

# Country Report: Poland



2019  
Update

## Acknowledgements & Methodology

This report was written by Karolina Rusiłowicz, in collaboration with Ewa Ostaszewska-Żuk, lawyer at the Helsinki Foundation for Human Rights (HFHR), and Maja Łysienia (legal counsel - *radca prawny*), with the support of Helsinki Foundation for Human Rights, and was edited by ECRE.

This report draws on information provided by the Office for Foreigners, the Border Guard, the Refugee Board, Voivods, and NGOs in writing and in oral interviews.

The information in this report is up-to-date as of 31 December 2019, unless otherwise stated.

## The Asylum Information Database (AIDA)

The Asylum Information Database (AIDA) is coordinated by the European Council on Refugees and Exiles (ECRE). It aims to provide up-to date information on asylum practice in 23 countries. This includes 19 EU Member States (AT, BE, BG, CY, DE, ES, FR, GR, HR, HU, IE, IT, MT, NL, PL, PT, RO, SE, SI) and 4 non-EU countries (Serbia, Switzerland, Turkey, United Kingdom) which is accessible to researchers, advocates, legal practitioners and the general public through the dedicated website [www.asylumineurope.org](http://www.asylumineurope.org). The database also seeks to promote the implementation and transposition of EU asylum legislation reflecting the highest possible standards of protection in line with international refugee and human rights law and based on best practice.



This report is part of the Asylum Information Database (AIDA), funded by the European Programme for Integration and Migration (EPIM), a collaborative initiative by the Network of European Foundations, and the European Union's Asylum, Migration and Integration Fund (AMIF). The contents of this report are the sole responsibility of ECRE and can in no way be taken to reflect the views of EPIM or the European Commission.



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## Glossary & List of Abbreviations

<b>AMIF</b>	Asylum, Migration and Integration Fund
<b>ASQAEM</b>	Asylum Systems Quality Assurance and Evaluation Mechanism
<b>BIPs</b>	Beneficiaries of international protection
<b>CAR</b>	Central African Republic
<b>CJEU</b>	Court of Justice of the European Union
<b>EASO</b>	European Asylum Support Office
<b>ECtHR</b>	European Court of Human Rights
<b>EMN</b>	European Migration Network
<b>ERF</b>	European Refugee Fund
<b>HFHR</b>	Helsinki Foundation for Human Rights
<b>IFA</b>	Internal Flight Alternative
<b>IPI</b>	Individual Integration Programme
<b>SIP</b>	Legal Intervention Association   Stowarzyszenie Interwencji Prawnej
<b>NFZ</b>	National Health Fund
<b>OPS</b>	Social Welfare Centre   Ośrodek Pomocy Społecznej
<b>PCPR</b>	Powiat Family Support Centres   Powiatowe Centra Pomocy Rodzinie
<b>PTSD</b>	Post-Traumatic Stress Disorder
<b>SG</b>	Border Guard / Straż Graniczna
<b>SGBV</b>	Sexual and gender-based violence
<b>UNHCR</b>	United Nations High Commissioner for Refugees

## Statistics

### Overview of statistical practice

Statistics are provided by the Head of the Office for Foreigners on a weekly basis and are available on their website.<sup>1</sup> Also the Head of the Office for Foreigners prepares every year an annual report on migration situation in Poland. The statistics presented below were provided upon request.

### Applications and granting of protection status at first instance: 2019

	Applicants in 2019	Pending at end 2019	Refugee status	Subsidiary protection	Rejection	Refugee rate	Subs. Prot. rate	Rejection rate
<b>Total</b>	4,096	3,364	131	130	1,730	6.58%	6.53%	86.89%

Breakdown by countries of origin of the total numbers

Russia	2,614	2,447	8	68	961	0.77%	6.56%	92.67%
Ukraine	434	301	4	11	357	1.07%	2.96%	95.97%
Tajikistan	113	106	8	21	61	8.89%	23.33%	67.78%
Iraq	32	18	14	3	14	45.16%	9.68%	45.16%
Armenia	46	25	0	0	28	0	0	100%
Turkey	123	73	49	0	7	87.5%	0	12.5%
Georgia	86	69	0	0	39	0	0	100%
Belarus	37	29	3	0	31	8.82%	0	91.18%
Iran	52	22	19	0	20	48.72%	0	51.28%
Afghanistan	62	13	3	8	1	25%	66.67%	8.33%

Source: Office for Foreigners

<sup>1</sup> Office for Foreigners, *Weekly report*, available (in Polish) at: <http://bit.ly/2i6FUCB>.

**Gender/age breakdown of the total number of applicants: 2019**

	Number	Percentage
<b>Total number of applicants</b>	4,096	100%
Men	1,338	32.7%
Women	951	23.2%
Children	1,807	44.1%
Unaccompanied children	105	2.5%

Source: Office for Foreigners

**Comparison between first instance and appeal decision rates: 2019**

	First instance		Appeal	
	Number	Percentage	Number	Percentage
<b>Total decisions (persons)</b>	1,991	100%	1,627	100%
Positive decisions	261	13,1%	11	0.7%
• <i>Refugee status</i>	131	6,6%	4	0.2%
• <i>Subsidiary protection</i>	130	6,5%	7	0.4%
Negative decisions	1,730	86,9%	1,616	99.3%

Source: Office for Foreigners. The number of negative decisions at appeal reflects the number of first instance negative decisions which were upheld on appeal. This number includes appeals against decisions granting subsidiary protection status with the aim of obtaining refugee status.

## Overview of the legal framework

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

Title (EN)	Original Title (PL)	Abbreviation	Web Link
Law of 13 June 2003 on granting protection to foreigners within the territory of the Republic of Poland (Journal of Laws 2012 pos. 680)	Ustawa z dnia 13 czerwca 2003 r. o udzielaniu cudzoziemcom ochrony na terytorium Rzeczypospolitej Polskiej (Dz.U. 2012 poz. 680)	Law on Protection	<a href="http://bit.ly/37G7nV9">http://bit.ly/37G7nV9</a> (PL)
Law of 12 December 2013 on foreigners (Journal of Laws 2013 pos. 1650)	Ustawa z dnia 12 grudnia 2013 r. o cudzoziemcach (Dz.U. 2013 poz. 1650)	Law on Foreigners	<a href="http://bit.ly/2OcvDXg">http://bit.ly/2OcvDXg</a> (PL)
Law of 14 June 1960 Code of administrative procedure (Journal of Laws 2013 pos. 267)	Ustawa z dnia 14 czerwca 1960 r. Kodeks Postępowania Administracyjnego (Dz.U. 2013 poz. 267)	Code of Administrative Procedure	<a href="http://bit.ly/2RFIG5t">http://bit.ly/2RFIG5t</a> (PL)

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

Title (EN)	Original Title (PL)	Abbreviation	Web Link
Ordinance of the Minister of Interior and Administration of 19 February 2016 on the amount of assistance for foreigners seeking international protection (Journal of Laws 2016 pos. 311)	Rozporządzenie Ministra Spraw Wewnętrznych i Administracji z dnia 19 lutego 2016 r. w sprawie wysokości pomocy dla cudzoziemców ubiegających się o udzielenie ochrony międzynarodowej (Dz.U. 2016 poz.311)	Regulation on Amount of Assistance for Asylum Seekers	<a href="http://bit.ly/2kwxqo7">http://bit.ly/2kwxqo7</a> (PL)
Ordinance of the Ministry of Interior of 23 October 2015 on the rules of stay in the centre for foreigners (Journal of Laws 2015 pos.1828)	Rozporządzenie Ministra Spraw Wewnętrznych z dnia 23 października 2015 r. w sprawie regulaminu pobytu w ośrodku dla cudzoziemców (Dz. U. 2015 poz. 1828)	Regulation on Rules of stay in the Centre for Asylum Seekers	<a href="http://bit.ly/1OheyUn">http://bit.ly/1OheyUn</a> (PL)
Ordinance of the Ministry of Interior and Administration of 24 April 2015 on the guarded centres and detention centres for foreigners (Journal of Laws 2015 pos. 596)	Rozporządzenie Ministra Spraw Wewnętrznych i Administracji z dnia 24 kwietnia 2015 r. w sprawie strzeżonych ośrodków i aresztów dla cudzoziemców (Dz.U. 2015 poz. 596)	Regulation on Detention Centres	<a href="http://bit.ly/37HtN8o">http://bit.ly/37HtN8o</a> (PL)
Ordinance of the Ministry of Interior of 4 November 2015 on the form of application for international protection	Rozporządzenie Ministra Spraw Wewnętrznych z dnia 4 listopada 2015 r. w sprawie wzoru formularza wniosku o udzielenie ochrony międzynarodowej	Regulation on the application form	<a href="http://bit.ly/2EDHyfc">http://bit.ly/2EDHyfc</a> (PL)

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

The report was previously updated in **March 2019**.

### Covid 19 related measures

Please note that this report has largely been written prior to the outbreak of COVID-19 in Poland. Certain measures that have been adopted in this context have a direct impact on the situation of asylum seekers and beneficiaries of protection. The Office for Foreigners published relevant information in this regard, including in English, available at: <https://bit.ly/2VBjVrJ>.

While they do not figure throughout this AIDA report, this box aims to outline some of the key measures which were applied as of 15 April 2020:

- ❖ **Asylum procedure:** The Office for Foreigners is closed and has suspended all direct contact. Applications for the legalisation of stay must be submitted by post. Practicalities of applying by post remain unclear however.

Applicants for international protection staying in reception centres are able to lodge subsequent applications. There is no clear instruction, however, as regards applications lodged by other applicants living in Poland. Difficulties in lodging asylum applications at the border, and especially at the border crossing point in Terespol, have been reported. Only one application was lodged at the border between 14 and 31 March 2020.

Negative in-merit asylum decisions are currently not being issued as the special law on Covid-19 foresees that no decisions may be issued in administrative proceedings.

- ❖ **Returns and Dublin transfers:** Forced returns by air and sea have been postponed, while forced returns by land continue to take place. Dublin transfers have been suspended, however.
- ❖ **Reception conditions:** Many asylum seekers and beneficiaries of international protection lost their job following the outbreak, thus adding obstacles in securing housing and paying rents. Issues relating to the access to education have also been reported, as children can hardly access online lessons because they do not possess computers and other necessary tools.

### *Asylum procedure*

- ❖ **Access to territory:** Access to the territory and to the asylum procedure at the border in Terespol remains one of the main challenges in 2019. According to statistics provided by the Border Guard, 1,610 persons applied for international protection at the border crossing point in Terespol, which constitutes 39% of all applicants in 2019. Moreover, 4,378 persons were refused entry at the border crossing point in Terespol and only 81 persons were able to lodge an appeal against the refusal of entry.<sup>2</sup> Civil society organisations and other actors continue to document the irregularities and incidents occurring at the border. Despite the repeated reports, interventions and litigation in 2016-2019, the Polish government denies the allegations of unlawful practices at the border.
- ❖ **Personal interview:** Several issues were reported regarding the personal interview. This includes the fact that applicants have been held responsible for inconsistencies in their statements although these resulted from improper interpretation. Moreover, NGOs stress that there is a persisting issue with the way interviews are being recorded, as the report is prepared in Polish and is not a verbatim transcript. As a result, applicants become familiar with the content of the report only after the interview has been

<sup>2</sup> Letter from the Border Guard Headquarter to HFHR from 17 January 2020. No information on the outcomes was available.

conducted and any clarifications made during the appeal or in a subsequent proceeding are generally not taken into account.<sup>3</sup>

- ❖ **Suspensive effect of onward appeals:** The main development in 2019 concerns onward appeals to the Administrative Courts, as the latter have started to suspend the enforcement of negative decisions during appeal proceedings, thus protecting applicants against *refoulement* during this time. The Supreme Administrative Court also issued judgements in 2019 in which the suspensive effect was upheld.<sup>4</sup>
- ❖ **Legal assistance:** Access to legal assistance has been severely restricted since 2016 because of a lack of funding for NGOs and the suspension of the Asylum, Migration and Integration Fund (AMIF). However, in 2019, a call for proposals has finally been opened to NGOs again. While this marks a positive step, its impact remains limited as only 6 projects concerning asylum seekers were accepted. Moreover, the low participation of NGOs to the call for proposals results from the fact that they had to reduce their activities and resources in recent years, while others even ceased to exist. In January 2020, several NGOs urged the European Commission to amend the system of distribution of EU-funding so that it can also be directed to NGOs providing assistance to asylum seekers and migrants.<sup>5</sup>
- ❖ **Bill on border procedure and safe countries:** There is no border procedure in Poland. However, a bill presented in January 2017 was updated in 2019.<sup>6</sup> According to the proposal, if a negative decision is issued during the border procedure, the Office for Foreigners will also decide on return in the same decision. An appeal, which has no suspensive effect, can be lodged within 7 days in front of the Voivodeship Administrative Court. The draft law also provides for the adoption of a list of safe countries of origin and safe third countries. The Commissioner for Human Rights and NGOs, which had already raised concerns in the past, published their statements on the new draft law.<sup>7</sup> As of February 2020, the draft was still under discussion.
- ❖ **Vulnerable applicants:** The lack of identification mechanisms of vulnerable applicants persisted in 2019 and vulnerability assessments by medical experts are rarely conducted. In 2019, the UN Committee against Torture highlighted the issue of a lack of appointment of experts to determine whether foreigners are victims of torture.<sup>8</sup> The authorities, however, continue to argue that the qualification as a victim of torture does not require an opinion from a specialist and is a part of specialised medical assistance provided during the asylum procedure. Case-law seems to follow that reasoning, thus putting vulnerable applicants at risk.

### *Reception conditions*

- ❖ **Access to reception:** Given that the Administrative Courts have started to suspend the enforcement of negative decisions during onward appeals, asylum seekers have access to reception conditions during that period. However, other practical obstacles to access reception persisted in 2019, e.g. practical problems in registering in first reception centres within two days after lodging the asylum application or being released from a detention centre, *inter alia* because of transportation costs.

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<sup>3</sup> M.Jaźwińska, *Postępowanie w przedmiocie udzielenia ochrony międzynarodowej*, [in] Stowarzyszenie Interwencji Prawnej (SIP), *SIP w działaniu. Prawa cudzoziemców w Polsce w 2018 r.* (2019), available (in Polish) at: <http://bit.ly/2S507LV>, 19.

<sup>4</sup> Supreme Administrative Court judgement from 6 February 2019 II OZ 46/19 and from 16 May 2019, II OSK 1257/19. See comments (in Polish) made by Legal Intervention Association at: <http://bit.ly/2Ofs0ja>.

<sup>5</sup> Letter of 11 Polish NGOs to the European Commission from 21 January 2020, available at: <https://bit.ly/2RI51ii>.

<sup>6</sup> Draft law available at: <http://bit.ly/2lqboVu>.

<sup>7</sup> The Commissioner for Human Rights, *Letter commenting on the draft law from 1 April 2019*, available in Polish at: <https://bit.ly/31pTAQf>; Legal Intervention Association, *Letter commenting on the draft law from 15 February 2019*, available in Polish at: <https://bit.ly/2v6aiaV>.

<sup>8</sup> Poland, UN Web TV, *Consideration of Poland (Cont'd) - 1762nd Meeting, 67th Session of Committee Against Torture*, 24 July 2019, available at: <https://bit.ly/2RXiHqd>, and reply of Poland, UN Committee against Torture, *Concluding observations on the seventh periodic report of Poland*, 22-24 July 2019, available at: <https://bit.ly/2tw02w>.

Moreover, asylum seekers are not entitled to material reception conditions when they have to wait for the day on which they can lodge their application for international protection.

- ❖ **Withdrawal of reception conditions:** Following the CJEU's judgement in *Haqbin*,<sup>9</sup> the Office for Foreigners (OFF) stopped applying the provision depriving the asylum seeker of material reception conditions when he/she violates house rules or is violent towards reception staff or other inhabitants.
- ❖ **Access to health care:** The duty hours of general practitioners (GPs) operating in reception centres were reduced. On the other hand, paediatricians have started to work in every centre, thus ensuring direct access to specialised doctors to asylum-seeking children. Overall, access to health care is problematic, as the quality of medical assistance provided by the service provider Petra Medica, contracted by the OFF since 2016, remains unsatisfactory. In particular, some asylum seekers are refused access to more costly treatments or must wait several months to access such treatments, often after NGOs specifically intervened to that end. One of the biggest obstacles in accessing health care results from the lack of intercultural competence and knowledge of foreign languages amongst doctors and nurses.<sup>10</sup> Out of the 13 complaints that the OFF received in 2019 on conditions in reception centres, all of them concerned medical assistance.<sup>11</sup>
- ❖ **Access to information in reception centres:** The Supreme Audit Office concluded in 2019 that the Office for Foreigners had provided access to necessary information for asylum seekers at its headquarters, in the centres and through its website. The information concerned asylum procedure, material reception conditions, healthcare, rights and obligations of asylum seekers, appeal proceedings and NGOs' assistance. In the centres, information meetings were organised on a regular basis and asylum seekers could receive leaflets published by NGOs. The Office for Foreigners published its own guides for asylum seekers as well.<sup>12</sup> However, it should be noted that the overall presence of NGOs in reception centres seems to have diminished in 2019 in comparison to 2018.

#### *Detention of asylum seekers*

- ❖ **Length of detention:** NGOs raised concerns as regards the length of detention. It seems that, when ordered, detention is not treated as a measure of last resort and is often being automatically ordered for the maximum 6 months period permissible under law.<sup>13</sup>
- ❖ **Detention of vulnerable applicants:** Vulnerable applicants such as families with children as well as victims of violence are still being detained in Poland. As confirmed by the UN Committee against Torture,<sup>14</sup> there is no effective identification and referral mechanism in place to protect vulnerable applicants from detention and the best interest of the child is rarely examined, despite a legal obligation to do so. This often leads to a considerable deterioration of their psychological well-being. The situation of vulnerable applicants in detention centres is further being litigated both at national and European level.<sup>15</sup> The Polish Government recognised itself a violation of Article 8 of the European Convention on Human Rights (ECHR) in the case of *Bilalova against Poland* which concerned a lack of assessment

<sup>9</sup> CJEU (Grand Chamber), case C-233/18 *Haqbin*, Judgment of 12 November 2019.

<sup>10</sup> M. Koss-Goryszewska, 'Służba zdrowia' in A Górńska, M Koss-Goryszewska, J Kucharczyk (eds), *W stronę krajowego mechanizmu ewaluacji integracji: Diagnoza sytuacji beneficjentów ochrony międzynarodowej w Polsce* (Instytut Spraw Publicznych 2019), 43; Centrum Pomocy Prawnej im. H. Nieć, *Situation of Dublin Returnees in Poland. HNLAC Information Note – July 2016*, available at: <http://bit.ly/2lkV08v>, 8; HFHR, Letter to the Head of the Office for Foreigners, 1765/2016/BD, 13 September 2016. Information confirmed by SIP, 8 January 2020.

<sup>11</sup> Information provided by the Office for Foreigners, 22 January 2020.

<sup>12</sup> Supreme Audit Office, *Przygotowanie administracji publicznej do obsługi cudzoziemców. Informacja o wynikach kontroli* (2019), available (in Polish) at: <https://bit.ly/2Sej7IT>, 43.

<sup>13</sup> Article 89(5) Law on Protection.

<sup>14</sup> UN Committee against Torture, Concluding observations on the seventh periodic report of Poland, 22-24 July 2019, available at: <https://bit.ly/36qh3BL>.

<sup>15</sup> See for example: ECtHR, *M.R and others against Poland*, Application No 11247/18, lodged on 26 February 2018, available at: <https://bit.ly/30TcvCz>.

of the child's best interest and the fact that alternatives to detention were not considered.<sup>16</sup>

- ❖ **Procedural safeguards for the review of detention:** The right of defence is not fully observed as foreigners are not heard in person during court proceedings relating to the prolongation of detention. They do not receive a Border Guard's motion on the decision to prolong detention and are infrequently informed about the date of the court hearing. Therefore, they are unable to file a motion to the court to appoint a legal representative in their case (in the first instance proceedings). Moreover, legal assistance in detention centres is generally not effective because of a lack of a centralised and well-managed system which would ensure access.

#### *Content of international protection*

- ❖ **Access to housing:** Beneficiaries of international protection in Poland face serious obstacles in securing accommodation, thus resulting in homelessness and destitution. This is due to the general lack of social housing in Poland, which also affects nationals. Moreover, general conditions to access housing under the law are difficult to fulfill for beneficiaries of protection, which is exacerbated by high prices and discrimination.<sup>17</sup>
- ❖ **Long-term residence permits:** A report published by the Institute of Public Affairs in 2019 emphasised that Poland represents the country with the least favorable conditions, applying high fees and costs which constitute burdensome obstacles for beneficiaries of international protection given the very low level of social assistance benefits.<sup>18</sup>

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<sup>16</sup> ECtHR, *Dagmara BILALOVA against Poland*, Application No 23685/14, lodged on 25 March 2014, available at: <https://bit.ly/37kQJu3>.

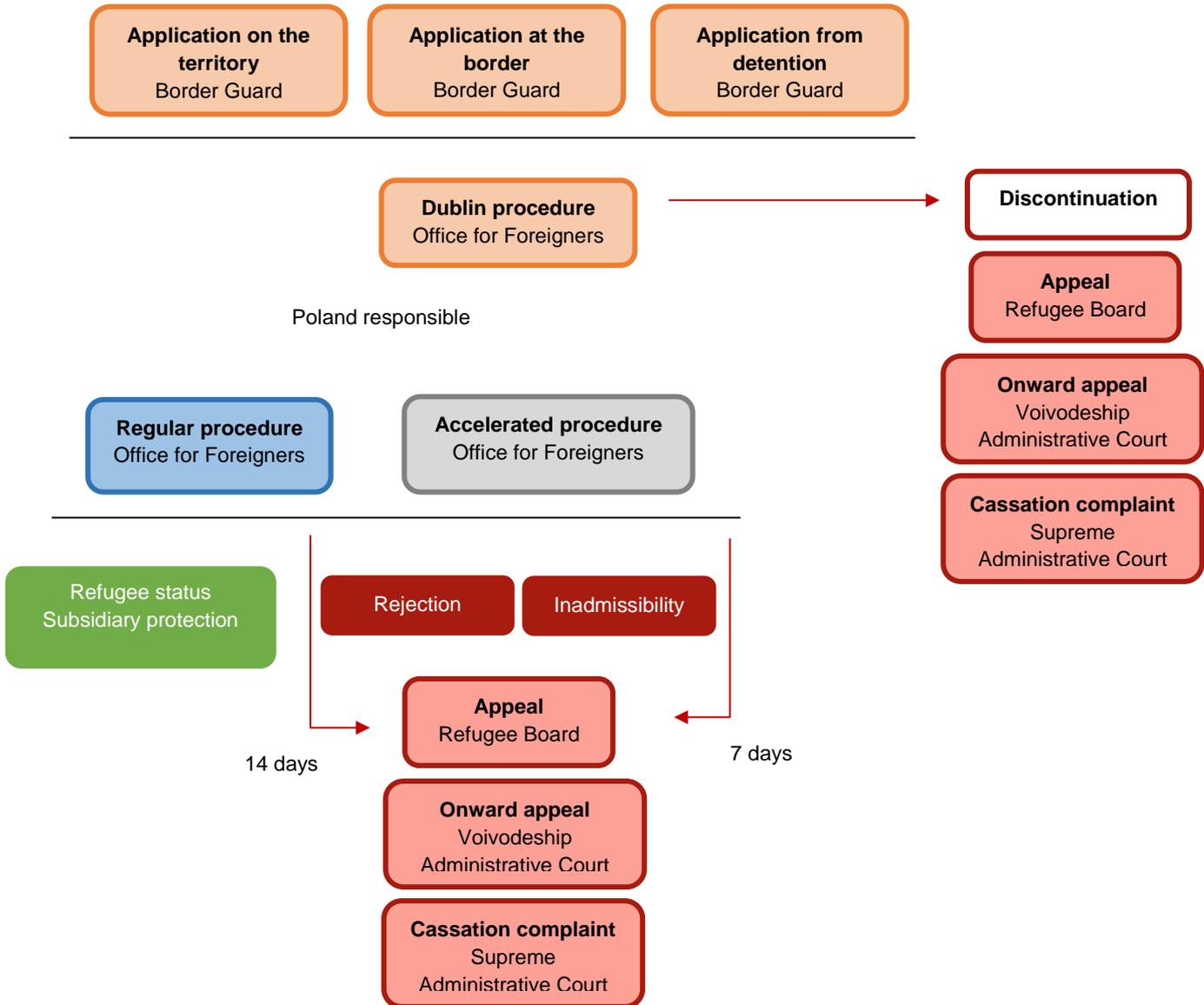
<sup>17</sup> Information available at: <https://bit.ly/3d9U426>.

<sup>18</sup> A. Wolffhardt, C. Conte, T. Huddleston, *The European Benchmark for Refugee Integration: A Comparative Analysis of the National Integration Evaluation Mechanism in 14 EU Countries* (Institute of Public Affairs, Warsaw, 2019), available at: <https://bit.ly/39rQCNS>, 62.

# Asylum Procedure

## A. General

### 1. Flow chart



## 2. Types of procedures

### Indicators: Types of Procedures

Which types of procedures exist in your country?

- |  |   |  |
|--|---|--|
| ❖ Regular procedure:                     | <input checked="" type="checkbox"/> Yes | <input type="checkbox"/> No            |
| ▪ Prioritised examination: <sup>19</sup> | <input type="checkbox"/> Yes            | <input checked="" type="checkbox"/> No |
| ▪ Fast-track processing: <sup>20</sup>   | <input type="checkbox"/> Yes            | <input checked="" type="checkbox"/> No |
| ❖ Dublin procedure:                      | <input checked="" type="checkbox"/> Yes | <input type="checkbox"/> No            |
| ❖ Admissibility procedure:               | <input checked="" type="checkbox"/> Yes | <input type="checkbox"/> No            |
| ❖ Border procedure:                      | <input type="checkbox"/> Yes            | <input checked="" type="checkbox"/> No |
| ❖ Accelerated procedure: <sup>21</sup>   | <input checked="" type="checkbox"/> Yes | <input type="checkbox"/> No            |

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

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

Stage of the procedure	Competent authority (EN)	Competent authority (PL)
Application at the border	Border Guard	Straż Graniczna (SG)
Application on the territory	Border Guard	Straż Graniczna (SG)
Dublin (responsibility assessment)	Head of the Office for Foreigners	Szef Urzędu do Spraw Cudzoziemców
Refugee status determination	Head of the Office for Foreigners	Szef Urzędu do Spraw Cudzoziemców
First appeal	Refugee Board	Rada do Spraw Uchodźców
Onward appeal	<ul style="list-style-type: none"> <li>❖ Voivodeship Administrative Court in Warsaw</li> <li>❖ Supreme Administrative Court</li> </ul>	<ul style="list-style-type: none"> <li>❖ Wojewódzki Sąd Administracyjny w Warszawie</li> <li>❖ Naczelny Sąd Administracyjny</li> </ul>
Subsequent application (admissibility)	Head of the Office for Foreigners	Szef Urzędu do Spraw Cudzoziemców

## 4. Number of staff and nature of the determining authority

Name in English	Number of staff	Ministry responsible	Is there any political interference possible by the responsible Minister with the decision making in individual cases by the determining authority?
Office for Foreigners	413	Ministry of Interior and Administration	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No

The Office for Foreigners (OFF) is the authority responsible for examining applications for international protection and competent to take decisions at first instance. According to information provided by the OFF on 16 July 2019, the total number of staff amounted to 413 officials, out of whom the large majority were permanent staff (363 permanent staff and 50 temporary staff). However, only 34 caseworkers are responsible for conducting interviews and examining asylum claims, out of whom a majority are female caseworkers (82% female caseworkers compared to 18% male caseworkers). The number of caseworkers went down from 45 in 2016 to 36 in 2018, along with the significant decrease of the number of asylum applicants (12,305 in 2016 to 5,045 in 2017 and 4,110 in 2018). As of March 2020, there were 28 caseworkers.

<sup>19</sup> For applications likely to be well-founded or made by vulnerable applicants. See Article 31(7) recast Asylum Procedures Directive.

<sup>20</sup> Accelerating the processing of specific caseloads as part of the regular procedure.

<sup>21</sup> Labelled as “accelerated procedure” in national law. See Article 31(8) recast Asylum Procedures Directive.

Caseworkers are trained on all aspects of the asylum procedure, in particular drafting of decisions and conducting interviews. The training is provided internally as well as through the European Asylum Support Office (EASO). In addition, training for staff members conducted by UNHCR is envisaged, although no further information is available on which topics. Specific training is also provided by psychologists and EASO to staff members of the Department on Proceedings for International Protection on interviewing vulnerable groups immediately upon recruitment. Although there is no specialised unit for vulnerable groups within the OFF, only qualified staff members are allowed to decide on applications from persons with special needs.

As regards the internal structure of the OFF, the Department on Proceedings in International Protection of the OFF is divided into three units handling regular procedures, while one unit is responsible for accelerated and inadmissibility procedures. The OFF has established geographical departments, whereby the Department on Proceedings for International Protection is divided into Units handling asylum applications from persons originating from Chechnya (Unit II), from the former Soviet Union (Unit IV) and from other countries (Unit III).

The Head of the Office for Foreigners is appointed by the Prime Minister, upon the request of the Ministry of Interior and Administration, among persons applying via open call.<sup>22</sup> There is no regular monitoring of the decisions, but in practice caseworkers fill in a special questionnaire which is made available to the Heads of Units and Departments of the OFF to review their activities. There is no quality control mechanism after a decision has been issued by the OFF, however. Monitoring can be conducted at any time by the responsible Ministry or the Supreme Chamber of Control (*Najwyższa Izba Kontroli*). According to the Office for Foreigners, the Ministry cannot be involved in any way in the decision making process e.g. by issuing binding instructions or by intervening in specific individual cases. In high profile cases, an intervention is probable according to NGO lawyers working on specific cases.

It should be further noted that another activity covered by the OFF are reception facilities for asylum seekers and beneficiaries of international protection. The OFF is thus responsible for the management of all the reception centres. While the OFF has delegated this responsibility to civil-society organisations and private contractors, it monitors the situation in the centres through the Office's employees working in the centres and through inspections that are conducted twice a year. Asylum seekers can complain to the OFF about the situation in the centres. As of December 2019, there were 29 officials of the Office for Foreigners working in the centres.

## 5. Short overview of the asylum procedure

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

**First instance:** The main asylum authority is the Head of the Office for Foreigners, for which the Ministry of Interior is responsible. It is an administrative authority specialised in asylum and is responsible for examining, granting, refusing and withdrawing protection, in Poland, as well as for Dublin procedures (see [Number of staff and nature of the determining authority](#)). A Dublin procedure is applied whenever there is evidence or any sign that another State may be responsible for examining the claim.<sup>23</sup> However, Poland is principally a “receiving” country, rather than a country which requests and carries out transfers to other countries.

In Poland a single procedure applies and includes the examination of conditions to grant refugee status and subsidiary protection. A regular asylum procedure therefore has four possible outcomes:

- ❖ The applicant is granted refugee status;
- ❖ The applicant is granted subsidiary protection;

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<sup>22</sup> Article 17 of the Law on Foreigners.

<sup>23</sup> The Dublin procedure should be applied in every case: Article 36(1) Law on Protection.

- ❖ The application is rejected;
- ❖ The proceedings are discontinued e.g. when the applicant is no longer on the territory of Poland.

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

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

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

The Refugee Board may then:

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

After the administrative appeal procedure before the Refugee Board, there is a possibility of an onward appeal before the Voivodeship Administrative Court in Warsaw. Only points of law can be litigated at this stage. This onward appeal does not have a suspensive effect on the Refugee Board's decision. Upon request of the applicant, the court may suspend a decision for the time of the court proceedings, if its enforcement would cause irreversible harm. The court procedure is adversarial.

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

There is also a national protection status called 'asylum'. A foreigner can be granted 'asylum' in a separate procedure if it is necessary to provide them with protection, but only if it is in the interest of the state. Political aspects are, therefore, taken into account in this procedure. However, in practice, the procedure is very rarely applied (one case in 2019 and none in 2018).

## B. Access to the procedure and registration

### 1. Access to the territory and push backs

#### Indicators: Access to the Territory

1. Are there any reports (NGO reports, media, testimonies, etc.) of people refused entry at the border and returned without examination of their protection needs?  Yes  No
2. Is there a border monitoring in place?  Yes  No

The previous updates of this report referred to persisting cases of persons denied access to the territory at the border-crossing point in **Terespól** on the Belarusian border, which has been the main entry point in Poland for asylum seekers, during 2012-2018, with a significant deterioration of the situation in 2016.

Throughout 2016, independent monitoring visits to the border crossing point in Terespol held by the Legal Intervention Association,<sup>24</sup> Helsinki Foundation for Human Rights,<sup>25</sup> the Commissioner for Human Rights,<sup>26</sup> Amnesty International,<sup>27</sup> and Human Rights Watch<sup>28</sup> confirmed the existence of grave systemic irregularities with accepting applications for international protection at the border. Despite the repeated reports, interventions and litigation in 2016-2019, the Polish government denies the application of unlawful practices at the border.<sup>29</sup>

Most importantly, several cases have been brought before the European Court of Human Rights (ECtHR). Currently, there are four cases pending before the ECtHR concerning the pushbacks at Terespol, which have been communicated to the Polish government.<sup>30</sup> Three cases concern Chechen nationals and the fourth (*D.A. v. Poland*) Syrian nationals who travelled to the Terespol border crossing point in order to seek asylum in Poland. In all cases the Court granted interim measures under Rule 39 of the Rules of the Court, indicating to the government that the applicants should not be removed to Belarus. According to Warsaw Bar Council, HFHR and Association for Legal Intervention, Poland did not comply with the measures and returned the applicants to Belarus.<sup>31</sup> The Ministry of Foreign Affairs stated that the person was not returned since he had not been admitted in the first place. In its statement, the Ministry noted that the foreigner had not crossed the Polish border and was hence not expelled and had not filed an application for international protection during a border check.<sup>32</sup> The Commissioner for Human Rights has also intervened in the cases of non-compliance with the measures issued by the ECtHR. Eventually, the applicants in the case of *M.A. and others v. Poland* have been admitted into Poland in 2018.<sup>33</sup> In addition, the Polish government was notified of two other cases by the ECtHR concerning the situation at the border. Both concern applicants who were detained after making several unsuccessful attempts to apply for international protection at the border crossings in Terespol<sup>34</sup> and Medyka (Polish-Ukrainian border).<sup>35</sup>

The cases of push backs were also brought before the domestic courts. As of April 2019, there were 25 judgements delivered by the Supreme Administrative Court and all of these cases resulted in revoking administrative decisions on refusal of entry issued by Border Guards. The Court indicated in numerous cases that interviews conducted at the border must be recorded in the form of protocols signed by both Border Guard officers and foreigners.<sup>36</sup> Although the administrative courts annulled the unlawful decisions on the refusal of entry, in most of the cases administrative proceedings were discontinued by the decisions of the courts. According to the instructions in the judgements, the proceedings on refusal of entry cannot be reopened and re-examined, because there is no case as such for the time being (as the proceedings were discontinued). Once the applicant arrives again at the border, new proceedings are initiated. And if there is a new proceeding concerning the refusal of entry, the judgement of the court is not applicable in this case, even if it concerns the same person. This means that applicants do not gain the right to enter

<sup>24</sup> Legal Intervention Association, *At the Border. Report on monitoring of access to the procedure for granting international protection at the border crossings in Terespol, Medyka and Warszawa-Okecie airport, Warsaw 2016*, available at: <https://bit.ly/2tuJCK0>.

<sup>25</sup> Helsinki Foundation for Human Rights, *A Road to Nowhere: The account of the monitoring visit at the Brest-Terespol border crossing between Poland and Belarus, Warsaw 2016*, available at: <https://bit.ly/2ShztiG>.

<sup>26</sup> Commissioner for Human Rights paid three unannounced visits to Terespol border crossing on 11.08.2016, 15.05.2018 and 23.09.2019, the report of the last visit available (in Polish) at: <https://bit.ly/31nztK>.

<sup>27</sup> Amnesty International Poland, *Tam i z powrotem: Brześć–Terespol*, 7 December 2016, available at: <https://bit.ly/2GMcEOW>.

<sup>28</sup> Human Rights Watch, *Poland: Asylum Seekers Blocked at the Border*, 1 March 2017, available at: <https://bit.ly/2GMcGq2>.

<sup>29</sup> Helsinki Foundation for Human Rights, *Access to asylum procedure at Poland's external borders, Current situation and challenges for the future*, Warsaw April 2019, available at: <https://bit.ly/3955t0w>.

<sup>30</sup> ECtHR, *M.K. v. Poland*, Application No 40503/17; *M.A. and Others v. Poland*, Application No 42902/17; *M.K. v. Poland*, Application No 43643/17; *D.A. v. Poland*, Application No 51246/17.

<sup>31</sup> HFHR, 'Attorneys at border: Poland failed to implement ECtHR judgment', 9 June 2017, available at: <http://bit.ly/2ucnHMV>.

<sup>32</sup> Ministry of Foreign Affairs, 'Wyjaśnienie MSZ w sprawie zarządzenia Europejskiego Trybunału Praw Człowieka z 8 czerwca 2017r.', available (in Polish) at: <http://bit.ly/2oke75z>.

<sup>33</sup> ECtHR, *M.A. and Others v. Poland*, Application No 42902/17, available at: <http://bit.ly/2VtZ4B>.

<sup>34</sup> ECtHR, *A.B. v. Poland and T.K. and S.B. v. Poland*, Applications Nos 15845/15 and 56300/15.

<sup>35</sup> ECtHR, *M.Z. and Others v. Poland*, Application No 79752/16.

<sup>36</sup> Supreme Administrative Court, cases nos. II OSK 2511/18, II OSK 2599/18, and II OSK 3100/18.

Poland if they arrive at the border again, even after a judgement in their favour. At the same time, the Ministry of the Interior and Administration refused to introduce amendments to national law to ensure its compliance with the established case-law of administrative courts.<sup>37</sup>

According to the statistics provided by the Border Guard in 2019, 1,610 persons applied for international protection at the border crossing point in Terespol, which constitutes 39% of all applicants in 2019. In 2019 4,378 persons were refused entry at the border crossing point in Terespol and only in cases of 81 persons appeals against decisions on refusal of entry were lodged.<sup>38</sup>

## 2. Registration of the asylum application

### Indicators: Registration

1. Are specific time limits laid down in law for making an application?  Yes  No  
❖ If so, what is the time limit for lodging an application?
2. Are specific time limits laid down in law for lodging an application?  Yes  No  
❖ If so, what is the time limit for lodging an application?
3. Are registration and lodging distinct stages in the law or in practice?  Yes  No
4. Is the authority with which the application is lodged also the authority responsible for its examination?  Yes  No

Asylum applications should be submitted to the Border Guard (SG) which will then transfer them to the Head of the Office for Foreigners. If the application is lodged at the border or in detention, the relevant authority receiving it is the SG unit responsible for the border check point or the detention facility. If the application is lodged in the territory, it can be submitted to any SG unit. There is also a possibility to express the intention to apply for asylum by post for i.e. elderly persons, persons with disabilities, pregnant women, persons in hospitals or imprisoned.<sup>39</sup>

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

When applying for asylum, asylum seekers have to submit their travel document (e.g. passport) to the SG. Travel documents are kept by the Head of the Office for Foreigners. Asylum seekers are issued a temporary ID document entitling them to stay on the territory of Poland, the Foreigner's Identity Temporary Certificate (*Tymczasowe Zaświadczenie Tożsamości Cudzoziemca*). The document is initially valid for 90 days – 10 days in case of Dublin returnees – then for 6 months and can be prolonged every 6 months by the Head of the Office for Foreigners until the end of the asylum procedure.<sup>40</sup>

The SG is entitled to inform an asylum seeker that it is impossible to apply for asylum on a day when said individual comes to the SG unit. However, the SG must then set a date and place when it will be possible.<sup>41</sup> In such a situation (e.g. when there is a need to ensure an interpreter is available), the intention to apply for protection is laid down in a protocol and registered and the Border Guard has 3 working days to ensure the application is lodged and registered (in case of massive influx it is 10 working days). During this time decision on return cannot be executed.<sup>42</sup> According to the Office for Foreigners (OFF) in 2019, 165 persons

<sup>37</sup> Helsinki Foundation for Human Rights, *Access to asylum procedure at Poland's external borders, Current situation and challenges for the future*, Warsaw April 2019, available at: <https://bit.ly/2OmcMc0>.

<sup>38</sup> Letter from the Border Guard Headquarter to HFHR from 17 January 2020. No information on the outcomes was available.

<sup>39</sup> Article 28(2) Law on Protection.

<sup>40</sup> Article 55(1) and (2) and Article 55a(2) Law on Protection.

<sup>41</sup> Article 28(1) Law on Protection.

<sup>42</sup> Article 330(1)8 Law on Foreigners.

declared their willingness to lodge an application for international protection, which was eventually registered subsequently.<sup>43</sup> NGOs report that the waiting period is to lodge an application at the OFF in **Warsaw** is usually a couple of days in.<sup>44</sup>

## C. Procedures

### 1. Regular procedure

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

##### Indicators: Regular Procedure: General

1. Time limit set in law for the determining authority to make a decision on the asylum application at first instance: 6 months
2. Are detailed reasons for the rejection at first instance of an asylum application shared with the applicant in writing?  Yes  No
3. Backlog of pending cases at first instance as of 31 December 2019: 3,364

The Head of Office for Foreigners is a state authority which is responsible, among others, for taking first instance decisions on granting and withdrawing protection status, deciding on the state's responsibility under the Dublin Regulation and on social assistance provided in the asylum procedure. He/she is also responsible for the legalisation of the stay of foreigners in Poland and issuing visas and is second-instance authority in residence permit procedures.

The time limit set in law for the Head of the Office for Foreigners to make a decision on the asylum application is 6 months.<sup>45</sup> This period can be prolonged to 15 months if the case is considered complicated (319 cases in 2018),<sup>46</sup> if there are many asylum seekers applying at the same time (11 cases in 2018) or if the asylum seeker did not fulfil the obligation of presenting all the evidence and documents or attending the interview (1 case in 2018).<sup>47</sup> The Office for Foreigners did not provide updated figures for the year 2019. The Office stressed that there are no formal guidelines on what is considered a complicated case and the decision in this regard is taken individually.<sup>48</sup>

In 2019 the average processing time for a decision on the merits was 152 days. The longest processing time took 2,023 days and the shortest 1 day.<sup>49</sup>

According to the law, if the decision is not issued within 6 months, the general provisions on inaction of the administrative authority apply,<sup>50</sup> therefore the Head of the Office for Foreigners should inform the applicant in writing about the reasons of delay and the applicant can submit a complaint to the second-instance authority. In practice, information about the reasons for delay is provided in a very general way and complaints to the second-instance authority hardly ever happen. The most significant consequence for the applicant of not receiving a decision on an asylum application within 6 months is a possibility to apply for a work permit on this basis (see [Access to the Labour Market](#)).<sup>51</sup> The Head of the Office for Foreigners then issues a certificate, which – together with a temporary ID – gives a right to work in Poland until the end of the procedure.

<sup>43</sup> Letter from the Office for Foreigners to HFHR no BSZ.074.2.2020/RW received on 22 January 2020.

<sup>44</sup> A. Pulchny, M. Sadowska, *Dostęp do procedury* [in] Legal Intervention Association, *SIP w działaniu. Prawa cudzoziemców w Polsce w 2018 r.*, May 2019, 9, available (in Polish) at: <http://bit.ly/2S507LV>.

<sup>45</sup> Article 34(1) Law on Protection.

<sup>46</sup> Information provided by the Office for Foreigners, 15 January 2019. No data for 2019 was made available.

<sup>47</sup> Article 34 Law on Protection.

<sup>48</sup> Letter from the Office for Foreigners to HFHR no BSZ.074.2.2020/RW received on 22 January 2020.

<sup>49</sup> Letter from the Office for Foreigners to HFHR no BSZ.074.2.2020/RW received on 22 January 2020.

<sup>50</sup> Articles 36-38 Code of Administrative Proceedings.

<sup>51</sup> Article 35 Law on Protection.

As of 31 December 2019 there were 3,364 persons whose cases were pending before the Office for Foreigners.<sup>52</sup>

## 1.2. Prioritised examination and fast-track processing

There is no legal basis for prioritising certain types of cases. The Office for Foreigners has confirmed that in practice cases of vulnerable applicants and detainees are prioritised if this is possible.<sup>53</sup> The average time to process Syrian cases is shorter than the general average (108 days) and in Ukrainian cases it is longer (173 days).

## 1.3. Personal interview

### Indicators: Regular Procedure: Personal Interview

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

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

- ❖ A decision on granting refugee status can be issued on the basis of evidence already gathered; or
- ❖ An applicant is not fit to be interviewed (e.g. due to health or psychological problems).<sup>54</sup>

The Office for Foreigners does not collect data on the numbers of interviews.<sup>55</sup> Nevertheless the Office for Foreigners confirmed that in 2019 there were cases where the interview was not conducted because the applicant was not fit for interview.

## Interpretation

Interpretation is ensured respectively by the Head of the Office for Foreigners (for the first instance proceedings) and the Refugee Board (for the appeal proceedings). The interview should be conducted in a language understandable for the applicant. In the asylum application, the asylum seeker has to declare their mother tongue as well as any fluent knowledge of other languages. Applicants can further request the interviewer and/or interpreter to be of a specific gender.<sup>56</sup>

The contract established between the Office for Foreigners and interpretation services regulates the quality, liability, and specifies the field (asylum). Interpretation is available in most of the languages spoken by the asylum applicants in Poland. In 2018 reported problems concerned very rare languages, like Sinhala, Tamil, Bengali (Bangla) or Sorani dialect of Kurdish. Interpreters of these languages are available, but not at any time, that is why the waiting time for interview can be prolonged.<sup>57</sup> In 2019, NGOs reported cases where applicants were held responsible for inconsistencies in testimonies, which appeared because of improper interpretation.<sup>58</sup>

<sup>52</sup> Letter from the Office for Foreigners to HFHR no BSZ.074.2.2020/RW received on 22 January 2020.

<sup>53</sup> Letter from the Office for Foreigners to HFHR no BSZ.074.2.2020/RW received on 22 January 2020.

<sup>54</sup> Article 44(1) and (2) Law on Protection.

<sup>55</sup> Information provided by the Office for Foreigners, 15 January 2019.

<sup>56</sup> Article 44(4)2 of the Law on Protection.

<sup>57</sup> Information provided by the Office for Foreigners, 15 January 2019.

<sup>58</sup> M. Sadowska, K. Słubik *Osoby LGBT [in] Stowarzyszenie Interwencji Prawnej (SIP), SIP w działaniu. Prawa cudzoziemców w Polsce w 2018 r. (2019)*, available (in Polish) at: <http://bit.ly/2S507LV>,`14.

## Recording and report

Audio or video recording is possible under national legislation if an applicant was informed about this fact and technical means allow for it,<sup>59</sup> but this is not implemented in practice because there are no technical means for it (no cases in 2019).

The law provides that a copy of the report of the interview should be handed in to the applicant after a personal interview. In some cases the applicants do not take or keep them, but they can ask for a copy at any stage of the proceedings. The report is prepared in Polish and contains all the questions asked and responses received, but it is not a verbatim transcript. Although at the end of the interview the report is read to the applicant in an understandable language and before signing it, interviewees can make corrections (and are informed about such possibility), NGOs stress, that there is a recurring problem with this way of registering the interviews. Very often it happens that only after the interview the applicant goes through the copy of the interview report with a person who knows Polish and their national language and the inconsistencies in testimonies come to light. However, any comments and clarifications made in the appeal or in subsequent proceedings are generally not taken into account. Some NGOs suggest that recording the interview would allow to establish what was said during the interview and whether it was translated properly.<sup>60</sup>

Videoconferencing is used for interviews in the detention centres. NGOs find this practice problematic in terms of interpretation and with regard to vulnerable applicants, when presence of psychologist is required.

### 1.4. Appeal

#### Indicators: Regular Procedure: Appeal

- |   |   |  |
|---|---|--|
| 1. Does the law provide for an appeal against the first instance decision in the regular procedure? | <input checked="" type="checkbox"/> Yes | <input type="checkbox"/> No                        |
| ❖ If yes, is it   | <input type="checkbox"/> Judicial       | <input checked="" type="checkbox"/> Administrative |
| ❖ If yes, is it suspensive  | <input checked="" type="checkbox"/> Yes | <input type="checkbox"/> No                        |
| 2. Average processing time for the appeal body to make a decision:                                  | 131 days                                |  |

#### 1.4.1. Appeal before the Refugee Board

Decisions of the Head of the Office for Foreigners in the regular procedure can be appealed to the Refugee Board within 14 calendar days. The decision (without a justification) as well as guidance on how to appeal is translated into the language that the applicant for asylum had previously declared as understandable; the motivation of the decision is not translated. The applicant can submit the appeal in their own language.

The Refugee Board is an administrative body, consisting of twelve members, supported in their work by six employees, not involved in the decision-making process.<sup>61</sup> In the regular procedure, decisions are taken by three members. The procedure includes an assessment of the facts and there is a possibility of hearing applicants. The Head of the Office for Foreigners is not a party to these proceedings. The time limit set in law for the appeal procedure is 1 month.<sup>62</sup> The appeal has suspensive effect.<sup>63</sup> Neither hearings nor decisions of the Refugee Board are made public.

In 2019, the average processing time for the Refugee Board to issue a decision in appeal proceedings was 131 days for the cases which started and finished in 2019. The longest processing time in 2019 took 327

<sup>59</sup> Article 44(5) of the Law on Protection.

<sup>60</sup> M.Jaźwińska, *Postępowanie w przedmiocie udzielenia ochrony międzynarodowej*, [in] Stowarzyszenie Interwencji Prawnej (SIP), *SIP w działaniu. Prawa cudzoziemców w Polsce w 2018 r.* (2019), available (in Polish) at: <http://bit.ly/2S507LV>, 19.

<sup>61</sup> Information provided by the Refugee Board, 27 August 2015.

<sup>62</sup> Article 35(3) Code of Administrative Proceedings.

<sup>63</sup> Article 130(1) and (2) Code of Administrative Proceedings.

days and the shortest - 1 day. In 21 cases (down from 35 in 2018) the Refugee Board decided to hear the applicant, and there were no cases of hearing a witness in 2019.<sup>64</sup>

The Refugee Board may annul the first instance decision, overturn it, or confirm it. In the majority of cases, the decisions of the Head of the Office for Foreigners were confirmed. This was the case for 1,610 persons who appealed the decision in 2019. In that year, the Refugee Board granted refugee status to 4 persons only and subsidiary protection to 7 persons.<sup>65</sup>

After the negative decision or a decision on discontinuing the asylum procedure becomes final, the respective authority informs the Border Guard and the return proceedings can be launched.<sup>66</sup>

#### 1.4.2. Onward appeal before the Administrative Court

After the administrative appeal procedure before the Refugee Board, the decision of the latter can be further appealed to the Voivodeship Administrative Court in **Warsaw** within 30 days, but only points of law can be litigated at this stage.<sup>67</sup> The case is revised *ex tunc*. There is no fee for the procedure. This onward appeal does not have a suspensive effect on a final administrative decision. However, asylum seekers can ask the court to suspend a decision for the time of the court proceedings, if the decision can cause irreversible harm. The court procedure is adversarial; both the Refugee Board and the asylum seeker are parties before the court. The ruling of the Voivodeship Administrative Court in Warsaw can itself be appealed to the Supreme Administrative Court by lodging a cassation complaint, based exclusively on the legal conditions foreseen in the law, also accompanied by a request for suspension of the administrative decision.<sup>68</sup>

The Law on Foreigners separates asylum proceedings and return proceedings, which means that a return decision is not issued within the asylum procedure. Return proceedings are started after the final administrative decision refusing international protection is served to the person concerned. However under the current legal framework it may happen that the return proceedings lead to a return decision before the Voivodeship Administrative Court in Warsaw examines the appeal against the final administrative decision refusing protection to the applicant.

In numerous cases in 2018, the Supreme Administrative Court decided not to grant suspensive effect to an appeal against a final negative decision on international protection, on the basis that it does not impose an obligation to leave the territory (only a return decision does so), and therefore the condition of a risk of irreparable harm is not fulfilled.<sup>69</sup> However, in the 20 December 2018 ruling, the Supreme Administrative Court held that, although in numerous cases the same Court was of the opinion that suspensive effect due to the threat of irreparable harm can only be granted to an appeal against a final return decision, this can be an insufficient safeguard and therefore decided to suspend the enforcement of the final negative asylum decision.<sup>70</sup> According to the information provided by the Voivodeship Administrative Court, in 2018 in 86 cases the Court refused to grant suspensive effect and only in one case decided to grant suspensive effect to the onward appeal against a negative asylum decision.<sup>71</sup>

In 2019 the trend has changed and the court started to grant a suspension in those cases (the Voivodeship Administrative Court decided to suspend the enforcement of the negative asylum decision in 34 cases and refused it in 21 cases).<sup>72</sup> In these cases article 46(5) of EU Asylum Procedures Directive is brought up in

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<sup>64</sup> Information provided by the Refugee Board, 16 January 2020.

<sup>65</sup> Information provided by the Office for Foreigners, 22 January 2020.

<sup>66</sup> Article 48a Law on Foreigners.

<sup>67</sup> Regulated in the Law of 30 August 2002 on the proceedings before administrative courts, Journal of Laws 2012 pos. 270 (*ustawa z dnia 30 sierpnia 2002 r. Prawo o postępowaniu przed sądami administracyjnymi*, Dz.U. 2012, poz. 270).

<sup>68</sup> *Ibid.*

<sup>69</sup> See e.g. Supreme Administrative Court, II OZ 872/18, 14 September 2018, available at: <http://bit.ly/2Haucpl>.

<sup>70</sup> Supreme Administrative Court, II 1239/18, 20 December 2018, available at: <http://bit.ly/2T6Zq8d>.

<sup>71</sup> Information provided by the Voivodeship Administrative Court, 11 January 2019.

<sup>72</sup> Information provided by the Voivodeship Administrative Court, 15 January 2020.

favour of suspension. More importantly, the Supreme Administrative Court issued judgements in 2019 in which the suspensive effect was upheld.<sup>73</sup>

According to the statistics of the Refugee Board, in 2019 there were 293 complaints submitted to the Voivodeship Administrative Court against the decisions of the Refugee Board. The Voivodeship Administrative Court in Warsaw annulled the Refugee Board's decision in 18 cases, in 216 cases it dismissed the complaint. In 65 cases cassation complaints were lodged. The Supreme Administrative Court annulled the judgment of the Voivodeship Administrative Court as well as the decision of the Refugee Board in 12 cases. In 61 cases the cassation complaint was dismissed.<sup>74</sup>

## 1.5. Legal assistance

### Indicators: Regular Procedure: Legal Assistance

1. Do asylum seekers have access to free legal assistance at first instance in practice?  
 Yes       With difficulty       No  
❖ Does free legal assistance cover:  
 Representation in interview  
 Legal advice
  
2. Do asylum seekers have access to free legal assistance on appeal against a negative decision in practice?  
 Yes       With difficulty       No  
❖ Does free legal assistance cover  
 Representation in courts  
 Legal advice

A State legal aid system was introduced in 2015 and it covers:

- Legal information, provided by the employees of the Office for Foreigners in cases concerning revocation of protection in the first instance; and
- Legal aid provided by advocates, legal counsellors and NGOs in the second instance. The latter will involve preparing appeal and providing legal representation in cases concerning refusal of protection, discontinuance of the procedure, and refusal of reopening the procedure, Dublin, inadmissibility of the application and revocation of protection.<sup>75</sup>

The system is managed by the Head of the Office for Foreigners who contracts lawyers, legal counsellors and NGO lawyers. Legal aid is provided by approximately 140 legal counsellors, 200 advocates and 3 NGOs: the Association for Legal Intervention (SIP), The Rule of Law Institute and Halina Niec Legal Aid Centre.<sup>76</sup>

In 2019, 304 asylum seekers benefited from the system of free legal aid. Taking into account the overall number of appeals (1,571) in 2019,<sup>77</sup> the capacity for providing legal aid is definitely not sufficient. There is no information on the number of cases in which legal aid was granted by NGOs or by other legal aid providers.

Before the system of legal aid was created, legal assistance had been provided by NGOs under European Refugee Fund (ERF)-funded projects. This funding, now provided under AMIF, practically has been suspended since mid-2015. One call for projects was made invalid, others were cancelled, after the announcement of the results had been postponed three times.<sup>78</sup> In September 2017 two NGOs (the HFHR

<sup>73</sup> Supreme Administrative Court judgement from 6 February 2019 II OZ 46/19 and from 16 May 2019, II OSK 1257/19. See comments (in Polish) made by Legal Intervention Association at: <http://bit.ly/2Ofs0ja>.

<sup>74</sup> Information provided by the Refugee Board, 16 January 2020. This data may be not fully coherent because of delays in transferring information on judgements.

<sup>75</sup> Article 69c-69m Law on Protection.

<sup>76</sup> The list of legal counsellors, advocates and NGOs is available at: <https://bit.ly/2TYEAUW>.

<sup>77</sup> Information provided by the Office for Foreigners, 22 January 2020. .

<sup>78</sup> See more at Wyborcza, 'MSWiA ma miliony na integrację cudzoziemców, ale w 2016 r. nie wydało na to ani złotych', 9 January 2017, available (in Polish) at: <http://bit.ly/2lguY9N>.

and the Association for Legal Intervention) prepared a report where the history of (lack of) funding and its consequences for NGOs have been presented.<sup>79</sup>

The situation did not change in 2018. NGOs were forced to limit their personnel and fields of assistance provided so far (legal, psychological or integration assistance). Some NGOs reported that in 2018 in Warsaw the waiting time to see a lawyer was one month.<sup>80</sup> They organised fundraising events to be able to continue their activities<sup>81</sup> or rely on voluntary work. However, as NGOs noted themselves, some fields of assistance (such as psychological assistance) cannot be provided on a voluntary basis of voluntary by the staff.<sup>82</sup> Available funding under AMIF has so far been distributed among the Voivodes (local governors), which can implement projects in partnership with NGOs (as of mid-2018 there were only 5 such projects). However, these projects concern migrants, not asylum seekers. As NGOs stress, they had to limit their activities and legal assistance in detention centres in 2019 because of the lack of funding (see [Judicial review of the detention order](#)).

In 2019 for the first time since 2016 calls for proposals have been opened for NGOs. NGOs submitted 62 applications, compared to 142 in 2016 (the calls that eventually were cancelled). This is probably the result of the lack of funding for over 3 years – some NGOs reduced their staff and activities and some ceased to exist. Eventually 27 applications for projects were accepted but only 6 concern asylum seekers. In January 2020 the NGOs called on the European Commission to amend the system of distribution of funding so that the funding can actually reach NGOs providing assistance to asylum seekers and migrants.<sup>83</sup> Moreover these projects started in September 2019 so their impact on 2019 is inconsiderable.

In January 2020 UNHCR signed an agreement with the Bar Association of Attorney-at-Law in Warsaw based on which the Bar Association will provide legal aid to persons seeking international protection.<sup>84</sup>

Generally NGOs providing legal assistance in Poland differ between one another: there are some specialised organisations with extensive experience in the field, also engaged in strategic litigation and advocacy. For some others, providing legal assistance to asylum seekers is another component of their general assistance activities. In most cases, NGOs assist asylum seekers not only in the asylum process, but also in other legal proceedings and in solving every-day problems. Assistance related to the asylum procedure includes providing information and preparing relevant documents (appeals, applications, complaints) covering every stage of the procedure.

Legal representation is provided only in some cases, as the organisations providing legal assistance generally lack resources. For instance, legal presence during the personal interview cannot be ensured and the assistance can cover only the administrative procedure (first and second instance) and submitting an onward appeal to the Voivodeship Administrative Court in Warsaw. Representation before this court and proceedings before the Supreme Administrative Court can be provided only by professional legal representatives (lawyers, legal counsellors). There is a general possibility to apply for a cost-free professional legal representation before these courts on the same rules that apply to Polish citizens (i.e. insufficient financial resources). There is a form, in Polish, available in the court or on the court's website (not in the offices of administrative authorities examining the claim). In 2019, there were 103 applications for cost-free professional legal representation submitted by applicants for international protection or beneficiaries of international protection (in cases concerning deprivation of protection) to the court. In 59

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<sup>79</sup> Witold Klaus, Ewa Ostaszewska-Zuk and Marta Szczepanik, *The role of European funds in supporting the integration of migrants in Poland*, November 2017, available at: <http://bit.ly/2EVdzxq>.

<sup>80</sup> Foundation Ocalenie cited "Assistance to refugees blocked: NGOs without access to European Funds", 14 August 2018, available at: <https://bit.ly/2T5Y6S3>.

<sup>81</sup> Refugee.pl cited in „Refugee.pl has helped foreigners for years. The Government blocks funding, will you help?” 14 December 2018, available at: <https://bit.ly/2ScoFkb>.

<sup>82</sup> Legal Intervention Association cited in "Assistance to refugees blocked: NGOs without access to European Funds", 14 August 2018, available at: <https://bit.ly/2T5Y6S3>.

<sup>83</sup> Letter of 11 Polish NGOs to the European Commission from 21 January 2020, available at: <https://bit.ly/2RI51ii>.

<sup>84</sup> Warsaw Bar Association, "Stołeczni radcowie prawni we współpracy z UNHCR w Polsce," 28 January 2020, available (in Polish) at: <https://bit.ly/2OrkJN9>.

cases the assistance was granted and in 21 it was denied.<sup>85</sup> So although in practice legal representation is granted by the court, it is very doubtful that asylum seekers would be able to benefit from it without the assistance from NGOs. In the absence of legal representation, applicants will receive the correspondence themselves. Since the appearance at the hearing is mostly not obligatory, the applicant may be served with the ruling after it is made.

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

## 2. Dublin

### 2.1. General

#### Dublin statistics: 2019

Outgoing procedure			Incoming procedure		
	Requests	Transfers		Requests	Transfers
<b>Total</b>	227	58	<b>Total</b>	4,023	694
Germany	55	25	Germany	1,915	481
Greece	38	-	France	1,192	66
France	29	-	Belgium	204	-
Bulgaria	-	9	Sweden	-	47
Sweden	-	5			

Source: Office for Foreigners, SI Pobyt

#### Application of the Dublin criteria

According to the Dublin Unit at the Office for Foreigners, a Dublin request may be initiated at any stage of the asylum procedure if any circumstances justifying the request arise. The vast majority of Dublin incoming requests are based on Eurodac hits.<sup>86</sup> According to the Office for Foreigners, in 2019, Poland accepted 2,913 requests (down from 3,623 in 2018), out of which 694 resulted in transfers. The Office for Foreigners did not provide information on evidence required for requests on the basis of family reunification provisions.

#### The dependent persons and discretionary clauses

The humanitarian clause was applied in 2 cases in 2019, while the sovereignty clause was not used at all.<sup>87</sup> No information on the circumstances was provided.

### 2.2. Procedure

#### Indicators: Dublin: Procedure

1. Is the Dublin procedure applied by the authority responsible for examining asylum applications?  
 Yes  No
2. On average, how long does a transfer take after the responsible Member State has accepted responsibility?  
 3-19 days

The Head of the Office for Foreigners is responsible for Dublin procedures and the Border Guard for transfers.<sup>88</sup> All asylum seekers over the age of 14 are fingerprinted and checked in Eurodac at the time of

<sup>85</sup> Information provided by the Voivodship Administrative Court on 20 January 2020.

<sup>86</sup> Information provided by the Office for Foreigners, 22 January 2020.

<sup>87</sup> Information provided by the Office for Foreigners, 22 January 2020.

<sup>88</sup> Article 36(2) Law on Protection.

lodging their asylum application. In all cases the Head of the Office for Foreigners applies the Dublin procedure.<sup>89</sup> The ruling of the CJEU in *Mengesteab*,<sup>90</sup> allowing Member States to apply the Dublin procedure as of the moment of registration before the lodging of the application, has not changed the practice of the Office for Foreigners, which starts the Dublin procedure as of the moment of lodging of the application.

According to the Office for Foreigners, if the authorities decide to apply the Dublin procedure, asylum seekers are informed about it. They are informed about the following steps of the procedure e.g. decision received from another Member State, or the need to submit additional documents. Asylum seekers and their legal representatives can contact the Dublin Unit in person, in writing or by phone.<sup>91</sup>

### Individualised guarantees

The *Tarakhel v. Switzerland* judgment of the European Court of Human Rights (ECtHR) has not influenced the practice of the Head of the Office for Foreigners in Dublin cases vis-à-vis Italy in 2015-2017, as there are not many Dublin cases concerning Italy. The Office for Foreigners noted however that the only foreigners transferred from Poland to Italy are single men, while vulnerable persons are allowed to stay in Poland.<sup>92</sup> Also in 2018 there were no cases where the *Tarakhel* judgment would have been relevant.<sup>93</sup> In 2019 the Office informed that the practice regarding transfer of single men to Italy has not changed.

In 2018 the Office for Foreigners submitted requests to any relevant country without restriction, unless the case concerned vulnerable persons. In the latter case, it is unclear whether in 2018 the sovereignty clause was applied automatically. Where Greece, Hungary or Bulgaria accepted the request, Poland asked these countries to present individual guarantees for the applicants concerned. According to the information provided in 2019, when the guarantees were not presented, Poland did not carry out the transfer and took responsibility for processing the application for international protection.<sup>94</sup>

### Transfers

According to the Border Guard, the transfer is organised within days from the moment the decision on transfer becomes final, bearing in mind the time in which other states expect to be informed about the transfer in advance and depending on the availability of plane tickets, etc.<sup>95</sup>

Asylum seekers are transferred under escort only when there is a risk of absconding or if they have already absconded before.

There is also a legal basis for detention in Dublin outgoing procedures, based on the risk of absconding (see section on [Grounds for Detention](#)).<sup>96</sup> The Border Guard reported that in 2019, 63 (down from 82 in 2018) persons were transferred under Dublin from detention centres.<sup>97</sup> In 2019, 134 detainees were transferred under Dublin Regulation from other countries beforehand. No information about the legal grounds of the detention was provided.<sup>98</sup>

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<sup>89</sup> Article 36(1) Law on Protection.

<sup>90</sup> CJEU, Case C-670/16, *Tsegezab Mengesteab v. Bundesrepublik Deutschland (GC)*, Judgment of 26 July 2017.

<sup>91</sup> Information provided by the Office for Foreigners, 27 August 2015.

<sup>92</sup> Information provided by the Office for Foreigners, 1 February 2018.

<sup>93</sup> Information provided by the Office for Foreigners, 14 January 2019.

<sup>94</sup> Information provided by the Office for Foreigners, 22 January 2020.

<sup>95</sup> Information provided by the Border Guard, 17 January 2020.

<sup>96</sup> Article 398(1)(3a) Law on Foreigners.

<sup>97</sup> However, according to the official statistics of the Office for Foreigners reported to the Eurostat, there were only 58 transfers in 2019 as a whole.

<sup>98</sup> Information provided by the Border Guard, 17 January 2020.

In the past years there was a problem of transferring only some members of the family from Germany to Poland. The Border Guard confirmed that these cases are rare now, but still happen.<sup>99</sup>

### 2.3. Personal interview

There is no separate interview where an applicant's case falls under the Dublin Regulation. Additional questions for the Dublin procedure form an integral part of the asylum application form.<sup>100</sup>

### 2.4. Appeal

**Indicators: Dublin: Appeal**

Same as regular procedure

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

<ul style="list-style-type: none"> <li>❖ If yes, is it</li> <li>❖ If yes, is it suspensive</li> </ul>	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> Judicial <input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No <input checked="" type="checkbox"/> Administrative <input type="checkbox"/> No
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Asylum seekers can appeal against decisions taken in the Dublin procedure to the Refugee Board (and then to the Voivodeship Administrative Court in Warsaw and the Supreme Administrative Court) within 14 days following the same procedure described in the section on appeals in the [Regular Procedure: Appeal](#). The average time for the appeal procedure in Dublin cases in 2019 was 110 days (up from 45 days in 2018). In 2019 the Refugee Board issued 33 decisions (down from 13 in 2018) in Dublin proceedings, none of which overturned the decision of the first instance authority.<sup>101</sup>

### 2.5. Legal assistance

**Indicators: Dublin: Legal Assistance**

Same as regular procedure

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

<ul style="list-style-type: none"> <li>❖ Does free legal assistance cover:</li> </ul>	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> Representation in interview <input checked="" type="checkbox"/> Legal advice	<input checked="" type="checkbox"/> With difficulty <input type="checkbox"/> No
---	---	--

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

<ul style="list-style-type: none"> <li>❖ Does free legal assistance cover</li> </ul>	<input checked="" type="checkbox"/> Representation in courts <input checked="" type="checkbox"/> Legal advice	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> With difficulty <input type="checkbox"/> No
--	--	--

Free legal assistance is offered as described in the section on [Regular Procedure: Legal Assistance](#). State legal aid covers preparing an appeal and representation in the second instance.<sup>102</sup>

### 2.6. Suspension of transfers

**Indicators: Dublin: Suspension of Transfers**

1. Are Dublin transfers systematically suspended as a matter of policy or jurisprudence to one or more countries?

	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
--	------------------------------	--

❖ If yes, to which country or countries?

<sup>99</sup> Information provided by the Border Guard, 17 January 2020.

<sup>100</sup> Regulation of the Ministry of the Interior of 4 November 2015 on the asylum application form (Rozporządzenie Ministra Spraw Wewnętrznych z dnia 4 listopada 2015 r. w sprawie wzoru formularza wniosku o udzielenie ochrony międzynarodowej), available (in Polish) at: <http://bit.ly/1I97b7F>.

<sup>101</sup> Information provided by the Refugee Board, 16 January 2020.

<sup>102</sup> Article 69e Law on Protection.

In 2019 requests were submitted to any country. Greece, Hungary and Bulgaria were asked to present individual guarantees for the applicants concerned.<sup>103</sup>

## 2.7. The situation of Dublin returnees

There is no information on obstacles in accessing the asylum procedure for Dublin returnees. There were cases where HFHR tried to follow asylum seekers transferred back from another country and learned from the SG that they applied straight away for voluntary return and left the territory. The reason why they chose return over a (re)examination of their asylum claim is unknown. The time limit to reopen the procedure is 9 months. Contrary to Article 18(2) of the Dublin III Regulation, in cases where e.g. the applicant did not wait for examination of his or her asylum claim in Poland but went to another Member State and did not come back to Poland within 9 months, the case will not be evaluated under the regular “in-merit” procedure. Their application lodged after this deadline will instead be considered as a subsequent application and subject to an admissibility procedure.<sup>104</sup>

In 2019, 2,005 decisions (down from 1,717 in 2018) discontinuing the procedure were issued because the applicant had explicitly withdrawn the application, left Poland, had not reached or left the reception centre, or did not attend the interview.<sup>105</sup> In 2019, 294 persons applied for reopening the procedure within 9 months.

In September 2017 the Commissioner for Human Rights published a report within the National Mechanism for the Prevention of Torture, in which cases of improper detention of Dublin returnees with PTSD were described.<sup>106</sup> According to the report, the problems occurred due to numerous procedural shortcomings during the transfer of a family to Poland by the German police, as well as the lack of appropriate operational algorithms that should have been implemented in order to promptly identify victims of torture and violence as well as persons whose mental and physical condition rule out their placement in detention. After visits in detention centers in 2018 and 2019, the Commissioner for Human Rights confirmed that the problem persists. Although the Border Guard implemented guidelines on how to deal with persons requiring special treatment, they address treatment in detention, rather than providing that the person identified as a victim of violence should be released from detention (as required by the law).<sup>107</sup> NGOs add that the system in place is not effective because a person who is a victim of violence should not be put in detention at all, so identification should be conducted before placing in detention and not in detention.<sup>108</sup> This problem does not concern merely Dublin returnees, as described in detail below (see [Guarantees for vulnerable groups](#) and [Detention of vulnerable applicants](#)).

## 3. Admissibility procedure

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

An admissibility procedure is provided for in national legislation.<sup>109</sup> The Head of the Office for Foreigners is the authority responsible for taking a decision on admissibility. If an asylum application is deemed inadmissible, the Head of the Office for Foreigners issues a decision on the inadmissibility of the application.<sup>110</sup>

<sup>103</sup> Information provided by the Office for Foreigners, 22 January 2020.

<sup>104</sup> Article 40(6) Law on Protection.

<sup>105</sup> Information provided by the Office for Foreigners, 14 January 2019.

<sup>106</sup> Commissioner for Human Rights, *Report on the activities of the National Mechanism for the Prevention of Torture in 2016, 2017*, available at: <http://bit.ly/2sBpmvy>, 76.

<sup>107</sup> Commissioner for Human Rights, *Raport Krajowego Mechanizmu Prewencji Tortur z wizytacji Strzeżonego Ośrodka dla Cudzoziemców w Lesznowoli (wyciąg)*, 18 December 2018, available (in Polish) at: <http://bit.ly/2SO3DgP>, *Report from Biała Podlaska*, 7 January 2019, available (in Polish) at: <http://bit.ly/2BU7ej5>, 7.

<sup>108</sup> Association for Legal Intervention (Stowarzyszenie Interwencji Prawnej, SIP), *Komentarz SIP: sprawozdanie Polski przed Komitetem przeciwko Torturom ONZ* (Association for Legal Intervention comments on Poland's reporting before UN Committee against Torture), 30 July 2019, available at: <https://bit.ly/2UncJR7>.

<sup>109</sup> Article 38 Law on Protection.

<sup>110</sup> Article 38(4) Law on Protection.

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

- a. Another Member State has granted refugee status to the applicant;
- b. A third country can be considered a [First Country of Asylum](#) with regard to the applicant;
- c. The applicant submitted a subsequent application after receiving a final decision, based on the same circumstances;
- d. A spouse of an applicant lodged a new asylum application after the applicant received a final decision and when the spouse's case was a part of an application made on their behalf and there are no facts justifying a separate application of the spouse.<sup>111</sup>

The application is considered inadmissible if there is a first country of asylum where the applicant is treated as a refugee and can enjoy protection there or is protected against *refoulement* in any other way.<sup>112</sup>

The Office for Foreigners delivered the following inadmissibility decisions in 2019:

Inadmissibility decisions: 2019	
Ground for inadmissibility	Number of persons
Subsequent application	854
Application by dependent (spouse)	86
Refugee status in another Member State	1
First country of asylum	0
<b>Total</b>	<b>941</b>

Source: Office for Foreigners

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

### 3.2. Personal interview

#### Indicators: Admissibility Procedure: Personal Interview

Same as regular procedure

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

The rules concerning personal interviews are the same as in the [Regular Procedure: Personal Interview](#). There is no data on how many interviews were conducted in admissibility procedures in 2019. For the admissibility procedures a lot depends on whether the case requires a detailed interview, as in the regular procedure, or whether it focuses only on specific issues (e.g. new circumstances). The scope of the interview is not limited to identity, nationality, and travel route.<sup>113</sup>

<sup>111</sup> Article 38 Law on Protection.

<sup>112</sup> Article 38 Law on Protection.

<sup>113</sup> Information provided by the Office for Foreigners, 1 February 2017.

### 3.3. Appeal

#### Indicators: Admissibility Procedure: Appeal

Same as regular procedure

1. Does the law provide for an appeal against the decision in the admissibility procedure?
- |   |  |
|---|--|
| <input checked="" type="checkbox"/> Yes | <input type="checkbox"/> No                        |
| <input type="checkbox"/> Judicial       | <input checked="" type="checkbox"/> Administrative |
| <input checked="" type="checkbox"/> Yes | <input type="checkbox"/> No                        |
- ❖ If yes, is it
- ❖ If yes, is it suspensive

Generally the appeal system in the admissibility procedure does not differ from the one in the [Regular Procedure: Appeal](#), including its suspensive effect. The deadline for the appeal is 14 days.

### 3.4. Legal assistance

#### Indicators: Admissibility Procedure: Legal Assistance

Same as regular procedure

1. Do asylum seekers have access to free legal assistance at first instance in practice?
- |                              |   |                             |
|------------------------------|---|-----------------------------|
| <input type="checkbox"/> Yes | <input checked="" type="checkbox"/> With difficulty | <input type="checkbox"/> No |
|------------------------------|---|-----------------------------|
- ❖ Does free legal assistance cover:
- |  |
|--|
| <input type="checkbox"/> Representation in interview |
| <input checked="" type="checkbox"/> Legal advice     |
2. Do asylum seekers have access to free legal assistance on appeal against an admissibility decision in practice?
- |                              |   |                             |
|------------------------------|---|-----------------------------|
| <input type="checkbox"/> Yes | <input checked="" type="checkbox"/> With difficulty | <input type="checkbox"/> No |
|------------------------------|---|-----------------------------|
- ❖ Does free legal assistance cover
- |  |
|--|
| <input checked="" type="checkbox"/> Representation in courts |
| <input checked="" type="checkbox"/> Legal advice             |

Free legal assistance is offered in under the same conditions as described in the section on [Regular Procedure: Legal Assistance](#). State legal aid covers preparing an appeal and representation in the second instance.<sup>114</sup>

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

There is no border procedure in Poland. However, in January 2017, the Minister of the Interior and Administration presented a draft amendment to the Law on Protection, which introduces a border procedure for granting international protection. The Commissioner for Human Rights, as well as the main NGOs in Poland, have criticised the draft law for failing to provide sufficient safeguards including limited access to effective remedies and for introducing detention for the duration of the border procedure. The proposal was updated in February 2019.<sup>115</sup> According to the proposal, if a negative decision is issued during the border procedure, the Office for Foreigners will also decide on return in the same decision. There would be 7 days to appeal this decision to the Voivodeship Administrative Court (not to Refugee Board, as in the regular procedure) and the appeal will not have an automatic suspensive effect. The draft law also provides for the adoption of a list of safe countries of origin and safe third countries. The Commissioner for Human Rights<sup>116</sup> and NGOs<sup>117</sup> sent their statements about the draft law. As of February 2020, the draft was still under discussion.

<sup>114</sup> Article 69e Law on Protection.

<sup>115</sup> Draft law available at: <http://bit.ly/2lqboVu>.

<sup>116</sup> The Commissioner for Human Rights, letter commenting on the draft law from 1 April 2019, available (in Polish) at: <https://bit.ly/31pTAQf>.

<sup>117</sup> Legal Intervention Association, letter commenting on the draft law from 15 February 2019, available (in Polish) at: <https://bit.ly/2v6aiaV>.

## 5. Accelerated procedure

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

The application for international protection is subject to an accelerated procedure if the applicant:<sup>118</sup>

1. Provides other reasons for applying for asylum than well-founded fear of persecution for reasons of race, religion, nationality, membership of a particular social group or political opinion, or a risk of serious harm; or did not provide any information on circumstances referring to the well-founded fear of persecutions or risk of serious harm);
2. Misleads the authority by withholding or presenting false information or documents which are important in an asylum procedure;
3. Makes inconsistent, contradictory, improbable or insufficient explanation of the persecution they are fleeing from, which are clearly inconsistent with the country of origin information (COI);
4. Submits an application to delay or frustrate enforcement of a return decision;
5. Is a threat to national security or public order or was, on this ground, already expelled from the territory.

The statistics obtained from the Office for Foreigners show that in 2019 162 applications were channeled in the accelerated procedure. These concerned the following grounds:

Applications channeled in the accelerated procedure: 2018-2019		
Grounds	2018	2019
Reasons unrelated to grounds for international protection	143	134
Misleading authorities by withholding or presenting false information or documents	0	0
Inconsistent, contradictory, improbable or insufficient statements	25	14
Application solely to delay or frustrate return	9	14
Threat to national security or public order	1	0

Source: Office for Foreigners, 22 January 2020.

The Head of the Office for Foreigners should issue a decision in the accelerated procedure within 30 calendar days. If a decision cannot be issued within 30 calendar days, the Head of the Office for Foreigners has to inform the applicant about the reasons for the delay and the date when a decision will be issued.<sup>119</sup> There are no consequences if this time limit is not respected.

### 5.2. Personal interview

#### Indicators: Accelerated Procedure: Personal Interview

Same as regular procedure

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

<sup>118</sup> Article 39 Law on Protection.

<sup>119</sup> No data was made available upon request if the time limit is respected in practice in 2016 and 2017.

The interview in the accelerated procedure is conducted according to the same rules as in the regular procedure (see [Regular Procedure: Personal Interview](#)).<sup>120</sup> There is no information on the number of cases in which the interview takes place – Office for Foreigners does not aggregate such data. The interview does not differ from the one in a regular procedure – it is in the same form and the same rules apply.<sup>121</sup>

### 5.3. Appeal

**Indicators: Accelerated Procedure: Appeal**  
 Same as regular procedure

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

<ul style="list-style-type: none"> <li>❖ If yes, is it</li> <li>❖ If yes, is it suspensive</li> </ul>	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> Judicial <input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No <input checked="" type="checkbox"/> Administrative <input type="checkbox"/> No
---	---	--

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

- (1) The time limit to lodge an appeal is 7 calendar days instead of 14;<sup>122</sup>
- (2) Decisions on the appeal in this procedure are issued by only one member of the Refugee Board, instead of three as in the regular procedure.<sup>123</sup>

The short timeframe for lodging an appeal, while extended from 5 to 7 calendar days in November 2015, still constitutes a significant obstacle in practice.

### 5.4. Legal assistance

**Indicators: Accelerated Procedure: Legal Assistance**  
 Same as regular procedure

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

<ul style="list-style-type: none"> <li>❖ Does free legal assistance cover:</li> </ul>	<input type="checkbox"/> Yes <input type="checkbox"/> Representation in interview <input checked="" type="checkbox"/> Legal advice	<input checked="" type="checkbox"/> With difficulty <input type="checkbox"/> No
---	--	--

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

<ul style="list-style-type: none"> <li>❖ Does free legal assistance cover</li> </ul>	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> Representation in courts <input checked="" type="checkbox"/> Legal advice	<input checked="" type="checkbox"/> With difficulty <input type="checkbox"/> No
--	--	--

Free legal assistance is offered in the same context described in the section on [Regular Procedure: Legal Assistance](#). State legal aid covers preparing an appeal and representation in the second instance.<sup>124</sup>

<sup>120</sup> Article 44 Law on Protection.  
<sup>121</sup> Information provided by the Office for Foreigners, 1 February 2017.  
<sup>122</sup> Article 39(2)(3) Law on Protection.  
<sup>123</sup> Article 39(2) Law on Protection.  
<sup>124</sup> Article 69e Law on Protection.

## D. Guarantees for vulnerable groups

### 1. Identification

#### Indicators: Identification

1. Is there a specific identification mechanism in place to systematically identify vulnerable asylum seekers?  Yes  For certain categories  No
  - ❖ If for certain categories, specify which:
2. Does the law provide for an identification mechanism for unaccompanied children?  Yes  No

Applicants who need special treatment are defined in particular as:<sup>125</sup>

- ❖ Minors;
- ❖ Disabled people;
- ❖ Elderly people;
- ❖ Pregnant women;
- ❖ Single parents;
- ❖ Victims of human trafficking;
- ❖ Seriously ill;
- ❖ Mentally disordered people;
- ❖ Victims of torture;
- ❖ Victims of violence (psychological, psychological, including sexual).

#### 1.1. Screening of vulnerability

Identification of vulnerable applicants is conducted by the Border Guard while registering the application for international protection and by the Office for Foreigners.

The Head of the Office for Foreigners is obliged to assess whether these persons need special treatment in the proceedings regarding granting international protection or regarding social assistance. In order to make this assessment, the authority can arrange for a medical or psychological examination of the applicant, funded by the state. In case the Head of the Office for Foreigners does not arrange for the medical or psychological examination, it is obliged to inform the person that might require special treatment that they can arrange for such an examination themselves and bear the costs. If a person does not agree to be subjected to medical or psychological examination, they should be considered a person that does not require special treatment. The Head of the Office for Foreigners should make the assessment immediately after the submission of the application for international protection and at any other time until the procedure is finished, in case any new circumstances arise.<sup>126</sup>

In 2019, the UN Committee against Torture pointed out the problem with the appointment of experts to determine whether foreigner is a victim of torture.<sup>127</sup> Responding to the Committee, the Polish delegation stressed that qualification as a victim of torture does not require an opinion from a specialist and is a part of specialised medical assistance provided during the refugee procedure.

According to the study from 2020, the Office for Foreigners representative admitted that typically a conversation with a psychologist is scheduled if the relevant fields in the application for international

<sup>125</sup> Article 68(1) Law on Protection.

<sup>126</sup> Article 68(3)-(6) Law on Protection.

<sup>127</sup> Poland, UN Web TV, *Consideration of Poland (Cont'd) - 1762nd Meeting, 67th Session of Committee Against Torture*, 24 July 2019, available at: <https://bit.ly/2RXiHqd>, and reply of Poland, UN Committee against Torture, *Concluding observations on the seventh periodic report of Poland*, 22-24 July 2019, available at: <https://bit.ly/2twn02w>.

protection are ticked. Then the psychologist issues an opinion in which they recommend whether to treat an applicant as requiring special treatment.<sup>128</sup>

However, the Office for Foreigners informed, that since 16 June 2019 every asylum seeker in the reception centre, subject to the procedure called epidemiological filter, is also subject to vulnerability screening. This is envisaged in the new contract for health services for asylum seekers from 4 June 2019.<sup>129</sup>

NGOs generally confirm that the system of identification envisaged in the law does not work in practice. According to SIP, the Office for Foreigners does not, in principle, require opinions from experts in order to determine, for example, basing on of scars and wounds if an applicant has been a torture victim. Such a practice makes it difficult for foreigners to prove that they have been victims of torture in the country of origin. Foreigners arrive in Poland frequently with visible signs of torture. In such cases ordering of an examination by an expert could help acquire reliable evidence of experienced torture.<sup>130</sup> According to HFHR even in case of applicants with PTSD the inconsistencies in testimonies may lead to refusal of international protection. Also at the later stages of the procedure, the courts still do not appoint independent experts to determine applicants' state of mental health.

NGOs documented important judgements in 2019 on the matter. The Supreme Administrative Court,<sup>131</sup> and the Voivodeship Administrative Court in Warsaw,<sup>132</sup> ruled on cases where the applicants were diagnosed with PTSD due to violence/torture experienced in their countries of origin, however examination has not been performed by experts appointed by the authorities deciding on international protection. The courts upheld refusal decisions on international protection stating that the testimonies of applicants were inconsistent, the courts also stated that the authorities had no obligation to appoint experts to assess mental state of health of the applicants. In the oral justification of the judgment from 16 May 2019 the Supreme Administrative Court stated that psychological opinions prepared by the Border Guards, doctors from psychiatric hospital and experts appointed by the detention court are not credible because they are based on the applicants testimonies (all of these opinions stated that the applicant experienced violence).<sup>133</sup>

Identification of vulnerable applicants is also conducted by the Border Guard while registering the application for international protection (the Border Guard assesses whether an applicant may belong to one of these two groups: victims of trafficking in human beings or persons subject to torture).<sup>134</sup> When applying to the court to place an applicant in detention, the Border Guard is also obliged to identify victims of violence and other persons for whom detention will cause a threat to life or health. For this purpose the Border Guard implemented an algorithm, criticized by the Commissioner for Human Rights and NGOs (see [Detention of vulnerable applicants](#)).

The Office for Foreigners does not collect statistics on the number of asylum seekers identified as vulnerable, which was confirmed during UN CAT report on Poland in 2019.<sup>135</sup> According a study for 2019, published in 2020, in which the Office for Foreigners representatives were interviewed, the largest group

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<sup>128</sup> Pachocka, M. and Sobczak-Szelc K., 'Refugee Protection Poland – Country Report', Multilevel Governance of Mass Migration in Europe and Beyond Project (Horizon2020), January 2020, available at: <https://bit.ly/2U1A9uL>; 69.

<sup>129</sup> Information provided by the Office for Foreigners on 9 April 2020.

<sup>130</sup> Association for Legal Intervention (Stowarzyszenie Interwencji Prawnej, SIP), *Komentarz SIP: sprawozdanie Polski przed Komitetem przeciwko Torturom ONZ* (Association for Legal Intervention comments on Poland's reporting before UN Committee against Torture), 30 July 2019, available at: <https://bit.ly/397QNOg>.

<sup>131</sup> The Supreme Administrative Court, judgments from 16.05.2019, II OSK 3536/18 and from 13.06.2019, II OSK 3769/18 (not published).

<sup>132</sup> The Voivodeship Administrative Court in Warsaw judgment from 4.04.2019, IV SA/Wa 353/19 (not published).

<sup>133</sup> Information from HFHR obtained on 30 October 2019 and 10 January 2020.

<sup>134</sup> Regulation of 5 November 2015 on the asylum application form (Rozporządzenie Ministra Spraw Wewnętrznych z dnia 5 listopada 2015 r. w sprawie wzoru formularza wniosku o udzielenie ochrony międzynarodowej), available (in Polish) at: <http://bit.ly/1hljviW>.

<sup>135</sup> UN Human Rights Office of the High Commissioner, Committee against Torture concludes its consideration of the report of Poland, 24 July 2019, available at: <https://bit.ly/2Sgy10j>.

are individuals who were subject to physical or psychological violence.<sup>136</sup> However, for the purpose of this report, the Office for Foreigners reported that in the fourth quarter of 2019, there were 274 asylum seekers identified as requiring special treatment, only 1 person identified as a victim of violence.<sup>137</sup>

According to the Office for Foreigners, identification of vulnerable applicants takes place also during regular psychological counselling, available in every reception centre and at the Office for Foreigners (see [Health Care](#)).<sup>138</sup>

## 1.2. Age assessment of unaccompanied children

Polish law provides for an identification mechanism for unaccompanied children.<sup>139</sup> An asylum seeker who claims to be a child, in case of any doubts as to their age, may have to undergo medical examinations – with their consent or with the consent of their legal representative – in order to determine their actual age. There are no additional criteria set in law.

In case of lack of consent, the applicant is considered an adult. Results of the medical examination should contain the information, if an asylum seeker is an adult. In case of any doubts, the applicant is considered as a minor.<sup>140</sup> The responsibility for undertaking a medical examination is triggered by the authorities and shall be ensured by the SG.<sup>141</sup> The law states that examination should be done in a manner respecting dignity and using the least invasive technique.<sup>142</sup>

In December 2016 guidelines on age assessment were drafted and were still applicable as of 2019.<sup>143</sup>

## 2. Special procedural guarantees

### Indicators: Special Procedural Guarantees

1. Are there special procedural arrangements/guarantees for vulnerable people?  Yes  For certain categories  No
- ❖ If for certain categories, specify which:

### 2.1. Adequate support during the interview

As mentioned in the section on [Identification](#), the Head of the Office is obliged to assess whether a person belonging to one of the groups enumerated in the law is in need of special procedural guarantees. Once the person is considered as requiring special treatment, all actions in the proceedings regarding granting international protection are performed in the following conditions:

- Ensuring freedom of speech, in a manner adjusted to their psychophysical condition;
- On the dates adjusted to their psychophysical condition, taking into account the time in which they benefit from health care services;
- In the foreigner's place of stay, in case it is justified by their health condition;
- In the presence of a psychologist, medical doctor or an interpreter, in case there is such a need.

Upon the request of the applicant considered requiring special treatment, in cases justified by their needs, the actions in the proceedings regarding granting international protection are performed by a person of the

<sup>136</sup> Pachocka, M. and Sobczak-Szelc K., 'Refugee Protection Poland – Country Report', Multilevel Governance of Mass Migration in Europe and Beyond Project (Horizon2020), January 2020, available at: <https://bit.ly/2U1A9uL>, p. 69.

<sup>137</sup> Information provided by the Office for Foreigners on 9 April 2020.

<sup>138</sup> Information provided by the Office for Foreigners, 1 February 2018.

<sup>139</sup> Article 32 Law on Protection.

<sup>140</sup> Article 32(5) Law on Protection.

<sup>141</sup> Article 32 Law on Protection.

<sup>142</sup> Article 32(4) Law on Protection.

<sup>143</sup> Information provided by the Border Guard, 17 January 2020. No further information on age assessment was provided for the years 2016-2019.

same gender, and in the presence of a psychologist, medical doctor or an interpreter, of a gender indicated by the foreigner.<sup>144</sup>

Also, the Head of the Office ensures that the interview is conducted by a person trained in the techniques of hearing such persons and in using the country of origin information.<sup>145</sup> The Office for Foreigners does not have a specialised unit dealing with vulnerable groups, however caseworkers are trained by psychologists and EASO experts and only trained staff work on these cases.<sup>146</sup>

An interview should not be conducted if the health condition of the applicant or psychological considerations make it impossible to hear them within the time set in the law as a deadline (i.e. 6 months). NGOs confirm that there were cases where the interview was postponed under this provision.

The Office for Foreigners has stated that children are always interviewed in their place of residence. The Office also confirms that there were cases of omission of an interview in 2019 because of the condition of the applicant.

In Poland there is a limited number of NGOs specialising in psychological support for vulnerable asylum seekers, some of them concentrate on assistance directed to a particular group (children or victims of trafficking). Additionally, due to the lack of funding since 2016, many NGOs have limited their assistance activities (see [Access to NGOs](#)).

## 2.2. Exemption from special procedures

In 2018 the Office for Foreigners stressed that the law does not exclude the application of the accelerated procedure towards vulnerable applicants (apart from some restrictions concerning unaccompanied children, where it is only allowed to examine their application in an accelerated procedure where they pose a threat to national security) and did not present any statistical data on the use of the accelerated procedure in their case.<sup>147</sup> In 2019 the Office responded that there were no statistics in that regard.

## 3. Use of medical reports

### Indicators: Use of Medical Reports

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

The law provides that a medical or psychological examination can be conducted in order to assess whether a person needs special treatment with regard to procedural safeguards and reception.<sup>148</sup> There is no medical examination for the purpose of confirming past persecution or serious harm.

NGOs report that the Office for Foreigners does not, in principle, require opinions from experts in order to determine, for example, basing on of scars and wounds if an applicant has been a torture victim. Such a practice makes it difficult for foreigners to prove that they have been victims of torture in the country of origin. Foreigners arrive in Poland frequently with visible signs of torture. In such cases ordering of an examination by an expert could help acquire reliable evidence of experienced violence.<sup>149</sup>

<sup>144</sup> Article 69 Law on Protection.

<sup>145</sup> Article 44(4)(1) Law on Protection.

<sup>146</sup> Information provided by the Office for Foreigners, as of 16 July 2019.

<sup>147</sup> Information provided by the Office for Foreigners, 15 January 2019.

<sup>148</sup> Article 68 Law on Protection.

<sup>149</sup> M.Jaźwińska, Postępowanie w przedmiocie udzielenia ochrony międzynarodowej, [in] Stowarzyszenie Interwencji Prawnej (SIP), SIP w działaniu. Prawa cudzoziemców w Polsce w 2018 r. (2019), available (in Polish) at: <http://bit.ly/2S507LV>, 20.

According to the Commissioner for Human Rights, there is a poor knowledge of the Istanbul Protocol among medical staff and psychologists in the detention centres.<sup>150</sup>

#### 4. Legal representation of unaccompanied children

##### Indicators: Unaccompanied Children

1. Does the law provide for the appointment of a representative to all unaccompanied children?

Yes  No

The Law on Protection provides for the appointment of a legal representative to an unaccompanied child - special guardian (*kurator*).<sup>151</sup> There are no exceptions; each child has to have a legal representative and all unaccompanied children get one in practice. The Head of the Office for Foreigners or the SG immediately lodges the request to the district custodial court. The court appoints the legal representative. Under the law, the deadline for appointing the guardian is 3 days. There is no information on compliance with this rule in practice. One guardian is appointed for the following proceedings: international protection, Dublin, social assistance, voluntary return.

There is no special requirement in the Law on Protection for being eligible as a representative of an unaccompanied child for an asylum procedure: the representative should be an adult and have legal capacity. Under the law, only the person who undertakes procedural acts in the proceedings in granting international protection to an unaccompanied minor should fulfill certain conditions.<sup>152</sup> There is no remuneration for being a legal representative. In practice in the last years there were problems arising from the insufficient numbers of trained legal representatives for unaccompanied children. NGO personnel and students of legal clinics at universities are appointed as guardians. The legal representative should be present during the interview, together with a psychologist, and may ask questions and make comments.<sup>153</sup>

The Border Guard reports that since December 2017 they use a list of NGO workers who declared their willingness to be a representative of a child.<sup>154</sup> However, as the Border Guard confirms, due to the lack of funding, some NGOs withdrew their representatives from the list. Currently there are representatives of 4 NGOs (altogether 11 persons) on the list. Their presence on that list is not binding, which means they are not obliged to become a representative.<sup>155</sup>

In 2018 the Commissioner for the Rights of the Child called on the Ministry of Justice to introduce a special type of legal representation of unaccompanied foreign children in Poland. In the opinion of the Commissioner that would allow a comprehensive and stable representation of a foreign child on the Polish territory, bearing in mind their best interest. The Commissioner criticised the fact that guardians were appointed for concrete proceedings or group of proceedings and they did not have a closer relation with a child, which impeded decision-making and assessing the children's best interest in other fields (such as education, medical care, etc.).<sup>156</sup>

Currently unaccompanied children are placed in various intervention facilities in Poland, instead of in a central institution. After the court ruling appointing the representative they can be placed in foster care facilities or foster families. In 2018, as in the past years, unaccompanied minors were mostly placed in foster care facilities in Ketrzyn (12 persons) – due the proximity to the detention centre in Ketrzyn, from which they are released because of age - or in Warsaw (4 persons). In other places, only one unaccompanied child was placed per location.<sup>157</sup> There is no information on whether the personnel speaks

<sup>150</sup> Conference presentation of the representative of the National Mechanism for the Prevention of Torture, 3 December 2018, Milan, information available (in Polish) at: <http://bit.ly/2T5YvE7>.

<sup>151</sup> Article 61 Law on Protection.

<sup>152</sup> Article 66 Law on Protection.

<sup>153</sup> Article 65(3) and (4) Law on Protection.

<sup>154</sup> Information provided by the Border Guard, 11 January 2018.

<sup>155</sup> Information provided by the Border Guard, 17 January 2020.

<sup>156</sup> The Commissioner for the Rights of the Child, letter to the Ministry of Justice, 2 July 2018, available (in Polish) at: <http://bit.ly/2SemiZK>. These letters are no longer available online once the Commissioner for the Rights of the Child changed and the website is being rebuild

<sup>157</sup> Information provided by the Office for Foreigners, 15 January 2019.

foreign languages there, this is not one of the criteria.<sup>158</sup> There is no information on place of residence for 2019.

When the asylum procedure is finished with a negative decision, the minor remains in the same foster family or institution.

In 2019 there were 105 unaccompanied children (down from 125 in 2018) applying for international protection in Poland.<sup>159</sup> According to the Office for Foreigners the vast majority of procedures are discontinued because of implicit withdrawal of the application (the minors leave the centres and do not return), in case of some nationalities (e.g. Vietnamese) the percentage of discontinued applications is 100%.<sup>160</sup>

## E. Subsequent applications

### Indicators: Subsequent Applications

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

Subsequent applications are subject to an [Admissibility Procedure](#). If there are no new grounds for the application, a decision on inadmissibility is issued. In 2019, there were 1,389 subsequent applications, submitted mainly by Russian, Ukrainian and Georgian nationals.<sup>161</sup>

The first subsequent application has suspensive effect on a return decision and return order cannot be executed.<sup>162</sup> If the application is considered inadmissible because the applicant did not present any new circumstances of the case<sup>163</sup> it can be appealed within 14 days and until the Refugee Board makes a decision, suspensive effect is upheld. If the application is considered admissible, i.e. containing new circumstances relevant for the case, the Head of the Office for Foreigners issues a decision considering the application admissible.<sup>164</sup> In this case, suspensive effect is in force until the final administrative decision on international protection is served. In case of further subsequent applications, there is no suspensive effect on a return order.<sup>165</sup>

In 2019 the Office for Foreigners issued 67 decisions deeming the subsequent application admissible, while 854 such applications were dismissed as inadmissible.<sup>166</sup>

In 2019 the Voivodeship Administrative Court in **Warsaw** issued a judgement in which the Court stated that the subsequent application cannot be deemed inadmissible even if only one single element of facts of the case has changed.<sup>167</sup>

<sup>158</sup> Information provided by the Office for Foreigners, 27 August 2015.

<sup>159</sup> Information provided by the Office for Foreigners, 22 January 2020.

<sup>160</sup> Information provided by the Office for Foreigners, 15 January 2019.

<sup>161</sup> Information provided by the Office for Foreigners, 15 January 2019.

<sup>162</sup> Article 330(2) and (3) Law on Foreigners.

<sup>163</sup> Article 38(4) Law on Protection.

<sup>164</sup> Article 38(5) Law on Protection.

<sup>165</sup> Article 330(2)2 Law on Foreigners.

<sup>166</sup> Information provided by the Office for Foreigners, 22 January 2020.

<sup>167</sup> The Voivodeship Administrative Court judgement from 18 April 2019 IV SA/Wa 3394/18, summary available (in Polish) at: <https://bit.ly/2UkEbiB>.

With regard to personal interviews, appeal and legal assistance, see section on the [Admissibility Procedure](#).

## F. The safe country concepts

### Indicators: Safe Country Concepts

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

Since the 2015 reform of the law, the safe country of origin concept is not applicable in Poland. The draft law submitted in 2017 (and updated in February 2019, yet not adopted as of February 2020) introduces the safe country of origin concept and foresees the adoption of national lists of safe countries of origin and safe third countries.<sup>168</sup>

The concept of first country of asylum is included in the law and reflects the wording of Article 35 of the recast Asylum Procedures Directive. This provision was not relied on in 2018<sup>169</sup> and applied in 4 cases in 2019.<sup>170</sup>

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

### 1. Provision of information on the procedure

#### Indicators: Information on the Procedure

- |  |                              |   |                             |
|--|------------------------------|---|-----------------------------|
| 1. Is sufficient information provided to asylum seekers on the procedures, their rights and obligations in practice? | <input type="checkbox"/> Yes | <input checked="" type="checkbox"/> With difficulty | <input type="checkbox"/> No |
| ❖ Is tailored information provided to unaccompanied children?  | <input type="checkbox"/> Yes | <input checked="" type="checkbox"/> No              |                             |

The same level of information on the asylum procedure is provided to applicants during all types of procedures. The Border Guard officer who receives an asylum application has to inform in writing the applicant in a language that they understand on:<sup>171</sup>

- ❖ Rules related to the asylum procedure;
- ❖ Rights and obligations of the asylum seeker and their legal consequences;
- ❖ The possibility of informing UNHCR of an asylum procedure, reading the files, making notes and copies;
- ❖ NGOs which work with asylum seekers;
- ❖ The scope of the material reception conditions and medical assistance;
- ❖ Access to the free of charge state legal aid;
- ❖ The address of the centre where the applicant will live in.

This information, covering the list of NGOs, is provided at the border crossing points and is available in 22 languages.<sup>172</sup>

<sup>168</sup> Draft law available in Polish at: <http://bit.ly/2lqboVu>.

<sup>169</sup> Information provided by the Office for Foreigners, 15 January 2019.

<sup>170</sup> Information provided by the Office for Foreigners, 22 January 2020.

<sup>171</sup> Article 30(1)(5) Law on Protection.

<sup>172</sup> Information provided by the Border Guard, 11 January 2018.

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

In addition, the Office for Foreigners also offers information in the form of a booklet entitled “First steps in Poland – Guidebook for foreigners applying for international protection,” available in 6 languages (Russian, English, Georgian, Arabic, French and Polish) and contains basic information on Poland, Polish law regarding asylum seekers and social assistance.<sup>173</sup>

Asylum seekers are informed about the Dublin procedure when they apply for international protection in accordance with the Dublin III Regulation and the Commission’s Implementing Regulation no 118/2014, including the specific leaflet for unaccompanied children.<sup>174</sup>

Information about the possibility to contact UNHCR is available at the Office for Foreigners (in English, Russian, French, Arabic and Vietnamese) and in reception and detention centres. The instructions for asylum applicants provided by the Border Guard contain information about the possibility to contact UNHCR and NGOs. According to the Border Guards the instructions are provided in every unit, also at the border and are available in 22 languages.<sup>175</sup>

**2. Access to NGOs and UNHCR**

**Indicators: Access to NGOs and UNHCR**

1. Do asylum seekers located at the border have effective access to NGOs and UNHCR if they wish so in practice?  Yes  With difficulty  No
2. Do asylum seekers in detention centres have effective access to NGOs and UNHCR if they wish so in practice?  Yes  With difficulty  No
3. Do asylum seekers accommodated in remote locations on the territory (excluding borders) have effective access to NGOs and UNHCR if they wish so in practice?  Yes  With difficulty  No

Since mid-2015 there is an ongoing problem with distributing AMIF funding, which significantly reduces the capacity of NGOs to provide information and assistance in reception centres. Since then, every year NGOs are forced to limit their personnel and fields of assistance provided so far (legal, psychological or integration assistance).

NGOs organise fundraising events to be able to continue their activities<sup>176</sup> or rely on voluntary work. However, as NGOs note themselves, psychological assistance cannot be provided by their staff on a voluntary basis.<sup>177</sup> Although in 2019 there were some new calls open for NGOs, only 6 projects that received funding concern asylum seekers. Moreover the projects started in September 2019 so their impact on 2019 was inconsiderable (see: [Regular procedure: Legal assistance](#)).

<sup>173</sup> Office for Foreigners, *First steps in Poland handbook*, available at: <http://bit.ly/2BEraXC>.  
<sup>174</sup> Information provided by the Border Guard, 17 January 2020.  
<sup>175</sup> Information provided by the Border Guard, 17 January 2020.  
<sup>176</sup> Refugee.pl cited in “Refugee.pl has helped foreigners for years. The Government blocks funding, will you help?” 14 December 2018, available at: <http://bit.ly/2BH0g0A>.  
<sup>177</sup> Legal Intervention Association cited in “Assistance to refugees blocked: NGOs without access to European Funds”, 14 August 2018, available at: <http://bit.ly/2U2ZYZe>.

## H. Differential treatment of specific nationalities in the procedure

### Indicators: Treatment of Specific Nationalities

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

In Poland there is no official policy implemented with regard to the top 5 countries of origin (Russia, Ukraine, Turkey, Tajikistan, Georgia), because every application is examined individually. However, it is visible from the statistics that applicants from Armenia and Georgia generally do not receive protection status.

Ukrainians constituted around 11% of all applicants in 2018 and in 2019. The rejection rate exceeds 95%. At the same time increasing number of persons apply for (and are granted) a permit for temporary stay (which is usually work related), notably around 162,000 applications in 2019, compared to 140,268 applications in 2018 (see [Status and residence](#)). As NGOs report, Ukrainians are granted protection if individual circumstances do not allow them to relocate internally, e.g. in a case of a single mother, whose child is under specialistic treatment, large families or elderly persons.<sup>178</sup>

As of 31 December 2019, just like in the past year, no returns are carried out to the following countries: Syria, Eritrea, and Yemen.<sup>179</sup>

<sup>178</sup> M. Sadowska, Obywatele *Ukrainy* [in] Stowarzyszenie Interwencji Prawnej (SIP), *SIP w działaniu. Prawa cudzoziemców w Polsce w 2018 r.* (2019), available (in Polish) at: <http://bit.ly/2S507LV>, 15.

<sup>179</sup> Information provided by the Border Guard, 17 January 2020.

## Reception Conditions

### A. Access and forms of reception conditions

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

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

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

The provision of reception conditions does not depend on the financial situation of asylum seekers.<sup>180</sup>

#### 1.1. The right to reception at different stages of the procedure

Asylum seekers are entitled to material reception conditions during all asylum procedures in Poland. There is no difference between regular, accelerated and admissibility procedures, as well as first appeal.<sup>181</sup>

Asylum seekers are entitled to material reception conditions after claiming asylum, from the moment they register in one of the first reception centres. They should register there within two days after applying for asylum, otherwise their procedure will be discontinued, as was the case in 51 cases in 2019.<sup>182</sup> Only medical assistance can be granted from the moment of claiming asylum (i.e. before registration in a first reception centre) in special situations, in case of threat to life and health.<sup>183</sup> Proof of an asylum application is confirmed by the temporary ID issued by the SG after submitting the claim.<sup>184</sup> However, according to the Office for Foreigners, the lack of such a document is not a problem for registering at the reception centre.<sup>185</sup> Asylum seekers are also entitled to the temporary ID when they are returned to Poland on the basis of the Dublin Regulation, if they claimed for asylum before departing from Poland and they state that they want to continue the asylum procedure in Poland.<sup>186</sup>

Exceptionally, the SG is entitled to inform an asylum seeker that it is impossible to apply for asylum the day he/she presents him/herself at the SG unit. In such a situation, the SG must determine a later date and place to submit the asylum application.<sup>187</sup> The asylum seeker should not wait for submitting asylum application longer than 3 working days (in case of massive influx - 10 working days). Between January and June 2018, such later date was given in 112 cases, in 2019 it was given in total in regard to 165 foreigners.<sup>188</sup> In such a situation only the intention to apply for international protection is registered and it does not entitle the person to any form of material reception conditions in Poland. The lack of material

<sup>180</sup> Articles 70-74 Law on Protection.

<sup>181</sup> Article 70 Law on Protection.

<sup>182</sup> Article 40(1)(2) in conjunction with Article 40 (2)(1) Law on Protection. Information from the Office for Foreigners, 22 January 2020.

<sup>183</sup> Article 74(1)(1) Law on Protection.

<sup>184</sup> Article 80(1) Law on Protection.

<sup>185</sup> Information obtained from the Office for Foreigners, 25 March 2014 and confirmed on 1 February 2017.

<sup>186</sup> Article 55(2) and (3) Law on Protection.

<sup>187</sup> Article 28(1) Law on Protection.

<sup>188</sup> Letter from the SG to the HFHR of 13 August 2018 and information from the Office for Foreigners, 22 January 2020.

reception conditions during 'the waiting period' may constitute a grave problem in regard to first-time asylum seekers. Regarding rejected asylum seekers, if they intend to apply again for asylum, to avoid a gap in obtaining the assistance, they try to submit a subsequent application before the entitlement to material reception conditions resulting from a previous asylum procedure elapses.<sup>189</sup>

As a general rule, reception conditions (material assistance, accommodation, medical care) are provided up until 2 months after the decision on the asylum application becomes final (either positive or negative, see [Housing](#)).<sup>190</sup> However, when the procedure is terminated through a decision discontinuing the procedure (e.g. in admissibility procedures), reception conditions are provided until 14 days after the decision becomes final.<sup>191</sup> Moreover, reception conditions are not provided, as soon as the period within which an asylum seeker was obliged to leave Poland voluntarily has passed.<sup>192</sup> Asylum seekers as a rule are obliged to leave Poland in 30 days from the day when the final decision of the Refugee Board was delivered or in 30 days from the moment when decision of the Office for Foreigners becomes final (if they do not appeal).<sup>193</sup> In practice it means that most often reception conditions are provided only for 30 days, not 2 months, in case of a negative decision.

In principle, during the onward appeal procedure before the Voivodeship Administrative Court in Warsaw, asylum seekers are not entitled to material reception conditions.<sup>194</sup> In practice, when the court suspends enforcement of the contested decision of the Refugee Board for the time of the court proceedings, asylum seekers are re-granted material reception conditions to the same extent as during the administrative asylum procedure, until the ruling of the court.<sup>195</sup> However, since 2016 the Court had mostly refused to suspend enforcement of negative decisions on international protection (see [Regular Procedure: Appeal](#)) for the time of the court proceedings,<sup>196</sup> which left asylum seekers without any material reception conditions for this period. In 2019, the trend has changed and the court started to grant a suspension in those cases (the court decided to suspend the enforcement of the negative asylum decision in 34 cases and refused it in 21 cases<sup>197</sup>). In practice, asylum seekers deal with the problem of the lack of material reception conditions during the court proceedings by submitting subsequent asylum applications.<sup>198</sup>

Asylum seekers who are subject to a Dublin transfer from Poland are entitled to material reception conditions until the day they should leave Poland.<sup>199</sup> Thus, this assistance may be granted for a longer period of time than in other cases when a decision discontinuing the proceedings is issued (it is an exception from the 14 days rule mentioned above). Moreover, Dublin transferees may request an additional assistance. The request has to be made in a specific term (30 days from the moment when the decision on transfer became final). After this time, the demand of the asylum seeker is left without consideration.<sup>200</sup> The

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<sup>189</sup> Information provided by SIP, 8 January 2020.

<sup>190</sup> Article 74(1)(2) Law on Protection.

<sup>191</sup> *Ibid.*

<sup>192</sup> Article 74(2)(2) Law on Protection.

<sup>193</sup> Article 299(6)(1)(b) Law on Foreigners.

<sup>194</sup> After the administrative appeal procedure before the Refugee Board, there is a possibility of an onward appeal before the Voivodeship Administrative Court in Warsaw, but only points of law can be litigated at this stage.

<sup>195</sup> This is the interpretation by the Legal Department of the Office for Foreigners. Information confirmed by the Office for Foreigners, 22 January 2020.

<sup>196</sup> For instance, in 2018 the court decided to suspend the enforcement of the negative asylum decision only once (see also Supreme Administrative Court, Decision No II OZ 1239/18, 20 December 2018) and refused such suspension in 86 cases (information provided by the Voivodeship Administrative Court in Warsaw, 11 January 2019). See also Magdalena Sadowska, 'Odmowa wstrzymania wykonania decyzji w przedmiocie udzielenia ochrony międzynarodowej na czas rozpatrzenia skargi cudzoziemca przez sąd administracyjny' in *Stowarzyszenie Interwencji Prawnej (SIP), SIP w działaniu. Prawa cudzoziemców w Polsce w 2018 r.* (2019), available (in Polish) at: <https://bit.ly/2vRN88S>, 23-24. For more information on the previous courts' practice in this area, see Maja Łysienia, 'Prawo cudzoziemca ubiegającego się o udzielenie ochrony międzynarodowej do pobytu na terytorium Polski' in D Pudzianowska (ed), *Status cudzoziemca w Polsce wobec współczesnych wyzwań międzynarodowych* (Wolters Kluwer SA, 2016).

<sup>197</sup> Information provided by the Voivodeship Administrative Court in Warsaw, 15 January 2020.

<sup>198</sup> Information provided by SIP, 8 January 2020.

<sup>199</sup> Article 74(3)(3) Law on Protection.

<sup>200</sup> Article 75a(2) in conjunction with Article 75(3) and (3a) Law on Protection.

assistance in case of the Dublin transfer covers travel costs, administrative payments for travel documents or visas and permits, cost of food and medical assistance during the travel.<sup>201</sup>

Some foreigners are not entitled to material reception conditions during the asylum procedure e.g. beneficiaries of subsidiary protection (applying for asylum again),<sup>202</sup> foreigners benefiting from humanitarian stay or “tolerated stay”, foreigners staying in Poland on the basis of temporary stay permit, permanent stay permit or long-term residence permit, foreigners staying in youth care facilities or detention centres or a pre-trial custody or detention for criminal purposes.<sup>203</sup> Beneficiaries of subsidiary protection, foreigners staying in Poland on the basis of a permanent stay permit, long-term residence permit or – in some cases – temporary stay permit are entitled to state benefits (general social assistance system) to the same extent as Polish citizens. Foreigners who were granted humanitarian stay or tolerated stay are entitled to state benefits only in the form of shelter, food, necessary clothing and an allowance for specified purpose.<sup>204</sup>

## 1.2. Obstacles to accessing reception

There are some practical obstacles reported in accessing material reception conditions. Asylum seekers can apply to change assistance granted in the centre to assistance granted outside of the centre. If the Office for Foreigners agrees, in practice asylum seekers are entitled to stay in the centre until the end of the month and from the following month they are entitled to the financial allowance. Currently the payments of this allowance are made through the post services. It is a positive development, as asylum seekers are no longer obliged to personally receive payments every month in the centre or in the Office for Foreigners, which led to many practical problems. However, now the date for receiving money is unpredictable,<sup>205</sup> as it depends on how swift the Office for Foreigners sends the allowance and on the efficiency of the postal services. It means that foreigners have to leave the centre at the end of the month, but it is possible that they do not get any financial resources to rent an apartment or even buy food for some days or even weeks. Moreover, they are not entitled to any payments in advance, despite the fact that owners often require paying a first rent or a deposit before they rent an apartment. No support is offered in finding a suitable and affordable private accommodation, even though the asylum seekers most often do not know Polish enough to communicate with owners.<sup>206</sup> Furthermore, when a foreigner does not pick up the financial allowance from the post office (where it is held for 14 days), it is sent back to the Office for Foreigners. In that case, in the subsequent month he/she will receive double payment. As there is no possibility to receive omitted payment earlier, the asylum seeker may be left without financial resources for one month.<sup>207</sup>

Asylum seekers should register in the first reception centre within two days after applying for asylum, otherwise their procedure will be discontinued.<sup>208</sup> In practice some asylum seekers have problem to get there in time.<sup>209</sup> They are given only the address of the centre and should get there by themselves. A transport is organised by the SG, pursuant to law, only for pregnant women, single parents, elderly and disabled people. In justified cases, food for them should be also provided.<sup>210</sup> The Border Guard does not

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<sup>201</sup> Article 75a(2) in conjunction with Article 75(2) Law on Protection.

<sup>202</sup> In practice, some foreigners after the end of the asylum procedure, in which they were granted subsidiary protection, apply for asylum again in order to be granted refugee status.

<sup>203</sup> Article 70(2) Law on Protection.

<sup>204</sup> Article 5(2) Law of 12 March 2004 on social assistance.

<sup>205</sup> Office for Foreigners, *Harmonogram wypłat*, available (in Polish) at: <http://bit.ly/2ttgDt5>.

<sup>206</sup> Lukaszewicz, K., ‘Exile to Poverty: Policies and Poverty Among Refugees in Poland’, *International Migration Vol.* 55 (6) 2017, 64, 66.

<sup>207</sup> Information from SIP, 8 January 2020.

<sup>208</sup> Article 40(1)(2) in conjunction with Article 40 (2)(1) Law on Protection. Information from the Office for Foreigners, 22 January 2020.

<sup>209</sup> See also Pachocka, M. and Sobczak-Szelc K., ‘Refugee Protection Poland – Country Report’, *Multilevel Governance of Mass Migration in Europe and Beyond Project (Horizon2020)*, January 2020, available at: <https://bit.ly/2WpN0sh>, 57.

<sup>210</sup> Article 30(1)(8) Law on Protection. See also Article 40a of this act, where such transport is guaranteed for Dublin transferees. However, partial data from the detention centres show that it was applied in 2019 only in regard to 17 asylum seekers [information from the different branches of the SG (February-March 2020)].

keep comprehensive data on the application of this provision in practice.<sup>211</sup> Other vulnerable asylum seekers cannot benefit from the organised transport, which is considered 'a gap in asylum system'.<sup>212</sup>

This problem concerns also formerly detained asylum seekers. Those who have been detained are not entitled to support immediately after being released from the detention centre. They are granted material reception conditions only from the moment of registration in a reception centre, which is very often located far away from the detention centre. As a result, asylum seekers have difficulties to cover the cost of transport to the reception centre.<sup>213</sup> Again, it should be organized by the SG in regard to released pregnant women, single parents, elderly and disabled people.<sup>214</sup> However, partial data that were made available show that the respective provision of the Law on Protection was not applied in 2019,<sup>215</sup> which may suggest that in practice it is interpreted too restrictively or overlooked. On the other hand, in the detention centre in Krosno Odrzańskie, according to the information provided by the SG, asylum seekers who could not afford bearing the costs of travel to the reception centre were given a financial support from AMIF and – if needed – offered the accommodation and food from Caritas.

Moreover, it was reported that asylum seekers in the process of appealing a decision were sometimes not granted social assistance, for the simple reason that the Office for Foreigners' system had no record of their appeal.<sup>216</sup> The Supreme Audit Office's report from 2019 confirms that some problems with the timely data input to prescribed registries still exceptionally occur.<sup>217</sup>

## 2. Forms and levels of material reception conditions

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

1. Amount of the monthly financial allowance/vouchers granted to asylum seekers as 31 December 2019 (in original currency and in €):
  - ❖ Accommodated, incl. food 50 PLN / 12 €
  - ❖ Private accommodation 775 PLN / 185 €

The Regulation on the amount of assistance to asylum seekers sets the level of financial allowances for all amounts related to reception conditions. In the law there are 2 forms of reception conditions, depending on whether the applicant is accommodated or not in a reception centre.<sup>218</sup> Conditions offered in both scenarios cover:

- Polish language course and basic material supplies necessary for the course;
- School supplies for children receiving education and care in public institutions, primary and higher schools, including, as far as possible, the expenses for extra-curricular classes, sports and recreational activities;

<sup>211</sup> Information provided by the Border Guard, 11 January 2018 and 14 January 2019.

<sup>212</sup> Pachocka, M. and Sobczak-Szelc K., 'Refugee Protection Poland – Country Report', Multilevel Governance of Mass Migration in Europe and Beyond Project (Horizon2020), January 2020, available at: <https://bit.ly/2WpN0sh>, 73.

<sup>213</sup> Jacek Białas, 'Niezgodność zasad pomocy socjalnej zapewnianej osobom ubiegającym się o nadanie statusu uchodźcy z wyrokiem Trybunału Sprawiedliwości UE', in HFHR, *W poszukiwaniu ochrony. Wybrane problemy dotyczące realizacji praw cudzoziemców ubiegających się o nadanie statusu uchodźcy i objętych ochroną międzynarodową w latach 2012-2014. Obserwacje Programu Pomocy Prawnej dla Uchodźców i Migrantów Helsińskiej Fundacji Praw Człowieka*, 2014, available (in Polish) at: <http://bit.ly/1eiVxDF>, 53.

<sup>214</sup> Article 89cb Law on Protection.

<sup>215</sup> Information from different branches of the SG (February-March 2020). However, it must be noted that the detention centre in Biała Podlaska is located next to the reception centre, so there is no need to organize transport for released asylum seekers.

<sup>216</sup> M. Łysienia, 'Prawidłowe funkcjonowanie systemu POBYT jako gwarancja przestrzegania praw cudzoziemców' in in HFHR, *W poszukiwaniu ochrony. Wybrane problemy dotyczące realizacji praw cudzoziemców ubiegających się o nadanie statusu uchodźcy i objętych ochroną międzynarodową w latach 2012-2014. Obserwacje Programu Pomocy Prawnej dla Uchodźców i Migrantów Helsińskiej Fundacji Praw Człowieka*, 2014, available (in Polish) at: <http://bit.ly/1eiVxDF>, 49.

<sup>217</sup> Supreme Audit Office, *Przygotowanie administracji publicznej do obsługi cudzoziemców. Informacja o wynikach kontroli* (2019), available (in Polish) at: <https://bit.ly/2OrVTwA>, 64.

<sup>218</sup> Article 71 Law on Protection.

- Public transport to (a) attend interviews as part of the asylum procedure; (b) medical examinations or vaccinations; or (c) other particularly justified cases;
- Medical care.

For asylum seekers accommodated in reception centres, other material conditions cover:

- Accommodation;
- Meals in the centre or a financial equivalent (PLN 9 / 2.15 €) per day;
- Allowance for personal expenses of PLN 50 / 11.93 € per month;
- Permanent financial assistance of PLN 20 / 4.77 € per month for purchase of hygienic articles or hygienic utilities;
- One-time financial assistance or coupons of PLN 140 / 33.42 € for purchase of clothing and footwear.

According to the law, in case an asylum seeker performs cleaning work for the centre, provides translation or interpretation that facilitates communication between the personnel of the centre and asylum seekers, or provides cultural and educational activities for other asylum seekers who stay in the centre, the amount of the allowance for personal expenses may be raised to PLN 100 (23.24€). In 2019 this raise was applied 571 times.<sup>219</sup>

For those assisted outside centres, there is one financial allowance for all costs of stay in Poland. This daily allowance depends on the family composition of the applicant:

Financial allowance for all costs of stay in Poland (outside reception centres)	
Family composition	Amount per day
Single adult	PLN 25 / 5.97 €
Two family members	PLN 20 / 4.77 €
Three family members	PLN 15 / 3.58 €
Four or more family members	PLN 12.50 / 2.98 €

Under the law, the assistance offered in the centre is granted as a rule to all asylum seekers. An asylum seeker can obtain assistance granted out of the centre upon request, examined by the Head of the Office for Foreigners. It can be granted for organisational, safety or family reasons or to prepare asylum seekers for an independent life after they have received any form of protection.<sup>220</sup> Most of the requests are accepted.<sup>221</sup> However, NGOs report that recently, obtaining the assistance granted out of the centre became more difficult.<sup>222</sup> One of the reasons might be that due to the small numbers of asylum seekers in Poland, accommodating them in the reception centres seems more reasonable from the perspective of the Office for Foreigners' budget.

All of the abovementioned reception conditions are applied in practice. As of 31 December 2019, 1,295 (compared to 1,260 in 2018) asylum seekers benefited from assistance in the centres and 1,640 (compared to 1,619 in 2018) asylum seekers were granted assistance outside the centres. In 2019, on average 1,276 (down from 1,361 in 2018) asylum seekers benefited from assistance in the centres and 1,595 (down from 1,730 in 2018) asylum seekers were granted assistance outside the centres.<sup>223</sup>

<sup>219</sup> Information provided by the Office for Foreigners, 22 January 2020.

<sup>220</sup> Article 72(1) Law on Protection.

<sup>221</sup> In 2019, 1,070 requests for the social assistance granted outside a centre were registered of which 791 were accepted (74%). Information from the Office for Foreigners, 22 January 2020.

<sup>222</sup> Information received from SIP, 8 January 2020. In 2018, 995 requests for the social assistance granted outside a centre were registered of which 868 were accepted (87%). Information provided by the Office for Foreigners, 15 January 2019. To compare, in 2019, only 74% requests were accepted.

<sup>223</sup> Information provided by the Office for Foreigners, 22 January 2020.

The amount of social assistance that asylum seekers receive is generally not sufficient to ensure an adequate standard of living in Poland.<sup>224</sup> With only PLN 750-775 per month, it is very difficult or even impossible to rent an apartment or even a room in **Warsaw**, where most asylum seekers stay during the procedure,<sup>225</sup> particularly taking into account that owners are often unwilling to rent an apartment to foreigners, especially asylum seekers, and tend to increase a rent or deposit in such situations.<sup>226</sup> As the amount of financial allowance is insufficient for renting separate accommodation, asylum seekers are often forced to live in overcrowded and insecure places. Many of them sleep in overcrowded apartments, where they have to share beds with other people or where living conditions do not provide privacy and personal safety.<sup>227</sup> Social assistance for families of four amounts to PLN 1,500 per month and in practice it may be enough only to rent an apartment, however with a great difficulty. Insufficient social assistance forces asylum seekers to work in Poland illegally in order to maintain and pay the rent.<sup>228</sup>

The amount of social assistance is below the so called “social minimum” (indicator which evaluates the cost of living in Poland). The asylum seeker receives 1,5-2 times less than what is essential according to the “social minimum”. The amount of social assistance for asylum seekers has not been raised since 2003,<sup>229</sup> even though the costs of living in Poland have increased significantly since then.<sup>230</sup> As a result, material reception conditions are insufficient to ensure a decent standard of living as highlighted in the CJEU judgment in *Saciri*.<sup>231</sup>

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<sup>224</sup> FRA, ‘Migration: Key Fundamental Rights Concerns: 1.7.2019-30.9.2019. Quarterly Bulletin’, 20, relying on the information from the HFHR and SIP. See also Lukaszewicz, K., ‘Exile to Poverty: Policies and Poverty Among Refugees in Poland’, *International Migration* Vol. 55 (6) 2017, 63-64; Commissioner for Human Rights, Letter to the Ministry of Interior of 7 December 2015, in which the Polish Commissioner for Human Rights is asking to consider the increase the amount of financial assistance for asylum seekers, available (in Polish) at: <http://bit.ly/2kSuua4>.

<sup>225</sup> Information confirmed by SIP, 8 January 2020. See also N. Kłerek, ‘Ochrona zdrowia nieudokumentowanych migrantów i osób ubiegających się o ochronę międzynarodową w opinii cudzoziemców’ in A. Chrzanowska, W. Klaus, ed., *Poza systemem. Dostęp do ochrony zdrowia nieudokumentowanych migrantów i cudzoziemców ubiegających się o ochronę międzynarodową w Polsce*, SIP, 2011, available (in Polish) at: <https://bit.ly/2GSP970>, 56.

<sup>226</sup> W. Goszczyński, R. Baczyński-Sielaczek, J. Suchomska, J. Stankowska and M. Wróblewski. ‘Lokalne systemy integracji uchodźców – badania’ in Fundacja EMIC and Pracownia Zrównoważonego Rozwoju, *Wielogłos. Integracja uchodźców w polskich gminach* (2016), available (in Polish) at: <https://bit.ly/31srALw>, 81; Lukaszewicz, K., ‘Exile to Poverty: Policies and Poverty Among Refugees in Poland’, *International Migration* Vol. 55 (6) 2017, 63-64.

<sup>227</sup> W. Klaus, ‘Rozwiązania prawne stosowane w odniesieniu do osób starających się o ochronę w Polsce’ in A. Górny, H. Grzymała-Moszczyńska, W. Klaus and S. Łodziński, *Uchodźcy w Polsce. Sytuacja prawna, skala napływu i integracja w społeczeństwie polskim oraz rekomendacje* (PAN 2017), available (in Polish) at: <https://bit.ly/2XE dsfZ>, 22; Lukaszewicz, K., ‘Exile to Poverty: Policies and Poverty Among Refugees in Poland’, *International Migration* Vol. 55 (6) 2017, 63. Information provided also by SIP, 8 January 2020. See also K. Wysieńska, *Gdzie jest mój dom? Bezdomność i dostęp do mieszkań wśród ubiegających się o status uchodźcy, uchodźców i osób z przyznaną ochroną międzynarodową w Polsce*, UNHCR, 2013, available (in Polish) at: <http://bit.ly/2IriKrA>, 14.

<sup>228</sup> Stowarzyszenie Interwencji Prawnej, A. Chrzanowska, I. Czerniejewska, ‘Mieszkamy tutaj, bo nie mamy innego wyjścia... Raport z monitoringu warunków mieszkaniowych uchodźców w Polsce, Analizy, raporty, ekspertyzy Nr 2/2015’, available (in Polish) at: <http://bit.ly/1Lq2Hie>, 55. Information provided also by SIP, 8 January 2020.

<sup>229</sup> W. Klaus, ‘Rozwiązania prawne stosowane w odniesieniu do osób starających się o ochronę w Polsce’ in A. Górny, H. Grzymała-Moszczyńska, W. Klaus and S. Łodziński, *Uchodźcy w Polsce. Sytuacja prawna, skala napływu i integracja w społeczeństwie polskim oraz rekomendacje* (PAN 2017), available (in Polish) at: <http://bit.ly/2DVccfr>, 22.

<sup>230</sup> M. Jaźwińska, M. Szczepaniak, “All quiet on the Eastern front: asylum trends and reception of refugees in Poland during the 2013-2015 Europe’s migration crisis” in *Biztpol Affaires* 2015 Summer Vol. 3 No 2, Corvinus Society for Foreign Affairs and Culture, available at: <http://bit.ly/2SQKpgQ>.

<sup>231</sup> CJEU, Case C-79/13 *Saciri*, Judgment of 27 February 2014; J. Białas, ‘Niezgoda zasad pomocy socjalnej zapewnianej osobom ubiegającym się o nadanie statusu uchodźcy z wyrokiem Trybunału Sprawiedliwości UE’, in HFHR, *W poszukiwaniu ochrony. Wybrane problemy dotyczące realizacji praw cudzoziemców ubiegających się o nadanie statusu uchodźcy i objętych ochroną międzynarodową w latach 2012-2014. Obserwacje Programu Pomocy Prawnej dla Uchodźców i Migrantów Helsińskiej Fundacji Praw Człowieka*, 2014, available (in Polish) at: <http://bit.ly/1eiVxDF>, 52; Commissioner for Human Rights, Letter of 7 December 2015 to the Ministry of Interior, in which he is asking to consider the increase the amount of financial assistance for asylum seekers, available (in Polish) at: <http://bit.ly/2kSuua4>.

The amount of social assistance that asylum seekers receive is not adjusted to their state of health, age or disability, which is incompatible with *Saciri*.<sup>232</sup> The system of granting material reception conditions for asylum seekers is separate from the general social assistance rules applicable to nationals. While social assistance for nationals is provided based on individual assessment of particular needs, the level of allowances offered to asylum seekers is generally standardized.

In 2015 the Polish Commissioner for Human Rights, UNHCR, HFHR and the SIP appealed to the Ministry of Interior to increase the amount of the social assistance granted to asylum seekers. Their motions were not accepted by the authorities. The authorities concluded that the amount of financial support granted outside of the centres was satisfactory because it was only an additional form of the material reception conditions. The basic form was the assistance granted in the reception centres, which the authorities deemed to be sufficient.<sup>233</sup>

### 3. Reduction or withdrawal of reception conditions

#### Indicators: Reduction or Withdrawal of Reception Conditions

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

The law provides for the possibility to withdraw material reception conditions, if an asylum seeker grossly violates the rules in the centre or acts violently towards employees of the centre or other foreigners staying there.<sup>234</sup> The decision on depriving reception conditions is issued by the Head of the Office for Foreigners. It can be re-granted to the same extent as previously (upon an asylum seeker's request), but if the violation occurs again, it can be re-granted only in the form of a payment of half of the regular financial allowance provided to asylum seekers.<sup>235</sup>

The abovementioned rules of withdrawal and reduction of social assistance are used in practice very rarely. In 2019 only one asylum seeker was deprived of reception conditions and in one case it was re-granted.<sup>236</sup> There was one case of withdrawal in 2018, 3 cases in 2017, and another 3 in 2016. No information is available about the specific reasons of such a withdrawal.<sup>237</sup> According to the Office for Foreigners, the rules on withdrawal are contradictory to the CJEU's judgment in the case of *Haqbin*.<sup>238</sup> Since the judgment, none of the asylum seekers was deprived reception conditions on this basis.<sup>239</sup>

Social assistance can be reduced to a half of the financial allowance provided to asylum seekers also in case of a refusal to undergo medical examinations or necessary sanitary treatment of asylum seekers themselves and their clothes.<sup>240</sup> This possibility was not used in 2019.<sup>241</sup>

<sup>232</sup> J. Białas, 'Niezgodność zasad pomocy socjalnej zapewnianej osobom ubiegającym się o nadanie statusu uchodźcy z wyrokiem Trybunału Sprawiedliwości UE', in HFHR, *W poszukiwaniu ochrony. Wybrane problemy dotyczące realizacji praw cudzoziemców ubiegających się o nadanie statusu uchodźcy i objętych ochroną międzynarodową w latach 2012-2014. Obserwacje Programu Pomocy Prawnej dla Uchodźców i Migrantów Helsińskiej Fundacji Praw Człowieka*, 2014, available (in Polish) at: <http://bit.ly/1eiVxDF>, 52.

<sup>233</sup> See e.g. letter of Polish Commissioner of Human Rights to Ministry of Interior of 7 November 2015, available (in Polish) at: <https://bit.ly/36ZyadF>.

<sup>234</sup> Article 76(1) Law on Protection.

<sup>235</sup> Articles 76 and 78 Law on Protection.

<sup>236</sup> Information provided by the Office for Foreigners, 22 January 2020.

<sup>237</sup> Information provided by the Office for Foreigners, 1 February 2017 and 1 February 2018.

<sup>238</sup> CJEU (Grand Chamber), case C-233/18 *Haqbin*, Judgment of 12 November 2019.

<sup>239</sup> Information provided by the Office for Foreigners, 22 January 2020.

<sup>240</sup> Article 81(3) Law on Protection.

<sup>241</sup> Information provided by the Office for Foreigners, 22 January 2020.

Moreover, in case an asylum seeker benefiting from social assistance in the centre stays outside this centre for a period exceeding two days, granting such assistance should be withheld by law until the moment of his return.<sup>242</sup>

Decisions on reduction and withdrawal of reception conditions are made on an individual basis. Asylum seekers have a possibility under the law to appeal a decision on reduction and withdrawal of reception conditions. Free legal assistance is provided by NGOs only under the general scheme. However, the risk of destitution is not assessed under the law or in practice. In one case in 2017, the Office for Foreigners withdrew material reception conditions from an applicant suffering from a complex form of PTSD, without his psychological condition being taken into consideration.

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

#### 4. Freedom of movement

##### Indicators: Freedom of Movement

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

Officially there is no restriction to the freedom of movement of asylum seekers: they can travel around Poland wherever they want. However, when an asylum seeker accommodated in a centre stays outside this centre for more than 2 days, the assistance will be withheld by law until the moment of their return.<sup>243</sup> To continue receiving assistance, asylum seekers should inform the employees of the centre if they want to leave for a longer period.<sup>244</sup>

The Office for Foreigners decides in which reception centre asylum seekers will be allocated. This decision cannot be formally challenged. Reasons of public interest and public order do not have any impact on the decision on an asylum seeker's place of stay. In practice, nuclear families generally stay in the same centre. The decisions are made taking into consideration family ties (asylum seekers should be allocated in the same centre as their families), vulnerability (e.g. asylum seekers with special needs can be allocated only to the centres which are adapted to their needs), continuation of medical treatment (when it cannot be continued in other premises), safety of the asylum seeker and capacity of the centres.<sup>245</sup>

Under the law an asylum seeker staying in one centre can be required to move to another facility if this is justified for organisational reasons.<sup>246</sup> Polish authorities in practice interpret such rule as applying only to transfers from first-reception centres to an accommodation centre.<sup>247</sup> As a result, asylum seekers are expected to move only from a first reception centre to the other centres.<sup>248</sup> In practice it can take a few to several days (depending on how long the epidemiological filter procedure lasts and whether the interview is conducted in the first reception centre – as a rule it should be conducted there in the first asylum procedure).<sup>249</sup> Afterwards if they are allocated to one centre they are very rarely moved to another. If so, it happens only upon request of the asylum seeker. In the period of 2016-2018 there were no cases of moving an asylum seeker to another facility without their request. In 2019, one family was moved to another centre

<sup>242</sup> Article 77 Law on Protection.

<sup>243</sup> Article 77 Law on Protection.

<sup>244</sup> Information received from UNHCR Poland and the Office for Foreigners, 25 March 2014.

<sup>245</sup> Information provided by Office for Foreigners, 22 January 2020.

<sup>246</sup> Article 82(1)(6) Law on Protection.

<sup>247</sup> EMN, *The Organisation of Reception Facilities for Asylum Seekers in different Member States. National Contribution of Poland*, 2013, available at: <https://bit.ly/2vKi6zx>, 19.

<sup>248</sup> Commissioner for Human Rights, *Realizacja prawa małoletnich cudzoziemców do edukacji. Raport RPO*, 2013, available (in Polish) at: <http://bit.ly/1Hz4N4a>, 38. However, exceptionally, asylum seekers are allowed to stay in the first reception centre for longer periods of time, even for the whole asylum procedure.

<sup>249</sup> Information provided by the Office for Foreigners, 27 August 2015.

on the initiative of the Office for Foreigners in order to stop the conflicts with other foreigners and ensure the security in the centre.<sup>250</sup>

If an asylum seeker submits a request to live in another centre, it is mostly because of the location of the centre (e.g. it is far from their family and friends or medical facilities).<sup>251</sup> Most of the requests for a move to another centre are accepted. However, NGOs report that recently, due to the small numbers of asylum seekers in Poland, obtaining the assistance granted out of the centre became more difficult (see [Forms and levels of material reception conditions](#)).

## B. Housing

### 1. Types of accommodation

#### Indicators: Types of Accommodation

- |   |               |
|---|---------------|
| 1. Number of reception centres: <sup>252</sup>  | 10            |
| 2. Total number of places in the reception centres:   | 1,962         |
| 3. Total number of places in private accommodation:   | Not available |
| 4. Type of accommodation most frequently used in a regular procedure:   |               |
| <input checked="" type="checkbox"/> Reception centre <input type="checkbox"/> Hotel or hostel <input type="checkbox"/> Emergency shelter <input checked="" type="checkbox"/> Private housing <input type="checkbox"/> Other |               |
| 5. Type of accommodation most frequently used in an accelerated procedure:  |               |
| <input checked="" type="checkbox"/> Reception centre <input type="checkbox"/> Hotel or hostel <input type="checkbox"/> Emergency shelter <input checked="" type="checkbox"/> Private housing <input type="checkbox"/> Other |               |

Poland has ten reception centres which altogether provide 1,962 places. At the end of 2019, 1,295 (1,260 in 2018) asylum seekers were residing in the centres. Another 1,640 (1,619 in 2018) asylum seekers were receiving assistance outside the centres.<sup>253</sup>

Two centres (**Dębak, Biała Podlaska**) serve for first reception, where asylum seekers are directed after applying for asylum in order to register and carry out medical examinations. The remaining eight centres are accommodation centres.<sup>254</sup> The total number of centres has dropped by one in 2019 (from 11 to 10). The centre in Grotniki ceased operating as an accommodation centre based on the agreement with the Office for Foreigners. However, some asylum seekers decided to continue living in this centre, paying for it with their financial allowance (after the closure of the centre they applied and were granted the assistance outside the centre).<sup>255</sup>

There is no problem of overcrowding in these centres. As of 31 December 2019, the occupancy rate was 48,18% in first reception centre in **Biała Podlaska**, 65,45% in **Dębak** and between 44,54% and 96,79% in the accommodation centres.<sup>256</sup>

Centres are located in different parts of Poland. Some of them are located in cities (**Warsaw, Biała Podlaska, Białystok, Lublin**) but most of them are situated in the countryside. Some are located far away from any towns: **Bezwola, Dębak, Grupa** and **Linin** are in the woods.<sup>257</sup> These centres are therefore not

<sup>250</sup> Information from the Office for Foreigners, 22 and 27 January 2020.

<sup>251</sup> Information provided by the Office for Foreigners, 22 January 2020.

<sup>252</sup> Both accommodation and for first arrivals.

<sup>253</sup> Information provided by the Office for Foreigners, 22 January 2020.

<sup>254</sup> Office for Foreigners, Guidebook Department of Social Assistance (2019), available at: <https://bit.ly/31xfDnV>, 4.

<sup>255</sup> M. Witkowska, 'Ośrodek dla cudzoziemców w Grotnikach został zamknięty. Ale uchodźcy nadal w nim mieszkają', 29 September 2019, available (in Polish) at: <https://bit.ly/2vQmtJr>.

<sup>256</sup> Information provided by the Office for Foreigners, 22 January 2020.

<sup>257</sup> List and map of reception centres available at: <http://bit.ly/1JzdU5c>. Regarding the centre in Linin, see the account of a Tajik asylum seeker living there, in Y. Matusevich, 'Tajik Asylum Seekers Struggle for a Sense of Security', 12 April 2019, available at: <https://bit.ly/2SIIspK>: 'Although Linin is informally referred to as an "open camp," there is nowhere to go within walking distance and Warsaw is extremely difficult to reach by public transportation. The center is surrounded by a wall and the reception center enforces a nightly curfew. Visitors

easily accessible; in **Dębak** residents have to walk 3km through the woods to access public transport. The centre in **Warsaw** (for single women with children) is situated far away from the city centre, near factories and a construction company. Nearby there are no shops or other service points, to get to the centre asylum-seeking women have to walk through a tree-lined road which is not sufficiently lit. This raises concerns with regard to safety of single women living there.<sup>258</sup> It is also pointed out that those centres are located in areas where is a high level of poverty, which hampers the asylum seeker's access to a labour market.<sup>259</sup>

Spatial exclusion as a result of the present location of the centres is considered as the main problem by some NGOs.<sup>260</sup> Isolation of the centres leads to limitation of contact with Polish citizens and Polish institutions, including NGOs, which affects the effectiveness of the integration process.<sup>261</sup>

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

## 2. Conditions in reception facilities

### Indicators: Conditions in Reception Facilities

1. Are there instances of asylum seekers not having access to reception accommodation because of a shortage of places?  Yes  No
2. What is the average length of stay of asylum seekers in the reception centres? Not available<sup>262</sup>
3. Are unaccompanied children ever accommodated with adults in practice?  Yes  No

The Head of the Office for Foreigners is responsible for the management of all the centres. This authority can delegate its responsibility for managing the centres to social organisations, associations, etc.<sup>263</sup> Currently 6 reception centres, one less than in 2018, are managed by the private contractors (private owners and companies).<sup>264</sup>

The Office for Foreigners monitors the situation in the centres managed by private contractors on a daily basis through the Office's employees working in those centres and through the overall inspections taking place two times a year.<sup>265</sup> Asylum seekers can complain to the Office for Foreigners on the situation in the centres and they use this opportunity in practice.<sup>266</sup> In 2017 there were only 2 complaints, none of which was considered legitimate.<sup>267</sup> In 2018, 8 complaints were registered: 4 – considered other foreigners staying

are only allowed upon prior approval from the Polish Ministry of Interior and there is a police van parked outside the main gate around the clock'.

<sup>258</sup> Centrum Pomocy Prawnej im. Haliny Nieć, K. Przybyłowska (Ed.), *Raport: Przemoc seksualna i przemoc ze względu na płeć w ośrodkach dla osób ubiegających się o nadanie statusu uchodźcy 2012-2014*, December 2014, available (in Polish) at: <http://bit.ly/1L1SxFG>, 8-10.

<sup>259</sup> Lukaszewicz, K., 'Exile to Poverty: Policies and Poverty Among Refugees in Poland', *International Migration Vol. 55 (6) 2017*, 61.

<sup>260</sup> See W. Goszczyński, R. Baczyński-Sielaczek, J. Suchomska, J. Stankowska and M. Wróblewski. 'Lokalne systemy integracji uchodźców – badania' in Fundacja EMIC and Pracownia Zrównoważonego Rozwoju, *Wielogłos. Integracja uchodźców w polskich gminach* (2016), available (in Polish) at: <https://bit.ly/31uBLiE>, 58.

<sup>261</sup> Institute of Public Affairs, *Analiza przygotowania lokalnych instytucji do przyjęcia uchodźców z programu relokacji i przesiedleń. Raport końcowy z badań fokusowych*, 2016, available (in Polish) at: <http://bit.ly/2GBfKr4>, 12-14; Lukaszewicz, K., 'Exile to Poverty: Policies and Poverty Among Refugees in Poland', *International Migration Vol. 55 (6) 2017*, 65.

<sup>262</sup> The Office for Foreigners does not collect this data. Other data is available. Out of all asylum seekers accommodated in the centres in December 2019, 59% stayed there for more than 18 months and 15% for between 6 and 12 months.

<sup>263</sup> Article 79(2) Law on Protection.

<sup>264</sup> Information from the Office for Foreigners, 22 January 2020.

<sup>265</sup> Information provided by the Office for Foreigners, 15 January 2019 and 22 January 2020.

<sup>266</sup> Information provided by the Office for Foreigners, 25 March 2014; Para 17 of the Annex to the Regulation on rules of stay in the centre for asylum seekers.

<sup>267</sup> Information provided by the Office for Foreigners, 1 February 2018.

in the centre, 1 – medical assistance, 1 – improper behaviour of the centre’s employee and 1 – the food in the centre.<sup>268</sup> In 2019, the Office for Foreigners registered 13 complaints, all of which concerned medical assistance.<sup>269</sup>

The existence of the centres raises some concerns of their neighbours. In 2018, Association ‘I love Białystok’ applied to Ministry of Interior and Administration to take measures to protect Polish citizens living near the centre in Białystok and eventually close it down.<sup>270</sup> The centre continued operating in 2019.

## 2.1. Overall living conditions

Living conditions differ across the reception centres. In the centres managed by private contractors ensuring certain minimum living conditions standards is obligatory on the basis of agreements between these contractors and the Office for Foreigners. Thus, centres have to have furnished rooms for asylum applicants, a separate common room for men and for women, kindergarten, space to practice religion, a recreation area, school rooms, specified number of refrigerators and washing machines.<sup>271</sup> Other conditions are dependent on the willingness and financial capacities of the contractor.<sup>272</sup>

The Supreme Audit Office (during an audit which took place in years 2012-2014) concluded that living conditions in 10 controlled centres as good.<sup>273</sup> However, generally, asylum seekers assess the conditions in the centres rather low.<sup>274</sup> In the research conducted in the centre in **Grupa** foreigners predominantly complained on the food served in the centre. They assessed the centre’s cleanliness, appearance and furnishings mostly as ‘average’ or ‘bad’.<sup>275</sup> In 2019 the UNHCR conducted the monitoring in the centre in **Biała Podlaska**<sup>276</sup> but the findings are not publicly available.

None of the centres was built in order to serve as a centre for foreigners. Most of them were used for different purposes before, as army barracks, hostels for workers or holiday resorts.<sup>277</sup> The standard in those centres is diverse, but generally rather low. Most often one family stays in one room, without separated bedrooms or kitchen. Moreover, usually the centres do not offer separated bathrooms and kitchens, only the common ones.<sup>278</sup>

The Office for Foreigners reported in 2019 that in the reception centre in **Dębak** the renovation works has ended. The renovation was aimed in improvement of reception conditions for asylum seekers.<sup>279</sup>

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<sup>268</sup> Information provided by the Office for Foreigners, 15 January 2019.

<sup>269</sup> Information provided by the Office for Foreigners, 22 January 2020.

<sup>270</sup> E Wołosik, ‘Inicjatywa “Kocham Białystok” chce likwidacji ośrodka dla cudzoziemców w mieście’, 7 May 2018, available (in Polish) at: <https://bit.ly/2GZfUqu>.

<sup>271</sup> Office for Foreigners, *Guidebook Department of Social Assistance (2019)*, available at: <https://bit.ly/31xfDnV>, 4.

<sup>272</sup> Commissioner for Human Rights, *Realizacja prawa małoletnich cudzoziemców do edukacji. Raport RPO*, 2013, available (in Polish) at: <http://bit.ly/1Hz4N4a>, 22.

<sup>273</sup> Supreme Audit Office, *Pomoc społeczna dla uchodźców. Informacja o wynikach kontroli*, November 2015, available (in Polish) at: <http://bit.ly/2IP90Z4>, 20-21.

<sup>274</sup> See i.a. W. Goszczyński, R. Baczyński-Sielaczek, J. Suchomska, J. Stankowska and M. Wróblewski. ‘Lokalne systemy integracji uchodźców – badania’ in Fundacja EMIC and Pracownia Zrównoważonego Rozwoju, *Wielogłos. Integracja uchodźców w polskich gminach* (2016), available (in Polish) at: <https://bit.ly/31uBLiE>, 64. *Ibid*, 65-67.

<sup>275</sup> Information from the Office for Foreigners, 22 January 2020.

<sup>276</sup> See Lukaszewicz, K., ‘Exile to Poverty: Policies and Poverty Among Refugees in Poland’, *International Migration* Vol. 55 (6) 2017, 61.

<sup>277</sup> W. Goszczyński, R. Baczyński-Sielaczek, J. Suchomska, J. Stankowska and M. Wróblewski. ‘Lokalne systemy integracji uchodźców – badania’ in Fundacja EMIC and Pracownia Zrównoważonego Rozwoju, *Wielogłos. Integracja uchodźców w polskich gminach* (2016), available (in Polish) at: <https://bit.ly/31uBLiE>, 63, 67.

<sup>278</sup> Office for Foreigners, ‘Remont ośrodka w Podkowie Leśnej – Dębaku’, 20 February 2019, available (in Polish) at: <https://bit.ly/2UvOsbF>.

No protests or hunger strikes in centres have been reported in years 2014-2017 and in 2019.<sup>280</sup> In 2018 an asylum seeker informed the Office for Foreigners in writing that he has started a hunger strike due to the fact that his and his wife's asylum procedures had been separated because they had split up.<sup>281</sup>

In every centre, there are two kinds of workers: employees of the Office for Foreigners and other employees (as kitchen aids, cleaners etc.). As regards the staff rate, in 2019, one employee of the Office for Foreigners was maximally in charge of 120 asylum seekers (staying outside and inside centres) and 75 asylum seekers (living in the centres).<sup>282</sup>

As of December 2019, there were 29 employees of Office for Foreigners working in all the centres and a variable number of other workers.<sup>283</sup> Staff in the centre is working from Monday to Friday from 7:00 to 18:00. They are mainly responsible for the administration of the centre, not for a social work with asylum seekers. The number of employees of the Office for Foreigners and the scope of their responsibilities is considered insufficient.<sup>284</sup> At night and on weekends only guards are present in the centre Security staff is available in all centres around the clock.<sup>285</sup> In the research conducted in the centre in **Grupa** the employers of the centre were evaluated by asylum seekers positively.<sup>286</sup>

## 2.2. Activities in the centres

Asylum seekers can go outside from the centre whenever they want, during the day, but they should be back before 23:00 in the evening.<sup>287</sup>

Polish language courses are organised in all reception centres, also for children. Those courses are considered the only integration activity provided by the Office for Foreigners.<sup>288</sup> See more in [Access to Education](#).

In 2019 NGOs carried out some projects in the centres which aimed at general integration, learning Polish, vocational training, cultural activities, and psychological and legal assistance.<sup>289</sup> In the centre in **Linin** there were no integration, vocational nor cultural activities provided by the NGOs (only legal and psychological assistance was provided there). In other centres the NGOs mostly organised activities for children. Adults could consult a cultural mentor (in 3 centres), take part to events engaging the local community (2 centres), handicraft workshops (one centre), integration meetings, touristic trips as well as go to cinema (one centre). In two centres some other activities for adults (unspecified in the information from the Office for Foreigners) were provided.<sup>290</sup> The NGOs' presence in the centres depends on their funding. Compared to 2018, the NGOs' presence in the centres seems to be considerably diminished. Moreover, most of their activities has started only in September 2019.

5 centres have libraries. In all centres access to internet is provided.<sup>291</sup>

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<sup>280</sup> Information provided by the Office for Foreigners, 1 February 2018 and 22 January 2020.

<sup>281</sup> Information provided by the Office for Foreigners, 15 January 2019.

<sup>282</sup> Information provided by the Office for Foreigners, 22 January 2020.

<sup>283</sup> *Ibid.*

<sup>284</sup> Concerns expressed by SIP, 8 January 2020.

<sup>285</sup> Office for Foreigners, *Guidebook Department of Social Assistance (2019)*, available at: <https://bit.ly/31xfDnV>, 8.

<sup>286</sup> W. Goszczyński, R. Baczyński-Sielaczek, J. Suchomska, J. Stankowska and M. Wróblewski. 'Lokalne systemy integracji uchodźców – badania' in Fundacja EMIC and Pracownia Zrównoważonego Rozwoju, *Wielogłos. Integracja uchodźców w polskich gminach* (2016), available (in Polish) at: <https://bit.ly/31uBLiE>, 68.

<sup>287</sup> Para 12(3) of the Annex to the Regulation on rules of stay in the centre for asylum seekers.

<sup>288</sup> W. Goszczyński, R. Baczyński-Sielaczek, J. Suchomska, J. Stankowska and M. Wróblewski. 'Lokalne systemy integracji uchodźców – badania' in Fundacja EMIC and Pracownia Zrównoważonego Rozwoju, *Wielogłos. Integracja uchodźców w polskich gminach* (2016), available (in Polish) at: <https://bit.ly/31uBLiE>, 69.

<sup>289</sup> Information provided by the Office for Foreigners, 22 January 2020.

<sup>290</sup> *Ibid.*

<sup>291</sup> *Ibid.*

In all centres there is a special room designed for religious practices.<sup>292</sup> If asylum seekers want to participate in religious services outside of the centre, they have such a right, although in practice remoteness from the closest place of worship can prevent them from participating in such services.

## C. Employment and education

### 1. Access to the labour market

#### Indicators: Access to the Labour Market

- |  |   |
|--|---|
| 1. Does the law allow for access to the labour market for asylum seekers?<br>❖ If yes, when do asylum seekers have access the labour market? | <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No<br>6 months |
| 2. Does the law allow access to employment only following a labour market test?  | <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No             |
| 3. Does the law only allow asylum seekers to work in specific sectors?<br>❖ If yes, specify which sectors:                                   | <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No             |
| 4. Does the law limit asylum seekers' employment to a maximum working time?<br>❖ If yes, specify the number of days per year                 | <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No             |
| 5. Are there restrictions to accessing employment in practice?   | <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No             |

The law allows for access to the labour market for asylum seekers after six months from the date of submission of an asylum application if a first instance decision has not been taken within this time and if the delay is not attributed to any fault of the asylum seeker.<sup>293</sup> The Head of the Office for Foreigners upon the asylum seeker's request, issues a certificate, which accompanied by a temporary ID document entitles the asylum seeker to work in Poland.<sup>294</sup> The certificate is valid until the day the decision concerning international protection becomes final.<sup>295</sup> The temporary ID document is valid for 90 days and can be subsequently prolonged for renewable periods of 6 months.

Access to employment is not limited to certain sectors, but can be problematic in practice. Many employers do not know, that the above mentioned certificate with a temporary ID document gives an asylum seeker a right to work or do not want to employ a person for such a short time (i.e. up to 6 months, as the employers are unaware that the procedure will actually take longer than the validity of a single temporary ID document), which causes that those certificates have no practical significance.<sup>296</sup> Secondly asylum seekers often live in centres which are located far away from big cities and in the areas with high level of poverty and unemployment in general, which makes it difficult to find a job in practice. Moreover, most asylum seekers do not know Polish well enough to get a job in Poland.<sup>297</sup> Asylum seekers also face a problem of a limited

<sup>292</sup> Office for Foreigners, *Guidebook Department of Social Assistance (2019)*, available at: <https://bit.ly/31xfDnV>, 4. See also Supreme Audit Office, *Pomoc społeczna dla uchodźców. Informacja o wynikach kontroli*, November 2015, available (in Polish) at: <http://bit.ly/2IP90Z4>, 9.

<sup>293</sup> Article 35 Law on Protection.

<sup>294</sup> *Ibid.*

<sup>295</sup> Article 35 (3) Law on Protection. The Refugee Board's decision is final. If an asylum seeker does not appeal, the decision of the Office for Foreigners, the latter becomes final 14 days following notification of such decision.

<sup>296</sup> W. Klaus, 'Rozwiązania prawne stosowane w odniesieniu do osób starających się o ochronę w Polsce' in A. Górny, H. Grzymała-Moszczyńska, W. Klaus and S. Łodziński, *Uchodźcy w Polsce. Sytuacja prawna, skala napływu i integracja w społeczeństwie polskim oraz rekomendacje* (PAN 2017), available (in Polish) at: <http://bit.ly/2DVccfr>, 23.

<sup>297</sup> Lukaszewicz, K., 'Exile to Poverty: Policies and Poverty Among Refugees in Poland', *International Migration Vol. 55* (6) 2017, 61, 66; M. Abdoulvakhabova, 'Problemy cudzoziemców w Polsce w świetle funkcjonowania Fundacji Ocalenie' in M. Duszczyk and P. Dąbrowski (ed.), *Przestrzeganie praw cudzoziemców w Polsce. Monografia* (Rzecznik Praw Obywatelskich, 2012), available (in Polish) at: <http://bit.ly/1RTIHbU>, 46. See also M. Pawlak, 'Zatrudnienie' in A. Górńska, M. Koss-Goryszewska, J. Kucharczyk (eds), *W stronę krajowego mechanizmu ewaluacji integracji: Diagnoza sytuacji beneficjentów ochrony międzynarodowej w Polsce* (Instytut Spraw Publicznych 2019), 35.

recognition of education and skills acquired outside Poland, so they are often underemployed. Moreover, foreigners endure a discrimination in an employment, e.g. they are offered lower salary than Poles.<sup>298</sup>

Furthermore, even receiving the above-mentioned certificate may be in some circumstances problematic. In regard to asylum seekers who reached majority during the asylum proceedings that had been initiated by and continued with their parents and who declared that they did not want to apply for asylum separately, the Office for Foreigners refuses issuing the certificate entitling them to work. In order to receive such certificate, they have to initiate asylum proceedings separate from their parents, which is criticized by the NGOs.<sup>299</sup>

Experts point out that the fact that asylum seekers cannot work for the first 6 months of the refugee procedure is one of the factors which leads to a lack of independence and reliance on social assistance.<sup>300</sup>

## 2. Access to education

### Indicators: Access to Education

- |  |   |
|--|---|
| 1. Does the law provide for access to education for asylum-seeking children? | <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No |
| 2. Are children able to access education in practice?                        | <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No |

All children staying in Poland have a constitutional right to education. Education is mandatory until the age of 18. It is provided to asylum-seeking children in regular schools and it is not limited by law. Asylum seekers benefit from education in public schools under the same conditions as Polish citizens until the age of 18 or the completion of higher school.<sup>301</sup> In September 2019, approximately 850 asylum-seeking children attended around 110 public schools in Poland. Most of them (approx. 490) stayed in the reception centres, predominantly in Łuków, Czarny Bór and Linin.<sup>302</sup>

In 2018, the Ministry of Interior and Administration proposed the amendment to Polish law enabling teaching asylum-seeking children in the reception centres instead of public schools. The proposal was grossly criticized as *inter alia* violating children's rights and leading to discrimination and separation from Polish society.<sup>303</sup> The Ministry explained that the aim of the proposal is not to change the current model of teaching applied to those children, but to provide the possibility to react in case of a massive influx of foreigners.<sup>304</sup> However, due to widespread criticism, the Ministry withdrew from this idea.<sup>305</sup>

There are different obstacles to accessing education in practice. The biggest problem is a language and cultural barrier. Children do not know Polish but they are obliged to participate in classes in Polish (see next section on the [Preparatory classes](#)). However, in all centres courses of Polish language for children are organised.<sup>306</sup> In 2017 the Office for Foreigners together with Linguae Mundi Foundation created a

<sup>298</sup> Lukasiwicz, K., 'Exile to Poverty: Policies and Poverty Among Refugees in Poland', *International Migration* Vol. 55 (6) 2017, 64, 66.

<sup>299</sup> O. Dobrowolska, 'Zaświadczenie uprawniające do wykonywania pracy dla pełnoletnich dzieci wnioskodawcy' in Stowarzyszenie Interwencji Prawnej (SIP), *SIP w działaniu. Prawa cudzoziemców w Polsce w 2018 r.* (2019), available (in Polish) at: <https://bit.ly/39b6qUJZ>, 21-22.

<sup>300</sup> UNHCR, *Gdzie jest mój dom? Bezdomność i dostęp do mieszkań wśród ubiegających się o status uchodźcy, uchodźców i osób z przyznaną ochroną międzynarodową w Polsce*, 2013, 14.

<sup>301</sup> Article 165 (1) and (2) of Law of 14 December 2016 on education.

<sup>302</sup> Office for Foreigners, 'Nowy rok szkolny dla dzieci w procedurze uchodźczej', 3 September 2019, available (in Polish) at: <https://bit.ly/2SvIcy5>.

<sup>303</sup> See *i.a.* SIP, Letter to Ministry of Interior and Administration, 5 March 2018, available (in Polish) at: <http://bit.ly/2U0qZw6>; Dziennik.pl, 'Getta edukacyjne dla uchodźców, dzieci nie będą się uczyć z polskimi rówieśnikami. "Już na starcie ich wykluczamy"', 26 February 2018, available (in Polish) at: <http://bit.ly/2SMmPel>.

<sup>304</sup> Ministry of Interior and Administration, Letter to Commissioner for the Rights of the Child, 3 April 2018, available (in Polish) at: <http://bit.ly/2IsRfxV>.

<sup>305</sup> DGP, 'MSWiA: Nie będzie gett edukacyjnych', 4 April 2018, available (in Polish) at: <http://bit.ly/2SOFIDp>.

<sup>306</sup> Office for Foreigners, *Guidebook Department of Social Assistance* (2019), <https://bit.ly/3bstdgP>, 5: 'Classes for children consist in help with homework and compensatory classes (5 groups in each centre, classes 5 times a week, 1 hour a day each). Children beginning compulsory education in Poland can participate in a course

comprehensive programme and materials for teaching Polish language in the centres.<sup>307</sup> Since recently, the compensatory classes are also being organized in the centres.<sup>308</sup> The Office for Foreigners emphasizes that teachers working in the centres are in contact with the schools in order to gather the information on the real needs and problems of their pupils, to adapt the lessons accordingly.<sup>309</sup> Moreover, material reception conditions for asylum seekers include basic supplies necessary for learning Polish.<sup>310</sup> Furthermore, asylum-seeking children should receive the allowance 'Good start' (300 PLN) that according to the law should be granted once a year for every child that begins a school year in Poland. However, the SIP informs that asylum seekers have problems with receiving this support.<sup>311</sup> The refusals result from the internal incompatibility of the law in this regard.

Moreover, children are entitled to additional free Polish language classes, which should be organised by the authority managing the school which asylum seekers are attending.<sup>312</sup> Those classes are organized as long as it is needed. Children can also participate in additional lessons on other subjects if their education level is different from this of the class (compensatory classes). This form of assistance can be granted for a maximum of twelve months.<sup>313</sup> Compensatory lessons and additional Polish language classes can last for a maximum of five hours per week for one child. In practice, schools organise two to ten hours of additional Polish language lessons per week (most of the times it is 2 hours per week which is not sufficient). In some schools they are not organised at all.<sup>314</sup> The limitation of compensatory and additional Polish language lessons to five hours per week is criticised as insufficient.<sup>315</sup> NGOs find fault with the automatic limitation of the duration of provision of additional assistance to twelve months, as it should be adjusted individually.<sup>316</sup>

Children have also a right to assistance of a person who knows the language of their country of origin, which can be employed as a teacher's assistant by the director of the school.<sup>317</sup> This help is limited to a maximum of twelve months, which is considered not enough.<sup>318</sup> Moreover, the remuneration of such assistants is too low<sup>319</sup>. In some schools NGOs provide support as teacher's assistant in the framework of their projects.<sup>320</sup> Such support is dependent on the NGOs' funding, however. In the end of 2018 the media has reported that in some schools there was only one assistant for as much as 70 foreign children.<sup>321</sup>

Experts also point out that there are no legal provisions concerning assessment and promotion to higher classes of foreign children who do not know the Polish language sufficiently. Those children are also obliged

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addressed to them (classes 5 times a week, 3 lessons a day)'. Information confirmed by the Office for Foreigners, 22 January 2020.

<sup>307</sup> Information provided by the Office for Foreigners, 1 February 2018.

<sup>308</sup> Office for Foreigners, 'Wsparcie dla cudzoziemców w procedurze uchodźczej', 13 November 2019, available (in Polish) at: <https://bit.ly/38ec161>.

<sup>309</sup> Office for Foreigners, 'Nowy rok szkolny dla dzieci w procedurze uchodźczej', 3 September 2019, available (in Polish) at: <https://bit.ly/2SbaCOR>.

<sup>310</sup> Article 71(1)(1f) Law on Protection. See also Office for Foreigners, 'Wsparcie dla cudzoziemców w procedurze uchodźczej', 13 November 2019, available (in Polish) at: <https://bit.ly/31Dre54>.

<sup>311</sup> M. Sadowska, 'Świadczenia "Dobry start"> in Stowarzyszenie Interwencji Prawnej (SIP), *SIP w działaniu. Prawa cudzoziemców w Polsce w 2018 r.* (2019), available (in Polish) at: <https://bit.ly/37h1zjl>, 52.

<sup>312</sup> Article 165 (7) of Law of 14 December 2016 on education.

<sup>313</sup> Article 165 (10) of Law of 14 December 2016 on education.

<sup>314</sup> Commissioner for Human Rights, *Realizacja prawa małoletnich cudzoziemców do edukacji. Raport RPO*, 2013, available (in Polish) at: <http://bit.ly/1Hz4N4a>, 32.

<sup>315</sup> K. Wójcik, 'Więcej cudzoziemców w szkołach', 11 September 2019, available (in Polish) at: <https://bit.ly/31MrM8H.l>

<sup>316</sup> W. Klaus, *Prawo do edukacji cudzoziemców w Polsce*, Stowarzyszenie Interwencji Prawnej, 2011, available (in Polish) at: <http://bit.ly/2T2hvDA>, 8.

<sup>317</sup> Article 165 (8) of the Law of 14 December 2016 on education.

<sup>318</sup> K. Sołtan-Kościelecka, 'Klasy powitalne. Realna szansa na poprawę warunków kształcenia cudzoziemców czy pozorne rozwiązanie?', *Biuletyn Migracyjny* no. 57, June 2018, available (in Polish) at: <http://bit.ly/2EkclF8>.

<sup>319</sup> Ibid.

<sup>320</sup> Commissioner for Human Rights, *Obecność uchodźców w małych gminach. Doświadczenia Góry Kalwarii i Podkowy Leśnej w integracji uchodźców i edukacji ich dzieci*, 2016, available (in Polish) at: <http://bit.ly/2IKSM6n>, 30-31.

<sup>321</sup> M. Sewastanowicz, 'Kuratorium sprawdzi, czy dzieci uchodźców mają dostęp do edukacji', 5 December 2018, available (in Polish) at: <https://bit.ly/2SeH5Eb>.

to write exams at the end of the school, even if they have joined school a couple of days before. Nevertheless, they can use dictionaries and simplified forms during an exam.<sup>322</sup>

Moreover, schools admitting foreign children often have to cope with a lack of sufficient financial means to organise proper education for this special group of pupils. Moreover, teachers working with foreign children are not receiving sufficient support, like courses and materials.<sup>323</sup> However, it should be pointed out that in the Warsaw teachers' training institution (*Warszawskie Centrum Innowacji Edukacyjno-Społecznych i Szkoleń*) the unit for education of foreign children was established and a specialized assistant was hired. The institution conducts also on a regular basis trainings for teachers working with foreign children. There are also some training initiatives of the Ministry of Education.<sup>324</sup>

It happens that a school refuses to admit a foreigner because it is unable to cope with the challenge.<sup>325</sup> Parents have a right to appeal such refusal.<sup>326</sup> When the refusal is justified by the organizational reasons, by law authorities are obliged to provide a place in a different school.<sup>327</sup>

If a child cannot enter the regular education system e.g. due to illness, their special needs are supposed to be addressed in special school. At the end of 2019, at least 8 asylum-seeking children were attending a special school.<sup>328</sup>

NGOs inform that the asylum seekers most often complain about the hate speech that their children encounter in the school, both from their peers and the staff.

To sum up, the current education system is not taking into account the special needs of foreign children.<sup>329</sup> As a result, adaptation of the education programme to the needs and abilities of the individual child is dependent on the goodwill and capacity of teachers and directors. Moreover, as a factor impeding effective teaching, schools also report the problem of the big fluctuation of the foreign children as a result of families' migration to Western Europe.<sup>330</sup> As a consequence, asylum-seeking and refugee children are disappearing

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<sup>322</sup> Commissioner for Human Rights, *Obecność uchodźców w małych gminach. Doświadczenia Góry Kalwarii i Podkowie Leśnej w integracji uchodźców i edukacji ich dzieci*, 2016, available (in Polish) at: <http://bit.ly/2IKSM6n>, 30-31.

<sup>323</sup> Commissioner for Human Rights, *Obecność uchodźców w małych gminach. Doświadczenia Góry Kalwarii i Podkowie Leśnej w integracji uchodźców i edukacji ich dzieci*, 2016, available (in Polish) at: <http://bit.ly/2IKSM6n>, 23-24; Iglicka, Krystyna, 'Chechen's Lesson. Challenges of Integrating Refugee Children in a Transit Country: A Polish Case Study', *Central and Eastern European Migration Review*, Vol. 6, No. 2, 2017, available at: <http://bit.ly/2GPiKiV>, 132.

<sup>324</sup> Ministry of Education, 'Nauka dzieci przybywających z zagranicy w polskim systemie edukacji', available (in Polish) at: <https://bit.ly/31KtY0C>.

<sup>325</sup> Iglicka, Krystyna, 'Chechen's Lesson. Challenges of Integrating Refugee Children in a Transit Country: A Polish Case Study', *Central and Eastern European Migration Review*, Vol. 6, No. 2, 2017, available at: <http://bit.ly/2GPiKiV>, 132-133. Schools are entitled to refuse admission on a basis of Article 166 of the Law of 14 December 2016 on education, when due to the demographic reasons such admission would require changes in the organisation of a school. See also Paras 13-15 Ordinance of the Ministry of National Education of 23 August 2017 on education of persons without Polish citizenship and Polish citizens who learned in schools in other countries (*w sprawie kształcenia osób niebędących obywatelami polskimi oraz osób będących obywatelami polskimi, które pobierały naukę w szkołach funkcjonujących w systemach oświaty innych państw*).

<sup>326</sup> Paras 13-15 Ordinance of the Ministry of National Education of 23 August 2017 on education of persons without Polish citizenship and Polish citizens who learned in schools in other countries (*w sprawie kształcenia osób niebędących obywatelami polskimi oraz osób będących obywatelami polskimi, które pobierały naukę w szkołach funkcjonujących w systemach oświaty innych państw*).

<sup>327</sup> Article 166(1)-(2) Law of 14 December 2016 on education.

<sup>328</sup> Information from the Office for Foreigners, 22 January 2020.

<sup>329</sup> See e.g. Iglicka, Krystyna, 'Chechen's Lesson. Challenges of Integrating Refugee Children in a Transit Country: A Polish Case Study', *Central and Eastern European Migration Review*, Vol. 6, No. 2, 2017, available at: <http://bit.ly/2GPiKiV>, 132.

<sup>330</sup> Institute of Public Affairs, *Analiza przygotowania lokalnych instytucji do przyjęcia uchodźców z programu relokacji i przesiedleń. Raport końcowy z badań fokusowych*, 2016, available (in Polish) at: <http://bit.ly/2GBfKr4>, 57-62.

from Polish education system.<sup>331</sup> Another problem is that too many foreign children are admitted to the same class, which impedes education of both Polish and foreign children.<sup>332</sup>

## 2.1. Preparatory classes

Since 2016, schools have a possibility to organise preparatory classes for foreign children who do not have sufficient knowledge of the Polish language. A foreign minor can join preparatory classes anytime during the school year. After the end of the school year, his participation in those classes can be prolonged, when needed, for maximum one more year. The preparatory classes last for 20-26 hours a week. If a school decides to organise such classes, foreign children are not obliged to participate in regular classes. Learning Polish as a foreign language is limited only to 3 hours per week,<sup>333</sup> which raise serious doubts concerning the effectiveness of such solution.<sup>334</sup>

Preparatory classes have been met with mixed reactions. In the opinion of the Ministry of Education, the implemented solution enables individual treatment of foreign children and adaptation of the methods and forms of education to their needs. According to the critics of this solution, children are placed exclusively in foreign classes, thus impeding their integration into Polish society and fuelling separation.<sup>335</sup> Furthermore, the preparatory classes were not designed as 'welcome classes' which have their own program, separate from the regular classes and adapted to foreign minors' needs.<sup>336</sup> Teachers are obliged to implement the same curriculum in the preparatory classes as in the regular ones, the only difference is that all children in a class are foreign and a teacher can adapt his method of teaching to their special needs.<sup>337</sup> Meanwhile, the program of such classes should concentrate on learning Polish.<sup>338</sup> Moreover, one preparatory class can be organised for children of different ages (e.g. children qualifying to classes I to III of primary school can be gathered in one preparatory class), which means that a teacher may be obliged to implement the curriculum even for three classes at once.<sup>339</sup> Furthermore, experts point out that there is no system which would prepare teachers to work in preparatory classes with foreigners.<sup>340</sup>

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<sup>331</sup> Iglicka, Krystyna, 'Chechen's Lesson. Challenges of Integrating Refugee Children in a Transit Country: A Polish Case Study', Central and Eastern European Migration Review, Vol. 6, No. 2, 2017, available at: <http://bit.ly/2GPIKiV>, 123, 130.

<sup>332</sup> Institute of Public Affairs, *Analiza przygotowania lokalnych instytucji do przyjęcia uchodźców z programu relokacji i przesiedleń. Raport końcowy z badań fokusowych*, 2016, available (in Polish) at: <http://bit.ly/2GBfKr4>, 57-62.

<sup>333</sup> Para 16(9) Ordinance of the Ministry of National Education of 23 August 2017 on education of persons without Polish citizenship and Polish citizens who learned in schools in other countries (*w sprawie kształcenia osób niebędących obywatelami polskimi oraz osób będących obywatelami polskimi, które pobierały naukę w szkołach funkcjonujących w systemach oświaty innych państw*).

<sup>334</sup> K. Sołtan-Kościelecka, 'Klasy powitalne. Realna szansa na poprawę warunków kształcenia cudzoziemców czy pozorne rozwiązanie?', Biuletyn Migracyjny no. 57, June 2018, available (in Polish) at: <http://bit.ly/2EkclF8>.

<sup>335</sup> Commissioner for Human Rights, *Posiedzenie Komisji Ekspertów ds. Migrantów*, 12 December 2016, available (in Polish) at: <http://bit.ly/2odhX16>.

<sup>336</sup> K. Sołtan-Kościelecka, 'Klasy powitalne. Realna szansa na poprawę warunków kształcenia cudzoziemców czy pozorne rozwiązanie?', Biuletyn Migracyjny no. 57, June 2018, available (in Polish) at: <http://bit.ly/2EkclF8>.

<sup>337</sup> Para 16(3) Ordinance of the Ministry of National Education of 23 August 2017 on education of persons without Polish citizenship and Polish citizens who learned in schools in other countries (*w sprawie kształcenia osób niebędących obywatelami polskimi oraz osób będących obywatelami polskimi, które pobierały naukę w szkołach funkcjonujących w systemach oświaty innych państw*). See also K. Wójcik, 'Więcej cudzoziemców w szkołach', 11 September 2019, available (in Polish) at: <https://bit.ly/2vgizth>.

<sup>338</sup> M. Koss-Goryszewska, 'Edukacja' in A. Górka, M. Koss-Goryszewska, J. Kucharczyk (eds), *W stronę krajowego mechanizmu ewaluacji integracji: Diagnoza sytuacji beneficjentów ochrony międzynarodowej w Polsce* (Instytut Spraw Publicznych 2019), 50-51.

<sup>339</sup> Commissioner for Human Rights, *Posiedzenie Komisji Ekspertów ds. Migrantów*, 12 December 2016, available (in Polish) at: <http://bit.ly/2odhX16>.

<sup>340</sup> M. Koss-Goryszewska, 'Edukacja' in A. Górka, M. Koss-Goryszewska, J. Kucharczyk (eds), *W stronę krajowego mechanizmu ewaluacji integracji: Diagnoza sytuacji beneficjentów ochrony międzynarodowej w Polsce* (Instytut Spraw Publicznych 2019), 51.

According to data from the Office for Foreigners, in 2017/2018, the preparatory classes for foreign children were organized in schools in Grupa, Michał, Grotniki and Łuków and in 2018/2019 in a school in Warsaw.<sup>341</sup> According to the Ministry of Education, in the school year 2018/2019 approximately 300 foreign minors (number of asylum-seeking minors is not available) were participating in the preparatory classes.<sup>342</sup> The preparatory classes seem to become increasingly popular. For instance, in the school year 2019/2020 in Wrocław, 7 preparatory classes were set up.<sup>343</sup>

## 2.2. Kindergarten

In all of the reception centres, some form of kindergarten is organised, which are sometimes supported by NGOs.<sup>344</sup> This day care is provided minimum 5 times a week for 5 hours a day.<sup>345</sup> However, in one centre (Czerwony Bór) in 2019 there was no day care for couple of months due to the difficulties with finding a kindergarten teacher.<sup>346</sup>

Moreover, in 2018 and 2019, the additional play and educational classes for children were organised in the centres on Saturdays.<sup>347</sup>

In 2019, the Office for Foreigners informed that the works in the centre in Biała Podlaska were finalised. They were conducted in order to create a new room for kindergarten.<sup>348</sup>

## 2.3. Educational activities for adults

There is no access to vocational training for asylum seekers provided under the law.

The only educational activities that adults have constant access to are courses of Polish language organised in all centres.<sup>349</sup> The course's level is considered insufficient by some NGOs. Foreigners evaluate those classes in general positively.<sup>350</sup> However, only a limited number of asylum seekers decides to participate in those classes (e.g. 45% in the research conducted in 2016, up to 17% according to the Supreme Audit Office).<sup>351</sup> The research showed that the low participation rate results, among others, from the fact that asylum seekers are not willing to stay in Poland or are aware that the chances for obtaining international protection in Poland are low so they have no motivation to learn the language. The time of language classes is also not adapted to the needs of working asylum seekers.<sup>352</sup>

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<sup>341</sup> This is not the exhaustive list, but it shows the scope of the application of this new solution in the context of asylum-seeking children, especially those staying in the centres. Information provided by the Office for Foreigners, 15 January 2019.

<sup>342</sup> Ministry of Education, 'Nauka dzieci przybywających z zagranicy w polskim systemie edukacji', available (in Polish) at: <https://bit.ly/2vZF5Xr>.

<sup>343</sup> Wrocław.pl, 'Klasy przygotowawcze dla dzieci obcojęzycznych. Gdzie są i jak się zapisać', 22 July 2019, available (in Polish) at: <https://bit.ly/38gsl7A>.

<sup>344</sup> In 2019, Dialog Foundation organized a day care in the centres in Białystok and Czerwony Bór (information from the Office for Foreigners, 22 January 2020).

<sup>345</sup> Information provided by the Office for Foreigners, 22 January 2020. See also: Office for Foreigners, 'Opieka przedszkolna w ośrodkach dla cudzoziemców', available (in Polish) at: <http://bit.ly/2Nfwx3q>.

<sup>346</sup> Information from the Office for Foreigners, 22 January 2020.

<sup>347</sup> Office for Foreigners, *Guidebook Department of Social Assistance (2019)*, available at: <https://bit.ly/38qtDIW>, 5. See also: Office for Foreigners, 'Opieka przedszkolna w ośrodkach dla cudzoziemców', available (in Polish) at: <http://bit.ly/2Nfwx3q>; Office for Foreigners, 'Wsparcie dla cudzoziemców w procedurze uchodźczej', 13 November 2019, available (in Polish) at: <https://bit.ly/3bvyQez>.

<sup>348</sup> Office for Foreigners, 'Punkt przedszkolny w ośrodku w Białej Podlaskiej', 5 February 2019, available (in Polish) at: <https://bit.ly/2HaTSkt>.

<sup>349</sup> In all centres such courses were provided in 2019 (information from the Office for Foreigners, 22 January 2020).

<sup>350</sup> R. Baczyński-Sielaczek, *Język polski w ośrodkach. Wyniki badania ewaluacyjnego*, Instytut Spraw Publicznych 2016, 19-22.

<sup>351</sup> *Ibid.*, 18, 28.

<sup>352</sup> *Ibid.*, 34.

In 2017 the Office for Foreigners together with Linguae Mundi Foundation created a comprehensive programme and materials for teaching Polish language in the centres.<sup>353</sup> According to the governmental data, the programme takes into account specific needs of asylum seekers and its aim is to enable the communication in everyday situations. Asylum seekers are provided with books and notebooks needed to learn Polish. They can receive a certificate confirming the attendance in the course and material prizes for good results<sup>354</sup>.

There are some initiatives by NGOs, organising other courses in the centres, including vocational training, but these have been impacted by the lack of funding. In 2017 research was conducted on the impact of the suspension of AMIF in Poland on Polish NGOs and foreigners. The research showed that 9 out of 13 NGOs had to limit their legal and integration assistance for foreigners and 7 NGOs had to decrease the amount of trainings for foreigners, including Polish language lessons and vocational training.<sup>355</sup> NGOs continued to face the same impediments in 2019. In fact, compared to 2018, the NGOs' presence in the centres seems to be considerably diminished. Moreover, most of their activities began only in September 2019.

In 2019 NGOs carried out some projects in the centres which aimed at general integration, learning Polish, vocational training, cultural activities, psychological and legal assistance.<sup>356</sup> Adults could consult a cultural mentor (in 3 centres), take part in the events engaging the local community (2 centres), handicraft workshops (one centre), integration meetings, touristic trips as well as go to cinema (one centre). In two centres some other activities for adults (unspecified in the information from the Office for Foreigners) were provided.<sup>357</sup> On the other hand, in the centre in Linin there were no integration, vocational nor cultural activities provided by the NGOs (there was only legal and psychological assistance provided there). In some other centres the NGOs mostly organised activities for children.

## D. Health care

### Indicators: Health Care

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

Access to health care for asylum seekers is guaranteed in the law under the same conditions as for Polish nationals who have health insurance.<sup>358</sup> Health care for asylum seekers is publicly funded.

Basic health care is organised in medical offices within each of the reception centres. The Office for Foreigners informed that until 15 June 2019 the medical doctor in the centres had 10 duty hours per 120 asylum seekers, while the nurse had 20 hours for the same amount of possible patients. Both had 3 hours

<sup>353</sup> Information provided by the Office for Foreigners, 1 February 2018.

<sup>354</sup> Ministerstwo Pracy, Rodziny i Polityki Społecznej, *Informacja o sytuacji osób starszych w Polsce za 2018 r.* (2019), 146. See also Office for Foreigners, *Guidebook Department of Social Assistance (2019)*, available at: <https://bit.ly/2HmFvdb>.

<sup>355</sup> W. Klaus, E. Ostaszewska-Żuk and M. Szczepanik, *Fundusze Europejskie i ich rola we wspieraniu integracji cudzoziemców w Polsce*, September 2017, 9. See also ECRE/UNHCR, 'Follow the money II. Assessing the use of EU Asylum, Migration and Integration Fund (AMIF) funding at the national level 2014-2018', January 2019, available at: <https://bit.ly/2OIO1J2>, 43. To learn more about the governmental policy in regard to AMIF and the impact on NGOs, see Pachocka, M. and Sobczak-Szelc K., 'Refugee Protection Poland – Country Report', Multilevel Governance of Mass Migration in Europe and Beyond Project (Horizon2020), January 2020, available at: <https://bit.ly/2U1A9uL>, 35-38.

<sup>356</sup> Information provided by the Office for Foreigners, 22 January 2020.

<sup>357</sup> Information from the Office for Foreigners, 22 January 2020.

<sup>358</sup> Article 73(1) Law on Protection.

a week extra for every additional 50 asylum seekers. Since 16 June 2019, the medical doctor in the centres has 6 duty hours per 120 asylum seekers, with 3 hours a week extra for every additional 50 asylum seekers, at least three times a week. Additionally, in every centre the duty hours of a pediatrician should be organized at least for 4 hours a week per 50 children, with extra 2 hours of duty for every additional 20 children. The duty hours of nurses have not changed.<sup>359</sup>

There is a medical centre at the Office for Foreigners as well, however in 2019 the Supreme Audit Office concluded that it had not been managed properly (in particular it was open one hour a day shorter than it was agreed with the Office for Foreigners).<sup>360</sup>

Health care for asylum seekers includes treatment for persons suffering from mental health problems. Currently, psychologists work in all the centres for at least 4 hours a week for every 120 asylum seekers. This is extended to 1 hour for every additional 50 asylum seekers.<sup>361</sup> Their help is limited to basic consultations, however.<sup>362</sup> Asylum seekers can also be directed to a psychiatrist or a psychiatric hospital. According to some experts and many NGOs, specialised treatment for victims of torture or traumatised asylum seekers is not available in practice.<sup>363</sup> NGOs still point at the lack of proper treatment of persons with PTSD. The available psychological assistance is considered an intervention, not a regular therapy.<sup>364</sup> There is a shortage of psychologists prepared to work with vulnerable and traumatized asylum seekers.<sup>365</sup> Moreover, there are only three specialised NGOs that provide psychological consultations and treatment to asylum seekers.<sup>366</sup> In 2019, some form of psychological support was provided by NGOs only in three reception centres.<sup>367</sup>

The medical assistance is provided since July 2015 by the private contractor Petra Medica,<sup>368</sup> with whom the Office for Foreigners has signed an agreement to coordinate medical care for asylum seekers. The Office for Foreigners monitors the application of this agreement. The quality of medical assistance provided under this agreement has triggered wide criticism. In particular, some asylum seekers are refused access to more costly treatments. It happens that only after NGOs' interventions and months of fighting for the access to a proper medical treatment, asylum seekers were able to receive it.<sup>369</sup> The access to a treatment is particularly difficult for HIV-positive asylum seekers. In 2019, the SIP described its battle to provide the continuation of the treatment for the asylum-seeking women that was HIV-positive and had a Hodgkin lymphoma. The women started the treatment in Germany and afterwards was sent back to Poland under the Dublin III Regulation. In Poland, she faced multiple refusals of the treatment and administrative obstacles to receiving medical assistance from proper doctors and medical facilities. She was not referred to infectious diseases, cardiological nor psychiatric clinics even though the medical documentation from Germany found it was necessary. She was repeatedly misinformed that she is not entitled to the HIV-treatment in Poland. Even though she was in bad health condition, the staff of the centre in Dębak refused

<sup>359</sup> Information provided by the Office for Foreigners, 22 January 2020.

<sup>360</sup> Supreme Audit Office, *Przygotowanie administracji publicznej do obsługi cudzoziemców. Informacja o wynikach kontroli* (2019), available (in Polish) at: <https://bit.ly/2OIlqIn>, 43.

<sup>361</sup> Information provided by the Office for Foreigners, 22 January 2020.

<sup>362</sup> See Pachocka, M. and Sobczak-Szelc K., 'Refugee Protection Poland – Country Report', Multilevel Governance of Mass Migration in Europe and Beyond Project (Horizon2020), January 2020, available at: <https://bit.ly/2U1A9uL>, 70. The Office for Foreigners claims that those psychologists' assistance concentrates on psychological support and counselling and also on diagnosis of mental disorders, including PTSD.

<sup>363</sup> See e.g. M. Szczepanik, *Right to healthcare and access to medical services for asylum seekers and beneficiaries of international protection in Poland*, May 2017, available at: <http://bit.ly/2CxXokd>.

<sup>364</sup> Information provided by the Association for Legal Intervention, October 2016.

<sup>365</sup> Pachocka, M. and Sobczak-Szelc K., 'Refugee Protection Poland – Country Report', Multilevel Governance of Mass Migration in Europe and Beyond Project (Horizon2020), January 2020, available at: <https://bit.ly/2U1A9uL>, 71.

<sup>366</sup> M. Szczepanik, *Right to healthcare and access to medical services for asylum seekers and beneficiaries of international protection in Poland*, May 2017, available at: <http://bit.ly/2CxXokd>.

<sup>367</sup> Information provided by the Office for Foreigners, 22 January 2020.

<sup>368</sup> Information from the Office for Foreigners website: <http://bit.ly/1XqYMIQ>; Office for Foreigners, *Guidebook Department of Social Assistance* (2019), available at: <https://bit.ly/39ljreM>, 6.

<sup>369</sup> Such problems were notified by SIP on 8 January 2020 in regard to the HCV. In 2019, in one case, it took more than half of the year from the diagnosis and determination of the proper treatment to the factual provision of the treatment due to the administrative obstacles.

calling for the ambulance explaining (falsely) that she was not entitled to it. Moreover, one of the Polish doctors said to her that Poland does not need sick people. Finally, the foreigner received proper treatment in Poland. Thanks to the German doctor who sent her additional medication, she was left without it 'only' for two weeks. The SIP points out that it was not an exceptional situation.<sup>370</sup>

One of the biggest obstacles in accessing health care that asylum seekers face is the lack of intercultural competence and knowledge of foreign languages amongst doctors and nurses.<sup>371</sup> Petra Medica that is responsible for the provision of medical assistance to asylum seekers is also obliged to ensure interpretation during the medical and psychological consultations, if it is needed.<sup>372</sup> According to the governmental information, such interpretation is available in Russian, Ukrainian, English, Georgian, Persian, Arabic, Chechen, Uzbek. Doctors working in the centres are expected to know Russian.<sup>373</sup> However, since 2016 NGOs have been expressing concerns in regard to availability and quality of the interpretation provided to asylum seekers in connection with medical consultations<sup>374</sup>.

Another challenge is the fact that some clinics and hospitals providing medical assistance to asylum seekers are located far away from the reception centres, so an asylum seeker cannot be assisted by the closest medical facility, except for emergency situations. The Office for Foreigners noticed that for those asylum seekers living outside the reception centres health care is provided in voivodeship cities in Poland and that coordination of visits is conducted by the helpline of the contractor, where the asylum seeker can learn about the time of the visit and ways to get the prescription.<sup>375</sup>

If an asylum seeker is deprived of material reception conditions or they are limited, they are still entitled to health care.<sup>376</sup>

In 2019, the Office for Foreigners registered 13 complaints, all of them concerned medical assistance.<sup>377</sup>

## E. Special reception needs of vulnerable groups

### Indicators: Special Reception Needs

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

Persons who need special treatment are defined particularly as:<sup>378</sup>

1. Minors
2. Disabled people
3. Elderly people
4. Pregnant women
5. Single parents
6. Victims of human trafficking
7. Seriously ill

<sup>370</sup> O. Hilik, 'Leczenie osób zarażonym wirusem HIV w postępowaniu w przedmiocie udzielenia ochrony międzynarodowej' in Stowarzyszenie Interwencji Prawnej (SIP), *SIP w działaniu. Prawa cudzoziemców w Polsce w 2018 r.* (2019), available (in Polish) at: <https://bit.ly/2viZkz5>, 46-48.

<sup>371</sup> M. Koss-Goryszewska, 'Służba zdrowia' in A. Górka, M. Koss-Goryszewska, J. Kucharczyk (eds), *W stronę krajowego mechanizmu ewaluacji integracji: Diagnoza sytuacji beneficjentów ochrony międzynarodowej w Polsce* (Instytut Spraw Publicznych 2019), 43.

<sup>372</sup> Information provided by the Office for Foreigners, 1 February 2017.

<sup>373</sup> Ministerstwo Pracy, Rodziny i Polityki Społecznej, *Informacja o sytuacji osób starszych w Polsce za 2018 r.* (2019), 146.

<sup>374</sup> Centrum Pomocy Prawnej im. H. Nieć, *Situation of Dublin Returnees in Poland. HNLAC Information Note – July 2016*, available at: <http://bit.ly/2lkV08v>, 8; HFHR, Letter to the Head of the Office for Foreigners, 1765/2016/BD, 13 September 2016. Information confirmed by SIP, 8 January 2020.

<sup>375</sup> Information provided by the Office for Foreigners, 1 February 2017.

<sup>376</sup> Articles 76(1) and 70(1) Law on Protection.

<sup>377</sup> Information provided by the Office for Foreigners, 22 January 2020.

<sup>378</sup> Article 68(1) Law on Protection.

8. Mentally disordered people
9. Victims of torture
10. Victims of violence (psychological, psychical, including sexual).

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

- ❖ Accommodate him or her in a reception centre adapted to the needs of the disabled people or ensuring a single room or designed only for women or women with children;
- ❖ Place him or her in special medical premises (like a hospice);
- ❖ Place him or her in a foster care corresponding to the psychophysical situation of the asylum seeker;
- ❖ Adapt his or her diet to his or her state of health.<sup>379</sup>

If an asylum seeker is a person who needs special treatment, his/her needs concerning accommodation and alimentation are taken into account when providing material reception conditions.<sup>380</sup> An asylum seeker who needs special treatment should be accommodated in the reception centre by taking into account his special needs.<sup>381</sup>

The Border Guard ensures transport to the reception centre and – in justified cases – food during the transport after claiming for asylum only to: disabled or elderly people, single parents and pregnant women.<sup>382</sup> The same groups can benefit from this transport after the Dublin transfer and release from a detention centre.<sup>383</sup> However, there only partial data on the practical application of these provisions are available. In 2019, only 17 Dublin transferees were reported to benefit from this transport.<sup>384</sup> Other vulnerable asylum seekers cannot benefit from the organised transport, they must get to the reception centre by themselves, which is considered 'a gap in asylum system'.<sup>385</sup> However, in the detention centre in **Krosno Odrzańskie**, according to the information provided by the SG, those asylum seekers who could not afford bearing the costs of travel to the reception centre were given a financial support from AMIF and – if needed – offered the accommodation and food from Caritas. Other detention centres did not inform about such good practices.

Some of the reception centres are adapted to the needs of disabled asylum seekers. All of the centres managed by the Office for Foreigners have special entry for disabled foreigners and bathrooms adapted to the needs of the asylum seekers on wheelchairs. Other centres have some adaptations for such asylum seekers. There is also a provision of rehabilitation services to this group of persons. The Office for Foreigners declares that it provides the transport for the medical examinations and rehabilitation services as well as specialist equipment, when needed.<sup>386</sup> The Office for Foreigners bought in 2019 10 crutches, 10 wheelchairs and 2 cars for 15 persons each that are adapted to the transportation of disabled persons.<sup>387</sup>

On 2 November 2015, the Office for Foreigners adopted Procedure No 1/2015 which concerns the granting of social assistance to vulnerable groups. The document contains the steps of identification for the purpose of providing adequate support by the employees of the Social Assistance Department, dividing the vulnerable groups into categories mentioned in the law (e.g. elderly persons, disabled, minors, torture victims, etc.). There are no separate accommodation centres for traumatised asylum seekers, or other

<sup>379</sup> Article 68(2) Law on Protection.

<sup>380</sup> Article 69a Law on Protection.

<sup>381</sup> Para 5(3) Annex to the Regulation on rules of stay in the centre for asylum seekers.

<sup>382</sup> Article 30(1)(8) Law on Protection.

<sup>383</sup> Article 40a and Article 89cb Law on Protection.

<sup>384</sup> Information from different branches of the SG (February-March 2020)..

<sup>385</sup> Pachocka, M. and Sobczak-Szelc K., 'Refugee Protection Poland – Country Report', Multilevel Governance of Mass Migration in Europe and Beyond Project (Horizon2020), January 2020, available at: <https://bit.ly/2U1A9uL>, 73.

<sup>386</sup> Information from the Office for Foreigners, 22 January 2020.

<sup>387</sup> Office for Foreigners, 'Remont ośrodka w Podkowie Leśnej – Dębaku', 20 February 2019, available (in Polish) at: <https://bit.ly/31DR0WS>; Office for Foreigners, 'Wsparcie dla cudzoziemców w procedurze uchodźczej', 13 November 2019, available (in Polish) at: <https://bit.ly/38dcxrK>.

vulnerable persons but some of them (including torture victims) can be placed in a single room if there is such a need.<sup>388</sup>

Reportedly, the Office for Foreigners tries to provide the assistance of only one psychologist to a specified asylum seeker, 'so that the person has a sense of security and does not have to discuss his/her situation several times'.<sup>389</sup>

## 1. Reception of women and children

Only one centre is designed to host single women or single women with children. It is located in **Warsaw** and it is managed by the private contractor. From its very beginnings it is fully occupied.<sup>390</sup> Moreover, social assistance may be granted outside of the centre when it is necessary in order to ensure the safety of the asylum seeker, with special consideration to the situation of single women.<sup>391</sup>

Since 2008, the Office for Foreigners has a special agreement with the Police, UNHCR, "La Strada" Foundation and Halina Niec Legal Aid Centre aiming to better identify, prevent and respond to gender-based violence in reception centres.<sup>392</sup> In regard to all reception centres, special teams have been created, consisting of one representative from the Office for Foreigners, the Police and an NGO. Their task is to effectively prevent acts of violence in reception centres and respond to any which do occur quickly. There were 23 cases of violence in 2016, 28 in 2017, 13 in 2018 and 14 in 2019.<sup>393</sup>

In 2017 and 2018, the Office for Foreigners in partnership with NGOs implemented a comprehensive system of child protection against violence in the centres. In the framework of the project "We protect children in the centres for foreigners", trainings of centre staff were organised and standards of child protection were developed.<sup>394</sup>

## 2. Reception of unaccompanied children

The only safeguards related to special reception needs of unaccompanied children are those referring to their place of stay. Unaccompanied children are not accommodated in the centres. The custody court places them in a youth care facility, so unaccompanied children are not accommodated with adults in practice. Until the court makes a decision on placing a child in a regular youth care facility, an unaccompanied child stays with a professional foster family functioning as emergency shelter or in a youth care facility for crisis situations.<sup>395</sup>

As noticed in the EASO report, amendments introduced to Article 61 of the Law on Protection, 'now make it possible to submit an application for placement in foster custody immediately after an unaccompanied minor expresses the intention to submit an application for international protection. Per previous practice, this would take place only after an applications was submitted'.<sup>396</sup>

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<sup>388</sup> Procedure 1/2015 of the Office for Foreigners.

<sup>389</sup> Pachocka, M. and Sobczak-Szelc K., 'Refugee Protection Poland – Country Report', Multilevel Governance of Mass Migration in Europe and Beyond Project (Horizon2020), January 2020, available at: <https://bit.ly/2U1A9uL>, 80.

<sup>390</sup> Office for Foreigners, *Guidebook Department of Social Assistance (2019)*, available at: <https://bit.ly/3btqAeG>, 9.

<sup>391</sup> Article 72(1)(1) Law on Protection.

<sup>392</sup> *Porozumienie w sprawie standardowych procedur postępowania w zakresie rozpoznawania, przeciwdziałania oraz reagowania na przypadki przemocy seksualnej lub przemocy związanej z płcią wobec cudzoziemców przebywających w ośrodkach dla osób ubiegających się o nadanie statusu uchodźcy*, 25 March 2008. To learn more about it, see Office for Foreigners, *Guidebook Department of Social Assistance (2019)*, available at: <https://bit.ly/38qPIRm>, 8.

<sup>393</sup> Information provided by the Office for Foreigners, 1 February 2017, 1 February 2018, 15 January 2019 and 22 January 2020.

<sup>394</sup> Office for Foreigners, *Guidebook Department of Social Assistance (2019)*, available at: <https://bit.ly/2H9jiPK>, 9.

<sup>395</sup> Article 62 (2) Law on Protection.

<sup>396</sup> EASO, Annual Report on the Situation of Asylum in the European Union 2018 (2019), available at: <https://bit.ly/31GgGID>, 172.

The law also refers to qualified personnel that should undertake activities in the asylum procedures concerning unaccompanied children (a defined profile of higher education, 2 years of relevant experience).<sup>397</sup>

When providing material reception conditions to children, the need to safeguard their interests should be taken into account, especially taking into consideration family unity, best interests of the child and their social development, security and protection (particularly if they are a victim of human trafficking) and their opinion according to their age and maturity.<sup>398</sup>

Whereas previously they were mainly placed in a youth care facility in **Warsaw**, currently unaccompanied asylum-seeking children can be placed in facilities throughout the country. However, in 2019 they were accommodated mainly in **Kętrzyn**, Warsaw and Białystok.<sup>399</sup>

## F. Information for asylum seekers and access to reception centres

### 1. Provision of information on reception

The provisions in law on information for asylum seekers concerning social assistance are formulated in a general way. The Border Guard, upon admitting the asylum application, has to inform the applicant in a language understandable to him or her and in writing about i.e. the asylum procedure itself, the asylum seeker's rights, obligations, and the legal consequences of not respecting these obligations, as well as the extent of the material reception conditions. It also provides the asylum seeker with the address of the centre to which they have to report.<sup>400</sup> According to the Border Guard it is provided in 22 languages.<sup>401</sup>

Upon admission to the centre, asylum seekers receive (in writing or in the form of an electronic document, in a language understandable to them) the rules of stay in the centre (set in law), information about their rights and obligations (which includes all the basic information, including on access to the labour market or on their legal status), information on regulations governing the provision of assistance for asylum seekers and about procedures used in case of the person has been subjected to violence, especially against minors.<sup>402</sup> Moreover, the rules of stay in the centre shall be displayed in a visible place in the premises of the centre, in Polish and in languages understandable to the asylum seekers residing in the centre.<sup>403</sup> In the reception centres in **Biała Podlaska** and **Dębak** new-coming asylum seekers also participate in a course on basic information about Poland and the asylum procedure, with presentations and information package provided on USB.<sup>404</sup>

It is not envisaged in the legislation which languages the rules of stay in the centre, information about rights and obligations and on regulations governing the provision of assistance for asylum seekers should be translated into. It states that information has to be accessible "in an understandable language". The rules of stay in the centre and above-mentioned information issued on the basis of the current law were translated in practice into English, Russian, Arabic, French, Georgian and Ukrainian.<sup>405</sup>

The Supreme Audit Office concluded in 2019 that the Office for Foreigners had provided access to necessary information for asylum seekers at its headquarters, in the centres and through its website. The

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<sup>397</sup> Article 66 Law on Protection.

<sup>398</sup> Article 69b Law on Protection.

<sup>399</sup> Information provided by the Office for Foreigners, 22 January 2020.

<sup>400</sup> Article 30(1)(5) Law on Protection.

<sup>401</sup> Information provided by the Border Guard, 11 January 2018.

<sup>402</sup> Para 3 of the Annex to the Regulation on rules of stay in the centre for asylum seekers. The Office for Foreigners published a guide for asylum seekers "First steps in Poland", which is handed to them upon admission to the centre. Available in English, Arabic, French, Georgian, Polish, and Russian, available at: <http://bit.ly/2V8ilXm>.

<sup>403</sup> Para 18 of the Annex to the Regulation on rules of stay in the centre for asylum seekers.

<sup>404</sup> Information provided by the Office for Foreigners, 27 August 2015 and 1 February 2017. See also Office for Foreigners, Pomoc socjalna w trakcie procedury uchodźczej, available (in Polish) at: <http://bit.ly/2GU32mu>.

<sup>405</sup> Information provided by the Office for Foreigners, 22 January 2020.

information concerned asylum procedure, material reception conditions, healthcare, rights and obligations of asylum seekers, appeal proceedings and NGOs' assistance. In the centres, information meetings were organised on a regular basis and asylum seekers could receive leaflets published by NGOs. The Office for Foreigners published its own guides for asylum seekers as well.<sup>406</sup>

## 2. Access to reception centres by third parties

### Indicators: Access to Reception Centres

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

Asylum seekers staying in the centres have the right to be visited by family members, legal advisers, UNHCR, NGOs, etc. in the rooms intended for that purpose.<sup>407</sup>

Asylum seekers may receive visits in the centre from 9:00 to 16:00 in a place agreed with the employee of the centre. In particularly justified cases the visiting hours in the centre may be prolonged upon permission of the employee of the centre, till no later than 22:00.<sup>408</sup>

Each entry of a non-resident into the premises of the centre requires the permission of:<sup>409</sup>

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

The Head of the Office for Foreigners or an employee of the centre can refuse to give permission to enter the centre or withdraw it, if this is justified regarding the interest of the third country national or necessary to ensure the safety or for epidemiological and sanitary reasons.<sup>410</sup>

The above mentioned rules do not apply to the representative of the UNHCR, who may enter the centre anytime provided that the staff of the centre was notified in advance.<sup>411</sup> As regards NGOs, whose tasks include the provision of assistance to asylum seekers, and entities which provide legal assistance to asylum seekers, the Head of the Office for Foreigners may issue a permit to enter the centre for the period of their activities performed for asylum seekers residing in the centre.<sup>412</sup>

Asylum seekers have access to the information about entities providing free legal assistance. During their stay in the centre, asylum seekers communicate with legal advisers, UNHCR or NGOs mainly by phone, fax, e-mail, etc. Seven out of the ten centres are located in small villages, far away from big cities, where most of the legal advisers, UNHCR and NGOs in Poland have their premises, and accessing them can be an obstacle. As a result, asylum seekers are often contacted only remotely, especially when NGOs do not have the funds for travelling to these centres. Due to the financial problems of NGOs occurring since 2015 (see [Regular Procedure: Legal Assistance](#)),<sup>413</sup> their presence in the centres continues to be limited.

<sup>406</sup> Supreme Audit Office, *Przygotowanie administracji publicznej do obsługi cudzoziemców. Informacja o wynikach kontroli* (2019), available (in Polish) at: <https://bit.ly/2Sej7IT>, 43.

<sup>407</sup> Paras 7-9 of the Annex to the Regulation on rules of stay in the centre for asylum seekers.

<sup>408</sup> Para 9 of the Annex to the Regulation on rules of stay in the centre for asylum seekers.

<sup>409</sup> Para 7.2 of the Annex to the Regulation on rules of stay in the centre for asylum seekers.

<sup>410</sup> Para 7.5 of the Annex to the Regulation on rules of stay in the centre for asylum seekers.

<sup>411</sup> Para 7.6 and 7.7 of the Annex to the Regulation on rules of stay in the centre for asylum seekers.

<sup>412</sup> Para 7.4 of the Annex to the Regulation on rules of stay in the centre for asylum seekers.

<sup>413</sup> See also Pachocka, M. and Sobczak-Szelc K., 'Refugee Protection Poland – Country Report', Multilevel Governance of Mass Migration in Europe and Beyond Project (Horizon2020), January 2020, available at: <https://bit.ly/2U1A9uL>, 35-38, 54; ECRE/UNHCR, 'Follow the money II. Assessing the use of EU Asylum, Migration and Integration Fund (AMIF) funding at the national level 2014-2018', January 2019, available at: <https://bit.ly/38h6lin>, 43; Witold Klaus, Ewa Ostaszewska-Żuk and Marta Szczepanik, *The role of European funds in supporting the integration of migrants in Poland*, November 2017, available at: <http://bit.ly/2EVdxxq>, 9; Legal Intervention Association, 'Fundusz Azylu, Migracji i Integracji – opóźnienia i ich konsekwencje', 4 September 2014, available (in Polish) at: <http://bit.ly/1Cd5nSW>.

According to the Office for Foreigners' data, legal assistance was granted by the NGOs in all the centres in 2019, however in some of them only since July (Grupa) or September 2019 (Bezwola, Białystok, Łuków, Warszawa).<sup>414</sup>

### **G. Differential treatment of specific nationalities in reception**

There is no difference in treatment with respect to reception based on asylum seekers' nationality. All asylum seekers have the same rights and obligations.

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<sup>414</sup> Information from the Office for Foreigners, 22 January 2020.

## Detention of Asylum Seekers

### A. General

#### Indicators: General Information on Detention

1. Total number of asylum seekers detained in 2019:	Not available
2. Number of asylum seekers in detention at the end of 2019:	91
3. Number of detention centres:	6
4. Total capacity of detention centres:	527

As of 31 December 2019, out of the 184 persons detained, 91 were asylum seekers. Given that 4,095 persons applied for asylum in Poland in 2019, it cannot be said that the majority of asylum seekers in Poland are detained. There were no cases of overcrowding in detention centres during that year.<sup>415</sup> Foreigners are obliged to pay for their stay in a detention centre calculated on the basis of algorithm, set in the Polish law.

Contrary to 2017 (when 246 asylum seekers were detained in total), Border Guard did not collect the data on the number of asylum seekers detained in guarded centres in 2019. In general, 1,033 foreigners were placed in detention centres in 2019 and only 11 foreigners were released on the basis of health considerations.<sup>416</sup>

There are six detention centres in Poland, which are generally profiled according to demographics: **Lesznowola**, **Białystok** and **Krosno Odrzańskie** are for men. Women, married couples, and families with children are placed in **Kętrzyn**, **Biała Podlaska** and **Przemyśl**. Unaccompanied children are placed in the detention centre in **Kętrzyn**. Only the detention centres in Krosno Odrzańskie, Przemyśl and Biała Podlaska have rooms with barred windows.<sup>417</sup>

According to the Office for Foreigners, the asylum cases of asylum applicants placed in detention are prioritised but it does not mean that they are examined more quickly when the cases are complex.<sup>418</sup> In practice it means that asylum seekers have only 3 days to present additional evidence in their case, before an asylum decision is made. In addition, NGOs claim that in the case of detained asylum seekers, the Refugee Board does not conduct evidentiary proceedings, meaning that they do not assess the grounds for applying for international protection.<sup>419</sup> The interview is conducted through videoconference in the presence of a psychologist (e.g. in the detention centre in **Kętrzyn**). According to NGOs, sometimes psychologists are only available in the premises of the Head of the Office for Foreigners and not in the centre where the individual is detained. Additionally, asylum seekers complain about poor quality of the videoconference.<sup>420</sup>

<sup>415</sup> Information provided by the Border Guard, 11 January 2018.

<sup>416</sup> Information from different branches of the SG (February-March 2020)

<sup>417</sup> Information provided by the Border Guards, 17 January 2020, Commissioner for Human Rights, *Wyciąg, Strzeżony Ośrodek dla Cudzoziemców w Białej Podlaskiej*, 18-19 July 2018, available (in Polish) at: <https://bit.ly/2TBZ3OY>.

<sup>418</sup> Information provided by the Office for Foreigners, 15 January 2019.

<sup>419</sup> Information provided by Rule of Law Institute, 20 January 2020.

<sup>420</sup> Information provided by Helsinki Foundation for Human Rights, 20 January 2020.

## B. Legal framework of detention

### 1. Grounds for detention

#### Indicators: Grounds for Detention

- |   |  |  |                                |
|---|--|--|--------------------------------|
| 1. In practice, are most asylum seekers detained                        |  |  |                                |
| ❖ on the territory:   | <input type="checkbox"/> Yes                   | <input checked="" type="checkbox"/> No |                                |
| ❖ at the border:  | <input type="checkbox"/> Yes                   | <input checked="" type="checkbox"/> No |                                |
| 2. Are asylum seekers detained in practice during the Dublin procedure? |  |  |                                |
|   | <input checked="" type="checkbox"/> Frequently | <input type="checkbox"/> Rarely        | <input type="checkbox"/> Never |
| 3. Are asylum seekers detained during a regular procedure in practice?  |  |  |                                |
|   | <input checked="" type="checkbox"/> Frequently | <input type="checkbox"/> Rarely        | <input type="checkbox"/> Never |

Asylum seekers are placed in a detention centre if alternatives to detention cannot be used and for the following reasons:<sup>421</sup>

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

A "risk of absconding" of the asylum seekers exists particularly if they:<sup>422</sup>

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

Detention is possible in law and in practice in all asylum procedures, especially in the case of illegal crossing of the border and transfer under the Dublin Regulation.

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

<sup>421</sup> Articles 87(1) and 88a(1) Law on Protection.

<sup>422</sup> Articles 87(2) and 88a(1) Law on Protection.

## 2. Alternatives to detention

### Indicators: Alternatives to Detention

1. Which alternatives to detention have been laid down in the law?  Reporting duties  
 Surrendering documents  
 Financial guarantee  
 Residence restrictions  
 Other
2. Are alternatives to detention used in practice?  Yes  No

The Law on Protection sets out the following alternatives to detention for asylum seekers:

1. An obligation to report;
2. Bail options;
3. The obligation to stay in a designated place.

SG can use more than one alternative in the case of any foreigner.<sup>423</sup> Alternatives can be applied by the SG which apprehended the asylum seeker concerned or by the court (subsequent to a SG's decision not to apply alternatives and who have submitted a motion for detention to the court).<sup>424</sup> An asylum seeker can be detained only if the alternatives to detention cannot be applied.<sup>425</sup> In practice asylum seekers are placed in detention, and alternatives to detention are not considered, properly justified and explained.<sup>426</sup> In 2019, 1,650 foreigners were subject to alternatives to detention.

Over the period 2016- 2019 alternatives to detention were used as follows for foreigners, including asylum seekers and returnees:<sup>427</sup>

Alternatives to detention in Poland: 2016-2019				
Type of alternative	2016	2017	2018	2019
Reporting obligations	1,208	2,094	1,327	1,603
Residence in a designated place	1,333	1,818	1,058	1,522
Bail	3	4	1	3
Surrendering travel documents	54	49	29	36
<b>Total</b>	<b>2,598</b>	<b>3,965</b>	<b>2,415</b>	<b>3,164</b>

Source: Border Guard, 14 January 2018; Border Guard, 14 and 25 January 2019, 17 January 2020.

## 3. Detention of vulnerable applicants

### Indicators: Detention of Vulnerable Applicants

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

<sup>423</sup> Article 88(3) of the Law on Protection.

<sup>424</sup> Articles 88(2) and 88b(2)-(3) Law on Protection.

<sup>425</sup> Article 88a(1) Law on Protection.

<sup>426</sup> Commissioner for Human Rights, *Wyciąg Strzeżony Ośrodek dla Cudzoziemców w Krośnie Odrzańskim*, 30 January 2018, available (in Polish) at: <http://bit.ly/2F2ptCr>.

<sup>427</sup> In practice, a person may be subject to more than one alternative measure.

If a decision to release a foreigner from the detention centre is issued and the asylum seeker is a disabled, elderly, pregnant or single parent, the SG is obliged to organise the transport to the reception centre, and – in justified cases – provide food during the transport.<sup>428</sup>

In 2019, only 17 persons that were transferred under Dublin were reported to benefit from this transport.<sup>429</sup> However, in the detention centre in **Krosno Odrzańskie**, according to the information provided by the SG, those asylum seekers who could not afford bearing the costs of travel to the reception centre were given a financial support from AMIF and – if needed – offered the accommodation and food from Caritas. Other detention centres did not report such good practices.

### 3.1. Detention of persons with health conditions

According to the law, asylum seekers whose psychophysical state leads to believe that they are victims of violence or have a disability as well as unaccompanied minors cannot be placed in detention centres. This is also applicable to asylum seekers whose detention causes a serious threat to their life or health,<sup>430</sup> as under the law, an asylum seeker should be released if further detention constitutes a threat to their life or health.<sup>431</sup> This means that, for example, children, if they stay in Poland with parents or other legal guardians, can still be detained, as can pregnant women if they are healthy.

Notwithstanding legal provisions, in practice it happens that vulnerable asylum seekers are detained, even when they were diagnosed with mental health problems as a result of past events.<sup>432</sup> Indeed, a poor mental condition is hardly ever accepted by courts as sufficient ground for not placing in or releasing an asylum seeker from detention. According to the Commissioner for Human Rights sometimes foreigners are placed in a detention centre without having been examined by a physician. Courts do not accept psychological opinions submitted by independent psychologists (e.g. from NGOs),<sup>433</sup> and they rely on short opinions (very often it is one sentence stating there are no obstacles to prolonging the stay in guarded centre) of the physician who works in detention centre (in detention center in Krosno, physician is an orthopaedist). In practice, only courts of higher instance call on experts to determine applicants' mental health state<sup>434</sup> but this happens very rarely. Additionally, courts do not conduct their own evidentiary proceedings.

In 2019, only 11 foreigners were released on the basis of health considerations.<sup>435</sup> As the experience of lawyers of NGOs such as the Association for Legal Intervention shows, a person's psychological condition is rarely taken into account by the courts. An analysis of the justifications of the courts' rulings concerning detention leads to the conclusion that in a large number of cases mental health is not considered by judges or there is no reference to the health of the foreigners at all.<sup>436</sup>

In March 2018 the Commissioner for Child Rights sent a letter to the presidents of courts of appeal in which he shared his observations regarding the provisions on the prohibition to hold victims of violence in detention centers. In his opinion, placing a foreigner in detention when it is known that he or she is a victim of violence is against the law. The conclusion that a foreigner is a victim of violence can be drawn from medical or psychological opinions or foreigners' credible statements submitted in the asylum application. Furthermore, foreigners should be present during a hearing at the court regarding their appeal against the decision prolonging their stay in a guarded centre (on the different types of detention centres, see [Place of](#)

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<sup>428</sup> Article 89cb Law on Protection.

<sup>429</sup> Information from different branches of the SG (February-March 2020).

<sup>430</sup> Article 88a(3) Law on Protection.

<sup>431</sup> Article 406(1)(2) Law on Foreigners.

<sup>432</sup> T Dęboczyk and J Oleszkowicz, 'Praktyka sądowa stosowania detencji cudzoziemców w Polsce', 38.

<sup>433</sup> Supreme Court, Decision No III KK 33/14, 4 February 2015, available (in Polish) at: <http://bit.ly/1OiPpZE>.

<sup>434</sup> UN Committee against Torture, Concluding observations on the seventh periodic report of Poland, 22-24 July 2019, available at: <https://bit.ly/36kr8Qv>

<sup>435</sup> Information from different branches of the SG (February-March 2020)

<sup>436</sup> Information provided by Legal Intervention Association, January 2019.

detention) in order to enable the judge to assess the foreigner's behavior and conduct its own evidentiary proceedings in order to verify if a foreigner is a victim of violence by appointing a court expert.<sup>437</sup>

In his September 2017 report within the National Mechanism for the Prevention of Torture, the Commissioner for Human Rights addressed cases of inadequate detention of **Dublin Returnees** with PTSD. According to the report, the problems occurred due to numerous procedural shortcomings during the transfer of the family to Poland by the German police as well as due to the lack of appropriate operational algorithms that should have been implemented in order to promptly identify victims of torture and violence as well as persons whose mental and physical condition rule out their placement in detention. After visits in detention centers in 2018 and 2019, the Commissioner for Human Rights found that the problem persisted. Although the Border Guard implemented guidelines on how to deal with persons requiring special treatment, they do not clearly state that the person identified as a victim of violence should be released from detention (as required by the law).<sup>438</sup> NGOs add that the system in place is not effective because a person who is a victim of violence should not be in detention at all. Identification should be conducted before placing in detention and not in detention.<sup>439</sup>

Additionally, the Commissioner found that there was an ongoing problem with the system of the identification of vulnerable groups in Poland. Psychologists employed in detention centres are charged with many tasks including the recruitment, psychological support and training of border guard officers and care provided to migrants is merely one of them.<sup>440</sup> Moreover, pursuant to the Border Guard's internal document cited in the report, psychologists can offer psychological aid in the case of traumatic events only at the written request of the doctor examining the applicant. Thus, applicant themselves may not initiate a psychological evaluation which could result in an official psychological opinion. According to the report, this restriction impedes identification of potential victims of torture.

Furthermore, during 2016 inspections, the Commissioner for Human Rights' representatives discovered individual cases of persons whose detention reflected ineffective functioning of the identification system for victims of torture and violence, which should protect these persons from detention.<sup>441</sup> Details of the cases, identified in three out of four visited detention centres, were further elaborated in the letter to the Chief Commander of the Border Guard dated 30 June 2017.<sup>442</sup> In this letter the Commissioner for Human Rights noted that persons seeking international protection can be left in a less favorable situation than the returnees, whose situation is regulated under the Border Guard's internal guidelines concerning vulnerable persons.

In 2018 the Commissioner for Human Rights visited another 3 detention centres and in the reports the Commissioner reminds that the internal algorithm, on the basis of which the identification is performed, does not clearly state that vulnerable persons, once identified, should be immediately released from detention. The Commissioner observes that lack of accessible treatment and therapy in the detention centres deepens the trauma.<sup>443</sup> Torture survivors stay in detention centres and even if they are identified at

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<sup>437</sup> Commissioner for Child's Rights, Letter 6 March 2018, available (in Polish) at: <https://bit.ly/2GgwX8T>.

<sup>438</sup> Commissioner for Human Rights, *Raport Krajowego Mechanizmu Prewencji Tortur z wizytacji Strzeżonego Ośrodka dla Cudzoziemców w Lesznowoli (wyciąg)*, 18 December 2018, available (in Polish) at: <http://bit.ly/2SO3DgP>; *Raport from Biała Podlaska*, 7 January 2019, available (in Polish) at: <http://bit.ly/2BU7ej5>, 7.

<sup>439</sup> SIP, interview, 19 January 2018.

<sup>440</sup> Commissioner for Human Rights, *Report on the activities of the National Mechanism for the Prevention of Torture in 2016, 2017*, available at: <http://bit.ly/2sBpmvy>, 76.

<sup>441</sup> *Ibid*, 82.

<sup>442</sup> Commissioner for Human Rights, Letter to the Chief Commander of the Border Guard, 30 June 2017, available (in Polish) at: <http://bit.ly/2Cy89Tu>.

<sup>443</sup> Commissioner for Human Rights, *Raport Krajowego Mechanizmu Prewencji Tortur z wizytacji Strzeżonego Ośrodka dla Cudzoziemców w Lesznowoli (wyciąg)*, 18 December 2018, available (in Polish) at: <http://bit.ly/2SO3DgP>; *Raport Krajowego Mechanizmu Prewencji Tortur z wizytacji Strzeżonego Ośrodka dla Cudzoziemców w Białej Podlaskiej*, 7 January 2019, available (in Polish) at: <http://bit.ly/2BU7ej5>.

a later stage, they are not released from detention. Medical staff and psychologists in the detention centers lack expertise and proper knowledge of Istanbul Protocol.<sup>444</sup>

After the visit in the detention centre in Biala Podlaska in 2018, the Commissioner for Human Rights again confirmed that the Border Guard's guidelines on how to deal with persons requiring special treatment should clearly state that the person identified as a victim of violence should be released from detention (as required by the law) and not only offered treatment in detention.<sup>445</sup>

In its 2019 concluding observations, the UN Committee against Torture stated that in Poland there is insufficient capacity to identify asylum seekers who are victims of torture and lack of adequate protection and care for survivors of sexual and gender-based violence. In the opinion of CAT, Poland should introduce a principle to law that detention of asylum-seekers, and in particular children and vulnerable persons, should be a measure of last resort, for as short a period as possible and in facilities appropriate for their status. Furthermore CAT recommended that Polish authorities refrain from placing asylum seekers and in particular children in guarded centres and ensure the fast and appropriate identification of vulnerable persons including survivors of torture and ill-treatment, as well as sexual and gender based violence, and provide them with adequate access to health care and psychological services.<sup>446</sup>

Moreover, the Committee was concerned that training on the provisions of the Convention and the Istanbul Protocol is not part of the training of border guards, judges, forensic doctors and medical personnel engaged in the treatment of foreigners in detention. Therefore in the opinion of CAT, Poland should remedy it.

Practice shows that neither the Border Guard nor the courts take the initiative to assess if an asylum seeker is a victim of violence.

In March 2017, the Supreme Court ruled in a case of compensation for moral damage suffered by a mother with two minor children unlawfully placed in the detention centre in **Przemyśl**. The Court reversed the judgment of the Court of Appeal in Warsaw and remanded the case. The applicants were victims of violence in the country of origin and were not identified as victims of torture and other forms of serious violence despite the fact that Border Guard was informed about their history. The Supreme Court stressed that the court is obliged to summon an expert witness when assessing the impact of detention on the mental state of a foreigner.<sup>447</sup>

In July 2017, the Regional Court of Przemyśl released a family from the detention centre in Przemyśl who had been detained for 10 months. The family was placed in the detention centre in October 2016, after multiple attempts to apply for asylum at the border crossing point in Medyka on the Ukrainian border. During their stay, the mother was diagnosed with adaptation and depressive disorders related to violence and torture at a police station in her country of origin and detention in Poland which had a negative impact on her and her children. In June 2017 she tried to commit suicide. Although her and her children's poor mental state was confirmed in successive psychological and psychiatric assessment reports, Border Guards refused to release her and her family. HFHR filed a complaint to the ECtHR on her behalf.<sup>448</sup> On 8 January

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<sup>444</sup> Conference presentation of the representative of the National Mechanism for the Prevention of Torture, 3 December 2018, Milano, information available (in Polish) at: <http://bit.ly/2T5YvE7>.

<sup>445</sup> Commissioner for Human Rights, *Raport Krajowego Mechanizmu Prewencji Tortur z wizytacji Strzeżonego Ośrodka dla Cudzoziemców w Białej Podlaskiej*, 7 January 2019, available (in Polish) at: <http://bit.ly/2BU7ej5>, 7.

<sup>446</sup> Commissioner for Human Rights, 'Uwagi końcowe Komitetu Przeciwko Torturom wobec Polski' available at: <https://bit.ly/36jgfhN>.

<sup>447</sup> HFHR, 'Supreme Court rules on unlawful placement in guarded immigration centre', 13 April 2017, available at: <http://bit.ly/2ESHTIF>.

<sup>448</sup> HFHR, 'Torture victim released after 10 months in immigration custody', 12 July 2017, available at: <http://bit.ly/2ocUY6q>.

2018 the European Court of Human Rights communicated the case of *M.Z and Others against Poland*.<sup>449</sup> As of February 2020, the case was pending.

In another case a family from Tajikistan was placed in the detention centre in **Przemyśl** for 200 days despite the fact that in his asylum application, the father informed the Border Guard that he had been a victim of torture in the country of origin. His bad mental condition, diagnosed PTSD, was later confirmed by expert opinion written by the psychologist employed by the Border Guard. Furthermore, the mental condition of his wife worsened and the son was also diagnosed with PTSD. The family was released in May 2017, after the psychologist informed the administration of the detention centre that prolonged stay in a guarded centre would be a threat to their life.<sup>450</sup>

Another case concerns a single mother with four children aged 17, 14, 11 and 10. They were placed in the detention centre in **Kętrzyn** in July 2017. Despite the fact that children were victims of domestic violence and their abilities to cope with stress in the detention centre were impeded and two private expert opinions on their poor mental state, the family was not released from the guarded centre.<sup>451</sup>

On 25 June 2019 District Court in **Przemyśl** released from the detention centre a rejected asylum seeker who was a victim of torture. The court appointed an independent expert- a psychologist who examined the applicant. The opinion confirmed that he was a victim of violence and suffered from PTSD. The court stated that the Border Guards should properly assess state of health of the foreigner if he claimed that experienced torture in his country of origin. In addition, court noted that the opinion of the Border Guards' physicians may be questioned as it cannot be treated as independent expert opinion.<sup>452</sup>

In two other cases the national courts granted compensation for unlawful detention of foreigners; in one of the cases the Regional Court in Olsztyn stated that a person who experienced violence and was detained regardless of a form of violence and identity of the perpetrator.<sup>453</sup>

On 18 January 2020, the European Court of Human Rights communicated the case of *A.A. against Poland*.<sup>454</sup> Case concern asylum seeker from Burundi, who came to Poland in January 2019 with the fake Swiss ID. The applicant was detained and placed in a detention centre in Kętrzyn despite of the fact that she was a victim of rape, suffered from that traumatic experience and had permanent scars. During her stay in the guarded centre, she was examined by two psychologists. The first expert, the employee of the detention centre, issued an opinion according to which she did not suffer from PTSD, but she needed psychological treatment. The second psychologist found out that she was a victim of violence and that her emotional state had worsened. In addition, expert recommended psychiatric consultation and treatment. However, the courts prolonged her detention and stated that she represented a risk of absconding and was not diagnosed with PTSD syndrome and that the guarded center provide her with adequate living conditions and medical care. Additionally, she was not allowed to participate in court hearings concerning her appeals against the placement and prolongation of her detention. Moreover, her appeal against the extension of detention was examined only after 50 days.

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<sup>449</sup> ECtHR, *M.Z. and Others against Poland*, Application No 79752/16, lodged on 25 April 2017, available at: <https://bit.ly/3aAYhL9>.

<sup>450</sup> Information provided by the Association for Legal Intervention, January 2018.

<sup>451</sup> Ibid.

<sup>452</sup> SIP, 'Victims of violence in guarded centres -judgment of Regional Court in Przemyśl', judgment of 25.06.2019, II Kz 91/19, available at: <https://bit.ly/2RiD29a>.

<sup>453</sup> SIP, 'Victim of violence cannot be deprived of liberty for migration reasons', judgment of 29.07.2019 II Ko 280/18, available at: <https://bit.ly/2Ro8OBT>.

<sup>454</sup> ECtHR, "A.A. against Poland" Application, no. 47888/19, lodged on 29 August 2019, available at: <https://bit.ly/2TPp6Fp>.

### 3.2. Detention of children

According to the law, unaccompanied asylum-seeking children should not be detained,<sup>455</sup> but in practice it happens when there are doubts as to their age or if they were placed in detention as irregular migrants (which is possible under the law) and only then applied for international protection. Unaccompanied children are placed only in a detention centre in **Ketrzyn**, where adequate rooms (with 15 beds) are separated from the remaining part of the centre.

Asylum-seeking children who are with members of their family can be placed in detention centres together with accompanying adults.<sup>456</sup> At the end of 2019, 8 children were held in detention centres in **Kętrzyn**, **Biała Podlaska** and **Przemysł**, and 132 in total were detained in 2019 (unaccompanied children and children in families, in asylum and return procedure).<sup>457</sup> In 2019, children stayed in detention centres in average for 83 days (in the guarded centre of Biała Podlaska in average for even 115 days and for 134 days in **Ketrzyn**).<sup>458</sup>

In 2018, the policy of protection of children in detention was put in place. The new algorithm was introduced- "Intervention procedures in case of hurting children in guarded centres for aliens". Within the framework of that policy, the employees of guarded centres were trained in the new rules and identification of a behaviour which should be considered an abuse.<sup>459</sup>

In March 2018 the Commissioner for Child Rights sent a list of recent international recommendations concerning decisions on placing children in detention centers for foreigners to the presidents of courts of appeal (*prezesa sądów apelacyjnych*). Moreover the Commissioner underlined that placing children in detention is never in the best interest of a child,<sup>460</sup> always against their fundamental rights and could have a negative impact on their psycho-physical development. In addition, in the Commissioner's assessment, courts check the possibility of using alternatives to detention in a superficial way. Courts held very often that it is not possible to impose an alternative to detention on the basis that asylum seekers have no place to stay ignoring the fact that asylum seekers have a right to live in open centers for foreigners managed by the Head of the Office for Foreigners.<sup>461</sup>

In December 2018, the Commissioner for Child Rights in his letter to the Prime Minister indicated that all internal SG documents on the detention of children should be lawful and they should not render rules on releasing victims of violence ineffective.

In August 2019, the UN Committee against Torture (CAT) expressed its concern regarding the detention of families with children and unaccompanied minors over 15 years old. According to CAT conditions in detention centres require improvements and Poland should refrain from placing asylum seekers and in particular children in guarded centres for foreigners.<sup>462</sup> In addition, Poland should introduce a principle to the law that detention of asylum-seekers, and in particular children and vulnerable persons, should be a measure of last resort, for as short a period as possible and in facilities appropriate for their status. Furthermore, CAT recommended that Polish authorities refrain from placing asylum seekers and in particular children in guarded centres, and ensure the fast and appropriate identification of vulnerable persons including survivors of torture and ill-treatment, as well as sexual and gender-based violence, and

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<sup>455</sup> Article 88a(3) Law on Protection.

<sup>456</sup> Although it happens in practice that some members of the family are placed in the reception centre and some in the detention centre. See for instance, T. Sieniow, 'Wnioski z monitoringu wraz z rekomendacjami', 59.

<sup>457</sup> Information provided by Border Guard, 25 January 2019.

<sup>458</sup> Information provided by Border Guard, 14 January 2019 and 10 March 2020.

<sup>459</sup> Communication from Poland concerning the case *Bistieva and others v. Poland* (application No. 75157/14), 14 June 2019, available at: <https://bit.ly/2RzjAVU>.

<sup>460</sup> Commissioner for Child's Rights, *Wystąpienie do Prezesa Rady Ministrów*, 3 December 2018, available (in Polish) at: <https://bit.ly/2TCZ45d>.

<sup>461</sup> Commissioner for Child's Rights, 6 March 2018, available in Polish at: <https://bit.ly/2GgwX8T>.

<sup>462</sup> UN Committee against Torture, *Concluding observations on the seventh periodic report of Poland*, 22-24 July 2019, available at: <https://bit.ly/36qh3BL>.

provide them with adequate access to health care and psychological services.<sup>463</sup>

In the opinion of Commissioner for Human Rights, Commissioner for Children Rights,<sup>464</sup> HFHR and other NGOs in Poland, child detention should be forbidden by law in all cases because detention, regardless of children's migration status and their parents' decisions, can never be in the best interest of a child, violates the children rights and may have a negative effect on children and their further development.<sup>465</sup>

As of 2018 and 2019 detention decisions still did not consider the best interest of the child.<sup>466</sup> When placing a child in a guarded center together with parents, the courts either do not mention children in a justification of the detention decision or justify detention relying on the best interest of the child principle, or limit their assessment to statement that children will be with their parents or detention centres ensure medical and psychological support to foreigners. In addition, the courts place families in guarded centres for a maximum period of time, rather than for the shortest period.<sup>467</sup>

Detention is not treated as a measure of the last resort. The courts ignored assessment of the best interest of the child principle, or did not consider the individual situation of the child. In addition, courts did not order any further medical or psychological examination and did not interview children but instead relied on the documents presented by the Border Guards. Furthermore, justifications of the courts' decisions were adapted from the BG application for prolonging the detention. Moreover, some courts treated detention as a form of punishment for crossing the border illegally.<sup>468</sup>

On 8 January 2018 the European Court of Human Rights communicated the case of *M.Z and Others against Poland*.<sup>469</sup> The application was lodged on 25 April 2017 and concerned a family with two children from Tajikistan, placed in the detention centre in Przemyśl for more than 8 months. During their detention, the mental state of the applicant was worsening and she suffered from depression and showed symptoms of adjustment disorder. She tried to commit suicide and she was in psychiatric hospital a few times. The applicants complained that their detention resulted in inhuman and degrading treatment; was arbitrary and contrary to the domestic law. Moreover the situation of children was not taken into account and the length of detention had an impact on their family life. An application for a compensation for unlawful detention of the family was submitted and will be considered by the District Court in Warsaw. The motion was based, among others, on the fact that the family was deprived of liberty, despite of the fact that the applicant's psychophysical condition indicated that she was a victim of violence and that her health deteriorated because of detention. The application also emphasized that impact on minor children was not investigated properly when deciding on detention.<sup>470</sup> As of March 2020, the case was pending.

On 10 April 2018, the European Court of Human Rights issued a judgment in the case of *Bistieva and others against Poland*. The case concerned a family of five, placed in the detention centre in Kętrzyn for almost 6 months. The court ruled that their right to family life was violated and Polish authorities did not assess the impact of the detention on the family, did not consider alternatives to detention and did not view detention as a measure of a last resort. Furthermore, the court held that no sufficient reason was provided to justify the detention and the best interest of the child was not taken into account. The court held that the family was in the detention centre for too long and the preceding asylum procedure concerning a family

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<sup>463</sup> Commissioner for Human Rights, 'Uwagi końcowe Komitetu Przeciwko Torturom wobec Polski' available at: <https://bit.ly/2GmKzNP>.

<sup>464</sup> Commissioner for Child's Rights, *Wystąpienie do Prezesa Rady Ministrów*, 3 December 2018, available in Polish at: <https://bit.ly/2TCZ45d>.

<sup>465</sup> HFHR, "Rights of persons deprived of liberty-fundamental legal and practical issues. HFHR perspective", July 2018, available at: <https://bit.ly/2SktNaF>.

<sup>466</sup> Information provided by Border Guard, 14 January 2019.

<sup>467</sup> HFHR, *Prawa osób pozbawionych wolności*, May 2017, available (in Polish) at: <http://bit.ly/2GTFPAX>.

<sup>468</sup> HFHR, Research on the applicability of the best interests of the child principle as the primary consideration in detention decisions as well as the alternatives to detention, Marta Górczyńska, Daniel Witko, 2017.

<sup>469</sup> ECtHR, *M.Z. and Others against Poland*, Application No 79752/16, lodged on 25 April 2017, available at: <https://bit.ly/3aAVOaj>.

<sup>470</sup> HFHR, *Warsaw court to rule on moral damages for family's wrongful immigration detention*, 6 February 2019, available at: <https://bit.ly/3aEq50Y>.

with children should be conducted faster and with greater diligence. Proceedings of execution of that judgment take place before the CoE Committee of Ministers. In June 2019 the government presented an Action Report on the implementation of the judgment in this case. According to the government, alternatives to detention are taken into account in cases of families with children, detention procedures are standardized, identification system of vulnerable groups is developed and implemented, and asylum cases persons in detention are treated with priority by the asylum authorities. Moreover, the guarded centres are adjusted to the needs of minors, children have access to education and medical care. Additionally, the *Bistiéva* judgment has been translated into Polish, published on the Ministry of Justice website and disseminated among asylum authorities and Border Guard. Hence, Polish government stated that general measures adopted are sufficient and Poland fulfilled its obligations. In the opinion of Border Guard, that judgment does not impact prolongation of a foreigners' stay in detention centres.<sup>471</sup> On the other hand, according to HFHR, the general measures taken by Poland are not sufficient because the amendments in Polish law are not always applied in practice and Polish courts, placing children in detention centre, do not refer to the child's best interest and do not treat children as a part of the proceedings, ignoring their presence. Furthermore, the courts rely on the information provided by the Border Guard and disregard independent psychological opinion on the negative impact of detention on children. Detention is not applied as a measure of last resort but rather it is maintained for the maximum period.<sup>472</sup>

On 29 January 2019 the European Court of Human Rights communicated the case *R.M. and Others against Poland*. The application was lodged on 26 February 2018 and concerned family with three minor children, placed in the detention centre in Kętrzyn for almost eight months. Family was transferred to Poland under Dublin III regulation. Detention was prolonged despite the psychological problems of one of the children. The applicants presented an expert opinions but the courts extended their detention. The applicant complains that the detention of her children, then aged eleven and three years, constituted treatment contrary to Article 3 of the ECHR and her detention was also arbitrary, unjustified and unnecessary. The applicant also stated that placing and continuation of their detention had violated Article 5(4) of the ECHR as she had not received Border Guard motions on prolongation of their detention. Additionally, she complained that detention was a disproportionate interference with their right to respect for their family life.<sup>473</sup>

On 6 September 2019, the Polish government submitted a unilateral declaration in the case of *Bilalova against Poland* and acknowledged a violation of Article 8 of the ECHR. The case was communicated in 2014 and concerned administrative detention of a mother with five minor children aged between 4 and 10 for three months. The applicant complained that Polish authorities never assesses the child's best interest and the alternatives to detention were not considered.<sup>474</sup>

In November 2019, a complaint to the UN Human Rights Committee was submitted to challenge another case of child detention. It addressed detention of asylum seeking family (single father with two children) in the detention centre in Biała Podlaska for 10 months, following their Dublin-transfer to Poland in November 2018. In this case, courts did not properly assess children's situation and their best interests. The District Court, prolonging the detention of the family, considered only the opinion of Border Guard stating that there were no contradictions for the further children's' stay in detention centre. Likewise, Border Guard refused to release the family despite the fact that mental condition of children was deteriorating.

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<sup>471</sup> Information provided by Border Guard, 18 January 2020.

<sup>472</sup> Information provided by the Helsinki Foundation for Human Rights, 7 January 2020.

<sup>473</sup> ECtHR, *M.R and others against Poland*, Application No 11247/18, lodged on 26 February 2018, available at: <https://bit.ly/30TcvCz>.

<sup>474</sup> ECtHR, *Dagmara BILALOVA against Poland*, Application No 23685/14, lodged on 25 March 2014, available at: <https://bit.ly/37kQJu3>.

## 4. Duration of detention

### Indicators: Duration of Detention

- |  |                  |
|--|------------------|
| 1. What is the maximum detention period set in the law (incl. extensions): | 6 months         |
| 2. In practice, how long in average are asylum seekers detained?           | No data for 2019 |

The decision to detain an asylum seeker is issued for a period up to 60 days by a court, upon the motion of the SG.<sup>475</sup> If a foreigner claims asylum during the stay in the detention centre, the period of detention is prolonged only if the **Grounds for Detention** of an asylum seeker mentioned before are met. If so, then the applicant's stay in the detention centre is prolonged for up to 90 days from the day of filing the asylum application.<sup>476</sup> The period of a stay in a detention centre can also be prolonged if before the end of the previous period of detention, the final decision concerning international protection was not issued and the reasons to detain the applicant still exist. In this case, detention can be prolonged by a court for a specified period of time. There are no timeframes set in law other than the maximum total period of asylum seekers' detention, which is 6 months for asylum seekers and 12 to 18 months for persons facing removal.<sup>477</sup> Prolongation is not possible if the procedure concerning reasons of detention is still ongoing e.g. the identity of the asylum seeker still is not verified, and this delay cannot be attributed to any fault on the part of the applicant.<sup>478</sup>

There are no figures on the average duration of detention of asylum seekers in 2019.<sup>479</sup> In the first half of 2018, asylum seekers were detained on average for 97 days and children for 115 days.<sup>480</sup> The average stay of all foreigners in detention centre in Białystok was 180 days, 115 days in **Biała Podlaska** and 132 days in **Ketrzyn** in 2019.<sup>481</sup>

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

## C. Detention conditions

### 1. Place of detention

#### Indicators: Place of Detention

- |  |                              |  |
|--|------------------------------|--|
| 1. Does the law allow for asylum seekers to be detained in prisons for the purpose of the asylum procedure (i.e. not as a result of criminal charges)? | <input type="checkbox"/> Yes | <input checked="" type="checkbox"/> No |
| 2. If so, are asylum seekers ever detained in practice in prisons for the purpose of the asylum procedure?   | <input type="checkbox"/> Yes | <input checked="" type="checkbox"/> No |

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

<sup>475</sup> Article 89(1) Law on Protection.

<sup>476</sup> Article 89(2)-(3) Law on Protection.

<sup>477</sup> Article 89(4)-(5) Law on Protection; Article 404(5) Law on Foreigners.

<sup>478</sup> Article 89(4a) Law on Protection.

<sup>479</sup> Information provided by Border Guard, letter, 14 and 25 January 2019.

<sup>480</sup> Information provided by Border Guard, letter to Legal Intervention Association, 25 January 2019.

<sup>481</sup> Information provided by Border Guard, letter, 21 February and 3 March 2020.

## 1.1. Guarded centres

These are 6 such centres with a total capacity of 494 (down from 590 in 2018 and 608 in 2017) places for foreigners, located in:

Capacity and occupancy of guarded centres: 2018 - 2019			
Centre	Maximum capacity	Occupancy end 2018	Occupancy end 2019
Biała Podlaska	130	32	19
Białystok	122	20	69
Lesznowola	50	46	33
Kętrzyn	122	25	11
Krosno Odrzańskie	64	55	32
Przemyśl	102	38	14
<b>Total</b>	<b>590</b>	<b>216</b>	<b>178</b>

Source: Border Guard, 18 January 2020.

Currently in three detention centres (**Białystok, Krosno Odrzańskie, Lesznowola**) only men are held and in another three (**Kętrzyn, Biała Podlaska, Przemyśl**) only families with school-age children are held. Additionally, Border Guard plan to build a new building for families with children in guarded centre in Lesznowola in 2020 and 2021.

In one of the centres (**Kętrzyn**), there is a separate part for unaccompanied irregular migrant children.<sup>482</sup> Families are placed together in one room as far as possible both under the law<sup>483</sup> and in practice.<sup>484</sup> The single men are placed in rooms according to their nationality or preferences. In addition, there is a possibility to change a room on a foreigner's justified demand.<sup>485</sup> There are 2 places for individuals with a certificate of disability in Kętrzyn.

## 1.2. "Rigorous detention centres" (*areszt dla cudzoziemców*)

The term, literally translated as "arrests for foreigners", replaced that of "pre-removal centres" as of 1 May 2014. These facilities impose more rigorous conditions of detention than guarded centres.<sup>486</sup> Until December 2012 there were 5 such centres. Currently, there is one centre with a capacity of 33 places in **Przemyśl** for men and women.<sup>487</sup>

An asylum seeker can be placed in a more rigorous detention centre for foreigners only if there is a risk that they will not obey the rules in force in a guarded centre or the applicant has already disobeyed these rules.<sup>488</sup> These detention centres are more prison-like than guarded centres. An asylum seeker placed in such a centre cannot freely move around (he or she is closed in the ward), cannot go outside for a walk whenever he or she wants except for two hours per day etc.<sup>489</sup>

<sup>482</sup> Information provided by the Border Guard, 14 and 25 January 2019; Article 414(4) Law on Foreigners.

<sup>483</sup> Article 414(3) and (5) Law on Foreigners.

<sup>484</sup> HFHR and Association for Legal Intervention, *Wciąż za kratami*, 2014, available (in Polish) at: <http://bit.ly/1JBxxXm>, 17. Information provided by the Border Guard, 14 and 25 January 2019.

<sup>485</sup> Information provided by the Border Guard, 18 January 2020.

<sup>486</sup> Order No 23 of the Ministry of Interior of 1 July 2014 on the designation of areas in which the arrest for foreigners is executed.

<sup>487</sup> Information provided by the Border Guard, 14 and 25 January 2019.

<sup>488</sup> Article 88a(2) Law on Protection.

<sup>489</sup> Centrum Pomocy Prawnej im. Haliny Nieć, K. Przybysławska (Ed.), *Monitoring of Forced Returns from Poland July 2014-June 2015*, 35-36.

All detention centres are for migration-related purposes and the SG is in charge of their management. Asylum seekers are never placed in regular prisons with ordinary prisoners, but stay together with migrants in an irregular situation in a guarded centre or rigorous detention centre. There is no special facility where only asylum seekers are detained. The SG officers who run the centres are trained and there are no major issues reported concerning the staff behaviour. It was reported that in 2013 and in 2014 in some centres the SG addressed foreigners by numbers assigned to them in their administrative files or used bad language.<sup>490</sup> NGOs visiting detention centres noticed a positive change in that matter.

This SG's behaviour was reported in 2017 in CPT report on Poland.<sup>491</sup> Detainees in guarded centers in Lesznowola and Białystok complained about racist remarks, being called by their case numbers and being woken up at night by officers verifying their presence. Border Guards officers were using flash light, removing blankets and slamming the door. In response to the CPT report, the management of the guarded centre for foreigners in Białystok was obliged to cease such procedures, i.e. by ordering night checks only if they are absolutely necessary.<sup>492</sup> The CPT delegation also highlighted the problem of violence between detainees and recommended applying appropriate measures to combat it, i.e. by identifying victims and perpetrators, reporting cases of violence and investigating incidents.<sup>493</sup> There were no reports on these problems in 2019.

On the other hand, Border Guard officers who are on duty in the detention centre of **Krosno Odrzańskie** do not have any identifiers with their name or official identification number.<sup>494</sup>

The design and layout of some of the centres create the impression of a very prison-like environment: thick walls, bars in the windows and on the corridors. In addition all centres are surrounded by high walls topped with barbed wire. In 2015 the Polish authorities decided to remove bars in the windows in the detention centres and install special secure windows in **Lesznowola**, and in **Kętrzyn**, which do not have handles. On the other hand, in the detention centre in **Biała Podlaska**, where families with children are staying, windows still have bars.<sup>495</sup>

The Border Guard plan to remove bars in Biała Podlaska detention centre in 2020 and install special secure windows.<sup>496</sup>

## 2. Conditions in detention facilities

### Indicators: Conditions in Detention Facilities

- |   |   |  |
|---|---|--|
| 1. Do detainees have access to health care in practice? | <input checked="" type="checkbox"/> Yes | <input type="checkbox"/> No            |
| ❖ If yes, is it limited to emergency health care?       | <input type="checkbox"/> Yes            | <input checked="" type="checkbox"/> No |

The Law on Foreigners contains a section on detention conditions, rights and obligations of foreigners.<sup>497</sup> Some practices relating to the functioning of the centres have now been framed into the legal provisions. Below we present how the conditions are in practice.

<sup>490</sup> HFHR and Association for Legal Intervention, *Wciąż za kratami*, 2014, available (in Polish) at: <http://bit.ly/1JBxxXm>, 24.

<sup>491</sup> Report to the Polish Government on the visit to Poland carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 11 to 22 May 2017, 25 July 2018 (hereafter 'CPT report 2018'), available at: <https://bit.ly/2HVZlTc>, 23.

<sup>492</sup> Report to the Polish Government on the visit to Poland carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 11 to 22 May 2017, 25 July 2018 (hereafter 'CPT report 2018'), available at: <https://bit.ly/2HVZlTc>, 23.

<sup>493</sup> Report to the Polish Government on the visit to Poland carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 11 to 22 May 2017, 25 July 2018 (hereafter 'CPT report 2018'), available at: <https://bit.ly/2HVZlTc>, 23.

<sup>494</sup> Commissioner for Human Rights, *Wyciąg Strzeżony Ośrodek dla Cudzoziemców w Krośnie Odrzańskim*, 30 January 2018, available (in Polish) at: <http://bit.ly/2F2ptCr>.

<sup>495</sup> Commissioner for Human Rights, *Wyciąg Strzeżony Ośrodek dla Cudzoziemców w Białej Podlaskiej*, 18-19 July 2018, available (in Polish) at: <https://bit.ly/2TBZ3OY>.

<sup>496</sup> Information provided by the Border Guard, 18 January 2020.

<sup>497</sup> Articles 410-427 Law on Foreigners.

## 2.1. Overall conditions

Six centres (**Białystok, Kętrzyn, Biała Podlaska, Przemyśl, Lesznowola, and Krosno Odrzańskie**) are relatively new and in good condition (they were built after 2008), **Krosno Odrzańskie, Białystok** and **Lesznowola** have been renovated in recent years. The guarded centre in Białystok was renovated until the end of 2018 and the renovation will resume in 2020 and 2021. In addition, the guarded centre in Przemyśl and Biała Podlaska will also be renovated and the new premises for families with children are to be built in guarded centre in Lesznowola in 2020 and 2021.

In 2018 the SG bought equipment for all guarded centres: furniture (tables, beds, cupboards, sofas), smoking cabin, home appliance (supplies for bathroom and kitchens), multimedia equipment for educational classrooms and 4 cars for foreigners transportation.<sup>498</sup> However, the Commissioner for Human Rights underlined that rooms and washrooms in detention centre in Biała Podlaska should be renovated.<sup>499</sup> In 2019 the SG bought equipment for guarded centres in Kętrzyn (two washing machines, water dispensers) and in Biała Podlaska and Przemyśl (kitchen equipment for canteens).

In **Krosno Odrzańskie** where only men are placed, foreigners stay in eight, six or four-bed rooms.<sup>500</sup> In Lesznowola rooms have adequate access to natural light and double rooms measure 14 m<sup>2</sup> each. In Białystok rooms are well -lit and ventilated.<sup>501</sup>

The main equipment in a room consists of beds, small wardrobes and a small table. In **Lesznowola** there is a television in each room (also in Krosno Odrzańskie), a room for preparing meals on their own, laundry, drying room, gym and outdoor pitch. On the other hand there is only one smoking room per two blocks, which is inaccessible after 10 p.m. for detainees from the other block.<sup>502</sup> If people placed in the centres cannot have all their belongings in their room, they have to place them in external storage space in the centre. Some of their belongings are also placed there for safety reasons and can be accessed only upon request. A sufficient space between beds is provided. As for privacy matters, the rooms cannot be locked at night and in some centres the SG checks per night if the detainees are present (e.g. in Białystok and Lesznowola in 2017). There were also concerns about privacy in sanitary facilities in the men's part of the building in some centres (e.g. in 2017 in Białystok).<sup>503</sup>

Before the admission to the guarded centre and in situations justified on grounds of safety and order, foreigners are subject to detail checks. Foreigners have to take off all clothing and underwear. According to a 2016 report of the Commissioner for Human Rights, foreigners complained about the conditions in which the check was carried out,<sup>504</sup> although the Border Guard implemented new standardised guidelines on a two-stage checking of the foreigner, i.e. from the waist up and after dressing up from the waist down.<sup>505</sup> The CPT reported that this two stage approach was not duly followed in practice.<sup>506</sup> SG did not confirm any complaints on this issue but the management of all detention centres was reminded about this rule in March 2018. There were no complaints regarding this issue in 2019.

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<sup>498</sup> Information provided by Border Guards on 14 and 25 January 2019.

<sup>499</sup> Commissioner for Human Rights, *Wyciąg Strzeżony Ośrodek dla Cudzoziemców w Lesznowoli*, 18-19 July 2018, available (in Polish) at: <https://bit.ly/2WRAJKV>.

<sup>500</sup> Commissioner for Human Rights, *Wyciąg Strzeżony Ośrodek dla Cudzoziemców w Krośnie Odrzańskim*, 30 January 2018, available (in Polish) at: <http://bit.ly/2F2ptCr>.

<sup>501</sup> CPT Report 2018, available at: <https://bit.ly/2HVZltc>, 24.

<sup>502</sup> Commissioner for Human Rights, *Wyciąg Strzeżony Ośrodek dla Cudzoziemców w Lesznowoli*, 18 December 2018, available (in Polish) at: <https://bit.ly/2WRAJKV>.

<sup>503</sup> CPT Report 2018, available at: <https://bit.ly/2HVZltc>, 24.

<sup>504</sup> Commissioner for Human Rights, *Wyciąg Strzeżony Ośrodek dla Cudzoziemców w Kętrzynie*, available (in Polish) at: <https://bit.ly/2sUwCns>.

<sup>505</sup> *Ibid.*

<sup>506</sup> CPT Report 2018, available at: <https://bit.ly/2HVZltc>, 28.

On the other hand, the personal checks in **Krosno Odrzańskie** are conducted in a warehouse which violates people's dignity. There are no windows but only metal shelves along the walls. Personal checks take place in a fairly narrow space between the bookshelves.<sup>507</sup>

In February 2018, the Commissioner for Human Rights published a report of a visit to the detention centre in **Przemyśl** in October 2017, describing cases of improper conditions of arrests for foreigners. Problems in sanitary facilities are visible and the privacy and intimacy of detained persons are not ensured.<sup>508</sup>

Conditions in **Biała Podlaska** and in **Ketrzyn**<sup>509</sup> detention centre are good, especially premises for additional classes for children. They are adapted to the needs and interests of children, which has a positive impact on their development.

Foreigners are subject to constant monitoring, which is disproportionate to their situation and applied in the penitentiary system only to particularly dangerous prisoners. In addition, foreigners do not have access to the toilet at all times because there are no sanitary facilities in the cells. Foreigners have to ask the guard every time to allow them to use the toilet. The Commissioner for Human Rights noticed some urinated plastic bottles and considered such conditions to be inhumane.<sup>510</sup>

In some detention centres, the food is provided by external providers, while in others it is prepared in the centres (e.g. in Białystok). Additionally, detainees have access to the microwave (e.g. in Białystok) or a separate place where they can prepare food by themselves (Lesznowola). There are several specific diets e.g., vegetarian, vegan, adapted to Muslims, adapted to pregnant or breastfeeding women or diabetics. Other diets can be respected on prescription of the physician.<sup>511</sup>

In the opinion of the Commissioner for Human Rights, one of the part of the detention centres – of limited use, dedicated to men – in **Przemyśl** needs to be renovated and adapted to the needs of foreigners of both genders. At the moment, the entrance to the laundry room is situated in the bathroom, which cannot be functional if the number of persons in the centre is high.

Additionally, in the past, the Border Guard officers on duty in the guarded centre in **Przemyśl** were always equipped with an electric rifle, visible to the detainees. In the opinion of the Commissioner for Human Rights, this kind of equipment should be stored out of the sight of foreigners, with restricted access limited to authorised officers, and only in case of need. Electric rifles should not be part of the standard equipment of Border Guard officers who have direct contact with a foreigner.<sup>512</sup> In 2018 the Border Guard verified this practice in all detention centres and ordered that means of coercion should be applied only if there is a need.

## 2.2. Activities and education

In all guarded centres there is a sport and recreation space.<sup>513</sup> Free time outside is no longer strictly limited. The open-air space is of adequate size and sufficient recreational facilities are provided (e.g. playing field for volleyball or basketball, in **Białystok** there is an open-air gym and in Ketrzyn a well-equipped playground for children). In practice the detainees have the possibility to take part in outdoor exercises on a regular

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<sup>507</sup> Commissioner for Human Rights, *Wyciąg Strzeżony Ośrodek dla Cudzoziemców w Krośnie Odrzańskim*, 30 January 2018, available (in Polish) at: <http://bit.ly/2F2ptCr>.

<sup>508</sup> Commissioner for Human Rights, *Wyciąg Strzeżony Ośrodek dla Cudzoziemców w Przemyślu*, 7 February 2018, available (in Polish) at: <http://bit.ly/2EXIR4y>.

<sup>509</sup> Commissioner for Childs' Rights, *Informacja o wynikach wizytacji SOc w Kętrzynie*, 6 September 2018, available (in Polish) at: <https://bit.ly/2X2PBGG>.

<sup>510</sup> *Ibid.*

<sup>511</sup> Commissioner for Human Rights, *Wyciąg Strzeżony Ośrodek dla Cudzoziemców w Przemyślu*, 7 February 2018, available (in Polish) at: <http://bit.ly/2EXIR4y>.

<sup>512</sup> Commissioner for Human Rights, *Wyciąg Strzeżony Ośrodek dla Cudzoziemców w Przemyślu*, 7 February 2018, available (in Polish) at: <http://bit.ly/2EXIR4y>.

<sup>513</sup> Paras 2 and 9 Regulation on detention centres.

basis. However some foreigners interviewed by the CPT delegation in the guarded centre in **Białystok** did not know of this free access.<sup>514</sup> There are no additional restrictions, but occasionally the management of the guarded centre in Lesznowola (in 2017 and 2018) and in Białystok (in 2017) limited the access to outdoor exercise area.<sup>515</sup> In 2014 video game consoles were bought and provided to the detainees (**Kętrzyn**, **Biała Podlaska**, and **Białystok**). Detainees can watch television without any limitations, even until late at night.<sup>516</sup> According to the CPT, the management of guarded centres in Lesznowola and Białystok should enlarge the offer of organised activities.

In all centres there is access to the internet and in all of them there are computers which can be used by detainees. In 2018 the foreigners placed in detention centre in **Krosno Odrzańskie** complained that there is restricted access to internet. They could not send directly emails or fax to the NGO which provide legal assistance, this is done by the administration of the guarded centre. It is worth noting that foreigners are under constant supervision of the Border Guard officer who additionally records the personal data and the exact time of their use of internet.<sup>517</sup> Furthermore, the Border Guard Chief Commander ordered on 27 January 2017 the blocking of sites with terrorist-related and extremist content, social media and instant messaging platforms. New technologies such as VoIP (Voice over Internet Protocol) are also forbidden for security reasons despite the fact that the CPT recommended this kind of communication to be available for use by the foreigners in detention centres.<sup>518</sup> Clearance of the internet usage was also introduced<sup>519</sup> but on the other hand, foreigners placed in detention centres in Białystok, Krosno Odrzańskie, Przemyśl and Lesznowola have a possibility to use Skype a day after signing up for the list.

The detainees have access to reading and leisure materials. There are libraries – with a number of books and newspapers in several languages – Russian, English, and French. New books or newspapers, dictionaries, handbooks, maps and other materials were provided to all libraries in 2019. They also have popular games to play (e.g. chess, cards). Concerts and sport competitions are organised for adults and children in **Kętrzyn**. On the other hand, according to UNHCR, foreigners complained that additional activities are rarely organised and that they feel bored.

Detention centres provide rooms for religious practices.

In all centres, in the corridors of each floor there are boards which provide information in at least 1 or 2 main foreign languages (Russian and/or English). They provide information on the asylum applicants' rights and/or the rules of stay in the detention centre, meal times, and contact details of NGOs, UNHCR and – depending on the centre – on access to the doctor and psychologist.

In all centres each asylum applicant and irregular migrant has an officer appointed to their case with a scheduled meeting to discuss their case. The rules of stay in the detention centres are available in 16 languages: Arabic, English, Ukrainian, Russian, French, Armenian, Chinese, Georgian, Hindi, Spanish, Mongolian, Turkish, Farsi, Urdu, Bengali and Vietnamese.<sup>520</sup> Not all the language versions are displayed, as the vast majority of asylum seekers are Russian-speaking. Depending on the centre they are available on each floor of the detention centre or in the common-rooms, etc.

Children staying in the guarded centres are – like all other children staying on the territory of Poland – subject to obligatory education until they are 18. However, this obligation, set in the Polish Constitution, is

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<sup>514</sup> CPT Report 2018, available at: <https://bit.ly/2HVZlTc>, 24.

<sup>515</sup> Commissioner for Human Rights, *Wyciąg Strzeżony Ośrodek dla Cudzoziemców w Lesznowoli*, 18 December 2018, available (in Polish) at: <https://bit.ly/2WRAJKV>.

<sup>516</sup> Information provided by the Border Guard, 18 August 2015.

<sup>517</sup> Commissioner for Human Rights, *Wyciąg Strzeżony Ośrodek dla Cudzoziemców w Krośnie Odrzańskim*, 30 January 2018, available (in Polish) at: <http://bit.ly/2F2ptCr>.

<sup>518</sup> CPT Report 2018, 28; available at: <https://bit.ly/2HVZlTc>. See also Commissioner for Human Rights, *Wyciąg Strzeżony Ośrodek dla Cudzoziemców w Białej Podlaskiej*, 7 January 2019, available (in Polish) at: <https://bit.ly/2TBZ3OY>.

<sup>519</sup> Information provided by the Border Guard, 14 and 25 January 2019.

<sup>520</sup> Information provided by the Border Guard, 18 August 2015.

not fulfilled in the case of children staying in guarded centres.<sup>521</sup> None of the children staying there regularly attends school. Schools near the detention centres in **Kętrzyn** and **Biała Podlaska** delegate teachers to work in detention facilities. Special classrooms are prepared in these centres. This is the result of agreements between the Border Guard, educational institutions and local authorities.<sup>522</sup> Unfortunately, in 2019 local authorities in Przemyśl refused to sign such agreement due to the small number of children.<sup>523</sup>

Moreover, educational departments in guarded centres organise additional classes for children, e.g., compensatory classes and activities for adults on e.g. Mother's Day, father's Day, Refugee day.<sup>524</sup>

In October 2016, representative of National Prevention Mechanism, who visited the guarded centre in **Kętrzyn** underlined that providing the right to education in Kętrzyn is an example of a good practice since the law on foreigners and law on protection does not ensure it.

### 2.3. Special needs and health care in detention

According to the law, all detainees have access to regular health care.<sup>525</sup> In all centres, medical staff are present and working, there is at least one physician and one nurse, but there are often more. Nurses are present on a daily basis from 7.30 a.m. In case of an emergency or the need for a specialist (e.g. gynaecologist), detainees are transferred to hospitals or clinics. As of March 2018, SG officers trained in first aid should be present during night shifts in all guarded centers. The management of all detention centres was also obliged to make sure that there will be a physician in the center every day of the week.

As revealed in the opinion of the CPT, in 2017 medical examinations of detainees were conducted in the presence of SG officers. However, the Polish government stated that presence of a SG officer during a medical check-up is at the request of the physician's conducting the examination.

In September 2015, the Border Guard prepared a document entitled "Rules of SG proceedings with foreigners who need special treatment (algorithm)" because there is no definition of persons who need special treatment and there are no methods for their identification set out in law. The algorithm consists of: (i) a definition of foreigners who are in need of special treatment, (ii) a list of persons involved in identification, (iii) a set of solutions which simplify identification, (iv) a procedure which should be implemented before a foreigner is placed in detention centre and (v) a procedure when a foreigner is already in detention. However, early identification of victims of torture and violence is not carried out during the preliminary examination of a foreigner on admission in practice. Additionally foreigners are not asked about any medical documentation which they could have from another EU country (see also [Identification](#)).<sup>526</sup> This document was modified in June 2019, based on merely internal consultation at Border Guards. In the opinion of SIP, still this document needs to be improved.

In the opinion of the Commissioner for Human Rights,<sup>527</sup> and the Commissioner for Child Rights,<sup>528</sup> the algorithm used by Border Guard to identify victims of violence is inconsistent with Polish law, the Istanbul Protocol and other international standards. This algorithm does not allow for the immediate release of

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<sup>521</sup> HFHR and Association for Legal Intervention, *Wciąż za kratami*, 2014, available (in Polish) at: <http://bit.ly/1JBxxXm>, 46.

<sup>522</sup> Regulation on education foreigners and Polish citizens who were learning abroad, 23 August 2017, available (in Polish) at: <https://bit.ly/2XkPupP>.

<sup>523</sup> Information provided by Border Guards, letter, 17 January 2020.

<sup>524</sup> Commissioner for Child Rights, *INFORMACJA O WYNIKACH WIZYTACJI Strzeżonego Ośrodka dla Cudzoziemców w Kętrzynie, przeprowadzonej w dniu 26 lipca 2018 r.*; available (in Polish) at: <http://bit.ly/2EmgyOi>.

<sup>525</sup> Articles 415(1)(5) and 417 Law on Foreigners.

<sup>526</sup> Commissioner for Human Rights, *Wyciąg Strzeżony Ośrodek dla Cudzoziemców w Kętrzynie*, available (in Polish) at: <https://bit.ly/2sUwCns>.

<sup>527</sup> Commissioner for Human Rights, *Wystąpienie do Komendanta Głównego Straży Granicznej w sprawie identyfikacji ofiar tortur*, 4 July 2017, available (in Polish) at: <https://bit.ly/2SvtzZJ>.

<sup>528</sup> Commissioner for Child Rights, *Wystąpienie do Ministra spraw Wewnętrznych*, 5 September 2018, available (in Polish) at: <https://bit.ly/2GAvObC>.

foreigners who are alleged victims of violence from the guarded centre. According to the Commissioner for Child Rights, the available treatment and therapy in the detention centre for identified victims of torture only exacerbate their mental trauma. The Commissioner called on the Minister of Interior and Administration to oblige the SG to develop new set of rules regarding foreigners whose mental state demonstrates that they were violence victims.<sup>529</sup>

According to the Commissioner for Human Rights, still in 2018, the identification of torture victims was ineffective, the victims were detained, and medical and psychological personnel was not well prepared to identify victims of torture.<sup>530</sup> For example, in the dispensary in detention centre in Lesznowola, there was no set of documents with guidelines on how to handle sensitive groups, the algorithm, the Istanbul Protocol with Appendix. Moreover, the staff was not trained in identification of victims of violence and inhuman treatment. Furthermore the SG was not conducting a medical assessment of traces on the body reported by foreigners as traces of violence and torture.<sup>531</sup>

According to the HFHR, the Polish authorities (SG and courts on own motion) do not identify victims of violence in an effective way. Such identification should be done at the earliest possible stage while deciding on whether the person should be placed in detention. Additionally, the SG and courts should on their own motion exclude the use of detention. Asylum seekers who in their asylum application declare that they were torture victims, are in practice sometimes placed in detention centres. Moreover some courts placed victims in detention centres stating that there is no objection to placing a victim in detention because they will have access to psychological assistance in the guarded centre. The same opinion is presented in the SG guidelines, according to which, a foreigner will not be released if a psychological assistance can be provided in the guarded centre.<sup>532</sup>

In three cases concerning Syrians, courts of second instance held that it was unlawful to place a foreigner in a guarded center only if he or she was the victim of intentional violence justified by political repression or other. Such a justification is against the Polish law.<sup>533</sup>

During the visit of Commissioner for Human Rights in the guarded centre in **Lesznowola**, the delegation identified two victims of violence:

- The first case concerned a single man, whose family – pregnant wife with five children was not with him and living outside the detention centre. He stayed in the detention centre for 4,5 months. He informed the authorities immediately that he had epilepsy and was a victim of physical and psychological violence. The staff knew about these facts in the first week (the information was in psychologists' notes and in the health book). The first consultation took place four weeks after the request of a physician, psychologist and a detainee. He was treated several times in hospital and several experts' opinions were issued. It stated three times that the stress experienced during detention may increase the frequency of epileptic seizures, and a psychologist confirmed twice that the foreigner should not be in the centre due to his mental condition and threat to his life. Despite the certificate about the threat to life and health, the detention lasted for the next 5.5 weeks. During this time the psycho-physical state of the foreigner deteriorated. During his stay in the detention centre, the Border Guard not did not release him as recommended by specialists, and no one examined the traces of torture on his body.
- The second case concerned a single men who informed the SG immediately that he was a violence victim and traumatized. His consultation was translated by another detainee whose language skills were not verified.<sup>534</sup>

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<sup>529</sup> *Ibid.*

<sup>530</sup> Commissioner for Human Rights, *Wyciąg Strzeżony Ośrodek dla Cudzoziemców w Lesznowoli*, 18 December 2018, available (in Polish) at: <https://bit.ly/2WRAJKV>.

<sup>531</sup> *Ibid.*

<sup>532</sup> HFHR, Rights of persons deprived of liberty-fundamental legal and practical issues. HFHR perspective, July 2018, available at: <https://bit.ly/2SktNaF>.

<sup>533</sup> *Ibid.*

<sup>534</sup> Commissioner for Human Rights, *Wyciąg Strzeżony Ośrodek dla Cudzoziemców w Lesznowoli*, 18 December 2018, available (in Polish) at: <https://bit.ly/2WRAJKV>.

During the visit of the Commissioner for Human Rights to **Przemysł**, the experts identified persons who were victims of torture:

- The first case concerned a married couple of Chechen origin. The man claimed that he had been tortured and alleged inhuman treatment in the country of origin; his leg was shot through. He has a certificate of disability and a history of psychiatric treatment from Germany. Furthermore, he had numerous descriptions of symptoms indicating deterioration of his health under the influence of detention. His wife was distressed and kept saying that she could not stand being in a detention centre.
- The second case also related to a person of Chechen origin who constantly stated that he had been tortured in the country of origin, where the fingers of his left hand were broken during torture, he had many scars in his body and could not straighten his left finger. His mental state corroborated the reported violence.
- The third case referred to a woman with an 18-month-old child. She reported torture in the country of origin, her mental condition was deteriorating in the detention centre and PTSD and depression were developing.
- The last case concerned a Syrian national (according to his statement) who was placed in the arrest as a response to a suicide attempt. He suffered a suicidal crisis due to prolonged detention. His mental state justified immediate intervention and he was placed at once in a psychiatric hospital due to threat to his life.

There is also access to psychological care. In **Krosno** psychologist is present only for 4 hours per week, he is not trained in the Istanbul Protocol and he does not run a therapy for foreigners.<sup>535</sup>

In all detention centres, information on the availability of medical and psychological care is displayed on boards in the corridors, but in practice people are not always aware of it.<sup>536</sup>

In **Przemysł**, an external psychologist for foreigners is available 4 hours a week. The capacity of that guarded centre is for 103 foreigners, which means that the access to the psychologist is limited. The Commissioner for Human Rights estimated that foreigners would have to wait for an examination from 4 to 10 months and in their opinion the early identification of victims of violence is not ensured.<sup>537</sup>

Consultant psychologist visit the guarded centre in **Lesznowola** only one day for three hours a week.<sup>538</sup> Consultations are provided only in English and Russian. On the other hand, in the past the Commissioner for Human Rights reported lots of irregularities in psychological assistance and underlined that the number, the frequency and the description of the consultations showed that these consultations only consisted of preliminary interviews and diagnosis. Long-term psychological support was not provided. Additionally, the Commissioner pointed out that the fact there was only one psychologist limits the availability of psychological support. There is a high risk that this psychologist will not be available when her support during a foreigner's mental crisis is needed and there will be no one who could substitute her and provide psychological assistance. Moreover foreigners should have the possibility to choose a psychologist. Otherwise a detainee who is unable to trust an available psychologist, will not have access to effective psychological support.

The Commissioner also pointed out that the staff in the guarded centre were not aware of the system to ensure interpreters' presence during consultations, which languages were available and how long the foreigners had to wait for translation. There were no criteria for the selection of interpreters or the minimum requirements that they should meet. In 2019 in guarded centre in **Kętrzyn**, the psychologist was available

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<sup>535</sup> Border Guard Commander, Krosno Odrzańskie, information, 10 March 2020.

<sup>536</sup> Commissioner for Human Rights, *Wyciąg Strzeżony Ośrodek dla Cudzoziemców w Kętrzynie*, available (in Polish) at: <https://bit.ly/2sUwCns>.

<sup>537</sup> Commissioner Human Rights, *Wyciąg Strzeżony Ośrodek dla Cudzoziemców w Przemysłu*, 7 February 2018, available (in Polish) at: <http://bit.ly/2EXIR4y>.

<sup>538</sup> Information provided by Border Guards in Lesznowola, 27 February 2020.

5 days a week from 8 a.m. to 3 a.m., used an internet translator if there were communication problems with foreigners.<sup>539</sup>

The interpretation was not provided during psychological services in one case of a man who had two psychological and two psychiatric consultations. Despite the fact that his level of English was not sufficient, the interpreter was not called and translation was provided by another foreigner placed in the detention centre in Lesznowola. In a second case, the psychological consultation was not carried out due to the fact that the foreigner had not been informed that the translator would be present during the psychological consultation and he refused to take part in it. Consequently, the psychologist refused to carry out the consultation without the interpreter.<sup>540</sup>

The Commissioner for Human Rights also noted that in the guarded centre in Lesznowola, a list with foreigners' names and prescribed medicines was placed in a visible place on the board in the corridor.<sup>541</sup>

In **Białystok** one consultant psychologist was hired part time (4 hours, twice a week). In 2019 foreigners could make an appointment by themselves, and visit psychologist whenever they needed. The duty hours were placed on the door of the consultation room and on the each floor. In accordance with the provisions of the contracts (with a psychologist, with a clinic) psychological services should be guaranteed within 2 days from the moment of notification by SG of such need and the services are implemented up to date.<sup>542</sup>

Moreover there were no standards or guidance for preparing psychological documentation or how to ensure that elements in the diagnosis which constitute reasons why a person should not be detained are presented properly. The medical documentation was kept together with psychological documentation. According to the Commissioner for Human Rights delegation, staff in detention centre should be trained, and documents which are to be signed by foreigners should be translated in to a language they understand.<sup>543</sup>

During the visit of the Commissioner for Human Rights in **Białystok**, experts in the delegation identified a number of persons who were victims of violence:

- in case of a man detained for 5 months and 15 days there was no information in his medical files on anamnesis or on his first interview with a social guardian. He had 10 meetings with a psychologist, consultation in the emergency department of a psychiatric hospital, was suicidal, suffered from insomnia, adjustment disorder, PTSD and was aggressive. Only four months after the first psychological opinion, he was identified as a victim of violence and a psychological opinion was prepared by the psychologist, where it was stated that keeping him in a detention centre is a threat to his life.
- In the case of a man, who was a victim of sexual violence, the Commissioner for Human Rights delegation did not find any medical or psychological examination assessing whether there were reasons to exclude detention in his file. There was no anamnesis (a person's medical history) taken, although this is required by the guidelines of the Border Guards. Despite the fact that he was qualified as a person who required special treatment, psychiatric and psychological examination was not ordered for one month since he was qualified as such. Furthermore, the psychiatrist ordered additional psychological consultation twice, but this did not occur. Moreover, despite the existence of indications that the man could be a victim of violence, was diagnosed with post-traumatic stress disorder, adaptive disorder and anxiety, no steps were taken to release him from the guarded center. The foreigner stayed in detention for the entire period designated by the court, until he returned to his country of origin;

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<sup>539</sup> Information provided by SIP, January 2020.

<sup>540</sup> Commissioner for Human Rights, *Wyciąg Strzeżony Ośrodek dla Cudzoziemców w Lesznowoli*, 18 December 2018, available (in Polish) at: <https://bit.ly/2WRAJKV>.

<sup>541</sup> *Ibid.*

<sup>542</sup> Commissioner for Human Rights, *Wyciąg Strzeżony Ośrodek dla Cudzoziemców w Białymstoku*, 31 January 2019, available (in Polish) at: <https://bit.ly/2Sk0zE4>.

<sup>543</sup> *Ibid.*

- A blind man was placed in detention centre which was not adapted to the needs of people with disabilities, pending a Dublin transfer. The guardians helped him with laundry and eating. During his stay in the detention centre, the person self-mutilated, licked his wounds, refused to eat meals because of fear of being poisoned and had an adoption disorder. Coercive measures were used against him. None of four psychiatric consultations was diagnostic and no action was taken to identify him as a victim violence and the risk of self-harm which was life-threatening. As a consequence, he was not released from detention centre before have been transferred to the Netherlands.

A man who was transferred from another EU country to Poland, informed the authorities on the day of arrival of the fact that he survived torture, psychological and physical violence and handed over a medical diagnosis prepared as part of the program for the rehabilitation of victims of torture (Rehabilitation Program for Victims of Torture). In 2013 he was diagnosed with post-traumatic stress disorder. No procedure was implemented. Unfortunately the physician and nurse were not trained in diagnosing foreigners who were victims of violence and did not have any knowledge about the procedure which should be implemented in this case.<sup>544</sup>

Three psychologists are hired in **Biała Podlaska**, both man and woman; two as staff members of Border Guards (available from Monday till Saturday from 7.30 a.m. to 20.00 p.m.) and one as an external expert (available 4 hours a week). Furthermore, the staff working in the detention centre was well trained in 2019.

### 3. Access to detention facilities

#### Indicators: Access to Detention Facilities

- |  |   |                                  |                             |
|--|---|----------------------------------|-----------------------------|
| 1. Is access to detention centres allowed to |   |                                  |                             |
| ❖ Lawyers:                                   | <input checked="" type="checkbox"/> Yes | <input type="checkbox"/> Limited | <input type="checkbox"/> No |
| ❖ NGOs:                                      | <input checked="" type="checkbox"/> Yes | <input type="checkbox"/> Limited | <input type="checkbox"/> No |
| ❖ UNHCR:                                     | <input checked="" type="checkbox"/> Yes | <input type="checkbox"/> Limited | <input type="checkbox"/> No |
| ❖ Family members:                            | <input checked="" type="checkbox"/> Yes | <input type="checkbox"/> Limited | <input type="checkbox"/> No |

The law allows lawyers, NGOs and UNHCR to have access to detention centres.<sup>545</sup> Detained asylum seekers are entitled to maintain contact with UNHCR and organisations dealing with asylum issues or granting legal assistance (directly and by means of correspondence and telephone calls). Direct contact with UNHCR and organisations can be limited or restricted completely by the head of the detention centre if it is necessary to ensure safety and public order or to observe the rules of stay in the detention centre. The decision of the head of the centre is final.<sup>546</sup> The Head of the Office for Foreigners and UNHCR should be informed about it.<sup>547</sup> This provision is not used in practice. NGOs provide legal assistance, but unfortunately not on a regular basis. NGOs had to narrow their assistance, including legal assistance, in the detention centres, due to lack of financial means as a result of delay in the implementation of AMIF; delay in the announcement of the call for proposals and delay in publishing the results co-financed by AMIF.<sup>548</sup>

As a general rule, NGOs have to ask for the consent of a manager of the detention centre to meet with a specific asylum seeker. Lawyers, family members and friends, or NGOs can meet with a detainee during visiting hours. There are no limitations concerning the frequency of such visits. UNHCR Poland notes that they are not limited in accessing detention centres. The media and politicians have access to detention centres under general rules; they have to ask for the consent of the SG unit managing the detention centre.

<sup>544</sup> Commissioner for Human Rights, *Wyciąg Strzeżony Ośrodek dla Cudzoziemców w Białymstoku*, 31 January 2019, available (in Polish) at: <https://bit.ly/2Sk0zE4>.

<sup>545</sup> Article 415(1)(2), (3) and (19) Law on Foreigners and Article 89a(1)(2) Law on Protection.

<sup>546</sup> According to the Law on Protection, it will be a possibility only to limit such contact.

<sup>547</sup> Article 89a(1) and (2) Law on Protection.

<sup>548</sup> W Klaus, E Ostaszewska-Żuk and M Szczepanik, *The role of European Funds in supporting the integration of migrants in Poland*, September 2017, available at: <http://bit.ly/2EVdzxq>.

In practice, NGOs who want to meet with more than one or with unspecified asylum seekers, monitor conditions in a detention centre etc. must ask the SG Commander in Chief in writing for permission to visit a detention centre. Since 2017 permission is authorised by the Border Guard Headquarters. Nevertheless visits are generally not limited to visiting hours. NGOs generally do not face problems in accessing the centres. In 2018 NGOs were also permitted to contact detainees remotely by videoconferencing.<sup>549</sup>

Visits from relatives, friends or religious representatives are authorised. Any visit should not last more than 90 minutes, but it can be prolonged in justified cases by the manager of the centre. Two adults have a right to take part in the meeting. The number of children is not limited.<sup>550</sup> Non-scheduled visitors as a rule do not have a possibility to meet with the asylum applicant (but the manager of the detention centre can make exceptions from the above mentioned rules, especially when it is needed to maintain family ties and care over a children).<sup>551</sup>

Detainees are able to maintain regular contact with people outside the centre. There is no limitation in using cell phones (without audio- and video recording system). The SG's have several hundreds of substitute cell phones without a camera which they provide to foreigners in case they only have smartphones. The cell phones are handed over for the whole day for free. Detainees themselves pay for the calls. There are some problems to order a phone card and foreigners use phone card which were bought in other EU countries. The Border Guard officers go and do shopping for detainees usually twice a week. If the asylum applicant does not have money to buy a telephone card, there is a possibility of using the SG's equipment in justifiable cases. The detainees have also access to the internet and Skype in all detention centres.

The Law on Foreigners foresees a legal possibility to impose sanction on a detainee who does not obey the rules in the detention centre. There are two possibilities: banning participation in sport and leisure activities (except for using the library); or banning the purchase of food and cigarettes from outside the centre.<sup>552</sup>

When deciding upon the application of either of these two sanctions, the SG Regional Commander takes into account the general behaviour of the detainee, the level of disobedience, cultural background, etc. Before adopting the law, such punishments were applied in practice without any legal basis. In 2019, such punishment was used 6 times in Białystok for 7 days<sup>553</sup> and twice in Krosno Odrzańskie for 5 days<sup>554</sup>. In practice there seems to be no need to impose sanctions, because, in the opinion of the CPT, foreigners know that in case of serious violations, they could be transferred to rigorous detention centre in Przemyśl.<sup>555</sup>

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<sup>549</sup> M.Jaźwińska, *Dostęp do pomocy prawnej w strzeżonych ośrodkach dla cudzoziemców* [in] Legal Intervention Association SIP w działaniu. *Prawa cudzoziemców w Polsce w 2018 r.*, May 2019, available (in Polish) at: <https://bit.ly/36CSAZX>, 44.

<sup>550</sup> Para 21 of the Rules of foreigners' stay in guarded centre and arrest for foreigners (Annex to the Regulation on detention centres).

<sup>551</sup> Para 23 of the Rules of foreigners' stay in guarded centre and arrest for foreigners (Annex to the Regulation on detention centres).

<sup>552</sup> Article 421(2) Law on Foreigners.

<sup>553</sup> Information provided by the Border Guard in Białystok, 3 March 2020.

<sup>554</sup> Border Guard Commander, Krosno Odrzańskie, information, 10 March 2020.

<sup>555</sup> Report to the Polish Government on the visit to Poland carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 11 to 22 May 2017, 25 July 2018, available at: <https://bit.ly/2HVZltc>.

## D. Procedural safeguards

### 1. Judicial review of the detention order

#### Indicators: Judicial Review of Detention

1. Is there an automatic review of the lawfulness of detention?  Yes  No
2. If yes, at what interval is the detention order reviewed?

Detention is ordered by the District Court upon request of the SG. Prolongation of the detention is also ordered by the District Court upon request of the SG. Asylum seekers stay in the detention centre can be prolonged if before the end of the previous period of the detention, the final decision concerning the application for international protection is not issued and the reasons to detain the applicant still exist.<sup>556</sup>

Asylum seekers are informed of the reasons of their detention, legal remedies and their rights. Information on the reasons for detention is given first in the court, orally, translated into a language understandable for the asylum applicant. The court has a clear obligation to hear the person concerned before rendering a decision.<sup>557</sup> In all guarded centres, when the person arrives at the centre, there is a meeting during which a detainee receives information about the centre, although, in practice asylum seekers do not understand the reasons of their detention and have basic information on their rights.<sup>558</sup> For example it has happened that asylum seekers supported the SG requests to detain them which is surprising, especially in the light of the fact that later in some of these cases foreigners initiated appeal proceedings. In one of such cases, during the detention hearing a foreigner reportedly supported the SG request to detain him despite the fact that his child had epilepsy.<sup>559</sup>

The law provides for judicial review of the lawfulness of detention.<sup>560</sup> Asylum seekers can appeal against a District Court ruling to the Regional Court within 7 calendar days from the day the ruling is pronounced. In prolongation cases it is 7 days from the notification of the ruling to an asylum seeker.<sup>561</sup> In this appeal the detainee can dispute the grounds for their detention. Asylum seekers receive rulings in the language they understand; a literal translation of a ruling rendered in Polish. The Law on Foreigners envisages 7 days for the examination of the appeal.<sup>562</sup>

Some courts – although they have such a legal obligation – do not provide information about the right to a legal representative, whose services are free of charge if foreigners prove that they do not have any financial means. In 2017 many foreigners complained that they did not have money to hire a lawyer to represent them in the court.<sup>563</sup>

The court procedure concerning detention orders is not considered effective. Courts often decide on detention of asylum seekers without an in-depth analysis of their personal situation, and reasons for detention mentioned in the judgment are indicated very generally - without direct reference to a personal situation.

<sup>556</sup> Article 89(4) Law on Protection.

<sup>557</sup> Article 88b(1) Law on Protection.

<sup>558</sup> CPT Report 2018, available at: <https://bit.ly/2HVZltc>, 20.

<sup>559</sup> M. Górczyńska, D. Witko, Research on the applicability of the best interests of the child principle as the primary consideration in detention decisions as well as the alternatives to detention, UNHCR, 2017 available at: <https://bit.ly/2U7SbMr>.

<sup>560</sup> Article 88b(3) Law on Protection; Article 403(8) Law on Foreigners.

<sup>561</sup> Courts interpret differently the law in this matter – some claim that 7 days should be counted from the day of the pronouncement of the court ruling about placing the foreigner in the detention centre, some that it should be counted from the day the translated ruling is delivered to a foreigner in writing – T. Sieniow, *op. cit.*, 54.

<sup>562</sup> Article 88b(3) Law on Protection; Article 403(8) Law on Foreigners.

<sup>563</sup> CPT Report 2018, available at: <https://bit.ly/2HVZltc>, 5.

Previously the Border Guard had been requested by the District Court of **Biała Podlaska** to submit motions for prolongation of detention in due time. In 2019 the Border Guard complied with this requirement and motions were submitted at least two weeks before the end day of detention.<sup>564</sup>

Every person is entitled to compensation and redress for wrongful detention from the State Treasury.<sup>565</sup> In 2018 SIP represented two families and a man whose cases are pending before the District Court of Warsaw and Olsztyn.<sup>566</sup> In one of these cases, Court granted a compensation to the victim of violence in the amount of 20 000 PLN. The HFHR has two such cases in the District Court of Warsaw (pending as of April 2020) and in Radom. In the latter case, the foreigner, citizen of Congo was detained despite the fact that Border Guards identified him as a victim of violence from the very beginning. He was released from detention centre on the base of the court decision 3 months later. The court granted a compensation of 39,000 PLN (8,500 Euro) based on the documents presented with the compensation motion.<sup>567</sup>

In the appeal procedure, foreigners do not know that they can ask the court to be present during examinations of their appeal against detention, so they cannot present their standpoint. At the same time, foreigners are not informed about the reasons for prolonging their stay in a detention centre by the Border Guard, such as for example in Ketrzyn.<sup>568</sup> Furthermore, the appeal has to be prepared in Polish, so foreigners are dependent on NGOs which provide limited legal assistance due to limited access to funds. Courts do not conduct evidentiary proceedings on best interests of the child and on torture victims.

## 2. Legal assistance for review of detention

### Indicators: Legal Assistance for Review of Detention

1. Does the law provide for access to free legal assistance for the review of detention?  
 Yes  No
2. Do asylum seekers have effective access to free legal assistance in practice?  
 Yes  No

The law provides for access to free legal assistance for the review of detention before the courts, but it is hardly ever exercised in practice.<sup>569</sup> Asylum seekers can ask the court to grant them free legal assistance, if they duly prove that they are not able to bear the costs of legal assistance, without harm to the necessary maintenance of themselves and their families.<sup>570</sup> The court has a clear obligation to inform asylum seekers in a language understandable to them about the right to ask for legal assistance.<sup>571</sup> However, this happens rarely in practice. Most asylum seekers are not aware of this possibility and in practice they are not represented by a legal advisor in the District Court. In addition, their right to defence is not observed when the court decides on the extension of their detention. Foreigners are either not informed about the day of the court proceedings or they are informed (in Polish) on the short notice - on the same day. As a result, they are unable to submit a request for the lawyer on time.<sup>572</sup>

As a result they are dependent on legal assistance granted by NGO lawyers, most of whom are not entitled to represent them before courts. Due to limited funds from AMIF, since 2015 all NGOs have limited their activities and do not visit detention centres on a regular basis to provide such assistance whenever needed. This has not improved in 2019. NGOs visiting detention centres cover the travel expenses from short term projects (in some cases funded by private entities) which does not guarantee the stability of assistance.<sup>573</sup>

<sup>564</sup> Border Guard Biała Podlaska, letter, 26 February 2020.

<sup>565</sup> Article 407 Law on Foreigners.

<sup>566</sup> Information provided by the Association for Legal Intervention, 4 February 2019.

<sup>567</sup> Regional Court in Radom, II Ko 23/16

<sup>568</sup> Information provided by the Association for Legal Intervention, 31 January 2019.

<sup>569</sup> Articles 78 and 87a Law of 6 June 1997 on the Code of Criminal Procedure, available at: <http://bit.ly/1UcUEO3>.

<sup>570</sup> Article 78 and 87a Code of Criminal Procedure.

<sup>571</sup> Article 88b(4) Law on Protection.

<sup>572</sup> M.Jaźwińska, *Dostęp do pomocy prawnej w strzeżonych ośrodkach dla cudzoziemców* [in] Legal Intervention Association *SIP w działaniu. Prawa cudzoziemców w Polsce w 2018 r.*, May 2019, available (in Polish) at: <https://bit.ly/36CSAZX>, 44.

<sup>573</sup> *Ibid.*

It can be said that legal assistance in detention centres is generally not effective because of the lack of a centralised or well-managed system for its provision. NGOs pay visits to the detention centres mostly depending on the project they currently implement, which does not happen very often nowadays.

The law foresees a state legal aid system which includes lawyers' visits to the detention centres if necessary and it concerns only preparing the appeal of a negative asylum decision. In practice only some foreigners decide to look for a legal representative, i.e. an advocate or a legal advisor.

### **E. Differential treatment of specific nationalities in detention**

There is no differential treatment of specific nationalities in detention in Poland.

## Content of International Protection

### A. Status and residence

#### 1. Residence permit

##### Indicators: Residence Permit

1. What is the duration of residence permits granted to beneficiaries of protection?
  - ❖ Refugee status 3 years
  - ❖ Subsidiary protection 2 years
  - ❖ Humanitarian protection 2 years

**Refugee status** is granted for an unlimited period of time. Recognised refugees obtain a 3-year residence card (*karta pobytu*).<sup>574</sup> The first card is issued *ex officio*<sup>575</sup> and is renewed after this period for another 3 years upon request.<sup>576</sup>

**Subsidiary protection** is also granted for an unlimited period of time. Subsidiary protection beneficiaries obtain a 2-year residence card (*karta pobytu*).<sup>577</sup> The first card is also issued *ex officio*,<sup>578</sup> and is renewed after this period for another 2 years upon request.<sup>579</sup>

**Humanitarian protection** (*zgoda na pobyt ze względów humanitarnych*) is granted for an unlimited period of time. The beneficiary of humanitarian protection obtains a 2-year residence card (*karta pobytu*).<sup>580</sup> The card will be renewed after this period for another 2 years.<sup>581</sup> The first and subsequent card are issued on the foreigner's demand.<sup>582</sup>

According to the Supreme Audit Office, as of 1 January 2019 there were 1,357 persons with refugee status, 1,993 persons with subsidiary protection status and 1,978 persons under the humanitarian protection scheme.<sup>583</sup>

An application for the renewal of the residence card should be submitted 30 days before the expiration date of the current residence card.<sup>584</sup> Foreigners are often not aware of this rule.

The issuance of the residence card is paid and costs 50 PLN / 12 € for the card.<sup>585</sup> Only the first residence card is issued free of charge.<sup>586</sup> The fee can be diminished by 50% if a beneficiary is in difficult material situation (only if he or she obtains social assistance benefits) or is a minor up to 16 years old.<sup>587</sup> There is no possibility of full exoneration from payment. The obligation to pay even only 25 PLN / €6 sometimes prevents foreigners from obtaining a new residence card. Moreover, in case of culpable loss or damage of the card, a new one will be issued subject to a higher fee of no more than 150 PLN / €18.<sup>588</sup>

<sup>574</sup> Article 89i(1) Law on Protection.

<sup>575</sup> Article 229(2) Law on Foreigners.

<sup>576</sup> Article 89i(2a) Law on Protection.

<sup>577</sup> Article 89i(2) Law on Protection.

<sup>578</sup> Article 229(2) Law on Foreigners.

<sup>579</sup> Article 89i(2a) Law on Protection.

<sup>580</sup> Article 243(1)(4) Law on Foreigners.

<sup>581</sup> Article 243(2)(3) Law on Foreigners.

<sup>582</sup> Article 229(1) and Article 229(4)(3) Law on Foreigners.

<sup>583</sup> Supreme Audit Office (Najwyższa Izba Kontroli), *The State is not ready for foreigners [Państwo niegotowe na cudzoziemców]*, 7 August 2019, available at: <https://bit.ly/3buFMII>.

<sup>584</sup> Article 230(2) Law on Foreigners.

<sup>585</sup> Article 235(1) Law on Foreigners.

<sup>586</sup> Article 236(1)(a)-(c) Law on Foreigners.

<sup>587</sup> Article 237(1) and (2) Law on Foreigners.

<sup>588</sup> Article 238 Law on Foreigners.

The Office for Foreigners, which is responsible for the issuance and renewal of the residence cards for refugees and subsidiary protection beneficiaries,<sup>589</sup> is situated in **Warsaw**. In the case of humanitarian protection beneficiaries, an authority responsible for residence card renewal is a Border Guard unit having jurisdiction over the foreigner's current place of stay.<sup>590</sup>

The residence card has to be received in person. A card for a child under the age of 13 should be received in person by his or her legal representative.<sup>591</sup> There is no other possibility to receive a card by a representative or by post. Moreover, foreigners are obliged to give their fingerprints any time they renew a residence card.<sup>592</sup> If they refuse to give their fingerprints, the residence card will not be issued.<sup>593</sup> The obligation to give fingerprints and mandatory personal presence to pick up the card means that every time the foreigner has to obtain a new card, he or she has to travel to **Warsaw** in the case of the refugees and subsidiary protection beneficiaries, or another town in the case of humanitarian protection beneficiaries, twice, even if he or she lives far away. This can be time-consuming and costly. The Office for Foreigners informed, however, that in case of serious illness they lift the obligation to collect fingerprints from an applicant, but it happens rarely (1-2 times a year).<sup>594</sup> The lack of legal possibility to exempt the foreigner fully from the abovementioned payment, the obligation of personal presence twice – upon application and collecting the document, and the possibility to be issued a residence card only in one place may postpone the receipt of new residence cards by foreigners.

Failure to renew a residence card can be punished by fine,<sup>595</sup> but this rarely happens in practice. There have been no such cases in 2015-2019.<sup>596</sup>

Moreover, Polish law requires presenting – as a condition to issue or renew the residence card – recent photographs. Photos presenting face with covered hair are not allowed (hair has to be visible on the picture), which is often problematic for Muslim women.<sup>597</sup>

All residence cards should have the annotation “access to the labour market”, if the foreigner is entitled to work in Poland.<sup>598</sup> Cards issued for refugees as well as humanitarian and subsidiary protection beneficiaries do not have such an annotation in practice, which can impede their access to labour market and to some social benefits, such as the ones in the framework of the “Family 500+” programme.<sup>599</sup> However, the Supreme Administrative Court as well as the Voivodeship Administrative Court in Warsaw held that such lack of annotation cannot be interpreted as excluding the foreigner from receiving social assistance, if he is in fact entitled to work in Poland.<sup>600</sup> Consequently, the Polish authorities changed their practice and no longer refuse the special financial support under the 500+ Programme on that basis.

## 2. Civil registration

Every child born in Poland, regardless of the nationality of their parents, must be registered in the Civil Registry Office (*Urząd Stanu Cywilnego*). The birth of a child must be reported to the Civil Registry Office

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<sup>589</sup> Article 89n(2) Law on Protection.

<sup>590</sup> Article 245(4)-(5) Law on Foreigners.

<sup>591</sup> Article 248(1)-(2) Law on Foreigners.

<sup>592</sup> Article 246(2) Law on Foreigners.

<sup>593</sup> Article 247 Law on Foreigners.

<sup>594</sup> Information provided by the Office for Foreigners, 1 February 2017, 15 January 2019 and 22 January 2020.

<sup>595</sup> Article 465(4) Law on Foreigners.

<sup>596</sup> Information provided by the Office for Foreigners, i.a. 22 January 2020.

<sup>597</sup> Ordinance of the Minister of Interior of 29 April 2014 on the documents issued for foreigners, available (in Polish) at: <http://bit.ly/2l7o9n0>.

<sup>598</sup> Article 244(1)(11) Law on Foreigners.

<sup>599</sup> European Website on Integration, ‘Poland: social benefit ‘500 PLN per child’ not for refugees?’ 29 February 2016, available at: <http://bit.ly/2ILCBFK>. M. Sadowska, “Świadczenia ‘Dobry start’” in Stowarzyszenie Interwencji Prawnej (SIP), *SIP w działaniu. Prawa cudzoziemców w Polsce w 2018 r.*, 2019, available (in Polish) at: <https://bit.ly/31HyL2O>, 52.

<sup>600</sup> See judgments of Voivodeship Administrative Court in Warsaw No I SA/Wa 1997/16, 7 October 2016, available (in Polish) at: <http://bit.ly/2l8Mj26> and of the Supreme Administrative Court no. I OSK 1164/16, 14 March 2018.

territorially competent for the place of birth of the child.<sup>601</sup> The documents necessary for the preparation of a birth certificate include:

- Written statement of birth issued by a doctor, midwife or health care facility;
- Copy of the marriage certificate if the child's parents are married;
- Birth certificate of the mother, marriage certificate with an entry noting divorce, an abridged copy of the death certificate of the spouse; if the child's mother is single, divorced or widowed, respectively.

The Civil Registry Office which prepared a birth certificate applies for a PESEL number for a child, which is then entered into the registry as well. The PESEL number is crucial in many areas of life including in the provision of health care, hence its registration is initiated by reporting a child's birth.

Marriage is concluded in the Civil Registry Office of the choice of the persons concerned. The documents required to enter into a marriage in Poland are:

- Valid identity document;
- Birth certificate and a marriage certificate together with the annotation of divorce, if the person concerned was married before;
- Certificate issued by the country of origin that the person concerned has the capacity to enter into a marriage under the law of their country.

If the latter document cannot be obtained, the person concerned can apply to the court to be exempt from this obligation.

Generally foreign documents have to be legalised or authenticated by apostille. As a general rule, all documents presented in the Civil Registry Office should be translated by a sworn interpreter and a foreigner who does not speak Polish needs to complete all the formalities (including the marriage ceremony itself) accompanied by a sworn interpreter of a language they speak fluently. Certificates are drawn up immediately.

Problems occur when documents from the country of origin have to be submitted. However, the court procedure to exempt beneficiaries of international protection from this obligation is applied rather efficiently.

### 3. Long-term residence

#### Indicators: Long-Term Residence

1. Number of long-term residence permits issued to beneficiaries in 2019:	Not available
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The EU long-term residence permit (*zezwoleńie na pobyt rezydenta długoterminowego UE*) is issued on a foreigner's demand if he or she:<sup>602</sup>

1. Resides in Poland legally and continuously for at least five years immediately prior to the submission of the application for EU long-term residence permit,
2. Has stable and regular resources which are sufficient to maintain him or herself and the dependent family members;
3. Has appropriate sickness insurance;
4. Knows Polish language at least on level B1 (the documents confirming having this knowledge are required).<sup>603</sup>

Resources are considered sufficient, if for 3 years immediately prior to the submission of the application a foreigner had income higher than the income threshold for social assistance in Poland.<sup>604</sup>

<sup>601</sup> Law of 28 November 2014 on civil registration certificates.

<sup>602</sup> Article 211(1) Law on Foreigners.

<sup>603</sup> Article 211(1)(3) and (3) Law on Foreigners.

<sup>604</sup> Article 211(2) Law on Foreigners.

The entire period of a refugee’s stay in Poland during the asylum procedure is taken into account in the calculation of the 5-year period, if the asylum procedure lasted more than 18 months. In other cases, half of this period is taken into account.<sup>605</sup> If the previous asylum procedure ended with refusal of the international protection, the period of this procedure is not taken into account at all.<sup>606</sup> A procedure for an EU long-term residence permit is not initiated if a foreigner is a humanitarian protection beneficiary or is currently in an asylum procedure.<sup>607</sup>

Refugees and beneficiaries of subsidiary protection may also apply for a permanent residence permit (*zezwoleńie na pobyt stały*), if they continuously stay in Poland for at least 5 years immediately before the submission of the application. The asylum procedure is taken into account in this calculation.<sup>608</sup> The same rules apply to beneficiaries of humanitarian protection but the asylum procedure is not counted to the 5 years period.

The fee for an EU long-term residence permit and a permanent residence permit is 640 PLN / 150 €. The 2019 report published by the Institute of Public Affairs emphasised that ‘Poland represents the country with the least favourable conditions, applying high fees and costs which constitute burdensome obstacles for BIPs given the very low level of social assistance benefits. BIPs are subject to costs of issuing a residence permit and initiating a procedure for permanent/ long-term residence that are higher than 50% of the minimum amount of the monthly social assistance benefit’.<sup>609</sup>

The authority responsible for issuance of the EU long-term residence permit and a permanent residence permit is Voivode having jurisdiction over the current place of stay of the applicant.<sup>610</sup> The Office for Foreigners is a second instance administrative body competent to handle appeals against first instance decisions. The procedure should last maximum 3 months at the first instance and additionally maximum 2 months if an appeal was lodged.<sup>611</sup> In practice though it lasts often much longer. In 2016, 23 beneficiaries were granted EU long-term resident status. No data were made available for 2017-2019. Also the specific data concerning only beneficiaries of international protection who were granted permanent residence permits are not available.

**4. Naturalisation**

<b>Indicators: Naturalisation</b>	
1. What is the waiting period for obtaining citizenship?	
❖ Refugee status	7 years
❖ Subsidiary protection	7-10 years
2. Number of citizenship grants to beneficiaries in 2018:	Not available

Polish citizenship can be obtained through two procedures. Firstly, citizenship can be granted by the Polish President.<sup>612</sup> Any foreigner can apply to President to be granted Polish citizenship; there are no specific conditions and criteria for obtaining citizenship in this procedure. A foreigner only has to submit a form with information about him or herself and justification, why he/she applies for Polish citizenship, to a Consul or a Voievode, who hands on the application to the President.<sup>613</sup> Knowledge of Polish language is not required. The citizenship is granted free of charge. The President’s refusal is a final decision and cannot be appealed.

<sup>605</sup> Article 212(1) (2) and (3c) Law on Foreigners.  
<sup>606</sup> Article 212(2)(8) Law on Foreigners.  
<sup>607</sup> Article 213(1)(e)-(f) Law on Foreigners.  
<sup>608</sup> Article 195(1)(6) and Article 195(3) Law on Foreigners.  
<sup>609</sup> A. Wolffhardt, C. Conte, T. Huddleston, *The European Benchmark for Refugee Integration: A Comparative Analysis of the National Integration Evaluation Mechanism in 14 EU Countries* (Institute of Public Affairs, Warsaw, 2019), available at: <https://bit.ly/39rQCNS>, 62.  
<sup>610</sup> Articles 201 and 218(1) Law on Foreigners.  
<sup>611</sup> Articles 210 and 223 Law on Foreigners.  
<sup>612</sup> Article 18 Law of 2 April 2009 on Polish citizenship.  
<sup>613</sup> Article 19-21 Law on Polish citizenship.

Secondly, a foreigner can be declared as a Polish citizen if he or she fulfils criteria specified in law.<sup>614</sup> Both refugees and subsidiary protection beneficiaries have to obtain first a permanent residence permit (*zezwole nie na pobyt stały*) or EU long-term residence permit in Poland.

A **refugee** who has been granted permanent residence permit and stays continuously on this basis in Poland for 2 more years can be declared as a Polish citizen.<sup>615</sup> 18 and 57 refugees were declared as Polish citizens respectively in 2017 and 2018 on this basis.<sup>616</sup> In 2019 at least 20 refugees were declared as Polish citizens.<sup>617</sup> There is no similar rule concerning **subsidiary protection** beneficiaries. To be declared as Polish citizens, they have to fulfil the same criteria as any other foreigner who obtained permanent residence permit or EU long-term residence permit in Poland (i.e. 2-3 years stay in Poland on this basis or 10 years of legal stay in Poland independently of the basis of the stay, stable and regular resources, legal entitlement to stay in a residential property or marriage with Polish citizen).<sup>618</sup>

Both, refugees and subsidiary protection beneficiaries, to be declared as a Polish citizen, have to prove that they know the Polish language.<sup>619</sup> Foreigners should present a document confirming that they have graduated from a Polish school or that they have passed the State exam for Polish language as a foreign language (B1 at least). Those examinations are organised rarely (e.g. only twice in 2016 and 2017, three times in 2018 and 2019) and they are costly.<sup>620</sup> To take an exam, foreigners often have to travel to another city, so bear the costs not only of the exam itself, but also of transportation and hotel,<sup>621</sup> which may constitute an obstacle to naturalisation.

Other obstacles to naturalisation through a declaration as a Polish citizen are particularly the difficulties with providing a legal entitlement to stay in a residential property in writing (e.g. owners often do not want to sign a rental agreement, prefer oral agreements) and the civil registration documents from a country of origin.<sup>622</sup>

The beneficiary submits the application for declaration as a Polish citizen to Voivode who has jurisdiction over their current place of stay.<sup>623</sup> The fee for obtaining citizenship is 219 PLN. The Voivode decision can be appealed to the Minister of Interior.<sup>624</sup> The procedure should last one month or two, if it is a complicated case. In practice though it lasts often longer.<sup>625</sup>

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<sup>614</sup> Article 30 Law on Polish citizenship.

<sup>615</sup> Article 30(1)(3) Law on Polish citizenship.

<sup>616</sup> Information provided by the Ministry of Interior and Administration, 3 January 2018 and 1 February 2019.

<sup>617</sup> Information provided by the Ministry of Interior and Administration, 10 January 2020. The Ministry informed that those data may be incomplete as the decisions on declaration as Polish citizen are sometimes registered by the Voivode Offices with a delay.

<sup>618</sup> Article 30(1)(1), (2) and (6) Law on Polish citizenship.

<sup>619</sup> Article 30(2) Law on Polish citizenship.

<sup>620</sup> Information from the official exams' website, available (in Polish) at: <https://bit.ly/2uBSEMw>.

<sup>621</sup> P. Kaźmierkiewicz, 'Obywatelstwo' in A. Górka, M. Koss-Goryszewska, J. Kucharczyk (eds), *W stronę krajowego mechanizmu ewaluacji integracji: Diagnoza sytuacji beneficjentów ochrony międzynarodowej w Polsce* (Instytut Spraw Publicznych 2019), 25.

<sup>622</sup> *Ibid.*, 23-24.

<sup>623</sup> Article 36(1) Law on Polish Citizenship.

<sup>624</sup> Article 10(4) Law on Polish Citizenship.

<sup>625</sup> Information provided by the President's Office, 19 January 2017.

## 5. Cessation and review of protection status

### Indicators: Cessation

1. Is a personal interview of the asylum seeker in most cases conducted in practice in the cessation procedure?  Yes  No
2. Does the law provide for an appeal against the first instance decision in the cessation procedure?  Yes  No
3. Do beneficiaries have access to free legal assistance at first instance in practice?  Yes  With difficulty  No

Poland has a single procedure (“deprivation”) for the cessation and/or withdrawal of international protection.

Refugee status is ceased if a foreigner:<sup>626</sup>

- a. Has voluntarily settled in the country, which he or she had left for fear of persecution;
- b. Has voluntarily accepted protection of a country he or she is a citizen of;
- c. Has voluntarily accepted the citizenship of the country of origin, which he or she had lost before;
- d. Has acquired new citizenship and he or she is under the protection of the state whose citizen he or she has become;
- e. Can no longer refuse to accept the protection of the country of origin, because the reasons why he or she was granted a refugee status no longer exist, and he or she did not present convincing arguments as to why he or she cannot accept this protection. The same applies to countries of habitual residence for stateless persons.

Subsidiary protection is ceased, if the circumstances which were the reason for granting subsidiary protection no longer exist or have changed in such a way that a foreigner no longer requires protection.<sup>627</sup>

The cessation procedure is initiated by the Head of the Office for Foreigners *ex officio* or on other authorities’ demand.<sup>628</sup> The procedure should last no longer than 6 months.<sup>629</sup> During the procedure a refugee or a subsidiary protection beneficiary should be interviewed particularly, in order to present reasons as to why he or she should not be deprived of the protection. A foreigner can also present arguments in writing.<sup>630</sup>

A decision on deprivation of international protection is issued by the Head of the Office for Foreigners and can be appealed to the Refugee Board with suspensive effect. A foreigner should leave Poland within 30 days from the day of the delivery of the Refugee Board’s decision on cessation of international protection. In the same period he or she can make the complaint to the Voivodeship Administrative Court in Warsaw. This onward appeal does not have automatic suspensive effect but a foreigner can request the court to suspend final decision on deprivation of international protection. However, it takes sometimes even a couple of months to suspend the decision by court on the foreigner’s demand. During that period a foreigner stays illegally in Poland and may face the start and execution of return proceedings. In 2019, in only case regarding the deprivation of a refugee status, the foreigner did not ask the court to suspend the final decision in this regard. Five foreigners asked for a suspension of a decision depriving them subsidiary protection, but the request was accepted only in 2 cases.<sup>631</sup>

Only some refugees and subsidiary protection beneficiaries are entitled to free legal assistance in cessation proceedings, namely those whose income is not higher than 100% of the criteria qualifying them to social

<sup>626</sup> Article 21(1) Law on Protection.

<sup>627</sup> Article 22(1) Law on Protection.

<sup>628</sup> Article 54b Law on Protection.

<sup>629</sup> Article 54a Law on Protection.

<sup>630</sup> Article 54d(1) Law on Protection.

<sup>631</sup> Information provided by the Voivodeship Administrative Court in Warsaw, 15 January 2020.

assistance.<sup>632</sup> Free legal assistance is only provided in the appeal procedure; it does not include the first-instance procedure.<sup>633</sup> In a court procedure the foreigner can apply for free legal assistance following the general rules.

A foreigner who was deprived of international protection is obliged to return the residence card immediately to the Head of the Office for Foreigners, no later than 14 days from the moment when a decision concerning cessation of the international protection becomes final.<sup>634</sup>

There is no systematic review of the protection status in Poland. In 2016, 8 persons had their refugee status ceased or revoked and 21 had their subsidiary protection ceased or revoked.<sup>635</sup> In 2017, the only cases concerned 80 citizens of Russia deprived of subsidiary protection.<sup>636</sup> In 2018, 11 foreigners (incl. 9 citizens of Russia) had their refugee status ceased (10 refugees) or withdrawn (1 person) and 157 (incl. 154 citizens of Russia) had their subsidiary protection ceased (153 beneficiaries) or withdrawn (13).<sup>637</sup> In 2019, 6 decisions on cessation of a refugee status were issued (incl. 5 citizens of Russia) and 100 (all concerning citizens of Russia) – on ceasing subsidiary protection.<sup>638</sup>

These figures reveal that mostly Russian Federation citizens are deprived of international protection in Poland. Cessation is not systematically applied to them, however. 76 Russian citizens obtained international protection in Poland in 2019, 70 in 2018, 86 in 2017 and 67 in 2016.<sup>639</sup> In 2018 and 2019 Russian citizens were deprived of refugee status predominantly because of the fact that they have voluntarily accepted protection of the Russian Federation. They were deprived of subsidiary protection predominantly due to the fact that the circumstances which were the reason for granting subsidiary protection no longer existed or have changed in such a way that a foreigner no longer required protection (in 150 cases in 2018 and 97 in 2019).<sup>640</sup> HFHR concludes that Russian citizens have mostly been deprived of protection as a result of travel to their country of origin after they obtained international protection.<sup>641</sup> The finding is confirmed by the SIP. The NGO is referring to the case where the Russian citizen was deprived of a refugee status due to his travel to Russia in order to obtain new passport.<sup>642</sup> In 2018 and 2019 some Russian citizens were also deprived subsidiary protection because they were considered a security threat or there were serious grounds to believe that they committed a crime.<sup>643</sup>

In 2019, only one foreigner submitted a complaint to the Voivodeship Administrative Court in Warsaw against a decision depriving him refugee status. His complaint was rejected.<sup>644</sup> Eleven foreigners complained to the court in 2019 against refusal of subsidiary protection. The court dismissed 5 such complaints. None of the complaints in this regard was considered justified in 2019.<sup>645</sup>

In the judgment of 9 June 2017 (II OSK 904/17), the Supreme Administrative Court held that the administrative authorities entitled to cease or withdraw the refugee status cannot in those proceedings assess whether a foreigner should be granted subsidiary protection instead. In consequence, even when

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<sup>632</sup> Article 69d(2) Law on Protection.

<sup>633</sup> Article 69d Law on Protection.

<sup>634</sup> Article 89l(1) and (3) Law on Protection.

<sup>635</sup> Information provided by the Office for Foreigners, 1 February 2017.

<sup>636</sup> Information provided by the Office for Foreigners, 1 February 2018.

<sup>637</sup> Information provided by the Office for Foreigners, 15 January 2019.

<sup>638</sup> Information provided by the Office for Foreigners, 22 January 2019.

<sup>639</sup> Information provided by the Office for Foreigners, 1 February 2018 and 15 January 2019.

<sup>640</sup> Information provided by the Office for Foreigners, 15 January 2019 and 22 January 2020.

<sup>641</sup> This reasoning was confirmed by the Supreme Administrative Court in Decision No II OSK 1493/14, 23 February 2016: Lex.pl, 'NSA: uchodźcy z Czeczenii muszą wrócić do kraju', 26 February 2016, available (in Polish) at: <https://bit.ly/2w3JQiM>.

<sup>642</sup> A. Pulchny, 'Pozbawienie cudzoziemca ochrony międzynarodowej w Polsce' in Stowarzyszenie Interwencji Prawnej (SIP), *SIP w działaniu. Prawa cudzoziemców w Polsce w 2018 r.* (2019), available (in Polish) at: <https://bit.ly/2w3KcpC>, 24-25.

<sup>643</sup> Information provided by the Office for Foreigners, 15 January 2019 and 22 January 2020.

<sup>644</sup> Information provided by the the Voivodeship Administrative Court in Warsaw, 15 January 2020.

<sup>645</sup> *Ibid.*

the authorities are aware of the reasons to grant subsidiary protection, they cannot do it *ex officio*, they can only deprive a foreigner of a refugee status, indirectly accepting that he may be send back to danger.<sup>646</sup>

## 6. Withdrawal of protection status

### Indicators: Withdrawal

1. Is a personal interview of the asylum seeker in most cases conducted in practice in the withdrawal procedure?  Yes  No
2. Does the law provide for an appeal against the withdrawal decision?  Yes  No
3. Do beneficiaries have access to free legal assistance at first instance in practice?  
 Yes  With difficulty  No

Refugee status is withdrawn (“revoked”) where the person:<sup>647</sup>

- a. Has withheld information or documents, or presented false information or documents of significance for the asylum proceedings;
- b. Has committed a crime against peace, a war crime or a crime against humanity, as understood by international law;
- c. Is guilty of the acts contrary to aims and principles of the United Nations, as specified in Preamble and Articles 1 and 2 of the UN Charter.

Subsidiary protection is withdrawn where:<sup>648</sup>

- a. It has been revealed that a foreigner has withheld information or documents or presented false information or documents of significance for the asylum proceedings;
- b. There are serious grounds to believe that a foreigner has committed a crime against peace, a war crime or a crime against humanity, as understood by international law;
- c. There are serious grounds to believe that a foreigner is guilty of the acts contrary to aims and principles of the United Nations, as specified in Preamble and article 1 and 2 of the UN Charter;
- d. There are serious grounds to believe that a foreigner has committed a crime in Poland or an act outside Poland which is a crime according to Polish law;
- e. There are serious reasons to believe that a foreigner poses a threat to state security or to the safety of the society.

Subsidiary protection may also be revoked if, after a foreigner has been granted subsidiary protection, it has been revealed that the beneficiary had committed a crime under Polish law punishable by prison sentence and had left his or her home country for the sole purpose of avoiding punishment.<sup>649</sup>

The “deprivation” procedure and statistics for withdrawal are described in the section on [Cessation](#).

<sup>646</sup> A. Pulchny, ‘Pozbawienie cudzoziemca ochrony międzynarodowej w Polsce’ in Stowarzyszenie Interwencji Prawnej (SIP), *SIP w działaniu. Prawa cudzoziemców w Polsce w 2018 r.* (2019), available (in Polish) at: <https://bit.ly/2w3KcpC>, 25.

<sup>647</sup> Article 21(1) Law on Protection.

<sup>648</sup> Article 22(1) Law on Protection.

<sup>649</sup> Article 22(4) Law on Protection.

## B. Family reunification

### 1. Criteria and conditions

#### Indicators: Family Reunification

1. Is there a waiting period before a beneficiary can apply for family reunification?  
 Yes  No  
❖ If yes, what is the waiting period?
2. Does the law set a maximum time limit for submitting a family reunification application?  
Simplified procedure  Yes  No  
❖ If yes, what is the time limit?  
6 months
3. Does the law set a minimum income requirement?  Yes  No

The procedure of family reunification is governed by Article 159 of the Law on Foreigners. Family members who are eligible to reunite with the beneficiary are:

- spouse (marriage has to be recognised under the Polish law, but does not have to be concluded before the beneficiary's entry to Poland);
- minor child (biological or adopted) of the family member dependent on them and under their parental authority
- minor child (biological or adopted) of the beneficiary and his/her spouse dependent on them and under their parental authority

In case of a minor beneficiary of international protection, family members who can reunite with them are not only parents but also grandparents or other responsible adult under Polish law (e.g. legal guardians). A beneficiary can also apply for a residence permit for a family member, who already stayed in Poland without permit when the beneficiary had applied for protection. In such a case they have to prove that family has already existed in the country of origin.

There is no waiting period for family reunification in Poland, nor is there a time limit. Foreigners who have obtained refugee status or subsidiary protection are eligible for a simplified family reunification procedure. If they submit a relevant application with a Voivode of proper venue within 6 months from the date of obtaining protection within the territory of Poland, they are not obliged to comply with the conditions of having health insurance, a stable source of income or accommodation in Poland. It must, nonetheless, be remembered that when the residence permit is granted, the beneficiary's family residing outside Poland is obliged to obtain a visa from a Polish consulate. The requirements under which a visa is obtained, in turn, include having adequate financial means and health insurance.<sup>650</sup>

There are no differences between refugees and beneficiaries of subsidiary protection as to the family reunification conditions. The beneficiary is not required to know Polish, is not subject to DNA tests, but has to present original documents certifying the family ties, translated into Polish.

Data on family reunification of beneficiaries of international protection are generally not disaggregated by the authorities.<sup>651</sup> The main challenges for beneficiaries of international protection to be reunited with their family members are: a narrow definition of family members (e.g. civil partners are excluded), lengthy and

<sup>650</sup> HFHR, *Family Reunification of Foreigners in Poland, Law and Practice*, June 2016, available at: <http://bit.ly/2ILG11B>, 19-20.

<sup>651</sup> A. Kulesa, 'Łączenie rodzin' in A. Górską, M. Koss-Goryszewska, J. Kucharczyk (eds), *W stronę krajowego mechanizmu ewaluacji integracji: Diagnoza sytuacji beneficjentów ochrony międzynarodowej w Polsce* (Instytut Spraw Publicznych 2019), 9.

costly procedure (submitting and translating official documents, journey to Poland, paying several visits to the consulate).<sup>652</sup>

## 2. Status and rights of family members

Family members are granted a temporary residence permit, not a residence card issued for beneficiaries of international protection. The temporary residence permit in order to facilitate family reunification of beneficiaries of international protection is granted for 3 years. The foreigner is then issued a residence card upon arrival to Poland with an expiry date conforming to the expiry date of the permit that was granted. The card contains the foreigner's personal data, residence address, annotation confirming the right to be employed in Poland, and the expiry date.

Foreigners who have been granted a residence permit under family reunification procedure may take employment in Poland without the need to apply separately for a work permit, and children under 18 years of age are entitled to free education in Polish schools. Family members of foreigners granted refugee status or of subsidiary protection are also entitled to social benefits. They also are entitled to be covered by the Individual Integration Programme provided that a relevant application is submitted with one of the Poviats Family Support Centres (*powiatowe centra pomocy rodzinie*). Such an application must be submitted within 60 days from the date when the temporary residence permit is granted.

## C. Movement and mobility

### 1. Freedom of movement

Refugees and subsidiary protection beneficiaries have full freedom of movement in Poland. They can freely choose a place where they want to live, authorities do not require from them to live in some particular areas of the country.

There are no specific facilities for refugees and subsidiary protection beneficiaries in Poland. They are entitled to stay in reception centres up until 2 months after the decision on the asylum application becomes final. Afterwards they have to organise all living conditions themselves.

Provision of material conditions is not subject to actual residence in a specific place, however some restrictions in this regard exist during the Individual Integration Programme (IPI) (see [Social welfare](#)).<sup>653</sup> Beneficiaries are obliged to reside in a place (within the specified voivodeship) agreed with the authorities during the 12-month period of the IPI. In general, change of a place of residence is equated with the termination of the programme. However, a change of residence is allowed in particularly justified cases, e.g. in case of:

- 1) finding a job in another region with a possibility of accommodation;
- 2) obtaining an accommodation in another region;
- 3) family reunification, when the possibility to live together exists;
- 4) medical reasons justifying a move.

In those cases, the beneficiary has to inform authorities about the move and its reasoning. Then, the programme can continue in a new place of living.

Refugees and subsidiary protection beneficiaries are not assigned to a specific residence for reasons of public interest or public order.

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<sup>652</sup> Ibidem, 21.

<sup>653</sup> Article 94 of Law of 12 March 2004 on social assistance.

## 2. Travel documents

**Refugees** obtain travel documents mentioned in the Refugee Convention, which are valid for 2 years from the day of issuance.<sup>654</sup> Subsequent travel documents are issued on the refugee's demand.<sup>655</sup> The document is issued free of charge, whether a first travel document or a subsequent one. The authority responsible for issuance of refugee travel documents is the Head of the Office for Foreigners.<sup>656</sup> The procedure concerning refugee travel documents should last one month or two, if it is a complicated case.

A refugee travel document has to be received in person. A travel document for a child under the age of 13 should be received in person by his or her legal representative.<sup>657</sup> In case of *force majeure* preventing a foreigner to receive a document in person, the refugee travel document can be received by a proxy.<sup>658</sup> Foreigners are obliged to give their fingerprints any time they apply for refugee travel document.<sup>659</sup> The obligation to give fingerprints and mandatory personal presence to receive the travel document means that most of the time refugees willing to obtain a new travel document have to travel to **Warsaw** twice, even if they live far away. It is time-consuming and costly.

Beneficiaries of **subsidiary protection** are entitled to a Polish travel document for foreigners. The application for the document should be submitted to a Voivode having jurisdiction over the current place of stay of a foreigner and requires a fee of 100 PLN / 23 €. <sup>660</sup>

A Polish travel document will be issued only if a beneficiary of subsidiary protection: has lost his or her passport or the passport has been damaged or its validity has expired, *and* he or she is unable to obtain a new passport from the authorities of the country of origin.<sup>661</sup> Inability to obtain a new passport from the authorities of the country of origin is often understood by the Polish authorities as a requirement for beneficiaries to present written evidence that they have contacted the embassy of their country of origin and that this authority has refused to issue a passport for them. Often foreign authorities are unwilling to issue a document confirming those facts. Moreover, some beneficiaries of subsidiary protection are afraid to contact authorities of their country of origin, because the previous actions of those authorities were the reason they sought protection in Poland.

The procedure concerning the Polish travel document for a foreigner should last one month or two, if it is a complicated case. In practice, however, it often lasts longer.

Refusal to issue the Polish travel document for a foreigner can be appealed to the Head of the Office for Foreigners.

The Polish travel document for a foreigner entitles to multiple border crossings and is valid for 1 year.<sup>662</sup> After that period, a beneficiary of subsidiary protection needs to apply for another such document. Even in case of an application for a subsequent Polish travel document, after the previous one expires, beneficiaries of subsidiary protection are expected to take measures in order to obtain the passport from their country of origin.<sup>663</sup>

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<sup>654</sup> Article 89i(1) and (3) Law on Protection.

<sup>655</sup> Article 89m Law on Protection.

<sup>656</sup> Article 89n(1) Law on Protection.

<sup>657</sup> Article 89ib(1) and (2) Law on Protection.

<sup>658</sup> Article 89ib(4) Law on Protection.

<sup>659</sup> Articles 89i(4) and 89m Law on Protection.

<sup>660</sup> Article 257(1) Law on Foreigners.

<sup>661</sup> Article 252(3) Law on Foreigners.

<sup>662</sup> Article 253 Law on Foreigners.

<sup>663</sup> Article 254 Law on Foreigners.

The Border Guard has not observed any obstacles in the recognition of travel documents of beneficiaries of international protection issued by another country in 2017 and in 2018.<sup>664</sup>

In 2017, 658 refugees obtained Convention travel documents and 102 subsidiary protection beneficiaries obtained Polish travel documents for foreigners.<sup>665</sup> In 2018, 555 Refugee Convention travel documents were issued. The data concerning Polish travel documents for foreigners issued to beneficiaries of subsidiary protection were not made available.<sup>666</sup> In 2019, 681 refugees obtained Convention travel documents and 38 subsidiary protection beneficiaries obtained Polish travel documents for foreigners.<sup>667</sup>

## D. Housing

### Indicators: Housing

- |   |          |
|---|----------|
| 1. For how long are beneficiaries entitled to stay in reception centres?        | 2 months |
| 2. Number of beneficiaries staying in reception centres as of 31 December 2019: | 61       |

Beneficiaries of international protection are allowed to stay in the centres for 2 months after being served with the positive decision.

The state does not provide housing. There is a general lack of social housing to nationals as well, so the situation of beneficiaries is difficult in this regard.<sup>668</sup> General conditions to obtain housing under the law are hard to fulfill for beneficiaries because of their relatively short stay in Poland and mobility.<sup>669</sup> Some municipalities provide singular flats annually, dedicated for beneficiaries e.g.: 5 in Warsaw, 4 in Lublin, 4 in Gdansk. Within the 12-month period of Individual Integration Programme (IPI), individuals may receive a financial benefit to pay for a flat. Yet, according to social assistants in the Centre for Social Assistance in Wolomin, (suburbs of Warsaw) the owners are not willing to rent flats to refugees and often demand higher fees.<sup>670</sup> Many NGOs are of the opinion that beneficiaries of international protection face homelessness and destitution in Poland.<sup>671</sup> Some researchers stress that although there is no data on the number of homeless beneficiaries of international protection, there is a high risk that the number is substantial.<sup>672</sup> There is a study in which episodes of homelessness or severe housing conditions were reported in the period between living in the reception centre and benefitting from integration programme or after the integration assistance ended.<sup>673</sup> The Foundation Ocalenie, running a project called “Welcome home”, within which it helped 53 beneficiaries (as of August 2019) in i.a. renting a flat in **Warsaw**, informs that more than 25% beneficiaries in Poland can face homelessness. The main obstacles to find a flat are high prices and discrimination.<sup>674</sup> As another study shows, generally a negative narrative about refugees is prevalent in the public discourse, which leads to a systematic growth of the negative attitudes towards refugees in Poland. The lack of

<sup>664</sup> Information provided by the Border Guard, 11 January 2018 and 14 January 2019.

<sup>665</sup> Information provided by the Office for Foreigners, 1 February 2018.

<sup>666</sup> Information provided by the Office for Foreigners, 15 January 2019.

<sup>667</sup> Information provided by the Office for Foreigners, 22 January 2020.

<sup>668</sup> Maryla Koss-Goryszewska ‘Mieszkalnictwo’ in A. Górka, M. Koss-Goryszewska, J. Kucharczyk (eds), *W stronę krajowego mechanizmu ewaluacji integracji: Diagnoza sytuacji beneficjentów ochrony międzynarodowej w Polsce* (Instytut Spraw Publicznych 2019), available (in Polish) at: <https://bit.ly/2w3NkBS>, 27.

<sup>669</sup> Ibidem, 29.

<sup>670</sup> Rzeczpospolita, ‘Bez mieszkań dla uchodźców’, 13 October 2015, available (in Polish) at: <http://bit.ly/2IQYYJS>.

<sup>671</sup> Wyborcza, ‘Uchodźcy w Polsce mieszkają w squatach i ruderach. Fundacja szuka dla nich tanich mieszkań’, 10 November 2016, available (in Polish) at: <http://bit.ly/2kqrrpE>. There was an extended research on this for UNHCR in 2013, available at: <http://bit.ly/2kKwLAI>.

<sup>672</sup> Maryla Koss-Goryszewska ‘Mieszkalnictwo’ in A. Górka, M. Koss-Goryszewska, J. Kucharczyk (eds), *W stronę krajowego mechanizmu ewaluacji integracji: Diagnoza sytuacji beneficjentów ochrony międzynarodowej w Polsce* (Instytut Spraw Publicznych 2019), available (in Polish) at: <https://bit.ly/2w3NkBS>, 30.

<sup>673</sup> Lukaszewicz, K., ‘Exile to Poverty: Policies and Poverty Among Refugees in Poland’, *International Migration* Vol. 55 (6) 2017, 63.

<sup>674</sup> Information available at: <https://bit.ly/3d9U426>.

knowledge about the assistance offered to refugees in Poland reinforces stereotypical ideas about welfare support accompanied with the complete passivity and demanding nature of the refugees.<sup>675</sup>

## E. Employment and education

### 1. Access to the labour market

Refugees and beneficiaries of subsidiary protection have access to labour market on the same conditions as Polish citizens. There is no difference between refugees and subsidiary protection beneficiaries. Access to employment is not limited to certain sectors.

In practice they have access to employment although they face obstacles, e.g. language skills, qualifications, low awareness of employers about their full access to the labor market. Additionally, labour market institutions are not prepared to help beneficiaries of international protection to enter the labour market in Poland, despite a clear obligation to do so in the law. NGOs report that foreign employees face discrimination, often on multiple basis.<sup>676</sup>

Low language skills and low professional qualifications results in unemployment or employment with low salary; instability of employment; small chances for a promotion.<sup>677</sup> It is easier to find a job in bigger cities, e.g. in **Warsaw** where vocational trainings are provided in foreign languages. Support of the state is only provided during the 12-month Individual Integration Programme (IPI). Although beneficiaries of international protection have access to professional qualifications programs, they are held in Polish which exclude their participation in practice. There are no programs specially dedicated to foreigners improving professional qualification with learning Polish. Additionally, the specific needs of foreigners are not taken in to account.<sup>678</sup>

Professional qualifications are recognised, although that procedure is very difficult and time-consuming. Very often recognised refugees and beneficiaries of subsidiary protection do not have any documents confirming their education and skills. Sometimes foreigners have to pass an additional Polish language exam.

### 2. Access to education

The situation does not differ from the situation of asylum seekers (see above [Access to education](#)). The situation of beneficiaries can be actually worse because the schools near the accommodation and reception centres are more familiar with the challenges related to foreign pupils than other schools in the country. According to the data from the System of Educational Information as of 30.09.2016 there were 1,958 children in Polish schools, from families still subject to international protection proceedings or already granted protection.<sup>679</sup>

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<sup>675</sup> B. Łaciak, J. Seges Frelak 'The wages of fear. Attitudes towards refugees and migrants in Poland', Foundation Institute of Public Affairs, Warsaw 2018, available at: <http://bit.ly/32oTsAQ>.

<sup>676</sup> P. Mickiewicz, *Dyskryminacja cudzoziemców na rynku pracy* [in] Stowarzyszenie Interwencji Prawnej (SIP), *SIP w działaniu. Prawa cudzoziemców w Polsce w 2018 r.* (2019), available (in Polish) at: <http://bit.ly/2S507LV>, 53.

<sup>677</sup> Mikołaj Pawlak 'Zatrudnienie' in A. Górską, M. Koss-Goryszewska, J. Kucharczyk (eds), *W stronę krajowego mechanizmu ewaluacji integracji: Diagnoza sytuacji beneficjentów ochrony międzynarodowej w Polsce* (Instytut Spraw Publicznych 2019), 32.

<sup>678</sup> Mikołaj Pawlak, 'Kwalifikacje zawodowe' in A. Górską, M. Koss-Goryszewska, J. Kucharczyk (eds), *W stronę krajowego mechanizmu ewaluacji integracji: Diagnoza sytuacji beneficjentów ochrony międzynarodowej w Polsce* (Instytut Spraw Publicznych 2019), 37.

<sup>679</sup> Maryla Koss-Goryszewska 'Edukacja' in A. Górską, M. Koss-Goryszewska, J. Kucharczyk (eds), *W stronę krajowego mechanizmu ewaluacji integracji: Diagnoza sytuacji beneficjentów ochrony międzynarodowej w Polsce* (Instytut Spraw Publicznych 2019), 49.

## F. Social welfare

Beneficiaries of international protection have access to social welfare on equal terms as nationals. There is no difference drawn between refugees and subsidiary protection beneficiaries.

### 1. Forms of social assistance

Social assistance can be provided *inter alia* for the following reasons: orphanhood; poverty; homelessness; unemployment; disability; long-term or severe disease, violence in the family; the need to protect the child and family; addiction (alcoholism and drug addiction); difficulties in integration of foreigners who were granted refugee status, subsidiary protection, sudden and unpredictable situations (natural / ecological disaster, crisis situation, random event), difficulties in integration due to leaving the care and educational institution or prison.

Social assistance is granted to beneficiaries of international protection whose income does not exceed PLN 701 (161 €)(for a single person), or PLN 528 (121 €) (for a person in the family). The application for social assistance has to be filed before the Social Welfare Centre (*Ośrodek Pomocy Społecznej*, OPS) which is located in the district where beneficiaries of international protection reside.

Beneficiaries of international protection are also entitled to family benefits and supplements (*świadczenia rodzinne i dodatki*) under two conditions also applicable to Polish nationals: (a) residence in Poland; and (b) the average monthly family income per person in a family, which cannot exceed 674 PLN or 764 PLN<sup>680</sup> if the child in the family is certified as disabled. They have a right to apply for:

- Family allowance
- Childbirth aid and supplement
- Attendance allowance
- Parental benefit
- Supplement for the beginning of the school year, education away from home, education and rehabilitation of a disabled child, rising a child in a numerous family, rising child alone, and caring a child during parental leave.

Furthermore beneficiaries of international protection have a right to apply for special financial support under the government “500+ Programme”, which is paid on monthly basis. This benefit is for families with children, and should be spent on the need of child regardless of income. For families with a disabled child, the net income criterion is 1,200 PLN. The benefits are granted by Municipal Office of Social Welfare, acting on behalf of the President of the city.

In 2017, Polish authorities denied granting that benefit in several cases, concluding that beneficiaries of international protection did not meet the formal legal requirements, as the residence card which they presented did not include the annotation “access to the labour market” (see [Residence Permit](#)). However, the Regional Administrative Court of Warsaw ordered the authorities to grant the benefits.<sup>681</sup> Consequently, the Polish authorities changed their practice and no longer refuse the special financial support on the 500+ Programme on that basis.

On the other hand, single mothers who are recognised beneficiaries of international protection, still face obstacles to receiving the above mentioned benefits. According to the law, they have to provide a court with a writ of execution (*tytuł wykonawczy*) confirming maintenance benefit from the other parent. As a result of these regulations, they are deprived of that benefits because they are not able to present that required document due to their exceptional personal and family situation.<sup>682</sup>

<sup>680</sup> Ministry of Family, Work and Social Policy, Information, available (in Polish) at: <https://bit.ly/38lyK0m>.

<sup>681</sup> Voivodeship Administrative Court in Warsaw, I SA/Wa 1197/16, EDAL, available (in Polish) at: <http://bit.ly/2GPlai8>.

<sup>682</sup> Legal Intervention Association, “*SIP w działaniu. Prawa Cudzoziemców w Polsce 2018*”, 2019, available (in Polish) at: <https://bit.ly/36CSAZX>.

## 2. Individual Integration Programme

Beneficiaries of international protection are also entitled to the Individual Integration Programme (IPI) provided by the Poviats Family Support Centres (*Powiatowe Centra Pomocy Rodzinie*, PCPR). The Programme takes 12 months during which integration assistance is provided. This assistance includes:

- Cash benefits for the maintenance and coverage of expenses related to learning Polish language;
- Payment of the health insurance premium specified in the provisions on general insurance in the National Health Fund;
- Special social counseling.

The social worker carries out the so-called environmental interview with a beneficiary of international protection and his or her family, and then together with them draw up an IPI. The programme determines the amount, scope and forms of integration assistance, as well as mutual obligations of the beneficiary and PCPR. The minimum cash benefit amount is PLN 647 (149 €), per person per month. Since 1st October 2018 beneficiaries of international protection are entitled to receive:

1) during the first 6 months of the integration program:

- up to PLN 1376,00 (317 €) per month - for a single person;
- up to PLN 963.20 (22 €) per person per month - in a 2-person family;
- up to PLN 825.60 (190 €) per person per month - in a 3-person family;
- up to PLN 688 (158 €) per month per person - for a family of four and more.

2) in the period from 7 to 12 months of the integration program:

- up to PLN 1238.40 (288 €) per month - for a single person;
- up to PLN 866,88 (200 €) per person per month - in a 2-person family;
- up to PLN 743,04 (171 €) per person per month - in a 3-person family;
- up to PLN 619 (149 €) per month per person - for a family of four and more.<sup>683</sup>

PCPR assists the beneficiary to obtain housing in a place of residence his or her choice, where he or she is obliged to reside during the 12-month period of the IPI. A change of residence is allowed in particularly justified cases. In case the beneficiary changes residence in the region without informing PCPR, the programme will be terminated.

In practice, beneficiaries face a range of obstacles in obtaining social assistance, ranging from lack of awareness of their rights and language barrier, to the discretion of authorities in the limits of financial assistance granted, to the requirement of translated forms and official documents which cannot be obtained from their country of origin e.g. alimony judgment to receive the “500+” child benefit. The need for the entire family to reside in Poland may also pose difficulties.<sup>684</sup>

As one study finds, social policy provides few or no resources needed to function independently in Poland.<sup>685</sup> By delivering mostly financial assistance, integration programmes helped families to get by on a daily basis but failed to build the resources needed to become independent. For some participants, the programmes strengthened their feelings of lack of control over their lives and the helplessness already developed during the asylum procedure. The case workers interviewed in the study explained that, because

<sup>683</sup> Ministry of Family, Work and Social policy, *ROZPORZĄDZENIE MINISTRA PRACY I POLITYKI SPOŁECZNEJ z dnia 7 kwietnia 2015 r. w sprawie udzielania pomocy cudzoziemcom*, available (in Polish) at: <https://bit.ly/38PPAuB>.

<sup>684</sup> Commissioner for Human Rights, ‘Prawo do świadczeń rodzinnych cudzoziemki objętej ochroną uzupełniającą w sytuacji, gdy nie wszyscy członkowie rodziny zamieszkują w Polsce, PCPR’, 10 January 2018, available (in Polish) at: <http://bit.ly/2C8lYey>.

<sup>685</sup> Lukaszewicz, K., ‘Exile to Poverty: Policies and Poverty Among Refugees in Poland’, *International Migration Vol. 55* (6) 2017, 65.

they have too many integration programmes to manage monthly, it was practically impossible for them to offer any social work counselling, and they instead focused on managing monetary transfers.<sup>686</sup>

In 2018 the Polish government spent 1,440,867 PLN (343,063 €) (down from 2,131,587.75 PLN / 513,600 € in 2016) on different kinds of social welfare for refugees and 2,318,295 PLN (579,573 €) for beneficiaries of subsidiary protection.<sup>687</sup> Social assistance was provided in the form of social assistance, psychological and legal support, assistance in local institutions, financial support, and cash benefits for learning the Polish language as part of the implementation of the individual programme of integration.

Social Welfare Centres assisted 236 families of recognised refugees (which covered 296 people) and 394 families under subsidiary protection (which covered 461 persons) throughout 2018.<sup>688</sup>

## G. Health care

The right to healthcare is a constitutional right, applicable to third-country nationals as well. Recognised refugees and beneficiaries of subsidiary protection are considered “insurance holders’ under the Law on Healthcare Services financed from public funds and are thus entitled to exactly the same services as Poles under the condition of having a valid health insurance.<sup>689</sup> It means that in practice free health care is conditional on the payment of health care insurance with the National Health Fund (NFZ). Refugees and subsidiary protection holders, within their 12-month Individual Integration Programme (IPI), are obliged to register within regional job centre and are granted health insurance. After the IPI has been completed, the obligation to pay insurance lies with: the employer (if a refugee has a work contract), a regional job centre of social assistance centre (if they are registered as unemployed) or the refugees themselves if they wish to cover the costs of insurance.<sup>690</sup> The required documentation is very hard to obtain and there are long administrative delays and waiting periods in obtaining entitlement to health care in Poland, according to the report from 2019.<sup>691</sup>

Importantly, in Poland, all children under 18 years old are entitled to free health care, even if they are not insured and the cost of their treatment is covered by the State Treasury. Children under 19 years old who attend school, regardless of their migration status, are covered by preventive healthcare which includes medical and dental examinations, rehabilitation programmes, health awareness education and health emergency education provided by school or district nurses.<sup>692</sup>

The health insurance with the NFZ covers all guaranteed health care services specified in the lists of the Ministry of Health. They include both basic and specialist medical services, vaccinations, diagnostic testing (laboratory or other), rehabilitation, hospital care and medical rescue services, emergency ambulance services and medical transport. The NFZ, however, does not cover some dentistry procedures, costs of purchasing medicines, auxiliary products or orthopaedic equipment.<sup>693</sup> Notably, nursing care for elderly persons is not provided in Poland.<sup>694</sup>

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<sup>686</sup> Ibidem.

<sup>687</sup> Ministry of Family, Labour and Social Policy, *Report 2017*, available (in Polish) at: <https://bit.ly/2SFg2AE>.

<sup>688</sup> Ministry of Family, Labour and Social Policy, *Report 2017*, available (in Polish) at: <https://bit.ly/2G3RwVY>.

<sup>689</sup> Article 3(1)(2) Law of 27 August 2004 on healthcare services financed from public funds.

<sup>690</sup> M. Szczepanik, *Right to healthcare and access to medical services for asylum seekers and beneficiaries of international protection in Poland*, May 2017, available at: <http://bit.ly/2CxXokd>.

<sup>691</sup> Alexander Wolffhardt, Carmine Conte, Thomas Huddleston, *The European benchmark for refugee integration: A comparative analysis of the National Integration Evaluation Mechanism in 14 EU countries*, 2019, available at: <https://bit.ly/2SlshUh>, 123.

<sup>692</sup> Article 27(1) and (3) Law on healthcare services financed from public funds.

<sup>693</sup> M. Szczepanik, *Right to healthcare and access to medical services for asylum seekers and beneficiaries of international protection in Poland*, May 2017, available at: <http://bit.ly/2CxXokd>.

<sup>694</sup> Alexander Wolffhardt, Carmine Conte, Thomas Huddleston, *The European benchmark for refugee integration: A comparative analysis of the National Integration Evaluation Mechanism in 14 EU countries*, 2019, available at: <https://bit.ly/2SlshUh>, 122.

The main issue with regard to access to healthcare are cultural competence and language skills of the medical personnel. Access to interpretation in the health care system is not available at all.<sup>695</sup> Other challenges are similar to the challenge Polish nationals are facing as well: long waiting time to see a specialist, costly private medical services and expensive medicines. The beneficiaries' access to health care is jeopardised by difficulties in accessing legal forms of employment, which guarantee free health care.<sup>696</sup>

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<sup>695</sup> Alexander Wolffhardt, Carmine Conte, Thomas Huddleston, *The European benchmark for refugee integration: A comparative analysis of the National Integration Evaluation Mechanism in 14 EU countries*, 2019, available at: <https://bit.ly/2SishUh>, 124.

<sup>696</sup> Maryla Koss-Goryszewska 'Służba zdrowia' in A. Górską, M. Koss-Goryszewska, J. Kucharczyk (eds), *W stronę krajowego mechanizmu ewaluacji integracji: Diagnoza sytuacji beneficjentów ochrony międzynarodowej w Polsce* (Instytut Spraw Publicznych 2019), 43.

## ANNEX I – Transposition of the CEAS in national legislation

### Directives and other CEAS measures transposed into national legislation

Directive	Deadline for transposition	Date of transposition	Official title of corresponding act	Web Link
<b>Directive 2011/95/EU</b> Recast Qualification Directive	21 December 2013	30 August 2014	Ustawa z dnia 26 czerwca 2014 r. o zmianie ustawy o udzielaniu cudzoziemcom ochrony na terytorium Rzeczypospolitej Polskiej oraz niektórych innych ustaw	<a href="http://bit.ly/1dBH7hj">http://bit.ly/1dBH7hj</a> (PL)
<b>Directive 2013/32/EU</b> Recast Asylum Procedures Directive	20 July 2015 Article 31(3)-(5) to be transposed by 20 July 2018	13 November 2015	Ustawa z dnia 10 września 2015 r. o zmianie ustawy o udzielaniu cudzoziemcom ochrony na terytorium Rzeczypospolitej Polskiej oraz niektórych innych ustaw	<a href="http://bit.ly/1SHT11B">http://bit.ly/1SHT11B</a> (PL)
<b>Directive 2013/33/EU</b> Recast Reception Conditions Directive	20 July 2015	13 November 2015	Ustawa z dnia 10 września 2015 r. o zmianie ustawy o udzielaniu cudzoziemcom ochrony na terytorium Rzeczypospolitej Polskiej oraz niektórych innych ustaw	<a href="http://bit.ly/1SHT11B">http://bit.ly/1SHT11B</a> (PL)
<b>Regulation (EU) No 604/2013</b> Dublin III Regulation	Directly applicable 20 July 2013	13 November 2015	Ustawa z dnia 10 września 2015 r. o zmianie ustawy o udzielaniu cudzoziemcom ochrony na terytorium Rzeczypospolitej Polskiej oraz niektórych innych ustaw	<a href="http://bit.ly/1SHT11B">http://bit.ly/1SHT11B</a> (PL)