out by the officials themselves. The foreigners interviewed by the researchers in Brest complained about the conditions in the room for single men, specifically the insufficient number of sitting places. One interlocutor said that *“there is a toilet of sorts but there are no conditions for smoking, only two stools attached to the floor, probably so that no one flings them at the window out of frustration. When you ask for more, they won’t give you any.”*

In Okęcie, the procedure leading to the decision to refuse entry is carried out in the presence of the foreigner in a small room located at a slight distance from the cubicles of officials working on the frontline checking passports. Having received the decision to return, the foreigner waits for the return flight in the transit zone, where they can use couches and toilets. From this moment on, the responsibility for the foreigner is on the shoulders of the operator who brought the foreigner to Warsaw and who is now legally obliged to take the foreigner back into the country from which they arrived.

There are no legal grounds that would allow confiscating any devices used for communication that the foreigners might have. The individuals, while waiting for the officials to finalise all the relevant procedures, should be provided with proper conditions, including places to sit, access to restrooms, unlimited access to drinking water, as well as a possibility to purchase or receive free food, if they are unable to pay for it. Special care must be given to minors – the availability of food, drink and bedding should be a standard procedure.

Access to toilets should not require any additional action (e.g. requesting an escorting official) on the part of the foreigner.

## 6.4. Access to medical assistance

There is no doctor on duty at the border crossings in Terespol and Medyka, although both facilities have surgeries with basic equipment (a couch, medicine cabinets, desks)<sup>58</sup>. In both places officials claimed, however, that in any case involving a foreigner complain of a medical issue, the ambulance is called or the individual is taken to hospital and doctor’s orders are followed afterwards. Some interviewed foreigners confirmed these assertions, while others who had tried to cross the border in Terespol unsuccessfully maintained *“many suffering people complain that no one pays attention to them or their needs.”* One interlocutor recalled a case of an elderly person who felt faint and received no help from the officials, who said there was nothing they could do, despite several requests. The foreigners claimed that Border Guard officials believe that many of them pretend to be ill or to feel poorly to get

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58 In the comments to the preliminary version of the report the Border Guard Headquarters informed that all Border Guard outposts have doctors on duty, admittedly with Terespol having on since 9 May 2016. Also, access to medical help is free of charge.

their way. Still, in urgent situations, the officials called the ambulance, although the person had to pay for the assistance received. Several interviewees recounted an incident, when the ambulance was called to help a suffering girl and the parents had to pay 50 euros for the injection. Yet another interviewee maintained that when the ambulance was called the patient didn't need to pay for anything. One foreigner applying for international protection in Medyka reported that she's been beaten and had an acute headache, yet she didn't receive any medical help, despite asking for a doctor a few times.

At the outpost at Okęcie there is a doctor on duty around the clock. The Border Guard declare that the doctors speak English and Russian. Only in this outpost is every person applying for international protection subjected to medical check-up.

A constant presence of a doctor speaking basic foreign languages at a border crossing allows for a quick assessment of health of each foreigner at the border crossing, regardless of the stage of their proceedings. In such a case the ambulance would only be called for the most urgent situations. Thanks to this solution, a recommended practice could also be introduced, whereby each complaint of a medical nature made by a foreigner would be immediately dealt with by a doctor.

## 6.5. Individuals with mobility problems

In the course of the monitoring no serious obstacles were identified that would limit the access of people with mobility issues (including wheelchairs) to the territory of the Republic of Poland or the refugee procedure. The facilities in Terespol and at the airport in Warszawa-Okęcie have lifts that allow for free access to all the places that applying for international protection necessitates. Only in Medyka is the access to the toilet and social room compromised by a small set of stairs. The building in Terespol, as the only one (likely due to having the most modern infrastructure of all the monitored facilities), has disabled toilets. The solution should be implemented at the remaining border crossings.

## 7. Capacity and readiness for increased influx of refugees

The interviews that the researchers conducted with the Border Guard officials who work at the monitored border crossings indicate that they do not see the need for special preparation with a view to dealing with an increased number of foreigners arriving in Poland to apply for international protection. Migration routes, however, have a tendency to change quite quickly in response to the European migration policy. The closing of some borders might result in establishing a new migration route into the EU, leading to Poland through Ukraine. The comments made by the Border Guard Headquarters to the preliminary version of this report suggest the heads of the Border Guard have put in place “an action plan in the event of a mass influx of foreigners seeking international protection in the territory of Poland. As part of the above mentioned plan, the applications for international protection will be processed not only in Border Guard outpost which manage the border crossings. Border crossings have been designed to handle the traffic of travellers, whereas a mass influx is an exceptional occurrence and therefore shall be handled using exceptional measures, reaching outside the current activity of the border crossings infrastructure.”

The scope of the researchers’ interest,

however, covered also the readiness of the Border Guard’s outposts for an increased influx of foreigners arriving spontaneously at the eastern borders of Poland, not necessarily *en masse*, yet in numbers that could still exert significant pressure on the capacity of the border crossings.

In the conversation that the researchers held in March 2016, a Border Guard official claimed that the border crossing in Terespol deals daily with around 100–150 people who arrive without valid documents enabling them to cross the border. The number of entry refusals issued for this very reason is troubling<sup>59</sup>. At the border crossing in Terespol, applications for international protection were submitted by 8,250<sup>60</sup> people in 2015 (this number constitutes 70% of the total number of people applying for international protection in Poland that year).

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59 The statistical data quoted in the two following paragraphs have been obtained from the Border Guard under the Access to Public Information Act (see Fn.32).

60 Source: the Office for Foreigners’ statistics: <http://udsc.gov.pl/podsumowanie-ochrona-miedzynarodowa-w-2015-roku/> (access: 29 April 2016).

At the same time, Terespol issues a staggering number of 24,908 refusals of entry<sup>61</sup> due to the lack of visa or residence permit in the same year, which constitutes 98% of all entry refusal issued by this outpost in 2015 (when 25,358 refusals were issued in total). Explaining the statistics to the researchers, Border Guard officials claimed, that the grounds for issuing such decisions was the fact that the foreigners not only lacked the required entry documents but they also did not ask for international protection. However, this explanation stands in complete contradiction to what the foreigners that the researchers met during their visits to Brest recounted. Most of those people who had been refused entry many times due to the lack of visa or residence permit (a crossed out stamp in the passport with the letter “C” next to it) told the researchers that they had arrived in Terespol with the very reason of applying for international protection for fear of persecution in the country of origin. They claimed that the border guards wouldn’t listen to them and refused to accept their applications for refugee status.

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61 It’s noteworthy that during the monitoring it turned out that entry refusals are only issued with regard to adults. Children accompanying adult parents or guardians do not feature in the documents, nor are there any separate documents issued in their name (see Ch. 5, *Procedure on entry refusal*). What it means is that the numbers of people who have been refused entry can be much higher.

The practices of this sort have not occurred at the border crossing in Medyka or Okęcie. The foreigners themselves admitted that they did not have any difficulty submitting the application for international protection at either of the crossings. Similarly, none of the 436 Ukrainian refugees who benefited from assistance offered by SIP between the beginning of 2014 and the end of March 2016 reported any problems with access to refugee procedure at Medyka, neither did the respondents in this monitoring.

In 2015, 801 applications for international protection were accepted at Medyka border crossing, with 730 of them submitted by Ukrainians<sup>62</sup>. More than half of entry refusals at this border crossing (3,366 out of 6,098) were due to the lack of required documents justifying the purpose and conditions of stay. It all boils down to the fact that the crossing is

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62 In the first quarter of 2016 the number of applications submitted by Ukrainians dropped significantly. On the whole stretch of the border with Ukraine 65 applications concerning 155 people were submitted (in comparison with 245 applications concerning 482 individuals in the corresponding period the previous year), of whom only 53 had Ukrainian nationality (in comparison with 462 people in 2015). Data from: *Biuletyn Statystyczny Straży Granicznej za I kwartał 2016 r.*, Border Guard Headquarters, Warsaw 2016, pp. 8-10, available at: <http://strazgraniczna.pl/download/1/9315/BIULETYN1kw2016.pdf> (access: 29 April 2016).

very popular with the Ukrainians who work in Poland, who often miscalculate the expiry date of their visa or are simply not aware that it has been cancelled for whatever reason. The number of entry refusals due to the lack of valid visa was substantially lower at the crossing in Medyka. In 2015, only 1,650 foreigners were refused entry, which constituted 1/3 of all the negative decisions issued at the crossing. The number also constituted only 6.6% of respective decisions issued at the same time in Terespol.

It's worth analysing these numbers in the context of the capacity of each of the crossings, i.e. the number of people that pass through them annually. In 2015, 198,551 foreigners<sup>63</sup> arrived in Poland using the railway in Terespol. The border crossing in Medyka was much more overstretched – it was used by 2,680,497 people in 2015, not counting local border traffic. It is not known exactly what percentage of this number was constituted by foreigners but the estimates hint at 70%, which equals 1,876 million people<sup>64</sup>. What it means is that 13.38%

of foreigners crossing the border in Terespol were refused entry, while the number stood at 0.33% in Medyka.

In the first quarter of 2016 the tendency intensified. The frequency with which border guards issued negative decisions increased by 169% compared to the corresponding period the previous year (from 8,147 refusals to 13,790). The most significant increase was observed on the Belarussian side of our border, however, where it stood at 268% (from 2,486 refusals to 7,635). The main addressees of those refusals were the nationals of Russia and Tajikistan. The nationals of these countries applied for refugee status most often arriving at the border crossing in Terespol (since all the applications on the Belarussian side of the border were submitted at that outpost). Out of 2000 people who were identified on the border as asylum-seekers by Border Guard officials, 1,911 had arrived from the above mentioned countries (constituting 99.5% of all applicants). What's more, the nationals of those countries were refused entry exactly due to the lack of valid visa or required travel document. This was the reason behind the entry refusal issued with regard to 84% of Russians (regardless of where they attempted to cross the border with Poland, although 1,065 out of 1,329 (80% of the total) tried to do it on the border with Belarus, as well as all 408 nationals of Tajikistan (98.5% had chosen the same stretch

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63 Data by Nadbuzanski Division of the Border Guard, available at: <http://www.nadbuzanski.strazgraniczna.pl/nos/granice/statystyki/2015/15883,Statystyki-2015.html> (access: 29 April 2016). Own calculations.

64 The number of foreigners crossing the Polish border on the whole stretch of Bieszczadzki Division of the Border Guard stood at 72.3% in total in 2015. Data by Bieszczadzki Division of the Border

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Guard, available at: <http://www.bieszczadzki.strazgraniczna.pl/download/14/85075/>

of the border). It is also worth noticing that in the first quarter of 2016 there was an approximate 50% increase in the number of foreigners applying for international protection in comparison with the corresponding period a year before. The increase was incomparably higher in Terespol, standing at 188% (779 applications concerning 2000 people were submitted in comparison with 284 applications concerning 695 foreigners submitted in 2015)<sup>65</sup>.

It would seem that a high number of refusals due to the lack of visa or residence permit are the result of the specificity of the border crossing in Terespol. The outpost has for years been the biggest transit point for people applying for international protection in Poland. Out of the general number of refugee status applications submitted in the first quarter of 2016 in Poland, 779 were submitted in Terespol (69%), and if counting only the applications submitted on the outer border of the European Union, the number would rise to an overwhelming 90%. On the whole stretch of the Polish–Ukrainian border (all the border crossings) 64 applications for international protection concerning 155 foreigners have been submitted on the Ukrainian side, mainly by the nationals of Turkey, Ukraine and Tajikistan. The juxtaposition of the data implies

that the mass scale on which entry refusals are issued due to the lack of visa or residence permit in Terespol is a method aiming at limiting the foreigners' access to refugee procedure. The accounts of the respondents during the monitoring as well as those of foreigner who spontaneously reach out for NGOs' intervention seem to confirm that.

Such an approach of officials in Terespol raises a lot of doubts concerning the preparation of the Border Guard for admitting a bigger number of foreigners applying for international protection if such a need arises. Looking at the current pattern, it wouldn't be wrong to wonder, whether a bigger number of foreigners wouldn't result in a bigger number of entry refusals, proportionately to the number of submitted applications.

The officials at the border crossing in Terespol claim that the outpost does not have problems with "overpopulation" and it's ready to take on more foreigners. Since the officials in Terespol are informed in advance by their colleagues at the outpost in Belarus how many foreigners without documents boarded the train, they are able to estimate whether they need the support of extra officials to run the border control smoothly. The officials claimed that in the event of an arrival of more foreigners than so far, those who wouldn't fit into the corridor leading to immigration control would be waiting for their turn on the train. Currently, the hall for people who have been refused entry can hold up to 500 people. The rooms where people wait for their turn to submit the application, on the other hand, can hold only

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RuchosobisrodkowtransportuwBiOSGw2015roku.xlsx (access: 29 April 2016). Own calculations.

65 All the statistical data in this paragraph come from the document entitled: *Biuletyn Statystyczny Straży Granicznej za I kwartał 2016 r.*, pp. 5-10. Own calculations.

a few families at a time. The officials maintained that if that was not enough, they would make extra space in a room situated in the basement, where there are several chairs and bathroom access. The room looks more like a waiting room at a train station than a place when one can relax after a long journey in a safe atmosphere. Border guards also claimed that in the case of a sudden influx of foreigners the Border Guard would take advantage of the barracks in the neighbouring outpost in Terespol, which would be staffed by a group of officials trained in processing applications. However, the same border guards admitted that increased traffic at the crossing was unlikely since the Belarussian Border Guard limited the number of people allowed to cross the border without valid documents.

People without valid documents are only allowed to board the morning train from Brest to Terespol (arriving in Terespol at 6.48). It's incomprehensible since there are other trains travelling from Brest to Terespol, but it was impossible to establish why the foreigners only arrive on the morning train. Border guards themselves provided laconic and evasive answers, claiming the solution had been implemented by the Belarusian side and suggested it might have something to do with the limited number of seats and tickets on the train. The researchers who took the morning train journey in February and March on the Terespol–Brest–Terespol route observed that when in March the number of foreigners travelling to Poland without valid documents increased roughly by 50 people in comparison

with February, an additional car had been attached to the train<sup>66</sup>.

The officials at the border crossing in Medyka also quoted a close cooperation with the Ukrainian Border Guard, whose officials inform them in advance about the number of foreigners crossing the border without the necessary documents. According to the information obtained by the researchers in the course of interviews with the officials in Medyka, the outpost had devised a strategy for dealing with a potential increase in the number of refugees. Under the strategy, in the event of an increased demand for staff, subgroups of officials would be formed, consisting of 8–9 individuals working on shifts (4 shifts in 24 hours), which would allow non-stop processing of applications.

Foreigners who applied for international protection at the border crossing in Medyka complained that only a few hours after declaring the will to apply for protection during passport control were they allowed to submit the application, and even 16 hours could pass before they left the facility altogether. They were never informed why they had to wait for so long in a closed building and they emphasised that it couldn't have been down to a big number of foreigners applying for international protection. One of the respondents recalled that she had spent 12 hours in the facility, with only one more family applying for protection. It needs to be underlined that the Border

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66 See also Fn. 4.



Guard outpost in Medyka has little scope for admitting a greater number of foreigners than so far. The room in which the foreigners are currently waiting for submitting the application can hold around 20 people. Border Guard officials have declared that in the event of an increased influx of refugees, they have a separate room with mattresses and the room which is now occupied by people whose entry was refused can be made available as well. This room, however, is not suited to a stay longer than a few hours – it only has plastic chairs attached to the wall and a small table. Access to the toilet is made difficult as each time the assistance of an official who has a chip card to open the door is required.

Officials at Warszawa-Okęcie outpost did not seem to be concerned about an increased influx of people applying for international protection. They claimed that they could handle a maximum number of 20 foreigners daily, in accordance with the Dublin III procedure. This number will easily fit into the rooms available for people waiting to apply for international protection and to leave the facility. We need to point out, however, that the facility has only one room in which applications for international protection can be submitted, which means that the foreigners have to wait quite a while in the social room for their turn to submit the application. The officials asserted as well that in the event of an increased number of foreigners applying for international protection, they would make use of the rooms available in the facility in 17 Stycznia Street. A problem which is pervasive now is the time

foreigners spend waiting to apply for international protection, although there has not been a visible increase in the number of people applying for it. The foreigners who have crossed the border spend a dozen or so hours in social rooms or in the hall before they are finally on their way to the reception facility. In Medyka, the foreigners who didn't manage to squeeze their way into the social room are forced to stay in the corridor; at Okęcie there is only one room designed for accepting applications and Terespol has enough rooms to hold around 30 people. Therefore, now seems to be a good moment to improve the current system, including the formalities concerning the processing of the applications, which would all result in shortening the stay in a Border Guard outpost for the foreigners and speeding up the process of referring them to reception facilities, where they can finally rest and enjoy the safety of the new accommodation, having fled the dangers and endured a tiring journey. Additionally, the room vacated at the Border Guard outpost could well be taken advantage of by the new arrivals applying for protection at the same time.

To sum up, at the moment, the situation at the border crossing in Terespol is the most disturbing, with respect to the sheer number of entry refusals issued by the outpost. Taking into account the declarations of countless foreigners that the researchers spoke to in Brest, the explanations of Border Guard officials claiming that refusals are only issued in the case of foreigners who don't express the will to apply for international protection have to

be taken with due reservations. It would rather seem that the present law and procedures are not executed. The statistics supplied by the Border Guard Headquarters demonstrate that between 10 to 50 people declare the will to apply for international protection daily, with the average number standing at 20–30. At the same time 50–100 people travelling without visas are denied entry daily. None of the officials speaking with the monitoring team suggested that, but one wonders if the limited capacity of each outpost to deal with a daily management of a few dozens or even a hundred applications is not one of the reasons behind the current practice.

## 8. Summary and recommendations

The monitoring conducted at the border crossings in Terespol, Medyka and Warszawa–Okęcie between January and April 2016 allowed for formulating a number of recommendations with regard to existing practice and law.

### 8.1 Practice

#### Access to refugee procedure

The monitoring confirmed what had been brought to the attention of NGOs for years, namely, that the access of foreigners to refugee procedure is sabotaged by border guards on a mass scale at the border crossing in Terespol. The accounts of over sixty foreigners encountered by the researchers in Brest juxtaposed against the statistics supplied by the Border Guard Headquarters prove that in many cases officials prefer to turn a deaf ear to foreigners declaring a will to apply for international protection or, appropriating the competence of the Head of the Office for Foreigners, they verify the conditions negatively. As a result, against the law existing in the Republic of

Poland, they issue entry refusal with regard to people applying for international protection, in most cases based on the lack of valid visa or a residence permit.

From the observations made by NGOs' workers it transpires that the situation has visibly deteriorated in the course of the last year – more and more people are more and more often refused international protection, with record breakers “bouncing off” the border in Terespol even up to 50 times. It is difficult to resist the impression that it's a method that the Polish Border Guard employ to manage the migration traffic on the outer borders of the European Union. Regardless of the motifs, the practice currently in place violates both international and Polish law and constitutes infringement of human rights.

It is absolutely imperative that the refugee procedure is freely accessible to foreigners arriving at the border in Terespol and declaring a will to obtain refugee status. The will expressed by the foreigner in any form should in each case result in accepting their application or registering their declaration pursuant to Article 28 of the Act on Granting Protection to Foreigners, followed by referring the case further for the Head of the Office for Foreigners' consideration.

## Information on the right to apply for international protection

All the border crossings should display in visible places information on the possibility of applying for international protection and engaging the services of an interpreter. Foreigners should also have access to information on NGOs offering support to foreigners in Poland.

## Procedure for applying for international protection

All the border crossings, Medyka in particular, should use best efforts to ensure the confidentiality of the application process.

Extra emphasis should be placed on informing in private the person on behalf of which the application is placed (usually the wife of the applicant) about the consequences of applying jointly, as well as the possibility of applying for international protection separately (Article 27 (3), Act on Granting Protection to Foreigners). It is extremely important that foreigners be adequately informed about their rights and responsibilities during the refugee procedure, as well as their powers with regard to their fingerprints being recorded in Eurodac. In each case the applicant should receive a written instruction for their own disposal. Apart from providing written instruction, it would be advisable to have a conversation with the foreigner in a language they understand with

the view of explaining in simple terms the contents of the written document. Special attention should be drawn to the prohibition on leaving Poland for other countries of the EU and the consequences of flouting the regulations.

The monitored facilities of the Border Guard need to implement an effective system of early identification of victims of abuse and PTSD sufferers. In order to do that, border guards need to be trained in identifying this vulnerable group and dealing with their special needs, while their effectiveness in putting the newly-acquired knowledge into effect should be regularly supervised.

## Unaccompanied minor foreign nationals

Clear standards for evaluating relevance of the documents concerning guardianship and custody of unaccompanied minors arriving at the border must be put in place for the Border Guard to follow. The documents presented by adults accompanying minors should be verified in accordance with international law in place.

Also, all outposts should fully implement the guidelines prepared by the Border Guard Headquarters with regard to handling minors travelling with adult family members who are not their legal guardians, for example by standardising the procedure for dealing with minors arriving at the border, so as to ensure that a family is not separated by all means, even temporarily.

## Placing applicants in guarded centres for foreigners

Clear guidelines must be formulated and implemented for all the outposts with regard to requests aiming at placing the applicants for international protection in guarded centres, so that solutions alternative to detention are given priority and the best interest of the child is taken into consideration.

The guidelines should also include a prohibition on requesting placement in guarded centres of people whose physical and mental state suggests a history of abuse and equip border guards with tools for preliminary identification of abuse victims among individuals applying for international protection.

## Procedure on refusing entry into the territory of the Republic of Poland

The outpost in Terespol must immediately cease to violate the law by initiating the procedure for entry refusal with regard to people who have expressed the wish to apply for international protection and by failing to issue a copy of the decision on entry refusal or the written instruction on how to appeal against the decision.

## Meeting the basic needs of people participating in proceedings at borders

All border crossings, especially Medyka, should ensure the facility is accessible to people with mobility issues.

All rooms where foreigners participate in proceedings or where they wait for the proceedings to take place should offer protection from the rain and low temperatures, enough places to sit, access to toilets and unlimited access to drinking water, as well as the possibility to buy or warm up food or to receive it free of charge, in the case of lack of funds. Special care must be taken of children – food, drink and bedding provision should be a standard practice.

If conditions permit, border crossings should guarantee access to a doctor, for basic check-ups or life/health-threatening situations involving foreigners. Each case of a foreigner signalling a health problem should be given due attention by border guards.

The border crossing in Terespol ought to secure appropriate conditions (i.e. chairs, access to drinking water) for the men required to wait in a separate room on the first floor, while the decision on entry refusal is being issued. This form of isolation should only be used as the last resort.

Having accepted the application for international protection, the applicants and their families should be transported to the reception facility at the cost of the Border Guard or the Office for Foreigners (depending on individual arrangements).

## Capacity of border outposts

All the monitored outposts need to expand the use of the resources available, i.e. increase the number of used rooms and Border Guard officials, as well as improve the existing procedures to shorten the waiting time of foreigners who applied for international protection and will enter the territory of Poland. The improvement concerns also the length of time it takes to process the data in the Eurodac database.

### 8.2. The law

Most importantly, it would seem there is an urgent need to execute the procedures directive in the spirit of Point 27 of its Preamble, i.e. ensuring that all people who have expressed the wish to apply for international protection have access to all the rights that result from this directive, as well as the procedures directive to the same extent as the individuals whose applications have already been accepted. It concerns, for example, the right to

a prompt registration of the application for international protection (Article 6 (2) of the procedures directive), to contact NGOs and UNHCR (Article 8 of the procedures directive) and to obtain help and legal representation (Article 22 of the procedures directive). As a consequence of the above change, Article 28 (2) of the Act on Foreigners should also be reformulated so as to prevent issuing entry refusal to a person who expressed the will to apply for international protection. The current wording of the regulation quotes the declaration of the will to apply for international protection registered by the Border Guard in a situation where accepting the application is impossible (Article 28, Act on Granting Protection to Foreigners)<sup>67</sup>, while the essence of the regulation should be the fact that no individual who declared the wish to apply for in-

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67 Article 28 (2) (2) (a) of the Act on Granting Protection to Foreigners: “[...] expressed the wish to apply for international protection in the case as described in Article 28 (1) or Article 61 (1) of the Act of 13 June 2003 on Granting Protection to Foreigners in the territory of the Republic of Poland”.

ternational protection must be denied entry, regardless of whether the declaration was registered by the Border Guard.

During the monitoring it was observed that executing the regulations pertaining to unaccompanied minors wishing to apply for international protection (Article 61 to 67, Act on Granting Protection to Foreigners) presented a lot of practical problems. Most of all, the main rule stating that an unaccompanied minor should remain in temporary custody or in an education and care facility until the first ruling of the court (Article 62, Act on Granting Protection to Foreigners) should be lifted if during the first encounter of the minor with the Polish authorities it is possible to establish that the accompanying adult, though not a court-appointed representative, is in fact the minor's guardian in the light of the Polish law. In such situations, despite pronouncing the minor as an unaccompanied minor foreign national, there is no need to separate them from their actual guardian, since (in accordance with the Hague Conventions) the rulings and decisions of the authorities in their country of origin, granting the adult the guardianship of the minor, are legally binding in Poland. Therefore, this exception must be accounted for when considering Article 62 of the Act on Granting Protection to Foreigners. The current wording of the regulations does not allow the Border Guard authority to request that the Guardianship Court issue a decision on temporary custody of the child before accepting the application for international protection from the minor (or, as in

such cases, the representing guardian or an NGO) (Article 61 (6) of the Act on Granting Protection to Foreigners)<sup>68</sup>. In accordance with dates prescribed by law, the ruling pertaining to temporary custody may be issued within two weeks of the minor reporting at the Border Guard outpost (Article 61 (2) in conjunction with (7) of the Act on Granting Protection to Foreigners). Meanwhile, the mere declaration by the minor of the will to apply for international protection should be enough of a reason to initiate guardianship proceeding concerning them, which would accelerate the issuing of the decision with regard to the custody of the minor foreign national in question. Also, in similar circumstances, the minor and their guardian should be offered temporary accommodation together, either on the premises of the Border Guard or in the Office for Foreigners' reception centre.

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68 Article 61 (6) of the Act on Granting Protection to Foreigners: "The Border Guard authority which accepted the application for international protection from an unaccompanied minor foreign national or the Chief of the Border Guard outpost in the place where the unaccompanied minor was handed over by another Member State based on regulation (EU) No 604/2013 will immediately file a request with the respective Guardianship Court to place them in substitutive custody".



## 9. List of acronyms and abbreviations

**CPPHN** – Centrum Pomocy Prawnej im.

Haliny Nieć (Halina Nieć Legal Aid Centre)

**EU** – the European Union

**Eurodac** – European Dactyloscopy

**UNHCR** – United Nations High Commissioner  
for Refugees

**PTSD** – post-traumatic stress disorder

**SIP** – Stowarzyszenie Interwencji Prawnej  
(Association for Legal Intervention)

**SIS** – Schengen Information System

# ANNEX A

Algorithm devised by the Border Guard Headquarters Enabling the foreigner entry into the territory of Poland to seek international protection, dated 8 January 2016

14-01-16:13:12 ;

Śląski ;

# 2 / 2

## Umożliwienie cudzoziemcowi wjazdu na terytorium RP w celu poszukiwania ochrony międzynarodowej

Cudzoziemiec powinien mieć możliwość wjazdu na terytorium RP pomimo niespełniania warunków na wjazd i pobyt, o których mowa w art. 5 kodeksu granicznego Schengen, w celu poszukiwania ochrony międzynarodowej, w przypadku, gdy:

- 1) w sposób precyzyjny wyrazi wolę ubiegania się o ochronę międzynarodową,
- 2) w sposób precyzyjny lub w sposób skryty / dorozumiany wyrazi obawę przed powrotem do kraju pochodzenia i niechęć lub niemożność powrotu.

Wszelkie rozmowy przeprowadzane z cudzoziemcem (w toku sprawdzeń na II linii kontroli granicznej) w celu określenia, czy jest on osobą poszukującą ochrony międzynarodowej, należy przeprowadzać w sposób umożliwiający im swobodną i nieskrepowaną wypowiedź. W tym celu niezbędne jest zapewnienie właściwych warunków, w tym co najmniej odległości od innych osób, aby wyjaśnienia powodów poszukiwania ochrony międzynarodowej nie były przekazywane w obecności osób postronnych.

Gdy cudzoziemiec wyrazi chęć złożenia wniosku o udzielenie ochrony międzynarodowej (pkt. 1), ale bez uzasadnienia przyczyn, należy dopytać się o powód ubiegania się o ochronę. Jeżeli cudzoziemiec nie poda żadnego powodu wskazującego na obawę przed powrotem do kraju pochodzenia, należy uznać, że osoba posługuje się pojęciem „ochrony” wyłącznie w celu przekroczenia granicy z pominięciem obowiązku spełnienia niezbędnych do tego celu warunków (poza przypadkiem, gdy wygląd i zachowanie cudzoziemca będą wskazywać na stan psychofizyczny uniemożliwiający odpowiednią komunikację, co może być następstwem np. przeżyć traumatycznych).

Gdy cudzoziemiec wyrazi obawę, lub też jego postawa i zachowanie wskazują na to, że może obawiać się powrotu do kraju pochodzenia (pkt. 2), należy dążyć do ustalenia:

- podstaw opuszczenia kraju pochodzenia,
- powodów obaw przed powrotem do kraju pochodzenia,
- oczekiwań związanych z Polską.

Należy pamiętać, że nie wszyscy cudzoziemcy znają pojęcie „status uchodźcy / ochrona międzynarodowa / azyl”. Dlatego też można się spodziewać, że osoba potrzebująca ochrony międzynarodowej będzie o tych potrzebach mówiła nie wprost, lecz opisowo, używając innych słów. Należy też pamiętać, że cudzoziemiec może być po przeżyciach traumatycznych i jego stan psychofizyczny uniemożliwi właściwą komunikację, na co może wskazywać jego wygląd i zachowanie. Z uwagi na prawa dziecka szczególną uwagę należy zwrócić na samotne matki podróżujące z małymi dziećmi.

Rola Straży Granicznej nie jest ocena stopnia wiarygodności obaw wyrażanych przez cudzoziemca. Oceny tej w toku postępowania w sprawie udzielenia ochrony międzynarodowej dokona Szef Urzędu ds. Cudzoziemców.

Jeżeli w rozmowie z cudzoziemcem pojawiają się trudności językowe, konieczne jest wezwanie tłumacza (ewentualnie skorzystanie z pomocy innej osoby posługującej się właściwym językiem). Niedopuszczalne jest odmówienie wjazdu w związku z niezrozumieniem wypowiedzi cudzoziemca.

Na podstawie wszystkich ww. elementów należy dokonać oceny:

- czy cudzoziemiec jest osobą poszukującą ochrony międzynarodowej – co skutkowało powinno niezwłocznym przyjęciem wniosku o udzielenie ochrony międzynarodowej,
- czy cudzoziemiec nie jest osobą poszukującą ochrony międzynarodowej, lecz osobą migrującą w celach poprawy swojej sytuacji życiowej – co skutkowało powinno odmową wjazdu.

Krotność deklarowania chęci przekroczenia granicy nie ma znaczenia dla rozstrzygnięcia w tym zakresie.

RABCA  
Zarządca do Spraw Cudzoziemców  
Komendy Głównej Straży Granicznej  
08.01.2016  
mgr BB Przemysław JANKUBASZEK

2016-01-08

DYREKTOR  
Zarządca do Spraw Cudzoziemców  
Komendy Głównej Straży Granicznej  
plk SG Andrzej JANKUBASZEK

# ANNEX B

Document No. FAX-KG/CU/100/IP/PC/16, dated 11 January 2016, concerning misgivings as to the implementation of some of the regulations of the Act on Granting Protection to Foreigners on the territory of the Republic of Poland

11-01-16;10:21

Telegram wch. nr 80/16/KD Śląski  
Telegram wych. nr \_\_\_\_\_  
2016 (data i podpis)  
Wydział Koordynacji Działania ŚMOSG

# 1/ 8



Warszawa, dnia ..... stycznia 2016 r.

KOMENDA GŁÓWNA  
STRAŻY GRANICZNEJ

Egz. pojedynczy

ZARZĄD DO SPRAW CUDZOZIEMCÓW

FAX KG/CU/100/...../IP/PC/16

11 STY. 2016.

Wdsc  
11 STY. 2016

ZG  
de nr. 1/16  
2016-01-11

ADRESACI WEDŁUG ROZDZIELNIKA

**dotyczy:** wątpliwości w zakresie stosowania niektórych przepisów ustawy o udzielaniu cudzoziemcom ochrony na terytorium Rzeczypospolitej Polskiej

Uprzejmie informuję, że w dniu 1 grudnia 2015 r. z inicjatywy Zarządu ds. Cudzoziemców Komendy Głównej Straży Granicznej odbyło się spotkanie z Szefem Urzędu ds. Cudzoziemców, na którym rozstrzygnięto niektóre kwestie dotyczące praktycznej realizacji przepisów ustawy z dnia 13 czerwca 2013 r. o udzielaniu cudzoziemcom ochrony na terytorium Rzeczypospolitej Polskiej (Dz. U. z 2012 r. poz. 680, ze zm.) w brzmieniu nadanym im ustawą z dnia 10 września 2015 r. o zmianie ustawy o udzielaniu cudzoziemcom ochrony na terytorium Rzeczypospolitej Polskiej oraz niektórych ustaw (Dz. U. poz. 1607). Nawiązując do wcześniejszej korespondencji w tej sprawie (m.in. pisma nr KG/CU/7519/IV/PC/15 z dnia 9 listopada 2015 oraz nr KG/CU/7725/IP/15 z dnia 19 listopada 2015 r.) poniżej przedstawiam ustalenia podjęte na ww. spotkaniu.

**1. Art. 87 ust. 1 pkt. 2 ustawy o udzielaniu cudzoziemcom ochrony na terytorium RP (zwanej dalej ustawą o udzielaniu ochrony)**

Zgodnie z powyższym artykułem cudzoziemiec składający wniosek o udzielenie mu ochrony międzynarodowej na terytorium Rzeczypospolitej Polskiej może zostać zatrzymany (i następnie umieszczony w strzeżonym ośrodku lub areszcie dla cudzoziemców) w celu zebrania z jego udziałem informacji, na których opiera się wniosek, a których uzyskanie bez jego zatrzymania byłoby niemożliwe. Warunkiem koniecznym zatrzymania wnioskodawcy w oparciu o tę przesłankę jest ponadto zaistnienie znacznego prawdopodobieństwa ucieczki.

Właściwość do wydania opinii w zakresie konieczności zabezpieczenia obecności cudzoziemca w większości przypadków leży w gestii Szefa Urzędu ds. Cudzoziemców w związku z faktem, że to on jest organem prowadzącym postępowanie w sprawie udzielenia ochrony międzynarodowej.

- Ustalono, że obowiązek konsultowania, czy zachodzi konieczność zebrania z udziałem cudzoziemca informacji, na których opiera się wniosek, zaistnieje w szczególności w przypadku przyjęcia cudzoziemca na podstawie przepisów rozporządzenia (UE) nr 604/2013

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w procedurze „take back” (tj. po wcześniejszym prowadzeniu wobec cudzoziemca postępowania uchodźczego w Polsce), jeżeli cudzoziemiec złoży oświadczenie, o którym mowa w art. 40 ust. 6 ustawy, lub kolejny wniosek o udzielenie ochrony międzynarodowej. W takim przypadku Departament Postępowań Uchodźczych UdsC już w piśmie informującym o wyrażeniu zgody na przyjęcie cudzoziemca będzie przekazywało swoją opinię, czy zachodzi potrzeba zabezpieczenia (zatrzymania) cudzoziemca na potrzeby prowadzonego postępowania w sprawie udzielenia mu ochrony międzynarodowej.

- Natomiast w przypadku zatrzymania cudzoziemca w związku z usiłowaniami przekroczenia granicy wbrew przepisom należy skierować odrębne pismo do Departamentu Postępowań Uchodźczych UdSC opisujące okoliczności zatrzymania wnioskodawcy wraz z prośbą o wyrażenie opinii w przedmiocie konieczności jego umieszczenia w strzeżonym ośrodku lub areszcie dla cudzoziemców w oparciu o przesłankę art. 87 ust. 1 pkt 2 ustawy o udzielaniu cudzoziemcom ochrony (...).

**Jednakże w przypadku złożenia przez cudzoziemca pierwszego wniosku o udzielenie ochrony międzynarodowej i wydania przez Szefa Urzędu ds. Cudzoziemców decyzji o umorzeniu postępowania w związku z niezgłoszeniem się cudzoziemca do ośrodka recepcyjnego organ Straży Granicznej ma prawo sam dokonać oceny i uznać, że obecność cudzoziemca jest niezbędna do zebrania informacji na potrzeby postępowania.**

Oceny stopnia ryzyka ucieczki organy Straży Granicznej powinny dokonywać samodzielnie. Zarząd ds. Cudzoziemców stoi jednakże na stanowisku, że w przypadku przekroczenia bądź usiłowania przekroczenia granicy wbrew przepisom prawdopodobieństwo ucieczki cudzoziemca należy ocenić jako znaczne.

## 2. Art. 89 ust. 4a ustawy o udzielaniu ochrony

W przypadku kierowania do sądu wniosku o przedłużenie pobytu cudzoziemca w strzeżonym ośrodku lub areszcie dla cudzoziemców w oparciu o art. 89 ust. 4 ustawy o udzielaniu ochrony, istnieje konieczność ustalenia, czy zachodzi przesłanka, o której mowa w art. 89 ust. 4a ustawy, tj. czy postępowanie istotne z punktu widzenia dalszego istnienia okoliczności stanowiących podstawę pobytu cudzoziemca w strzeżonym ośrodku lub areszcie dla cudzoziemców (np. w sprawie udzielenia cudzoziemcowi ochrony międzynarodowej) **nie zostało zakończone z winy cudzoziemca.**

W związku z powyższym przed wystąpieniem do sądu z przedmiotowym wnioskiem naczelnik strzeżonego ośrodka dla cudzoziemców **powinien zwrócić się do Dyrektora Departamentu Postępowań Uchodźczych UdSC z pytaniem, czy cudzoziemiec utrudnia**, lub utrudniał, prowadzenie postępowania, czego efektem jest niewydanie jeszcze decyzji merytorycznej w jego sprawie.

Uzgodniono, że jednym z przykładów utrudniania przez cudzoziemca prowadzenia postępowania jest **odmowa udziału w telekonferencji** (z powodu np. rzekomego złego stanu zdrowia, co nie zostało potwierdzone badaniami lekarskimi).

## 3. Art. 393b w związku z art. 303 ust. 1 pkt 13 ustawy o cudzoziemcach

Ustalono, że Departament Postępowań Uchodźczych UdSC będzie traktować priorytetowo wydawanie decyzji o przekazaniu cudzoziemca do innego państwa członkowskiego na podstawie art. 393b ust. 1 ustawy o cudzoziemcach (mając na uwadze detencję cudzoziemca). Dotyczy to w szczególności cudzoziemców, wobec których przed 13 listopada br. wszczęto i nie zakończono postępowań w sprawie zobowiązania do powrotu, a na przyjęcie których w oparciu o przepisy rozporządzenia (UE) nr 604/2013 zgodę wyraziło inne państwo członkowskie (w związku z czym postępowania powrotowe powinny zostać umorzone). Należy zaznaczyć, że wydawanie przez Szefa Urzędu ds. Cudzoziemców decyzji o przekazaniu cudzoziemca do innego państwa członkowskiego może następować wyłącznie na podstawie dowodów i poszlak, o których mowa w art. 393a ust. 1 ww. ustawy, a więc tych, które wpłynęły do UdsC po dniu 13 listopada 2015 r.

#### 4. Art. 30 ust. 1 pkt. 8 ustawy o udzielaniu ochrony

##### a) po przyjęciu wniosku

Ustalono, że **obowiązek zapewnienia transportu do ośrodka recepcyjnego** cudzoziemcom składającym wniosek o udzielenie ochrony międzynarodowej należącym do kategorii osób o szczególnych potrzebach, powinien być realizowany **wyłącznie transportem własnym Straży Granicznej**. W przypadku rodziny, gdy tylko jeden z członków najbliższej rodziny kwalifikuje się jako osoba z ww. kategorii, zapewnienie transportu powinno objąć całą rodzinę.

##### b) po przyjęciu w Dublin III

**Obowiązek zapewnienia transportu** na podstawie art. 30 ust. 1 pkt. 8 ustawy o udzielaniu ochrony powinien dotyczyć również cudzoziemców należących do kategorii osób o szczególnych potrzebach **przyjmowanych w trybie rozporządzenia (UE) nr 604/2013**, którzy po przyjęciu powinni trafić do ośrodka recepcyjnego – nie tylko tych, którzy po przyjęciu składają wniosek o udzielenie ochrony międzynarodowej, ale również tych którzy składają oświadczenie, o którym mowa w art. 40 ust. 6 ustawy.

##### c) po przyjęciu deklaracji

**Obowiązek zapewnienia transportu nie dotyczy** cudzoziemców należących do kategorii osób o szczególnych potrzebach, od których organ SG nie może przyjąć wniosku (np. z powodu braku tłumacza) i od których na podstawie art. 28 ust. 1 przyjmowana jest deklaracja zamiaru jego złożenia. Należy zaznaczyć, że wniosek w takim przypadku nie jest przyjmowany od cudzoziemca z przyczyn leżących po stronie organu SG, natomiast sytuacja dotyczy osób zakwalifikowanych do kategorii osób o szczególnych potrzebach. Dlatego też organ SG po przyjęciu deklaracji powinien udzielić cudzoziemcowi wszelkiej pomocy w zapewnieniu miejsca pobytu do czasu, gdy przyjęcie wniosku będzie możliwe. W tym celu należy nawiązać kontakt np. z placówkami Caritasu. **Obowiązek transportu cudzoziemca** zachodzić będzie w momencie przyjęcia od niego wniosku o udzielenie ochrony międzynarodowej.

Jednocześnie informuję, że uzyskano zapewnienie dyrektora Departamentu Pomocy Socjalnej Urzędu ds. Cudzoziemców, że w przypadkach absolutnego braku możliwości zapewnienia cudzoziemcowi noclegu, będzie możliwość dowiezienia cudzoziemca do ośrodka recepcyjnego



(transport zapewnia organ SG przyjmujący deklarację) i przyjęcia wniosku już w ośrodku recepcyjnym (przez organ SG właściwy miejscowo dla danego ośrodka).

**Każdy przypadek należy zgłosić wcześniej z poziomem naczelnika Wydziału ds. Cudzoziemców do Dyrektora Departamentu Pomocy Socjalnej UdaC.**

Reasumując należy kategorycznie podkreślić, że cudzoziemcy deklarujący chęć złożenia wniosku o udzielenie ochrony międzynarodowej i należący do kategorii osób o szczególnych potrzebach, od których organ SG nie może przyjąć w danym dniu wniosku, nie mogą zostać pozostawieni bez zapewnienia im miejsca pobytu/noclegu.

#### 5. Art. 30 ust. 1 pkt. 7 ustawy o udzielaniu ochrony

Obowiązek przeprowadzania badań lekarskich dotyczy cudzoziemców:

- od których przyjęto wniosek o udzielenie ochrony międzynarodowej,
- od których przyjęto deklarację zamiaru złożenia wniosku, a którzy należą do kategorii osób o szczególnych potrzebach i którzy z uwagi na wyjątkowe okoliczności (opisane w punkcie powyżej) są transportowani do ośrodka recepcyjnego, a istnieją przesłanki wskazujące na występowanie realnego zagrożenia dla zdrowia publicznego / zagrożenia epidemiologicznego (np. wysięki ropne, wysypka).

Obowiązek ten nie dotyczy cudzoziemców:

- którzy po przyjęciu do Polski w trybie rozporządzenia (UE) nr 604/2013 złożyli oświadczenie, o którym mowa w art. 40 ust. 6 ustawy,
- od których przyjęto deklarację zamiaru złożenia wniosku,
- składających wniosek o udzielenie ochrony międzynarodowej w trakcie pobytu w strzeżonym ośrodku lub areszcie dla cudzoziemców.

#### 6. Art. 40 ust. 6 ustawy o udzielaniu ochrony

W przypadku złożenia przez cudzoziemca powtórnego oświadczenia o zamiarze dalszego ubiegania się o udzielenie ochrony międzynarodowej, lub też uchybienia terminu, o którym mowa w art. 40 ust. 6 ustawy o udzielaniu cudzoziemcom ochrony (...), należy oświadczenie przyjąć i przesłać do Dyrektora Departamentu Postępowań Uchodźczych, który wyda decyzję o odmowie uwzględnienia oświadczenia, o czym stanowi art. 40 ust. 10.

Należy jednakże podkreślić, że złożenie oświadczenia niespełniającego norm ustawowych, nie powoduje z mocy prawa wygaśnięcia decyzji o umorzeniu postępowania w sprawie udzielenia ochrony międzynarodowej. Tym samym organ SG po przyjęciu takiego oświadczenia zobowiązany jest do prowadzenia czynności zmierzających do powrotu cudzoziemca do państwa pochodzenia.

W opisanym przypadku organ SG nie wydaje cudzoziemcowi tymczasowego zaświadczenia tożsamości cudzoziemca.

**7. Wzór oświadczenia, o którym mowa w art. 40 ust. 6 ustawy o udzielaniu ochrony**

W celu ujednoczenia stosowanych formularzy w załączeniu przesyłam wzór oświadczenia, przyjmowanego od cudzoziemca. Wzór został zamieszczony na stronie intranetowej w folderze „Procedura uchodźcza”.

**8. Małoletni bez opieki w towarzystwie innego członka rodziny (niebędącego opiekunem prawnym)**

Podczas spotkania dyrektor Departamentu Pomocy Socjalnej UdsC zwrócił uwagę, że przyjęcie do ośrodka recepcyjnego małoletniego bez opieki, któremu towarzyszy inny członek rodziny, może nastąpić dopiero:

- a) po przyjęciu od małoletniego wniosku o udzielenie ochrony międzynarodowej,
- b) oraz po ustanowieniu przez sąd zabezpieczenia na czas postępowania o umieszczenie małoletniego w pieczy zastępczej / lub po wydaniu przez sąd postanowienia o umieszczeniu małoletniego w pieczy zastępczej.

Biorąc powyższe pod uwagę, w przypadku, gdy małoletniemu bez opieki towarzyszy inny członek rodziny, niezbędne staje się „rozdzielenie” małoletniego i członka jego rodziny. W takiej sytuacji należy:

- przyjąć wniosek o udzielenie ochrony międzynarodowej od członka rodziny,
- przyjąć od małoletniego deklarację zamiaru złożenia wniosku o udzielenie ochrony międzynarodowej i sporządzić z tej czynności protokół (art. 61 ust. 1 pkt. 1 i 2 ustawy o udzielaniu ochrony),
- wystąpić do sądu opiekuńczego z wnioskiem o ustanowienie kuratora do reprezentowania małoletniego w postępowaniu w sprawie udzielenia ochrony międzynarodowej, przekazania do innego państwa członkowskiego na podstawie rozporządzenia 604/2013, udzielenia pomocy socjalnej oraz udzielenia pomocy w dobrowolnym powrocie do kraju pochodzenia (art. 61 ust. 1 pkt. 3 ustawy o udzielaniu ochrony) – sąd wydaje postanowienie w tej sprawie w terminie 3 dni – wniosek powinien wskazywać na członka rodziny towarzyszącego małoletniemu,
- wystąpić do sądu opiekuńczego z wnioskiem o udzielenie zabezpieczenia, na czas postępowania o umieszczenie małoletniego w pieczy zastępczej, w postaci tymczasowego powierzenia pełnienia funkcji rodziny zastępczej dla małoletniego towarzyszącemu mu członkowi rodziny (art. 109 § 1 i § 2 pkt. 5 kodeksu rodzinnego i opiekuńczego w zw. z art. 730, art. 755 § 1 pkt 4 oraz art. 735 kodeksu postępowania cywilnego) – wniosek ten powinien zawierać uzasadnienie wskazujące, że sytuacja małoletniego jest wypadkiem niecierpiącym zwłoki, co pozwoli na udzielenie zabezpieczenia niezwłocznie na posiedzeniu niejawnym w składzie jednoosobowym (art. 735 § 2 i art. 756<sup>1</sup> kodeksu postępowania cywilnego),
- udzielić pomocy członkowi rodziny w wystąpieniu przez niego do sądu opiekuńczego z wnioskiem o ustanowienie członka rodziny spokrewnioną rodziną zastępczą dla małoletniego,



- umieścić małoletniego bez opieki w placówce opiekuńczo-wychowawczej w trybie interwencyjnym (do czasu powierzenia przez sąd sprawowania pieczy zastępczej nad tym małoletnim towarzyszącemu mu członkowi rodziny) (art. 62 ust. 1 ustawy o udzielaniu ochrony),

- skierować członka rodziny do ośrodka recepcyjnego, lub dla dobra małoletniego wskazać inne możliwości kwaterunkowe w pobliżu placówki, w której zostanie umieszczony małoletni bez opieki (z koniecznością dokonania stosownej adnotacji we wniosku o udzielenie ochrony międzynarodowej w miejscu przeznaczonym na wpisanie adresu, pod który cudzoziemiec został skierowany, a także poinformowania telefonicznie o zaistniałej sytuacji Departamentu Pomocy Socjalnej UdsC).

Kolejną czynnością jest przyjęcie od małoletniego bez opieki wniosku o udzielenie ochrony międzynarodowej. Wniosek składany jest w imieniu małoletniego przez kuratora. Czynność ta może mieć miejsce dopiero po ustanowieniu przez sąd kuratora.

Alternatywnie do powyżej opisanego sposobu procedowania można zastosować procedurę częściowo skróconą. Złożenie wniosku o udzielenie ochrony międzynarodowej w imieniu małoletniego przez przedstawiciela organizacji międzynarodowej lub pozarządowej zajmującej się udzielaniem pomocy cudzoziemcom pozwala na:

- pominięcie etapu przyjęcia od małoletniego deklaracji zamiaru złożenia wniosku,
- przyjęcie wniosku jeszcze przed ustanowieniem kuratora.

**Dowieszenie małoletniego do ośrodka recepcyjnego jest możliwe:**

- gdy od małoletniego został przyjęty wniosek o udzielenie ochrony międzynarodowej,
- oraz gdy sąd udzieli zabezpieczenia w postaci tymczasowego powierzenia pełnienia funkcji rodziny zastępczej dla małoletniego towarzyszącemu mu członkowi rodziny.

Niezależnie od powyższego, po przyjęciu od małoletniego wniosku o udzielenie ochrony międzynarodowej należy wystąpić do sądu opiekuńczego z wnioskiem o umieszczenie małoletniego w pieczy zastępczej (art. 61 ust. 6 ustawy o udzielaniu ochrony) – sąd wydaje postanowienie w tej sprawie w terminie 10 dni (w tym czasie małoletni powinien już przebywać w ośrodku recepcyjnym).

Biorąc powyższe pod uwagę optymalnym rozwiązaniem, które pozwoliłoby na uniknięcie potencjalnego „rozdzielenia” małoletniego z towarzyszącym mu członkiem rodziny (i umożliwiłoby skierowanie go bezpośrednio z nim do ośrodka recepcyjnego) jest:

- 1) złożenie w imieniu małoletniego bez opieki wniosku przez przedstawiciela organizacji międzynarodowej lub pozarządowej zajmującej się udzielaniem pomocy cudzoziemcom oraz
- 2) niezwłoczne wystąpienie do sądu opiekuńczego z wnioskiem o udzielenie zabezpieczenia, na czas postępowania o umieszczenie małoletniego w pieczy zastępczej, w postaci tymczasowego

powierzenia jej sprawowania nad małoletnim towarzyszącemu mu członkowi rodziny z uzasadnieniem wskazującym, że sytuacja małoletniego jest wypadkiem niecierpiącym zwłoki (tu też wniosek członka rodziny o ustanowienie go tymczasową rodziną zastępczą dla małoletniego) – po wydaniu przez sąd postanowienia w tej sprawie możliwe jest dowiedzenie małoletniego wraz z członkiem rodziny do ośrodka recepcyjnego,

- 3) niezwłoczne wystąpienie do sądu opiekuńczego z wnioskiem o umieszczenie małoletniego w pieczy zastępczej.

W przypadku braku możliwości złożenia wniosku w imieniu małoletniego przez przedstawiciela organizacji międzynarodowej lub pozarządowej zajmującej się udzielaniem pomocy cudzoziemcom, i konieczności „rozdzielenia” cudzoziemców na czas trwania procedur sądowych, należy dołożyć wszelkich starań, aby rozłąka ta była jak najmniej dotkliwa, m.in. poprzez udzielenie członkowi rodziny pomocy w zabezpieczeniu dla niego miejsca zakwaterowania, o czym mowa powyżej.

Biorąc powyższe pod uwagę pkt. II.3 pisma nr KG-CU-7725/IP/15 z dnia 19 listopada 2015 r. należy uznać za nieobowiązujący (zastąpiony niniejszym punktem).

**Załącznik: 1 na 1 str.:**

Wzór oświadczenia, o którym mowa w art. 40 ust. 6 ustawy o udzielaniu ochrony – na 1 str.

Z poważaniem,

**DYREKTOR**  
Zarządu do Spraw Cudzoziemców  
Komendy Głównej Straży Granicznej  
**plk SG Andrzej JAKUBASZEK**

**Otrzymują:** Komendant Warmińsko-Mazurskiego OSG  
Komendant Podlaskiego OSG  
Komendant Nadbużańskiego OSG  
Komendant Bieszczadzkiego OSG  
Komendant Śląsko-Małopolskiego OSG  
Komendant Nadodrzańskiego OSG  
Komendant Morskiego OSG  
Komendant Nadwiślańskiego OSG

**Do wiadomości:** Komendant OSS SG w Lubaniu  
Komendant CS SG w Kętrzynie  
Komendant COS SG w Koszalinie  
Komendant KOW w Nowym Sączu  
Dyrektor Departamentu Postępowań Uchodźczych UdsC  
Dyrektor Departamentu Pomocy Socjalnej UdsC

**Wykonano w 1 egzemplarzu**

sporz. i wyk. IP 660 41 11, PC 660 49 28  
dnia 8 stycznia 2016 r.

# ANNEX B

11-01-16;10:21 ;

Śląski ;

# 8/ 8

|                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      |                                    |
|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------|
| Imię:                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                | adresat:                           |
| nazwisko:                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            | Szef. Urzędu do Spraw Cudzoziemców |
| data urodzenia:                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      | za pośrednictwem                   |
| obywatelstwo:                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        | Komendanta                         |
| miejsce zamieszkania w RP, telefon kontaktowy:                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       | .....                              |
| kobieta <input type="checkbox"/>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     | .....                              |
| mężczyzna <input type="checkbox"/>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   | .....                              |
| nazwa oddziału/placówki SG                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           |                                    |
| <b>OŚWIADCZENIE</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  |                                    |
| <p>Na podstawie art. 40 ust. 6 ustawy o udzielaniu cudzoziemcom ochrony na terytorium Rzeczypospolitej Polskiej oświadczam, że zamierzam w dalszym ciągu ubiegać się w Polsce o udzielenie ochrony międzynarodowej.</p> <p style="text-align: center;">.....<br/>podpis wnioskodawcy</p>                                                                                                                                                                                                                                                                                                                             |                                    |
| adnotacje SG (data wpływu, nr systemowy w SI Pobyt):                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 | adnotacje UdSC (data wpływu):      |
|                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      |                                    |
| <b>UWAGA!</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        |                                    |
| <ol style="list-style-type: none"> <li>Oświadczenie może zostać złożone w terminie <u>9 miesięcy</u> od dnia wydania decyzji o umorzeniu postępowania w sprawie udzielenia ochrony międzynarodowej. W przypadku gdy postępowanie w sprawie nadania statusu uchodźcy zostało umorzone przed dniem 13 listopada 2015 r. na podstawie ustawy o udzielaniu cudzoziemcom ochrony na terytorium RP, wnioskodawca może złożyć oświadczenie w terminie <u>2 lat</u> od dnia wydania decyzji o umorzeniu postępowania w sprawie nadania statusu uchodźcy.</li> <li>Oświadczenie nie może zostać złożone powtórnie.</li> </ol> |                                    |

# ANNEX C

Extract from The Border Guard's code of conduct for handling special needs foreigners, a document authorised by the Deputy Chief of the Border Guard on 17 September 2015, concerning the Border Guard's code of conduct with regard to special need foreigners

Wyciąg z dokumentu pn. *Zasady postępowania Straży Granicznej z cudzoziemcami wymagającymi szczególnego traktowania*, zatwierdzonego przez Zastępcę Komendanta Głównego Straży Granicznej w dniu 17 września 2015 r.

## Zasady postępowania Straży Granicznej z cudzoziemcami wymagającymi szczególnego traktowania

Przepisy ustawy z dnia 12 grudnia 2013 r. o cudzoziemcach (ustawa o cudzoziemcach), nie zawierają definicji osób wymagających szczególnego traktowania, jak również nie określają metod ich identyfikacji. Mając na uwadze powyższe, niezbędne jest określenie obowiązujących w tym zakresie rozwiązań.

### I. CEL

- 1) określenie zakresu podmiotowego oraz przyjęcie definicji cudzoziemców wymagających szczególnego traktowania,
- 2) określenie warunków niezbędnych do identyfikacji tej kategorii cudzoziemców podczas pobytu w strzeżonym ośrodku dla cudzoziemców (SOC),
- 3) opracowanie trybu postępowania przy identyfikacji w/w kategorii osób, ze szczególnym uwzględnieniem sposobu działania, w przypadku zaistnienia przesłanek skutkujących zwolnieniem z SOC.

### II. ZAKRES PODMIOTOWY

Zasady postępowania mają zastosowanie wobec cudzoziemców:

- 1) zatrzymanych na podstawie art. 394 ustawy o cudzoziemcach,
- 2) umieszczanych w SOC.

Przy wdrażaniu w/w zasad należy przyjąć następujące definicje:

**cudzoziemcy wymagający szczególnego traktowania** - to osoby, takie jak: małoletnie, małoletnie bez opieki, niepełnosprawne, starsze, kobiety w ciąży, samotnie wychowujące małoletnie dzieci, ofiary tortur, zgwałcenia lub innych poważnych form przemocy, ofiary/świadkowie handlu ludźmi<sup>1</sup> oraz osoby wymagające wsparcia z uwagi na stan zdrowia lub szczególną sytuację osobistą.

Przyjęta definicja obejmuje pełny zakres podmiotowy „osób wymagających szczególnego traktowania określony” określony w art. 3 pkt. 9 Dyrektywy Parlamentu Europejskiego i Rady 2008/115/ WE z dnia 16 grudnia 2008 r. w sprawie wspólnych norm i procedur stosowanych przez Państwa Członkowskie w odniesieniu do powrotów nielegalnie przebywających obywateli państw trzecich, który został rozszerzony poprzez dodanie kategorii osób wymagających wsparcia z uwagi na stan zdrowia lub szczególną sytuację osobistą oraz osób wobec których istnieje domniemanie lub zostały zidentyfikowane jako ofiara/świadek handlu ludźmi.

<sup>1</sup> W przypadku identyfikacji podczas zatrzymania lub pobytu w SOC osoby co do której istnienie uzasadnione domniemanie, że jest ofiarą /świadkiem handlu ludźmi, należy podjąć działania określone w ustawie o cudzoziemcach, zgodnie z zasadami określonymi w „Algorytmie postępowania organów ścigania w przypadku ujawnienia przestępstwa handlu ludźmi”.

**przemoc** - to wszelkie umyślne działania narażające osobę na niebezpieczeństwo utraty życia, zdrowia, naruszające jej godność, nietykalność cielesną, wolność (w tym wolność seksualną), powodujące szkody na zdrowiu fizycznym lub psychicznym.

### III. WARUNKI NIEZBĘDNE DO IDENTYFIKACJI CUDZOZIEMCÓW WYMAGAJĄCYCH SZCZEGÓLNEGO TRAKTOWANIA PODCZAS POBYTU W SOC.

Do czynności związanych z identyfikacją cudzoziemców wymagających szczególnego traktowania zaangażowani są:

- opiekunowie socjalni,
- personel medyczny (lekarz, pielęgniarka, ratownik medyczny),
- psychologowie,
- terapeuci.

Dla potrzeb w/w zasad postępowania przyjęto, że:

**opiekun socjalny** – to odpowiednio przeszkolony z zakresu komunikacji międzykulturowej funkcjonariusz/pracownik Sekcji Dydaktyczno – Wychowawczej/Wychowawczej SOC, któremu powierzono zadania prowadzenia indywidualnej opieki nad cudzoziemcem w zakresie zasad funkcjonowania oraz pobytu w SOC, w tym również zadania identyfikacji osób wymagających szczególnego traktowania.

**psycholog** - osoba posiadająca prawo wykonywania zawodu psychologa zgodnie z przepisami ustawy z dnia 8 czerwca 2001 r. o zawodzie psychologa i samorządzie zawodowym psychologów, pełniący służbę albo zatrudniony w jednostkach organizacyjnych Straży Granicznej oraz przeszkolony w zakresie diagnozy psychologicznej cudzoziemców.

**terapeuta** – to psycholog zewnętrzny, posiadający specjalistyczne uprawnienia do prowadzenia terapii

Dla potrzeb w/w zasad postępowania wdrożono katalog rozwiązań ułatwiających identyfikację cudzoziemców wymagających szczególnego traktowania:

- anonimowe przekazywanie informacji/wniosków/zażeń kierowanej do naczelnika SOC poprzez znajdujące się na korytarzach skrzynki do korespondencji,
- dostosowanie czasu służby/pracy opiekunów socjalnych, do przyjętego w SOC porządku dnia tj. od poniedziałku do soboty w godz. 9.00-17.00 i 18.00-22.00,
- dostęp do przetłumaczonej na język polski, rosyjski i angielski informacji, określającej zasady korzystania z konsultacji lekarskiej/psychologicznej/terapeutów,
- opieka psychologiczna,
- konsultacje z lekarzami specjalistami, w tym lekarzem psychiatrą/ psychiatrą dziecięcym,
- konsultacje z terapeutami, w tym z Poradni Leczenia Uzależnień,
- opieka pielęgniarek lub ratowników medycznych, świadczona w godzinach 07.30 – 21.30 przez 7 dni w tygodniu,
- obecność tłumacza w sytuacjach, wystąpienia problemów komunikacyjnych.

### IV. TRYB POSTĘPOWANIA PRZY IDENTYFIKACJI CUDZOZIEMCÓW WYMAGAJĄCYCH SZCZEGÓLNEGO TRAKTOWANIA

Tryb postępowania przed umieszczeniem w SOC



1. W przypadku zatrzymania cudzoziemca, co do którego zachodzą przesłanki do umieszczenia w SOC, przed skierowaniem wniosku do sądu, należy każdorazowo ustalić, czy nie zachodzą przesłanki określone w art. 400 ustawy o cudzoziemcach. Informacja o braku zaistnienia tych przesłanek, powinna zostać zawarta we wniosku o umieszczenie cudzoziemca w SOC lub w areszcie dla cudzoziemców.
2. W przypadku cudzoziemców zidentyfikowanych jako wymagających szczególnego traktowania, wobec których zostały podjęte czynności identyfikacyjno – powrotowe, wniosek o identyfikację/zorganizowanie powrotu, należy zakwalifikować jako wniosek priorytetowy.

Tryb postępowania po umieszczeniu w SOC

1. Podczas konsultacji lekarskiej przy przyjęciu cudzoziemca do SOC, należy przeprowadzić wywiad pod kątem ewentualnego zakwalifikowania osoby do grupy cudzoziemców wymagających szczególnego traktowania.
2. Bezpośrednio po umieszczeniu cudzoziemca w SOC, opiekun socjalny przeprowadza indywidualną rozmowę z osobą umieszczoną, ze szczególnym uwzględnieniem zidentyfikowania ewentualnej przesłanki do szczególnego traktowania.
3. W przypadku zidentyfikowania okoliczności uzasadniających domniemanie, że cudzoziemiec wymaga szczególnego traktowania, opiekun socjalny niezwłocznie:
  - przeprowadza szczegółowy wywiad pozwalający na pogłębienie informacji uzyskanych w rozmowie przy przyjęciu cudzoziemca do SOC,
  - informuje o uzyskanych ustaleniach kierownika SOC oraz psychologa.
4. Zakres opieki świadczonej wobec cudzoziemców wymagających szczególnego traktowania w SOC, powinien być dostosowanych do ich potrzeb, a czas wykonywania wobec nich czynności administracyjnych skrócony do niezbędnego minimum.
5. W przypadku stwierdzenia zagrożenia zdrowia lub życia<sup>2</sup> w sytuacji, gdy opieka medyczna zapewniona w SOC jest niewystraszająca z uwagi na konieczność zapewnienia stałej opieki specjalistycznej, która co do zasady, powinna być kontynuowana we wskazanym podmiocie medycznym należy:
  - w przypadku bezpośredniego zagrożenia życia lub zdrowia, wezwać pogotowie ratunkowe,
  - doprowadzić osobę do wskazanej przez lekarza placówki medycznej.Postanowienie o zwolnieniu cudzoziemca z SOC, należy wydać po zakończeniu leczenia, w celu zapewnienia środków niezbędnych na pokrycie kosztów pobytu w szpitalu. Wyjątek stanowi sytuacja, gdy cudzoziemiec zostanie skierowany do szpitala zakaźnego. W tym przypadku, z uwagi na możliwość finansowania leczenia osoby nieposiadającej ubezpieczenia zdrowotnego ze środków finansowych pochodzących z budżetu państwa, należy przed skierowaniem do szpitala, wydać cudzoziemcowi postanowienie o zwolnieniu z SOC.
6. W przypadku zidentyfikowania cudzoziemców wymagających szczególnego traktowania, w stosunku, do których zaistniała przesłanka określona 406 ust.1 pkt. 2 ustawy o cudzoziemcach opiekun socjalny sporządza notatkę służbową, która po zatwierdzeniu przez kierownika SOC, jest przesyłana do właściwego sędziego penitencjarnego oraz do wiadomości Koordynatora ds. SOC.

DYREKTOR  
Zarządu do Spraw Cudzoziemców  
Korondy Głównej Straży Granicznej  
płk SG Andrzej JAJŁOBAZEK

<sup>2</sup> Zaświadczenie lekarza sprawującego opiekę nad cudzoziemcem w SOC, stwierdzające zaistnienie przesłanki skutkującej wydaniem postanowienia o zwolnieniu z SOC z uwagi na bezpośrednie zagrożenie zdrowia lub życia, co do zasady, powinno zawierać zalecenia dotyczące wskazania miejsca specjalistycznej placówki medycznej, w której może być kontynuowane dalsze leczenie specjalistyczne cudzoziemca..

## Authors' profiles

**Aleksandra Chrzanowska** – Cultural Studies graduate at the University of Warsaw (MA paper on “Cultural identity of Chechen refugees in Poland”, 2005). Between 2005 and 2006 worked as an interpreter for the Polish branch of Doctors without Borders, as part of a scheme offering psychological help to individuals applying for refugee status. Currently member of the board at the Association for Legal Intervention; works with refugees in the capacity of integration/intercultural facilitator. Author of publications on integration of refugees and multiculturalism. Received the Jerzy Zimowski Prize in the 8<sup>th</sup> edition of the ceremony (2015), awarded for the work benefiting social groups in extreme circumstances, migrants and refugees in particular.

**Patrycja Mickiewicz** – legal counsel, graduate of the University of Commerce and Law in Warsaw, member of the Association for Legal Intervention, based in the Foreigners Division and the Family and Child Division, where she offers free legal counselling and deals with prevention of discrimination on the grounds of race, ethnicity or nationality. Trainer in the field of law on foreigners, author of publications and pamphlets on the subject.

**Katarzyna Słubik** – lawyer, Law and Administration graduate at the University of Lodz, board member at the Association for Legal Intervention, where she gives legal counsel and coordinates national and international projects. Specializes in prevention of violence against female migrants and providing support for victims of prejudice-motivated crimes. Migration law trainer, author of articles and publications on the subject.

**Joanna Subko** – lawyer, Law graduate at the University of Warsaw and European Law graduate at the University of Poitiers. Offers free legal assistance to migrants and refugees at the Association. Also conducts trainings on migration law.

**Anna Trylińska** – lawyer, Law graduate at the University of Wrocław. Completed postgraduate MA studies in human rights at Louvain Academy (a chain of Catholic universities in Belgium in Brussels), as well as postgraduate studies in international humanitarian law at Sophia Antipolis University in Nice. Has been offering free legal assistance to foreigners at the Association for Legal Intervention since 2013. A former intern at the European Parliament and the Ministry of Justice (among others).



Since 2005 the Association for Legal Intervention (Stowarzyszenie Interwencji Prawnej – SIP) has been providing assistance and advocating for the rights of people in difficult situations. SIP represents them in courts and before other public bodies. The association offers legal and social assistance. It also identifies and researches problem areas and aims to eliminate them on individual and system levels by consulting legislative acts, bringing violations of rights into public light and working to bring change in social policies and law.

Laboratorium Migracji (Migration Laboratory) is a project started within SIP in 2015. Its main objective is to generate reliable information regarding migration and integration of foreigners but also to disseminate it among public institutions and private entities.

Here at Laboratorium Migracji we collect and produce various data, conduct research, publish reports and evaluations, offer trainings and mediation services (including labour and intercultural mediation).

More information: [WWW.INTERWENCJAPRAWNA.PL/EN](http://WWW.INTERWENCJAPRAWNA.PL/EN)

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## ANALYSES REPORTS EVALUATIONS

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