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Asylum Information  
Database

Asylum Information Database

# Country Report

# *Poland*

HR HELSINKI FOUNDATION  
for HUMAN RIGHTS

 **ecre**  
European Council  
on Refugees and Exiles

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

**Information in this report is up to date as of January 2015.**

## The AIDA project

The AIDA project is jointly coordinated by the European Council on Refugees and Exiles (ECRE), Forum Réfugiés-Cosi, Irish Refugee Council and the Hungarian Helsinki Committee. It aims to provide up-to date information on asylum practice in 14 EU Member States (AT, BE, BG, DE, FR, GR, HU, IE, IT, MT, NL, PL, SE, UK) which is easily accessible to the media, researchers, advocates, legal practitioners and the general public through the dedicated website [www.asylumineurope.org](http://www.asylumineurope.org). Furthermore the project seeks to promote the implementation and transposition of EU asylum legislation reflecting the highest possible standards of protection in line with international refugee and human rights law and based on best practice.



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## Statistics

**Table 1: Applications and granting of protection status at first and second instance in 2013<sup>1</sup>**

	Total applicants in 2013	Refugee status	Subsidiary protection	Humanitarian Protection	Rejections <sup>2</sup> (in-merit and admissibility)	Otherwise closed / discontinued	Refugee rate	Subs.Pr. rate	Hum. Pr. rate	Rejection rate
	A	B	C	D	E	F	B/(B+C+D+E) %	C/(B+C+D+E) %	D/(B+C+D+E) %	E/(B+C+D+E) %
<b>Total numbers</b>	15245	200	140	390	3210	n/a	5%	4%	10%	81%
<i>Breakdown by countries of origin of the total numbers</i>										
<i>Top 10</i>										
Russia	12845	20	100	280	2175	n/a	1%	4%	11%	84%
Georgia	1240	0	0	60	570	n/a	0%	0%	10%	90%
Syria	255	75	15	0	0	n/a	83%	17%	0%	0%
Armenia	205	0	0	20	150	n/a	0%	0%	12%	88%
Kazakhstan	95	0	5	0	40	n/a	0%	11%	0%	89%
Kyrgyzistan	65	10	5	5	15	n/a	29%	14%	14%	43%
Afghanistan	50	20	0	0	40	n/a	33%	0%	0%	67%
Ukraine	45	0	5	5	45	n/a	0%	9%	9%	82%
Belarus	40	20	0	5	30	n/a	36%	0%	9%	55%
Vietnam	40	0	0	0	40	n/a	0%	0%	0%	100%
<i>Others<sup>3</sup></i>										
Stateless	35	25	0	0	5	n/a	83%	0%	0%	17%

Source: Eurostat. Data extracted: 30 June 2014.

<sup>1</sup> Figures include both first instance and final decisions

<sup>2</sup> Rejection is only issued in in-merit procedure at first instance, in admissibility - it is discontinued. At the second instance the decision can only be confirmed

<sup>3</sup> Other main countries of origin of asylum seekers in the EU (not appearing in the national top 10 breakdown).

**Table 2: Gender/age breakdown of the total numbers of applicants in 2013**

	Number	Percentage
<b>Total number of applicants</b>	<b>15245</b>	
<b>Men</b>	7840	51,40%
<b>Women</b>	7405	48,60%
<b>Unaccompanied children</b>	255	1,67%

Source: Eurostat. Data extracted: 30 June 2014.

**Table 3: Comparison between first instance and appeal decision rates in 2013**

	First instance		Appeal	
	Number	Percentage	Number	Percentage
<b>Total number of decisions</b>	<b>2895<sup>4</sup></b>		<b>1050</b>	
<b>Positive decisions</b>				
<b>Total</b>	<b>685</b>	23%	<b>50</b>	5%
<i>Refugee Status</i>	<b>195</b>	7%	<b>5</b>	0,5%
<i>Subsidiary protection</i>	<b>120</b>	4%	<b>20</b>	2%
<i>Hum/comp protection</i>	<b>370</b>	13%	<b>25</b>	2,5%
<b>Negative decisions</b>	<b>2210</b>	76%	<b>1000</b>	95%

Source: Eurostat. Data extracted: 30 June 2014.

<sup>4</sup> This number refers to decision on granting refugee status, subsidiary protection or a tolerated stay permit as well as rejections and decisions on discontinuing the procedure

## Overview of the legal framework and practice

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

Title in English	Original title	Abbreviation	Weblink
Law of 13 June 2003 on granting protection to foreigners within the territory of the Republic of Poland (Journal of Laws 2012 position 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://www.bip.udsc.gov.pl/article/ustawa-z-dnia-13-czerwca-2003-r-o-udzielaniu-cudzoziemcom-ochrony-na-terytorium-rzeczypospolitej-polskiej">http://www.bip.udsc.gov.pl/article/ustawa-z-dnia-13-czerwca-2003-r-o-udzielaniu-cudzoziemcom-ochrony-na-terytorium-rzeczypospolitej-polskiej</a>
Law of 12 December 2013 on foreigners (Journal of Laws 2013 position 1650)	Ustawa z dnia 12 grudnia 2013 r. o cudzoziemcach (Dz.U. 2013 poz. 1650)	Law on Foreigners	<a href="http://isap.sejm.gov.pl/DetailsServlet?id=WDU20130001650">http://isap.sejm.gov.pl/DetailsServlet?id=WDU20130001650</a>
Law of 14 June 1960 Code of administrative proceedings (Journal of Laws 2013 position 267)	Ustawa z dnia 14 czerwca 1960 r. Kodeks Postępowania Administracyjnego (Dz.U. 2013 poz. 267)	Code of administrative proceedings	<a href="http://isap.sejm.gov.pl/DetailsServlet?id=WDU19600300168">http://isap.sejm.gov.pl/DetailsServlet?id=WDU19600300168</a>

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

Title in English	Original title	Abbreviation	Weblink
Ordinance of the Minister of Interior and Administration of 10 November 2011 on the amount of assistance for foreigners seeking refugee status (Journal of Laws 2011 no 261 position 1564)	Rozporządzenie Ministra Spraw Wewnętrznych i Administracji z dnia 10 listopada 2011 r. w sprawie wysokości pomocy dla cudzoziemców ubiegających się o nadanie statusu uchodźcy (Dz.U. 2011nr 261 poz. 1564)	Regulation on amount of assistance for asylum seekers	<a href="http://www.bip.udsc.gov.pl/article/rozporzadzenie-w-sprawie-wysokosci-pomocy-dla-cudzoziemcow-ubiegajacych-sie-o-nadanie-statusu-uchodzcy">http://www.bip.udsc.gov.pl/article/rozporzadzenie-w-sprawie-wysokosci-pomocy-dla-cudzoziemcow-ubiegajacych-sie-o-nadanie-statusu-uchodzcy</a>
Ordinance of the Ministry of Interior of 6 December 2011 on the rules of stay in the centre for foreigners seeking refugee status (Journal of Laws 2011 no 282 position 1654)	Rozporządzenie Ministra Spraw Wewnętrznych z dnia 6 grudnia 2011 r. w sprawie regulaminu pobytu w ośrodku dla cudzoziemców ubiegających się o nadanie statusu uchodźcy (Dz. U. 2011 nr 282 poz. 1654)	Regulation on rules of stay in the centre for asylum seekers	<a href="http://www.bip.udsc.gov.pl/article/rozporzadzenie-ministra-spraw-wewnetrznych-z-dnia-6-grudnia-2011-r-w-sprawie-regulaminu-pobytu-w-osrodku-dla-cudzoziemcow-ubiegajacych-sie-o-nadanie-statusu-uchodzcy">http://www.bip.udsc.gov.pl/article/rozporzadzenie-ministra-spraw-wewnetrznych-z-dnia-6-grudnia-2011-r-w-sprawie-regulaminu-pobytu-w-osrodku-dla-cudzoziemcow-ubiegajacych-sie-o-nadanie-statusu-uchodzcy</a>
Ordinance of the Ministry of Interior and Administration of 26 August 2004 on the conditions in guarded centres and detention centres for the purpose of expulsion and rules of foreigners' stay in guarded	Rozporządzenie Ministra Spraw Wewnętrznych i Administracji z dnia 26 sierpnia 2004 r. w sprawie warunków, jakim powinny odpowiadać strzeżone ośrodki i areszty w	Regulation on conditions and rules of stay in detention centres	<a href="http://www.dziennikuslaw.gov.pl/DU/2004/s/190/1953/1">http://www.dziennikuslaw.gov.pl/DU/2004/s/190/1953/1</a>

centres and detention centres for the purpose of expulsion (Journal of Laws 2004 no 190 position 1953)	celu wydalenia oraz regulaminu organizacyjno-porządkowego pobytu cudzoziemców w strzeżonym ośrodku i areszcie w celu wydalenia (Dz.U. 2004 nr 190 poz. 1953)		
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## Overview of the main changes since the previous report update

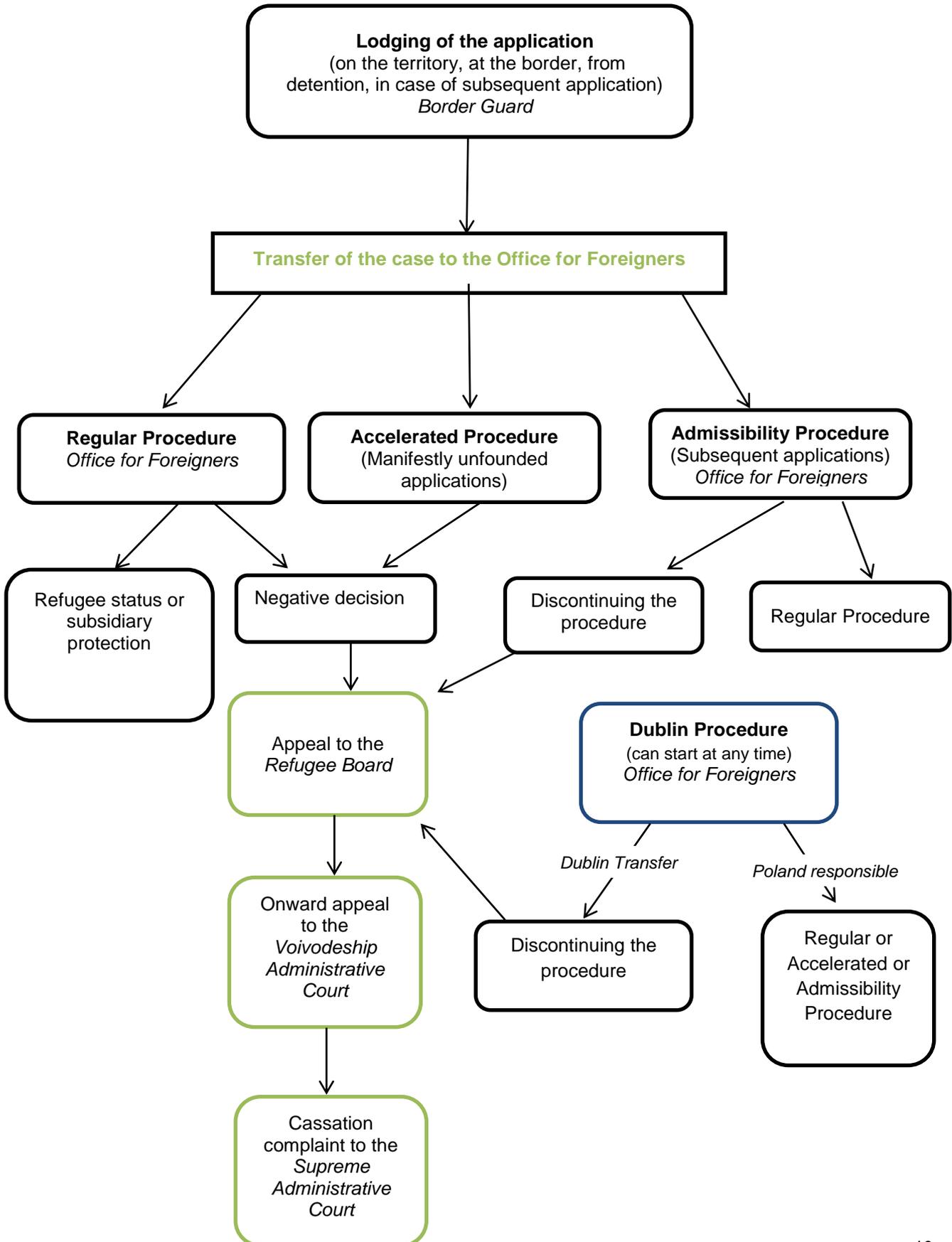
The previous update of this report was in June 2014.

- The recast Qualification Directive was transposed at the end of June 2014 and the amendments entered into force on 30 August 2014. The recast Procedure and Reception Directives are to be transposed in mid-2015, the draft law presented by the government is currently under negotiations. Introducing a state legal aid system is the major change in this regard. The law is expected to enter into force in mid-2015.
- In 2014 the number of Ukrainian asylum seekers increased significantly. Ukrainians constituted 34 % of all asylum claims (there were 8195 asylum applications, out of which 2318 were citizens of Ukraine). With regard to these 2318 applications lodged in 2014, the Office for Foreigners (first instance authority) issued 645 negative decisions and 372 decisions were discontinued, for various reasons.. Subsidiary protection was granted in only six cases, and 11 applicants were issued a “tolerated stay” permit (a form of limited national protection). The other cases are pending.
- In the second half of 2014 there was an increase in return flights, which the Helsinki Foundation for Human Rights (HFHR) had an opportunity to monitor. Foreigners were returned to Greece under readmission agreements. Some of them were failed asylum seekers (e.g. from Pakistan), but in some cases – due to the lack of interpreters at the airport - HFHR could not establish whether the foreigners had applied for asylum in Poland and if not, why not. There was no information whether their situation in Greece upon return was subject to any evaluation.

# Asylum Procedure

## A. General

### 1. Flow Chart





## 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 officer that will transfer the request to the Head of the Office for Foreigners. The examination of an asylum application lodged in Poland involves two main stages:

- 1) examination on the merits by the Head of the Office for Foreigners
- 2) appeal procedure before the Refugee Board

A Dublin procedure is applied whenever there is evidence or any sign that another State may be responsible for examining the claim. However, Poland is mostly a “receiving” country.

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 responsible for examining and granting, refusing, and withdrawing protection granted in Poland and also for Dublin procedures.

In Poland a single procedure applies and includes the examination of conditions to grant refugee status and subsidiary protection (until 1 May 2014 there was also a tolerated stay permit granted within this procedure, but now it is a part of a return procedure). A regular asylum procedure therefore has 4 possible outcomes:

- the applicant is granted refugee status
- the applicant is granted subsidiary protection
- the application is rejected
- the proceedings are discontinued (e.g. when applicant is no longer on the territory of Poland).

In the two last cases the authority issuing the decision informs the Border Guard about one of these circumstances which allow the start of return proceedings.

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, so there are political aspects taken into account in this procedure (the procedure is hardly ever applied in practice).

In Poland accelerated procedure refers to claims considered as manifestly unfounded. Admissibility procedures are most often applied in case of a subsequent application, considered to be based on the same circumstances. There is no border procedure.

The Refugee Board is a second instance administrative body competent to handle appeals against first instance negative decisions in all types of procedures (including Dublin). Appeals before the Refugee Board have automatic suspensive effect and must be lodged within 14 calendar days after the decision has been notified to the applicant (the only exemption – appeal in accelerated procedures must be submitted in 5 days). The procedure is not adversarial, there is no hearing. The Refugee Board may 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 first instance authority is needed); overturn it (i.e. grant refugee status or subsidiary protection) or confirm the decision of the Head 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, but only points of law can be litigated at this stage and there is a fee applicable to the procedure. The onward appeal does not have a suspensive effect on a final administrative decision. Upon request of the applicant, the court may suspend a decision for the time of the court proceedings, which happens in most cases, but usually takes some months. The court procedure is adversarial. The ruling of the Voivodeship Administrative Court in Warsaw can be

appealed against to the Supreme Administrative Court by lodging a cassation complaint, based exclusively on the legal conditions foreseen in the law.

## B. Procedures

### 1. Registration of the Asylum Application

#### Indicators:

- Are specific time limits laid down in law for asylum seekers to lodge their application?  
 Yes       No
  
- 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

If lodged at the border or in detention asylum applications should be submitted to the Border Guard which will then transfer them to the Head of the Office for Foreigners (*Szef Urzędu do Spraw Cudzoziemców*). If the application is lodged on the territory, it has to be registered by a specific Border Guard (*Straż Graniczna*) unit in Warsaw (located in the same building as the Office for Foreigners).<sup>5</sup>

Head of the Office for Foreigners is a competent authority to examine the claim, so the Border Guard cannot refuse to accept the application. When applying for asylum, any valid visa is annulled and the asylum seeker has to surrender their travel document (e.g. passport) to the Border Guard. Travel documents are kept by the Head of the Office for Foreigners. Asylum seekers are issued a temporary ID document entitling them to stay on the territory of Poland<sup>6</sup>. The document is initially valid for one month, then for 6 months and can afterwards be prolonged every six months by the Head of the Office for Foreigners until the end of the asylum procedure.

In 2012 - 2014, cases were reported where persons were denied access to the territory at the border crossing checkpoint in Terespol (at the border with Belarus), which is the main entry point in Poland for asylum seekers. The Helsinki Foundation for Human Rights (HFHR) made numerous inquiries in individual cases asking for clarification of these situations and brought up this issue at ministerial level.<sup>7</sup> In some cases asylum seekers were refused entry, in others they were detained on the basis of abusing the asylum procedure (also in the case of first-time applicants). The asylum seekers, mostly of Georgian nationality, interviewed in the detention centre in Białystok in October 2012 by the HFHR representatives claimed they had asked for asylum on the first instance, but managed to enter the territory only after some days (and several attempts) and were subsequently detained. The Border Guard states that third country nationals do not ask for asylum while trying to cross the border without visa or other permit and give other reasons which do not entitle them to enter Poland (financial problems in the country of origin, family members in other Member States).<sup>8</sup> They also claim that Poland is a transit country.

The issue was discussed at several meetings with the Border Guard representatives in 2013 and 2014. Still, HFHR and another NGO (Legal Intervention Association) receive phone calls from asylum seekers trying to cross the border in Terespol. On 29 October 2013 five representatives of the HFHR and Legal Intervention Association went to Terespol with the purpose of meeting with the Border Guard and

<sup>5</sup> Article 28 of the Law on Protection.

<sup>6</sup> Foreigner's Identity Temporary Certificate, *Tymczasowe Zaświadczenie Tożsamości Cudzoziemca*

<sup>7</sup> This issue was also included in HFHR's intervention letter submitted to the Head of the Office for Foreigners, the Border Guard Commander in Chief and the Ministry of Interior on 18 January 2013 (not published) and was mentioned in HFHR's comments to the project of the new Law on foreigners from November 2012, available (in Polish) [here](#)

<sup>8</sup> Consultation meeting with the Border Guard and NGO representatives held on 26-27 February 2013 in Lublin.

monitoring of the border crossing checkpoint. During their visit, the lawyers were shown the rooms and facilities for foreigners (waiting areas, kitchen, toilet, room for mothers and their children). They talked to two asylum-seeking families (one from Chechnya, one from Georgia), waiting for all the necessary procedural steps (fingerprinting, short interview) to be taken. The family of Chechen origin entered Poland for the first time, but the Georgian family claimed they had tried to enter Poland 9 times before they succeeded and managed to lodge an asylum application. According to their statement, they were not given the decision on refusal of entry, but just signed something written in Polish.

According to the Border Guard in Terespol, there are no cases of refusal of entry of asylum seekers. Every time there is a foreigner who does not fulfil the conditions to enter Poland, the Border Guard issues a decision on refusal of entry, which can be appealed. There were no cases of appeal in practice. The Border Guard hand over to the refused entrant the decision issued on the form with the instruction on appeal (in Polish) and the list of NGOs which is available in Russian. The Border Guard officer places a decision on refusal of entry in the registry with a detailed memo on what were the foreigner's reasons for entry. The Border Guard claims it is mostly work or visiting family members and that foreigners do not express any fear for their life or health. The highest number of foreigners applying for asylum in Terespol per day was 250. By 17 September 2013 there were 4078 applications (not applicants) for asylum submitted in Terespol and 13348 decisions on refusal of entry issued.

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

When asylum seekers are already on the territory and express the intention to apply for asylum to the Border Guards unit in Warsaw, it happens that they are asked to come back in a few days – when there is a need to provide interpretation in a language other than Russian or English.<sup>9</sup> It also happens that when an NGO lawyer representing a client wants to assist with the application, they are asked to schedule a meeting in advance (e.g. 2-3 days)<sup>10</sup>. In 2014 HFHR received information from Ukrainian asylum seekers that registration can even take 10 days. In the previous years, HFHR received a few complaints that the existence of a centralised system for submitting asylum applications on the territory is problematic for asylum seekers from places of residence which are far from Warsaw. It should be also noted that asylum seekers who want to benefit from social assistance have to register at one of the first reception centres within 2 days after submitting the asylum application and therefore need to come either to Warsaw or to Biala Podlaska<sup>11</sup>.

## 2. Regular procedure

### *General (scope, time limits)*

#### *Indicators:*

- Time limit set in law for the determining authority to make a decision on the asylum application at first instance (in months): **6**
- Are detailed reasons for the rejection at first instance of an asylum application shared with the applicant in writing?  Yes  No
- As of 31<sup>st</sup> December 2012, the number of cases for which no final decision (including at first appeal) was taken one year after the asylum application was registered: **N/A**

<sup>9</sup> Information provided by the Office for Foreigners, Department of Asylum Procedures on 25.03.2014.

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

<sup>11</sup> Article 42 section 1 point 1a of the Law on Protection.

The Head of the Office for Foreigners is a state authority which is responsible, among others, for making first instance decisions in granting and withdrawing protection status, deciding on the state's responsibility under the Dublin Regulation<sup>12</sup> and on social assistance provided in the asylum procedure. It is also responsible for the legalisation of the stay of foreigners in Poland (central visa authority, second instance authority in residence permits procedures).

The time limit set in law for the Head of the Office for Foreigners to make a decision on the asylum application is 6 months,<sup>13</sup> This limit is usually not observed in practice, even in the case of vulnerable applicants (such as torture survivors or traumatised women) and sometimes in cases considered well-founded (e.g. Belarusian). According to the Office for Foreigners, the applications of Syrians were examined within 6 months. It was also stated by the authorities that cases of detained asylum seekers are prioritised.

However, no caseloads are subject to official prioritisation. In 2012 the average processing time to issue a decision on the merits in practice was 6 months 17 days<sup>14</sup>. It has to be noted, that this data includes accelerated procedures (i.e. in case of manifestly unfounded claims), in which the time limit for the first instance authority to make a decision is 30 days.<sup>15</sup> There is a backlog in both first and second instance proceedings. Although no statistics are available on the number of cases for which a final decision was taken one year after the asylum application was registered, the Helsinki Foundation for Human Rights (HFHR) lawyers worked on cases where the decision has not been issued within two years.

According to the law, if the decision is not issued within 6 months, the general provisions on inaction of the administrative authority apply<sup>16</sup>, i.e. the Head of the Office for Foreigners should inform the applicant in writing about the reasons of delay (which in practice is done in a very general way) and the applicant can submit a complaint to the second instance authority (the latter hardly ever happens in practice). The most significant consequence for the applicant of not issuing a decision on asylum application within 6 months is a possibility to apply for a work permit on this basis.<sup>17</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>18</sup>

Since 2008 there is an ongoing cooperation between UNHCR and the Polish authorities aiming at enhancing the quality of asylum procedures.<sup>19</sup> In 2009 an internal quality audit mechanism was set up by the Office for Foreigners to ensure the internal sustainability of the quality RSD assessment mechanisms. In 2011 UNHCR and the Office for Foreigners also signed “The Cooperation Agreement regarding the implementation of parallel quality audit of refugee status determination proceedings conducted by the Head of the Office for Foreigners”. Based on the agreement, the parallel audit of the refugee status determination interviews, files and decisions, is conducted on a monthly basis and reports between both parties are exchanged.

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<sup>12</sup> Council Regulation (EC) No 343/2003 from 18 February 2003 establishing the criteria and mechanisms for determining the Member State responsible for examining an asylum application lodged in one of the Member States by a third-country national.

<sup>13</sup> Article 35 section 1 of the Law on Protection

<sup>14</sup> Information obtained from the Head of the Office for Foreigners. Data for 2013 are not available.

<sup>15</sup> Article 34 section 2 point 2 of the Law on Protection

<sup>16</sup> Article 36-38 of the Code of administrative proceedings

<sup>17</sup> Article 36 of the Law on Protection

<sup>18</sup> No data made available upon request on the average length of asylum procedure in both instances and on the backlog of cases in the first and second instance authorities.

<sup>19</sup> According to UNHCR Poland successful implementation of Asylum Systems Quality Assurance and Evaluation Mechanism (ASQAEM) project in cooperation of UNHCR and Office for Foreigners completed 2008-2010 and the subsequent Further Developing Asylum Quality in the EU (FDQ) 2010-2011

However, in recent years concerns were expressed with regard to the standards of reasoning in the decisions concerning Russian citizens of Chechen nationality (See reports of ECRE<sup>20</sup> and Transnational Dublin Project Final Report<sup>21</sup>). HFHR practice in granting legal assistance to asylum seekers in Poland served as one of the sources of information.

Generally, the situation in Chechnya has been considered stable for some time and it happens that country of origin information is taken into account only selectively. The authorities' position is that if there were no persecutions in the past, it cannot be argued that there can be a well-founded fear of persecutions upon return. Witness statements of other Chechens are not taken into account, as they are found not credible, since the members of the community are generally willing to testify in favour of one another. The Internal Flight Alternative (existing possibility to live in another part of Russian Federation) is raised in negative decisions, without giving due consideration of the personal situation of an applicant (vulnerable persons: elderly persons, single women with children).

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

HFHR has also documented Border Guard practices in establishing the identity of asylum seekers. There were cases of Iranian, Vietnamese and Belarusian asylum seekers who were asked to meet the representatives from their country of origin consulates in order to confirm their identity. According to Polish authorities, such activities did not involve disclosing the information that the person concerned applied for asylum and there was therefore no infringement of Article 9 of the Act on protection. Article 9 states that "information concerning a foreigner cannot be made available to authorities or public institutions in their country of origin which would make it possible to determine that: a) an asylum procedure of the foreigner is pending or has ended; b) the foreigner has been granted or refused the refugee status or subsidiary protection."

However in the opinion of HFHR, organising a meeting itself poses a threat to the asylum seeker or his relatives in the country of origin. One example of this issue is highlighted in the case of Vietnamese citizens seeking asylum. On 23 April 2014, there was a visit by representatives of Vietnam's authorities to the guarded centre in Białystok. The purpose of the visit was to confirm the identity of detained foreigners believed to be Vietnamese nationals. HFHR was concerned because Vietnamese officials actually met asylum seekers. This issue was raised in a request submitted to the Border Guard by HFHR.<sup>22</sup> In response, the Border Guard emphasised that, in accordance with the principle set out in law, asylum seekers are not interrogated unless they submitted their asylum applications after the list of people was already transferred by the Border Guard to the Vietnamese authorities for the purposes of confirming identity. At the same time, the Border Guard denied that actions taken by the Border Guard on 23 April 2014 breached the rights of foreigners. In another request, the HFHR referred to explanations of the Border Guard and indicated at least two cases known to the HFHR concerning foreigners whose asylum examination had lasted for a long time and who were interrogated by representatives of the authorities of Vietnam on 23 April 2014 in the guarded centre in Białystok.<sup>23</sup>

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<sup>20</sup> European Council on Refugees and Exiles, *Guidelines on the treatment of Chechen internally displaced persons (IDPs), asylum seekers and refugees in Europe*, revised March 2011, available [here](#)

<sup>21</sup> Transnational Dublin Project Final Report from May 2011, available [here](#)

<sup>22</sup> The request is available on the website: <http://programy.hfhr.pl/uchodzcy/wystapienie-hfpc-do-sq-w-sprawie-przesluchan-obywateli-wietnamu-odpowiedz-strazy-granicznej/> [accessed on: 30 September 2014] (PL).

<sup>23</sup> The request is available on the website: <http://programy.hfhr.pl/uchodzcy/na-terenie-soc-w-bialymstoku-byli-przesluchiwani-takze-cudzoziemcy-ubiegajacy-sie-o-nadanie-im-statusu-uchodzcy/> [accessed on: 20 January 2015] (PL).

## Appeal

### Indicators:

- Does the law provide for an appeal against the first instance decision in the regular procedure:  Yes  No
  - o if yes, is the appeal  judicial  administrative
  - o If yes, is it suspensive  Yes  No
- Average processing time for the appeal body to make a decision: not available

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 conclusion of the decision as well as the instruction on appeal are translated into the language that the asylum seeker concerned declared as understandable. Asylum seeker can submit the appeal in their own language.

The Refugee Board is an administrative body, consisting of 12 members, supported in their work by 6 employees<sup>24</sup>. In the regular procedure, decisions are made by 3 members. The procedure includes an assessment of the facts, and there is a possibility of hearing applicants, but interviews are not conducted often in practice. The time limit set in law for the appeal procedure is 1 month.<sup>25</sup> The appeal has suspensive effect.

The Refugee Board may 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 first instance authority is needed); overturn it (i.e. grant refugee status or subsidiary protection) or confirm the decision of the Head of the Office for Foreigners. In the majority of cases decisions of the Head of the Office for Foreigners are confirmed (in 656 decisions out of 795 in 2012<sup>26</sup>, 898 decisions out of 1121 in 2013<sup>27</sup>). Neither hearings nor decisions of the Refugee Board are made public.

After the negative decision or a decision on discontinuing the asylum procedure becomes final, the respective authority informs the Border Guard and the return proceedings can be launched.<sup>28</sup>

After the administrative appeal procedure before the Refugee Board, the latter's decision can be further appealed to the Voivodeship Administrative Court in Warsaw, but only points of law can be litigated at this stage.<sup>29</sup> There is a fee for the procedure, but in practice, upon application (available in Polish) asylum seekers are exempt from the payment. 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, which happens in most cases, but usually takes some months. 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.<sup>30</sup>

<sup>24</sup> Letter from the Refugee Board no DWSRU-0315-5(2)13 from 30 January 2013.

<sup>25</sup> Article 35 section 3 of the Code of administrative proceedings.

<sup>26</sup> Letter from the Refugee Board no DWSRU-0315-5(2)13 from 30 January 2013. Data for 2013 and 2014 not available

<sup>27</sup> Statistics available at: <http://udsc.gov.pl/statystyki/raporty-okresowe/zestawienia-roczne/> (PL) No full data for 2014 is available as of January 2015.

<sup>28</sup> Article 48a of the new Law on Foreigners.

<sup>29</sup> Regulated in the Law of 30 August 2002 on the proceedings before administrative courts, Journal of Laws 2012 position 270 (*ustawa z dnia 30 sierpnia 2002 r. Prawo o postępowaniu przed sądami administracyjnymi, Dz.U. 2012, poz. 270*).

<sup>30</sup> *Ibid.*

In 2012 and 2013 there were cases in which asylum seekers were returned to their country of origin without having the possibility to access the court. This problem mostly concerns asylum seekers placed in detention, who received their final negative administrative decision on asylum claim, containing expulsion order - as this decision is already enforceable. The issue was widely criticised by NGOs in Poland. On 9 January 2012, three NGOs dealing with asylum issues (Halina Niec Legal Aid Centre – *Centrum Pomocy Prawnej im. Haliny Nieć*, Legal Intervention Association – *Stowarzyszenie Interwencji Prawnej* and the Helsinki Foundation for Human Rights - HFHR) intervened before the Ombudsman Office in the case of a traumatised asylum seeking woman from the Democratic Republic of Congo, who was deported on the same day she received a negative decision from the Refugee Board on her asylum claim. On 22 February 2012, HFHR sent a letter to the Ministry of Interior and the Ombudsman Office about the deportation of an Afghan family a couple of days after they received a final negative decision, giving them no time to lodge an appeal to the Voivodeship Administrative Court<sup>31</sup>. Although the Ministry confirmed<sup>32</sup> that the applicants' right to an effective remedy was indeed limited in practice by their immediate deportation, there were no changes in law or practice on this issue. On 30 November 2012, HFHR and Legal Intervention Association submitted a letter to the Border Guard Commander in Chief (*Komendant Główny Straży Granicznej*)<sup>33</sup> pointing at the risk of further infringements of asylum seekers' right to judicial control if the practice of immediate deportations is maintained. The Border Guard Commander in Chief position is that the Refugee Board's decisions are final and return orders can be enforced<sup>34</sup>.

The above mentioned loophole constituted a reason for the Dutch court in the Hague to withhold a transfer of an asylum seeker to Poland under the Dublin Regulation by applying an interim measure (ruling no AWB 13/11314 from 18 June 2013<sup>35</sup>). The Court stated that the practice of deporting asylum seekers before the court examines their case is inconsistent with the article 47 of the Charter of Fundamental Rights of the European Union and can lead to violation of the principle of *non-refoulement*. Therefore the court found that the principle of trust can no longer be applied towards Poland.

In the Law on Foreigners which entered into force on 1 May 2014 asylum proceedings and return proceedings have been separated, which means that a return decision is no longer issued within the asylum procedure. During the legislative process, HFHR and the Legal Intervention Association suggested a suspensive effect on all return decisions – since it is the return decision which has irreversible effect. The solution proposed stated that in case of filing the complaint to the court together with the application to withhold the execution of the final administrative decision, a foreigner cannot be deported until the court examines this application. This has been accepted,<sup>36</sup> but at the same time the maximum detention period was prolonged from 12 to 18 months. Submitting a complaint to the court has been made one of the legal bases for prolonging the detention for another 6 months.<sup>37</sup>

The adoption of the new law was a success with regard to the suspensive effect of the appeal before an administrative court, but in 2014 the practice of deportations before the court which examined the case was maintained, since negative decisions on asylum applications issued before 1 May 2014 were accompanied by a return order. In February 2014 the HFHR presented one of such cases to the Ministry of Interior and called for changing this practice even before the new law enters into force, as it infringes fundamental rights of the foreigners. In their response, the Ministry of the Interior agreed with the HFHR and informed that the guidelines for the Border Guard Commander in Chief were issued in order to withhold the deportations until the court decision is made.<sup>38</sup>

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<sup>31</sup> Information on both letters available (in Polish) [here](#)

<sup>32</sup> Letter from the Ministry of Interior DPM-WPM-051-5/12/EBK from 19 April 2012, available [here](#)

<sup>33</sup> Letter available [here](#)

<sup>34</sup> Letter from the Border Guard Commander in Chief KG-CU-212/IV/KF/12 from 9 January 2013 (not published).

<sup>35</sup> Available at [here](#) (in Polish):

<sup>36</sup> Article 332 sec. 1 of the Law on Foreigners; the same solution is applicable to the expulsion of family members of the EU citizens.

<sup>37</sup> Article 404 sec. 5 of the Law on Foreigners.

<sup>38</sup> Both letters (in Polish) are available here: <http://www.hfhr.pl/kolejne-wydalenie-bez-sadu/>

Indicators:

- Is a personal interview of the asylum seeker conducted in most cases in practice in the regular procedure?  Yes  No
  - o If so, are interpreters available in practice, for interviews?  Yes  No
- In the regular procedure, is the interview conducted by the authority responsible for taking the decision?  Yes  No
- Are interviews ever 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>39</sup>

According to the Office for Foreigners, interviews are conducted in the majority of cases in a regular procedure.<sup>40</sup> In practice<sup>41</sup> it has happened, that the interview was conducted although the applicant was not fit for interview due to serious psychological and psychiatric problems.<sup>42</sup> The procedures are generally gender sensitive.

Interpretation is ensured respectively by the Head of the Office for Foreigners and the Refugee Board. The interview should be conducted in a language understandable for the applicant. In the asylum application, the asylum seeker has to declare their mother tongue as well as any fluent knowledge of other languages.

The contract established between the Office for Foreigners and interpretation services regulates the quality, liability, and specifies the field (asylum). Interpretation is available in most of the languages spoken by the asylum applicants in Poland. Only some rare African languages are not available<sup>43</sup>. In practice, there are problems with the quality of interpretation: the dialect of a particular language is not duly taken into account, as well as the knowledge of the country of origin and intercultural competence of the interpreters.<sup>44</sup> Audio or video recording is possible under national legislation if an applicant was informed about this fact and technical means allow for that. However, it was not used in 2012, nor in 2013. The only change in practice with regard to interviews is videoconferencing – this method is now used on a regular basis with regard to asylum seekers placed in detention centres, unless there is a vulnerable applicant. According to the Office for Foreigner in those cases the interviewer comes to the detention centre with a psychologist.<sup>45</sup> However, the Helsinki Foundation for Human Rights reports a case in 2014 where the applicant placed in the detention centre, suffering from post-traumatic stress disorder (PTSD) diagnosed in Germany, was interviewed through videoconferencing, without a psychologist.<sup>46</sup>

The law provides that a copy of the report of the interview should be handed in to the applicant after a personal interview. It happens that the applicants do not take or keep them, but they can ask for a copy at

<sup>39</sup> Article 43 of the Law on Protection.

<sup>40</sup> Information provided by the Office for Foreigners, Department of Asylum Procedures, 25.03.2014.

<sup>41</sup> No data made available upon request on the number of cases in which the applicant was interviewed by the first instance authority.

<sup>42</sup> Case of a Cameroonian woman, a torture survivor, handled by HFHR in 2012. Other anecdotal evidence was collected by HFHR.

<sup>43</sup> Letter from the Head of the Office for Foreigners, DPU-07-1410/2013 from 22 February 2013.

<sup>44</sup> M. Tobiasz, *Practices in interviewing immigrants. Legal implications* (project funded by the Visegrad Fund) Report from Poland, 2011, available [here](#)

<sup>45</sup> Information obtained from the Office for Foreigners, 25.03.2014.

<sup>46</sup> The case was handled by HFHR lawyer, decision of the Head of the Office for Foreigners was issued on 17 January 2014,

any stage of the proceedings. The report is prepared in Polish and contains all the questions asked and responses received, but it is not a verbatim transcript. The report is handwritten, which sometimes makes it unreadable. 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).

The problem is that asylum seekers are not instructed on how important the interview is, that they should give detailed testimonies and check thoroughly how their statements are put in the report. Especially that comments made afterwards (e.g. in the appeal) are generally not taken into account.

### Legal assistance

#### Indicators:

- Do asylum seekers have access to free legal assistance at first instance in the regular procedure in practice?  
 Yes       not always/with difficulty       No
- Do asylum seekers have access to free legal assistance in the appeal procedure against a negative decision?  
 Yes       not always/with difficulty       No
- In the first instance procedure, does free legal assistance cover:  
 representation during the personal interview     legal advice     both     Not applicable
- In the appeal against a negative decision, does free legal assistance cover  
 representation in courts       legal advice       both       Not applicable

There is no state legal aid system and legislation does not guarantee access to legal assistance. In 2012-2014 free legal assistance for asylum seekers and people granted international protection was only provided through projects run by NGOs funded by the European Refugee Fund, (75% of the projects budget is covered by EU fund and there is a possibility for NGOs to request an additional 10% from the state budget. 15 % has to be provided by the organisation itself).

NGOs providing legal assistance differ between each other: there are some specialised organisations, with extensive experience in the field, engaged also in strategic litigation and advocacy. For some others, providing legal assistance to asylum seekers is another component of their general assistance activities.<sup>47</sup> 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) basically at every stage of the procedure<sup>48</sup>. Legal representation is provided only in some cases, as the organisations providing legal assistance generally lack resources. For instance, presence during the interview of every asylum seeker assisted 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

<sup>47</sup> A. Bergiel, K. Kubin, *Bezpłatne poradnictwo prawne dla migrantów przymusowych – opis działalności organizacji pozarządowych. Wyniki badań jakościowych (Free legal aid for forced migrants - a description of the NGOs' activities. The results of qualitative research)* in J. Frelak, W. Klaus, ed., *Słabe ogniwa. Wyzwania dla funkcjonowania systemu ochrony uchodźców w Polsce (Weak links. Challenges for the functioning of the system of refugee protection in Poland)*, Instytut Spraw Publicznych, 2011, p. 15.

<sup>48</sup> A. Gutkowska, *Ewaluacja funkcjonowania poradnictwa prawnego dla uchodźców - analiza prawna i praktyczna (Evaluation of the functioning of legal counseling for refugees - legal and practical analysis)* in J. Frelak, W. Klaus, ed., *Słabe ogniwa. Wyzwania dla funkcjonowania systemu ochrony uchodźców w Polsce (Weak links. Challenges for the functioning of the system of refugee protection in Poland)*, Instytut Spraw Publicznych, 2011, p. 144.

same rules that apply to Polish citizens (i.e. insufficient financial resources). There is a form, in Polish, available in the court or on the court's website (not in the offices of administrative authorities examining the claim). So although in practice legal representation is granted by the court, it is very doubtful that asylum seekers would benefit from it if they are not assisted by NGOs to apply for it. Lack of legal representation means that applicants will receive the correspondence themselves. Since the appearance at the trial is mostly not obligatory, the applicant can be just served with the ruling after it is made.

Legal assistance provided by NGOs consists mainly of individual consultations during office hours.<sup>49</sup> But only some projects involve the provision of legal assistance during visits to accommodation and detention centres. Generally asylum seekers in reception centres face practical obstacles in accessing legal assistance, as most of the reception centres are located in remote areas, while NGOs have their offices in the main cities of the four *voivodeships* (Mazowieckie, Małopolskie, Podlaskie and Lubelskie).<sup>50</sup> However it should be noted that in September and October 2013, during the visits in the reception centres, HFHR lawyers noted almost no interest among the asylum seekers in benefitting from legal assistance.

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

One of the main problems for the provision of legal assistance in Poland is the limited funding opportunities. For European Refugee Fund (ERF) and state funded projects, NGOs need to provide a contribution of 15% of the total project budget from their own finances, which they often lack. Issues related to the delay in launching calls for proposals, and thus gaps between the different projects have been an issue in the previous years.<sup>51</sup> In addition, significant delays in the payments of projects which are already being implemented are particularly hard for smaller organisations<sup>52</sup>. In 2012, the ERF funds already granted for an ongoing 3-year long project, focusing on legal assistance and being implemented by a few NGOs, were reduced for 2013. As a result the number of lawyers working in some organisations decreased.

Projects for legal assistance funded through the European Fund for Refugees finished at the end of 2014. Some NGOs, such as Legal Intervention Association, had to reduce their activities from 1.01.2015.<sup>53</sup> National authorities responsible for the implementation of the funds, after numerous requests from NGOs and information in the media, decided to issue an additional call for projects and the funds will be available until mid-2015. In mid-2015 the state legal aid system is expected to enter into force. According to the draft law, which as of January is still being negotiated within the government, the calls will be directed to NGOs and lawyers in private practice. The lawyers will be remunerated per month, not per case. They will grant assistance in the detention centres as well.<sup>54</sup>

### 3. Dublin

#### Indicators:

- Number of outgoing requests in the previous year (estimations for 2013): 137
- Number of incoming requests in the previous year: 9933
- Number of outgoing transfers carried out effectively in the previous year: 82
- Number of incoming transfers carried out effectively in the previous year: 3351<sup>55</sup>

<sup>49</sup> A. Bergiel, K. Kubin, *op. cit.*, p.34.

<sup>50</sup> A. Gutkowska, *op.cit.*, p. 136 and 146.

<sup>51</sup> *Ibid.*, p. 146.

<sup>52</sup> A. Bergiel, K. Kubin, *op.cit.*, p.21 and 22.

<sup>53</sup> Available at <http://interwencjaprawna.pl/uwaga-zmiana-systemu-udzielania-porad/> (PL)

<sup>54</sup> Draft law as of 1 December 2014 available at: <http://bip.msw.gov.pl/bip/projekty-aktow-prawnyc/2014/23325,Projekt-ustawy-o-zmianie-ustawy-o-udzielaniu-cudzoziemcom-ochrony-na-terytorium-.html> (PL).

<sup>55</sup> Data covers the period until 11.12.2013.

## Procedure

### Indicator:

- If another EU Member State accepts responsibility for the asylum applicant, how long does it take in practice (on average) before the applicant is transferred to the responsible Member State?  
approximately 6 weeks

All asylum seekers (over 14 years old) are fingerprinted and checked in EURODAC at the time of lodging their asylum application. If there is any evidence or sign that another country may be responsible for examining the application, the Dublin procedure is applied. There are no grounds set in the national law that would allow for not applying the Dublin procedure, if there is any sign that another country may be deemed responsible. There are also no additional criteria in the national legislation taken into account to determine the state responsible. This includes the application of the humanitarian or sovereignty clause.

It takes on average 6 weeks before an applicant is transferred to the Member State which accepted the responsibility under the Dublin Regulation<sup>56</sup>. The length depends on whether the Dublin procedure was initiated by the asylum authorities or by the applicant themselves (e.g. requests to join their family member or relative, which is approximately a half of outgoing requests from Poland in 2013.<sup>57</sup>

According to the Dublin Proceedings Unit at the Office for Foreigners, the request for taking charge/taking back may be initiated at any stage of the asylum procedure if any circumstances justifying the request arise.

In 2012 responsibility for examining an application on humanitarian grounds was accepted in 3 cases (out of 5 requests sent by other states), based mostly on family unity. The sovereignty clause was used on 2 occasions (apart from cases of asylum seekers who transited through Greece, see below Suspension of transfers).<sup>58</sup> In 2012 HFHR handled a case where Polish authorities decided not to apply to Swedish authorities to accept the responsibility for a Belarusian student, who entered the Schengen zone with a visa issued by Sweden, but obtained a scholarship from the Polish government which enabled him to enrol in university.

Asylum seekers are transferred under escort only when there is a risk of absconding or if the asylum seeker has already absconded beforehand. It happens rarely, as in most cases asylum seekers are willing to be transferred (e.g. in family reunification cases). However, an asylum seeker can be detained after being transferred back from another state, as crossing the border illegally when leaving Poland constitutes a basis to be placed in detention or they may be detained in case of a lack of identity documents.<sup>59</sup> In 2014 HFHR handled a case of an Iranian woman, who was transferred under the Dublin Regulation from the Netherlands to Poland with an established identity according to the transfer documents but was detained upon arrival on the basis of her lack of identity documents. Assisted by HFHR lawyers, the asylum seeker (now granted subsidiary protection) applied to the court for compensation due to unlawful detention. The case is ongoing.

Asylum seekers are informed about the Dublin procedure when they apply for international protection in accordance with the Dublin III Regulation. They receive a leaflet, as specified in Article 4(3) of the Dublin

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<sup>56</sup> Period of time estimated by the Dublin Proceedings Unit at the Office for Foreigners

<sup>57</sup> Information obtained from the Dublin Proceedings Unit at the Office for Foreigners.

<sup>58</sup> No data for 2013 was provided.

<sup>59</sup> No data made available by the Border Guards on how many transferees were detained upon arrival. Last available statistics on this issue can be found in the Transnational Dublin Project Final Report from May 2011, available [here](#)

III Regulation. As of November 2014 it was available only in Russian and English. The Border Guard is still translating it into Ukrainian, Georgian and Vietnamese, among others.<sup>60</sup>. However, if the authorities decide to apply the Dublin procedure, asylum seekers are neither informed about the request for taking charge or taking back being submitted nor about the following steps of the procedure. The information is provided only upon request, once the asylum seeker gets to know about the procedure. This practice was applied in 2012 and 2013.

When an asylum seeker is transferred back from another Member State, they need to lodge an asylum application through the Border Guard (or an application to re-open their asylum procedure). The Border Guard either directs them to a reception centre or detains them for maximum 48 hours and requests a placement in a guarded centre to the court. Depending on the situation, their procedure is re-opened (if it was discontinued beforehand, because they left) or their application is considered subsequent, if they already received a decision before leaving Poland. Asylum seekers do not face obstacles to access the asylum procedure again if they wish to. There were cases when HFHR, trying to follow the asylum seekers transferred back from another country, learned from the Border Guard that they applied straight away for voluntary return and left the territory. The reason why they chose return over a (re) examination of their asylum claim is not known. The time limit to reopen the procedure has not been problematic as it is 2 years. In the amendments of the law relating to transposition of the recast Procedures Directive, prepared by the government<sup>61</sup> the deadline will be 9 months. In cases where e.g. the applicant did not wait for examination of his asylum claim in Poland but went to another Member State and did not come back to Poland within 9 months, the case will not be evaluated under the regular "in-merit" procedure. Their application lodged after this deadline will instead be considered as a subsequent application and subject to an admissibility procedure.

The number of asylum applications lodged in Poland in 2013 increased significantly. As statistical data on Dublin procedures show, most of the applicants went to other Member States without waiting for an examination of the claim in Poland. In 2013, the cases of 9938 applicants were discontinued because after submitting the asylum application they did not reach the reception centre to register for social assistance (which should be done within two calendar days) and cases of 430 applicants were discontinued because the authority received (explicit) information that they left Poland. According to the available statistics for 2013, the authority reopened the asylum procedure of only 9 applicants after it was discontinued on these grounds.

In 2013 HFHR was concerned about the practice of the application of the Dublin II Regulation, which resulted in the separation of the families of asylum seekers between two countries. Based on their information there were cases in which German authorities, transferred only some members of the foreigners' family, who have been initially under one, common asylum application in the territory of the Republic of Poland. Such practice was most commonly used in cases of foreigners who lodged an asylum application to the Head of the Office for Foreigners in Poland and after that travelled on to Germany. Subsequently their procedure in Poland was discontinued. Apart from infringement of international and European standards regarding family unity, described practice leads also to other legal problems. In a situation where an asylum seeker is transferred to Poland the Head of the Office of Foreigners lifts the previous decision of discontinuation of the proceedings and decides on its renewal. In some cases members of the family of the asylum seeker, on behalf of whom the asylum seeker lodged asylum application, are also under these proceedings, even though those members are not on the territory of the Republic of Poland. In such a situation, when part of the family of the asylum seeker is on the territory of another country, there is a problematic issue on the legitimacy of examining the asylum application for the whole family. In case of initiating such proceedings asylum seekers who are not present in the territory of Poland are not provided with the right of active participation in the proceedings

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<sup>60</sup> Information received from the Border Guards on 27 November 2014.

<sup>61</sup> Draft law as of 1 December 2014 available at: <http://bip.msw.gov.pl/bip/projekty-aktow-prawnyc/2014/23325,Projekt-ustawy-o-zmianie-ustawy-o-udzielaniu-cudzoziemcom-ochrony-na-terytorium-.html> (PL)

for granting them the status of a refugee. There is also no legal basis for granting the protection for the family of the asylum seeker if the application turns out to be justified. Whereas in the situation when part of the family is transferred, without the applicant, the members of the family have no capacity to request for renewal of the previous proceedings concerning them. In this situation the solution of filing another asylum application by the members of the family cannot be recognized satisfactory. When the family of the applicant has left his / her country of origin, due to possible danger that threatened only the applicant, and has as a whole been under one asylum application, this family is left with no chance of obtaining the protection.

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

Another issue concerns the separation of the families of asylum seekers in the territory of Poland after their transfer from another EU country accordingly to Dublin II Regulation. According to the HFHR there were cases where one family member (e.g. husband) has been placed in the detention centre while others (e.g. wife and children) stayed in reception centres for asylum seekers. In 2013 it happened that family members returned home separately, e.g. some of them deported by Border Guards while others returned voluntary with IOM.

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

## Appeal

### Indicators:

- Does the law provide for an appeal against the decision in the Dublin procedure:
  - Yes       No
  - o if yes, is the appeal  judicial       administrative
  - o If yes, is it suspensive  Yes       No
- Average processing time for the appeal body to make a decision: 6 weeks<sup>62</sup>

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) following the same procedure described in the section on appeals in the regular procedure.

HFHR has been aware of cases where the appeal body did not take into account the level of reception conditions, the procedural guarantees or recognition rates in the responsible Member State, even if these issues were brought up in the appeal.<sup>63</sup>

In 2012, all decisions of the first instance authority were confirmed by the Refugee Board. There were two cases, where the Voivodeship Administrative Court annulled the decision of the administrative authorities, as a result of an onward appeal. However, it needs to be noted, that onward appeal to the court does not

<sup>62</sup> Information was provided by the Dublin Proceedings Unit at the Office for Foreigners.

<sup>63</sup> Case file no RdU-271-1/S/13, decision from 24 September 2013 regarding a transfer to Malta

have suspensive effect on the transfer. In 2013 there were no cases of annulling the decision of the Office for Foreigners, neither by the second instance authority, nor by the court.<sup>64</sup>

### Personal Interview

#### Indicators:

- Is a personal interview of the asylum seeker conducted in most cases in practice in the Dublin procedure?  Yes  No

There is no personal interview conducted exclusively for the purpose of the Dublin procedure. The information about the possible responsibility of another Member State is taken – apart from the Eurodac database - from a form on which an asylum claim is registered by the Border Guard or then from an interview in the regular asylum procedure conducted by the Office for Foreigners. If there is a need to obtain additional information or documents from an asylum seeker involved in a Dublin procedure, they are contacted in writing or by phone. They can be asked to come to the Office for Foreigners.<sup>65</sup>

### Legal assistance

#### Indicators:

- Do asylum seekers have access to free legal assistance at the first instance in the Dublin procedure in practice?  Yes  not always/with difficulty  No
- Do asylum seekers have access to free legal assistance in the appeal procedure against a Dublin decision?  Yes  not always/with difficulty  No

Free legal assistance is offered only by NGOs, as described in the section on legal assistance in the regular procedure.

### Suspension of transfers

#### Indicator:

- Are Dublin transfers systematically suspended as a matter of policy or as a matter of jurisprudence to one or more countries?  Yes  No
  - o If yes, to which country/countries? Greece and Bulgaria

The Office for Foreigners adopted a policy of non-transfer to Greece from 1 February 2011, as a result of the European Court of Human Rights' *M.S.S.* judgement.<sup>66</sup> Transfers to Bulgaria have also been suspended, but there is no official information in this regard on the Office for Foreigners website – neither about the fact, nor about the cause. Poland does not direct any take charge/take back requests to these Member States, but tries to establish whether another state could be responsible for examining the asylum application and if not, it takes the responsibility for examining the asylum application. There were no other systematic suspensions to any other Member States as a result of jurisprudence or policy. It is worth mentioning that, as reported by HFHR in 2014, transfers to Greece under readmission agreements

<sup>64</sup> E-mail from the Dublin Proceedings Unit at the Office for Foreigners from 03.04.2014.

<sup>65</sup> Information obtained from the Dublin Proceedings Unit at the Office for Foreigners(orally and by e-mail).

<sup>66</sup> European Court of Human Rights, *M.S.S. v. Belgium and Greece*, Application No. 30696/09, Judgment of 21 January 2011

did take place.<sup>67</sup> Some of the returnees were rejected asylum seekers (e.g. from Pakistan), but in some cases – due to the lack of interpreters at the airport - HFHR could not establish whether the foreigners had applied for asylum in Poland and if not, why not. There was no information on whether their situation in Greece upon return was subject to any evaluation.

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

#### 4. Admissibility procedures

##### *General (scope, criteria, time limits)*

An admissibility procedure is provided for in national legislation<sup>68</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, a decision on discontinuing the procedure is issued. An asylum application is considered inadmissible when:<sup>69</sup>

- another Member State has granted refugee status to the applicant;
- the applicant submitted a subsequent application after receiving a final decision, based on the same circumstances;
- 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>70</sup>

There are no specific time limits that must be observed by the Head of the Office for Foreigners and the Refugee Board in this procedure, the rules governing regular procedures are applicable. There is no data on whether the time limits for taking a decision are respected in practice<sup>71</sup>.

The statistics obtained from the Office for Foreigners show, that in 2013, decisions on discontinuation of the procedure because of inadmissibility of the asylum application were received by:

- 2 asylum seekers on the basis of the first ground - the applicant was a recognized refugee in another Member State,
- 543 asylum seekers on the basis of the second ground - the applicant lodged a subsequent application on identical facts,
- 3 asylum seekers on the basis of the third ground - a spouse's application containing the same reasons.

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<sup>67</sup> HFHR, Information on monitoring of the return operations, available at: [http://www.hfhr.pl/wp-content/uploads/2015/01/HFPC\\_sprawozdanie\\_monitoring\\_lotow\\_przymusowych.pdf](http://www.hfhr.pl/wp-content/uploads/2015/01/HFPC_sprawozdanie_monitoring_lotow_przymusowych.pdf) (PL)

<sup>68</sup> Article 40 of the Law on Protection.

<sup>69</sup> This list is exhaustive.

<sup>70</sup> Article 40 section 2 of the Law on Protection.

<sup>71</sup> Letter from the Head of the Office for Foreigners BIEC-0351-242/2013/MK from 5 February 2013.

## Appeal

### Indicators:

- Does the law provide for an appeal against the decision in the admissibility procedure:  
 Yes       No
  - o if yes, is the appeal       judicial  administrative
  - o If yes, is it suspensive?       Yes  No

Generally the appeal system in the admissibility procedure does not differ from the one in the regular procedure, including its suspensive effect. However, it is worth highlighting that subsequent applications do not have an automatic suspensive effect but the applicant can submit a motion for suspension of a return order, together with a subsequent asylum application, to the Office for Foreigners. It has to be duly justified. The Head of the Office for Foreigners has 5 calendar days to issue a decision on the motion. Submitting such a motion does not itself withhold a return order. If the decision is negative, the applicant has the right to submit an appeal to the Head of the Office for Foreigners within 5 calendar days. If the decision is positive, the appeal in admissibility procedure has a suspensive effect. The return order can also be withheld by the Head of the Office for Foreigners at any time.<sup>72</sup>

## Personal Interview

### Indicators:

- Is a personal interview of the asylum seeker conducted in most cases in practice in the admissibility procedure?       Yes       No
  - o If yes, is the personal interview limited to questions relating to nationality, identity and travel route?       Yes       No
- Are personal interviews ever conducted through video conferencing?  
 Frequently       Rarely  Never

The law does not require a personal interview of asylum seekers in an admissibility procedure. According to the Office for Foreigners, in 90% of cases of subsequent applications, which are subject to admissibility procedure, there is no personal interview of the applicant.<sup>73</sup> Depending on the case it is a detailed interview just like in the regular procedure or it focuses only on specific issues (e.g. new circumstances).<sup>74</sup>

## Legal assistance

### Indicators:

- Do asylum seekers have access to free legal assistance at first instance in the admissibility procedure in practice?       Yes       not always/with difficulty       No
- Do asylum seekers have access to free legal assistance in the appeal procedure against an admissibility decision?       Yes       not always/with difficulty       No

Free legal assistance is offered only by NGOs, in the same context as described in the section on legal assistance in the regular procedure.

<sup>72</sup> Article 33 section 4-10 of the Law on Protection.

<sup>73</sup> E-mail from the Office for Foreigners, Department of Asylum Proceedings from 01.04.2014.

<sup>74</sup> Information obtained from the Office for Foreigners, letter DPU-07-1410/2013 from 22 February 2013.

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

There is no border procedure in Poland.

## 6. Accelerated procedures

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

Accelerated procedures are applied with regard to 'manifestly unfounded applications'. Under the Law of Protection, the application is considered manifestly unfounded if the asylum seeker:<sup>75</sup>

- 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;
- comes from a safe country of origin, included in the common minimum list of safe countries of origin, established by the Council of the European Union;
- misleads the authority by hiding or presenting false information or documents which are important in an asylum procedure,
- submits another application with other personal data,
- makes inconsistent, contradictory, improbable or insufficient explanation of the persecution they are fleeing from,
- submits an application to delay or disturb enforcement of a return decision,
- is a threat to national security or public order and was, on this ground, already expelled from the territory.

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>76</sup> There are no consequences of not respecting this time limit.

The statistics obtained from the Office for Foreigners show that in 2012 the Head of the Office for Foreigners issued 376 decisions (which constitutes 3,5 % of the total number of decisions issued in 2012), in which it considered the application manifestly unfounded. In the vast majority of these asylum claims the authority considered the application manifestly unfounded because the applicant provided other reasons for applying for asylum than a well-founded fear of being persecuted or a risk of serious harm or provided no information on circumstances referring to the well-founded fear of being persecuted or risk of serious harm.

### *Appeal*

#### *Indicators:*

- Does the law provide for an appeal against a decision taken in an accelerated procedure?
  - Yes                       No
  - o if yes, is the appeal:             judicial             administrative
  - o If yes, is it suspensive?         Yes                       No

<sup>75</sup> Procedure regulated in article 34 of the Law on Protection, this list is exhaustive.

<sup>76</sup> No data was made available upon request if the time limit is respected in practice.

The appeal system is broadly the same in the accelerated procedure as in the regular procedure. However, there are two important differences: first, the time limit to lodge an appeal is 5 calendar days instead of 14, which constitutes a significant obstacle in practice, because it is a short time, even more so if it falls on a weekend. The second difference is that decisions on the appeal in this procedure are issued by only one member of the Refugee Board (instead of three - in the regular procedure).

### Personal Interview

#### Indicators:

- Is a personal interview of the asylum seeker conducted in most cases in practice in an accelerated procedure?  Yes  No
  - o If yes, is the personal interview limited to questions relating to nationality, identity and travel route?  Yes  No
- Are personal interviews ever conducted through video conferencing?  
 Frequently  Rarely  Never

In the vast majority of cases in an accelerated procedure, the claims were considered manifestly unfounded because the applicant provided 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.<sup>77</sup> In those cases, there is no mandatory interview by the Head of the Office for Foreigners, unless the applicant is an unaccompanied child. According to the Office for Foreigners, in 60 % of cases considered manifestly unfounded, the personal interview is not conducted.<sup>78</sup> If it does take place, the interview doesn't differ from the one in a regular procedure – it is in the same form and the same rules apply. Generally the interview is mandatory in a regular procedure, unless a decision on the refugee status can be issued on the basis of the evidence already available, or the applicant is unable to attend the hearing, or isn't able to attend due to health or psychological reasons.<sup>79</sup> (see the section on Personal interview in the Regular Procedure)

### Legal assistance

#### Indicators:

- Do asylum seekers have access to free legal assistance at first instance in accelerated procedures in practice?  Yes  not always/with difficulty  No
- Do asylum seekers have access to free legal assistance in the appeal procedure against a decision taken under an accelerated procedure?  Yes  not always/with difficulty  No

Free legal assistance is offered only by NGOs, in the same context described in the section on legal assistance in the regular procedure.

<sup>77</sup> Art 34 section 2 point 1 of the Law on Protection

<sup>78</sup> E-mail from the Office for Foreigners, Department of Asylum Proceedings from 01.04.2014

<sup>79</sup> Art 43 section 2 of the Law on Protection

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

### Indicators:

- Is sufficient information provided to asylum seekers on the procedures in practice?  
 Yes       not always/with difficulty       No
- Is sufficient information provided to asylum seekers on their rights and obligations in practice?  
 Yes       not always/with difficulty       No
- Do asylum seekers in detention centres have effective access to NGOs and UNHCR if they wish so in practice?       Yes       not always/with difficulty       No
- 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       not always/with difficulty       No

The same level of information on the asylum procedure is provided to applicants during all types of procedures. According to the Law on Protection, the Border Guard officer who receives an asylum application has to inform in writing or orally the applicant in a language that they understand about:

- 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 address of the centre where the applicant will live in.<sup>80</sup>

In practice, the Border Guard informs asylum seekers in writing, in the language which the asylum seeker declares as understandable.<sup>81</sup> The information contains also the main rules for determining responsibility under the Dublin Regulation. Information on the Dublin procedure is rather clear and it is hard to estimate, whether it is the insufficient information or other reasons that make the asylum seekers go to other Member States despite the fact that Poland should examine their application. According to the Dublin Proceedings Unit the common leaflet as well the specific leaflet for unaccompanied minors drawn up by the Commission is provided to asylum seekers in practice. There is no information on any other brochures or leaflets on Dublin proceedings given to asylum seekers.

With regard to general information on the asylum procedure, rights and obligations of asylum seekers etc. (also after being granted protection), it has to be stressed that they are formulated in legal terms and therefore are not easily understandable. The information given to asylum seekers also contains a list of NGOs and their contact details.

In addition, the Office for Foreigners also offers information in the form of a booklet entitled "First steps in Poland – practical brochure for the asylum applicants in Poland".<sup>82</sup> It was published in 2011 within the framework of a project co-financed by the European Refugee Fund, in 6 languages (Russian, English, Georgian, Chechen, Arab, Ukrainian, French and Polish) and contains basic information on Poland, Polish law regarding asylum seekers and social assistance.

NGOs also provide information on asylum. A leaflet entitled "Refugee procedure in Poland – vulnerable persons and victims of sexual and gender based violence" was produced by the Halina Nieć Legal Aid Centre and the Office for Foreigner in 2012<sup>83</sup> in Polish and English. In 2012, the Helsinki Foundation for

<sup>80</sup> Art 29 section 1 point 6 of the Law on Protection.

<sup>81</sup> Letter from the Head of the Office for Foreigners, DPU-07-1410/2013 form 22 February 2013.

<sup>82</sup> The booklet is available (in English) here: <http://udsc.gov.pl/uchodzczy-2/pomoc-socjalna/informatory-do-pobrania/pierwsze-kroki-w-polsce/>.

<sup>83</sup> The leaflet was published within the framework of the project "Give them a chance! - Legal and information support to vulnerable asylum seekers and SGBV prevention in centres for asylum seekers in Poland" The booklet is available at: <http://udsc.gov.pl/uchodzczy-2/pomoc-socjalna/informatory-do-pobrania/pierwsze-kroki-w-polsce/>

Human Rights (HFHR) prepared a booklet on the asylum procedure in Polish, English, Russian, Arabic and French. The booklets are available on the webpage of the HFHR, and were sent to the Office for Foreigners, as well as detention and reception centres.<sup>84</sup> Both projects are co-funded by the European Refugee Fund and the Polish state. The booklets were sent to reception and detention centres.

Information about possibility to contact UNHCR is available in reception and detention centres (in English, Russian), in the main office of Head of the Office for Foreigners (in Polish). UNHCR Office in Warsaw also informs asylum seekers about the possibility to contact with them in writing or by telephone.

In every reception centre there is an organisation, which provides integration assistance (e.g. educational and leisure activities) to asylum seeker accommodated there.<sup>85</sup>

Asylum seekers are not held at the border. Asylum seekers in detention have access to NGOs and UNHCR through phone (especially their mobiles), fax and post. In every centre there is information about NGOs providing legal assistance and information in Russian, English, and French/Vietnamese/Georgian (depending on the centre). Asylum seekers often call NGOs and UNHCR to receive legal assistance or send letters via post, fax or e-mail.

A good practice is that the Border Guards and the case workers at the Office for Foreigners encourage asylum seekers to contact NGOs and they provide them with the list of NGOs.

The right of NGOs to access the detention centres is ensured in the law on Protection, regardless of projects run by NGOs.<sup>86</sup> NGOs have a right to access the centre on a regular basis, they just need to send information about their planned visit to the Border Guard Commander in the relevant region. Helsinki Foundation for Human Rights currently runs 2 projects directed to asylum seekers and returnees (Lawyers for refugees V- legal and integration assistance for refugees, financed by the European Refugee Fund and state budget funds and Returns. Legal assistance and information for returnees-financed by the European Return Fund and state budget) which include visiting detention centres. The problem that has been noticed is that different NGO projects are not coordinated so it happens that one detention centre is visited twice a week and then there is no lawyer coming there for another two weeks.

## D. Subsequent applications

### Indicators:

- Does the legislation provide for a specific procedure for subsequent applications?  
 Yes       No
- Is a removal order suspended during the examination of a first subsequent application?
  - o At first instance       Yes  No
  - o At the appeal stage       Yes  No
- Is a removal order suspended during the examination of a second, third, subsequent application?
  - o At first instance       Yes  No
  - o At the appeal stage       Yes  No

In 2012, 1579 out of 10753 asylum seekers lodged subsequent applications. These were submitted mainly by Russians, Georgians and Armenians. Subsequent applications are subject to an admissibility

<sup>84</sup> The booklet is available [here](#).

<sup>85</sup> Information provided by the Office for Foreigners, Department for Social Assistance, 25.03.2014. List of NGOs with which Office for Foreigners cooperated is listed in an informative brochure: Urząd do Spraw Cudzoziemców, *Informator Departamentu Pomocy Socjalnej*, from 21.01.2013.

<sup>86</sup> Art 39 section 1 of the Law on Protection.

procedure. If the application is considered inadmissible, the decision on discontinuing the procedure is issued. In 2013, 543 asylum seekers received decisions on discontinuing the procedure because their subsequent application was considered to be based on identical facts and therefore inadmissible.

In 2011 the Supreme Administrative Court in a significant judgement<sup>87</sup> highlighted that the administrative authorities, when deciding on admissibility of a subsequent asylum application:

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

This judgment is respected in practice and is cited in other cases<sup>88</sup>.

If the application is considered admissible, i.e. containing new circumstances relevant for the case, no separate decision is issued and the proceedings are continued according to general rules of the regular procedure.

Subsequent applications do not have an automatic suspensive effect but the applicant can submit a motion for suspension of a return order, together with a subsequent asylum application. It has to be duly justified. The Head of the Office for Foreigners has 5 calendar days to issue a decision on the motion. Submitting such a motion does not itself withhold a return order. If the decision is negative, the applicant has the right to submit an appeal to the Head of the Office for Foreigners within 5 calendar days. If the decision is positive, the appeal in admissibility procedure has a suspensive effect. The return order can also be withheld by the Head of the Office for Foreigners at any time.<sup>89</sup>

With regard to personal interviews, appeal and legal assistance – see section on the admissibility procedures.

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

### 1. Special Procedural guarantees

#### Indicators:

- Is there a specific identification mechanism in place to systematically identify vulnerable asylum seekers?  Yes  No  Yes, but only for some categories (disabled and subject to violence)
- Are there special procedural arrangements/guarantees for vulnerable people?  Yes  No  Yes, but only for some categories

Under the law there is a specific identification mechanism in place to identify defined groups of asylum seekers who need specific procedural guarantees (victim of violence, disabled persons, unaccompanied children) because of their vulnerability at the beginning of or during the asylum procedure.

<sup>87</sup> Judgment of the Supreme Administrative Court, 24 February 2011, II OSK 557/10 (not published).

<sup>88</sup> Judgement of the Voivodeship Administrative Court in Warsaw, 13 June 2012, V SA/Wa 2332/11 (not published).

<sup>89</sup> Article 33 section 4-10 of the Law on Protection.

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

If the examination confirms that an applicant should be identified as a vulnerable asylum seeker, all the steps in the asylum procedure should be done in conditions which ensure them a freedom of expression, in a particularly tactful manner and adapted to their mental and physical state<sup>90</sup>, with the participation of a psychologist or a doctor and, where necessary, of an interpreter of a gender indicated by the asylum seeker. The law provides that activities in an asylum procedure (e.g. interview) can be performed where the applicant resides, or means of transport are provided for an asylum seeker to make evidence and statements or use health services. The time limits for submitting evidence and support for gathering evidence are not extended, but the interview should be done in a special way and manner by specifically trained staff in the presence of a psychologist. Additionally, if the examination confirmed that the applicant was subject to violence or is disabled the activities in the asylum procedure and those related to granting social assistance in the reception centre can be performed by a person of a gender designated by the applicant and who was trained to work with people affected by crime or subjected to violence and people with disabilities.

However, the existing identification mechanism is not considered sufficient and effective by UNHCR, NGOs and some scholars.<sup>91</sup> In practice, the Office for Foreigners has not developed an effective process of identifying people with special needs, including victims of violence and traumatised people.<sup>92</sup> Asylum seekers do not give information about their disability or any violence they have suffered in the past, because they believe it is obvious or they do not know that it will lead to obtaining special procedural guarantees.<sup>93</sup>

According to the UNHCR National Office Poland, the main challenge regarding the procedure concerns the identification of vulnerable persons and procedural guarantees for them. Although the relevant legal provisions are in place, the current identification methods are not sufficient. In this regard the Office for Foreigners joined the UNHCR Regional Representation for Central Europe project called "Response to Vulnerability in Asylum" which finished in December 2013 and was co-financed by the EU. The project is aimed at gathering data on the situation of vulnerable asylum seekers across the EU Member States, ensuring effective and proper identification of vulnerable asylum seekers as well as the creation of tools for effective, timely and tailored response to special needs of asylum seekers. UNHCR notes some

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<sup>90</sup> Article 68 and 69 of the Law on Protection.

<sup>91</sup> A. Chrzanowska, W. Klaus, [Rekomendacje dla polityki lokowania ośrodków dla uchodźców](#) (*Recommendations for policy on placement of the centres for refugees*), in A. Chrzanowska, W. Klaus, A. Kosowicz, ed., *Polityka wyboru i lokalizacji ośrodków dla uchodźców. Analiza i rekomendacje* (*The policy on selection and location of the centres for refugees. Analysis and recommendations*), Stowarzyszenie Interwencji Prawnej, Fundacja Polskie Forum Migracyjne, 2011, p. 17. Also: D. Witko, K. Rusiłowicz, *Brak identyfikacji, gwarancji proceduralnych i odpowiednich warunków recepcyjnych dla osób wymagających szczególnej opieki* (*Lack of identification, procedural guarantees and proper reception conditions for vulnerable asylum seekers*), in Helsinki Foundation for Human Rights, *W poszukiwaniu ochrony. Wybrane problemy dotyczące realizacji praw cudzoziemców ubiegających się o nadanie statusu uchodźcy i objętych ochroną międzynarodową w latach 2012-2014. Obserwacje Programu Pomocy Prawnej dla Uchodźców i Migrantów Helsińskiej Fundacji Praw Człowieka* (*In search of protection. Selected problems concerning the enforcement of rights of foreigners who apply for refugee status and are under international protection in the years 2012-2014. Observations of the Legal Assistance for Refugees and Migrants Programme of the Helsinki Foundation for Human Rights*), 2014, [http://www.hfhr.pl/wp-content/uploads/2014/12/HFPC\\_w\\_poszukiwaniu\\_ochrony.pdf](http://www.hfhr.pl/wp-content/uploads/2014/12/HFPC_w_poszukiwaniu_ochrony.pdf) (PL), p. 27-32.

<sup>92</sup> P. Nikiel, [Raport z wyników badań i obserwacji zrealizowanych podczas projektu „Kampania na rzecz uchodźców i działania monitoringowe w ośrodkach dla cudzoziemców w Bytomiu i w Grotnikach](#) (*Report on the results of the research and observations carried out during the "Campaign for refugees and monitoring activities in the centres for foreigners in Bytom and Grotniki"*), Centrum Pomocy Prawnej im. H. Nieć, 2011, p. 14.

<sup>93</sup> M. Pajura, K. Przybysławska (ed.), *Cudzoziemcy szczególnej troski w Polsce (identyfikacja, detencja, orzecznictwo)* [*Vulnerable foreigners in Poland (identification, detention, jurisdiction)*], Centrum Pomocy Prawnej im. Haliny Nieć, 2013, [http://www.pomocprawna.org/images/stories/pomoc\\_uchodcom/Cudzoziemcy\\_Szczegolnej\\_Troski\\_CPPHN2013.pdf](http://www.pomocprawna.org/images/stories/pomoc_uchodcom/Cudzoziemcy_Szczegolnej_Troski_CPPHN2013.pdf).

developments - from September/October 2012 if the applicant stated in the asylum application that they were subject to violence, the Office for Foreigners ensures psychological consultation in order to confirm this statement. Within this project a new asylum application was prepared. It pays special attention to vulnerability of the applicant. It will be subject to consultations together with the amendments of the Law on Protection.<sup>94</sup>

There were 5 psychologists in 2013 and currently 3 psychologists who conduct this consultation and decide if the assistance of a psychologist during an interview is needed. In one of the cases involving a traumatised asylum seeker the Office for Foreigners decided to interview again the foreigner to clarify small contradictions which occurred in her previous statements despite the application of her representative to replace the personal interview with written explanations and despite the psychological problems which occurred during the first interview and confirmed by the psychologist. The asylum seeker was not in a fit state to participate in the second interview because of her (confirmed by medical reports, known to Office for Foreigners) PTSD. Despite that the interview was still organised. The individual was not able to answer any questions, because symptoms of PTSD occurred at the beginning of the interview (dissociation, panic attacks, paralysis of the body). She was then taken to hospital. Afterwards she was granted subsidiary protection<sup>95</sup>.

Psychological counselling in reception centres is available twice a week. Psychologists are available in all the centres, most of them are hired by the Central Clinical Hospital of the Ministry of the Interior in Warsaw. Interpreters do not assist during consultations. According to the Office for Foreigners, all the psychologists speak Russian and some of them – English.

Generally, asylum-seekers whose psychological or physical status leads to believe that they have been a victim of violence should not be placed in a detention centre. Under the law, an asylum-seeker should be released, if further detention constitutes a threat to their life or health. In practice, poor mental condition is hardly ever accepted by courts as sufficient grounds for not placing or releasing an asylum seeker. Courts do not accept psychological opinions submitted by independent psychologists (e.g. from NGOs). In practice, only courts of higher instance call on experts to give evidence. This makes proceedings last up to a couple of weeks.<sup>96</sup>

In Poland there is a very limited number of NGOs specialising in psychological support for vulnerable asylum seekers, some of them concentrate on assistance directed to a particular group (children or victims of trafficking). There are 2 NGOs which provide psychological support to asylum seekers – the first one is the International Humanitarian Initiative – they support asylum seekers on a regular basis in Warsaw. They visit detention centres occasionally if they receive information about asylum seekers who need psychological support. They run a project – Protect – process of recognition and orientation of torture victims in European countries to facilitate care and treatment.

The second one is Ocalenie Foundation – they support asylum seekers on a regular basis, 3 times a week in Warsaw. Their psychologist speaks English and Russian. Other NGOs due to financial reasons, provide psychological support in a limited way, and not on a regular basis (Caritas, Polish Humanitarian Action).

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<sup>94</sup> Information provided by UNHCR on 11.02.2014.

<sup>95</sup> D. Witko, K. Rusiłowicz, *Brak identyfikacji, gwarancji proceduralnych i odpowiednich warunków recepcyjnych dla osób wymagających szczególnej opieki (Lack of identification, procedural guarantees and proper reception conditions for vulnerable asylum seekers)*, in Helsinki Foundation for Human Rights, *W poszukiwaniu ochrony. Wybrane problemy dotyczące realizacji praw cudzoziemców ubiegających się o nadanie statusu uchodźcy i objętych ochroną międzynarodową w latach 2012-2014. Obserwacje Programu Pomocy Prawnej dla Uchodźców i Migrantów Helsińskiej Fundacji Praw Człowieka (In search of protection. Selected problems concerning the enforcement of rights of foreigners who apply for refugee status and are under international protection in the years 2012-2014. Observations of the Legal Assistance for Refugees and Migrants Programme of the Helsinki Foundation for Human Rights)*, 2014, [http://www.hfhr.pl/wp-content/uploads/2014/12/HFPC\\_w\\_poszukiwaniu\\_ochrony.pdf](http://www.hfhr.pl/wp-content/uploads/2014/12/HFPC_w_poszukiwaniu_ochrony.pdf), p. 28-29. (PL)

<sup>96</sup> Legal Intervention Association, information obtained during an interview.

According to the Office for Foreigners, in 2014 accelerated procedures were not used either towards unaccompanied children, or victims of torture, rape or other serious forms of psychological, physical or sexual violence. In very rare cases the interview is not carried out at all.<sup>97</sup>

## 2. Use of medical reports

### Indicators:

- Does the legislation provide for the possibility of a medical report in support of the applicant's statements regarding past persecution or serious harm?  
 Yes       Yes, but not in all cases       No
- Are medical reports taken into account when assessing the credibility of the applicant's statements?       Yes       No

Under the law, the Head of the Office for Foreigners shall ensure medical or psychological examinations only to asylum-seekers who themselves inform the authority carrying out the procedure that they are a victim of violence or are disabled or whose psychophysical status leads to believe that they have been a victim of violence.<sup>98</sup> A psychologist examines psychological conditions of the applicant, formulates a diagnosis on post-traumatic stress disorders (classification DSM IV is applicable) and gives an opinion whether specific safeguards envisaged in the legal provisions should be applied- if the psychologist is necessary during the interview.<sup>99</sup> Methodology set in the Istanbul protocol is not used.<sup>100</sup> However UNHCR is in the process of translating the Protocol and soon will promote its use among relevant authorities.<sup>101</sup> Head of the Office for Foreigners covers the costs of the medical reports.

Medical examinations influence the credibility assessment of an asylum seeker, but in practice if an applicant is not fit for interview and there are inconsistencies in their statement, not all doubts are interpreted in their favour.

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

### Indicators:

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

Polish law provides for an identification mechanism for unaccompanied children. 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. There are 3 methods: teeth examination, X-Ray of a wrist, and general examination. There aren't any requirements which methods should be chosen and used and what qualification doctors should have. In case of a lack of consent, the applicant is considered an adult. Results of the medical examination should contain the information about age, as well as the information

<sup>97</sup> Information obtained from the Department for Social Assistance, Office For Foreigners, 25.03.2014.

<sup>98</sup> Article 68 of the Law on Protection.

<sup>99</sup> Letter from the Head of the Office for Foreigners, DPU-07-1410/2013 from 22 February 2013.

<sup>100</sup> Letter from the Head of the Office for Foreigners, DPU-07-1410/2013 from 22 February 2013.

<sup>101</sup> Information provided by UNHCR on 11.12.2014.

about the acceptable margin of error. Carrying medical examination is triggered by the authorities and shall be ensured by the Head of the Office for Foreigners or the Border Guard.<sup>102</sup>

Usually the wrist x-ray is used as a method. In case the assessment cannot establish an exact age, young people are usually given the benefit of the doubt. Although in 2011, several Afghani youths were subjected to an age assessment examination initiated by the Border Guard (the applicants were detained) and they were declared adults, despite submitting documents from their country of origin, confirming that they were children.<sup>103</sup> The practice of according little weight to documents confirming the age of the applicant sent from his country of origin and to giving preference to the age assessment expertise (even with the margin of error) continued in following years.<sup>104</sup>

In 2013, two age assessments procedures were carried out. The asylum applicants were unaccompanied children – one from Bangladesh and one from Ivory Coast. Apart from x-rays of the wrist, their skull, spine, and teeth were also x-rayed. On the second stage of the examination, there was a meeting with a dentist, anthropologist and two doctors with the interpreters. The doctors interviewed the children about infectious diseases, place of birth, height of family members, and previous operations. They also analysed the x-rays, and requested an examination of the genitalia upon the consent of the child. The legal representative was absent during the examinations.<sup>105</sup> In another case the opinion on age assessment did not include the margin of error and because of this shortcoming it was considered inadmissible.<sup>106</sup>

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

The Law on Protection provides for the appointment of a legal representative to an unaccompanied child - special guardian- (kurator). The guardian is appointed only for the purpose of the asylum procedure – i.e. the guardian cannot act in the other fields of life, even to apply for an integration program if the child is recognised as a refugee or granted subsidiary protection. There are no exceptions - each child has to have a legal representative and all unaccompanied children get one. The Head of the Office for Foreigners or the Border Guard immediately lodges the request to the district custodial court. The court appoints the legal representative. There is no specific time limit to appoint a representative to an unaccompanied child, but the guardian - for the best interest of the child - should be appointed as soon as possible. There is no data on how fast a decision is issued, but the Office for Foreigners recalled cases, where it took 3 or even 5 months for the court to issue a decision appointing a legal representative.<sup>107</sup>

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

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<sup>102</sup> Article 30 of the Law on Protection.

<sup>103</sup> ECRE, Save the Children, [Comparative Study on Practices in the Field of Return of Minors](#), December 2011.

<sup>104</sup> M. Jaźwińska, *Procedura badania wieku cudzoziemców (Procedure of foreigners' age assesment)*, in Helsinki Foundation for Human Rights, *W poszukiwaniu ochrony. Wybrane problemy dotyczące realizacji praw cudzoziemców ubiegających się o nadanie statusu uchodźcy i objętych ochroną międzynarodową w latach 2012-2014. Obserwacje Programu Pomocy Prawnej dla Uchodźców i Migrantów Helsińskiej Fundacji Praw Człowieka (In search of protection. Selected problems concerning the enforcement of rights of foreigners who apply for refugee status and are under international protection in the years 2012-2014. Observations of the Legal Assistance for Refugees and Migrants Programme of the Helsinki Foundation for Human Rights)*, 2014, [http://www.hfhr.pl/wp-content/uploads/2014/12/HFPC\\_w\\_poszukiwaniu\\_ochrony.pdf](http://www.hfhr.pl/wp-content/uploads/2014/12/HFPC_w_poszukiwaniu_ochrony.pdf), p. 76-77. (PL).

<sup>105</sup> Information obtained from a social worker of Children's Home no 9 in Warsaw.

<sup>106</sup> Information obtained from the Department for Social Assistance, Office For Foreigners, 25.03.2014.

<sup>107</sup> Information obtained from the Department for Social Assistance, Office For Foreigners, 25.03.2014.

questions and make comments. The guardian is also entitled to receive social assistance allowance on behalf of the unaccompanied child.

Currently the unaccompanied children are placed in various intervention facilities in Poland, instead of in a central institution. According to the law they can be there for maximum 3 months. Although in practice unaccompanied children are placed there for longer periods due to a lack of places in social facilities. They are accommodated with Polish children and looked after by social workers who do not know their language.

## F. The safe country concepts (if applicable)

### Indicators:

- Does national legislation allow for the use of safe country of origin concept in the asylum procedure?  Yes  No
- Does national legislation allow for the use of safe third country concept in the asylum procedure?  Yes  No
- Does national legislation allow for the use of first country of asylum concept in the asylum procedure?  Yes  No
- Is there a list of safe countries of origin?  Yes  No
- Is the safe country of origin concept used in practice?  Yes  No
- Is the safe third country concept used in practice?  Yes  No

National legislation foresees that an application should be considered manifestly unfounded and subject to an accelerated procedure if the applicant comes from a safe country of origin included in the common minimum list of safe countries of origin established by the Council of the European Union.<sup>108</sup> However, as such a list was never adopted by the Council of the EU, there is therefore in practice no safe country of origin concept being implemented in Poland. The concept of first country of asylum is included in the draft law transposing the recast Procedures Directive and reflects the wording of Article 35 of that Directive.<sup>109</sup>

## G. Treatment of specific nationalities

In Poland there is no official policy implemented with regard to the top 5 countries of origin. Every application is examined individually. However, there is currently a policy with regards to Syrian applicants.

### SYRIA

When asylum seekers are identified as Syrian nationals, they are granted refugee status or subsidiary protection.<sup>110</sup> According to official statistics of the Office for Foreigners for 2012, 107 Syrians submitted asylum applications, 5 were granted subsidiary protection and the cases of 24 persons were discontinued<sup>111</sup> (there were no examples of the granting of refugee status, no tolerated stay permit, no rejection). In 2013 there were 248 applicants, towards which the authority issued 69 decisions on granting refugee status, 20 on subsidiary protection, 1 negative (according to the UNHCR this person had dual citizenship). 150 cases were discontinued. Until mid-2014 there were 44 applicants and 70 decisions granting refugee status, 15 granting subsidiary protection. 35 cases were discontinued. The number of

<sup>108</sup> Article 34 section 1 of the Law on Protection.

<sup>109</sup> Draft law as of 1 December 2014 available at: <http://bip.msw.gov.pl/bip/projekty-aktow-prawnyc/2014/23325,Projekt-ustawy-o-zmianie-ustawy-o-udzielaniu-cudzoziemcom-ochrony-na-terytorium-.html> (PL).

<sup>110</sup> Letter from the Head of the Office for Foreigners DPU-07-1410/2013 from 22 February 2013.

<sup>111</sup> There is no data available under which legal condition these cases were discontinued, but most probably this is because of leaving Poland.

the asylum applicants from Syria is not high. No policy on “freezing” or postponing the examination of the applications was adopted. According to the Office for Foreigners, these applications are considered well-founded and subject to priority examination.

In March 2014 Helsinki Foundation for Human Rights (HFHR) lawyers obtained the information from the Border Guard that, apart from Syria, also returns to Democratic Republic of Congo and Central African Republic are suspended. However no policy on granting protection to these nationals has been adopted yet.

Refugee status beneficiaries receive 3 years long residence permit, while subsidiary protection beneficiaries – 2 years long residence permit. In both cases it is renewed without re-examination of the protection needs. Both refugee status and subsidiary protection beneficiaries have a right to family reunification under the same rules – if they apply for it within 6 months from granting protection status, they do not have to prove they have enough financial resources to cover the costs of stay of family members. However only nuclear families can be reunited under the legal provisions on family reunification. Both refugee status and subsidiary protection beneficiaries have unrestricted access to the labour market (no work permit is required). While refugee status beneficiaries have a right to Geneva Convention travel document, subsidiary protection beneficiaries need to apply for Polish travel document for foreigners in case they want to cross the border. In order to obtain it, they need to prove that they cannot obtain a passport of the country of origin. The administrative authorities very often require direct contact with the embassy and a written statement that no passport can be issued. This requirement, interpreted very strictly, is an obstacle to free movement of subsidiary protection beneficiaries.

#### **UKRAINE:**

In 2014 the number of Ukrainian asylum seekers increased significantly. Ukrainians constituted 34 % of all asylum claims (there were 8195 asylum applications, out of which 2318 were citizens of Ukraine). With regard to these 2318 applications lodged in 2014, the Office for Foreigners (first instance authority) issued 645 negative decisions and 372 cases were discontinued. Subsidiary protection was granted in only six cases, and 11 applicants were issued a “tolerated stay” permit (a form of limited national protection). The remaining number are either pending, or there is no data on the result.

The main reason for rejection mentioned in the negative decisions concerns the Internal Flight Alternative. Contrary to political statements and actions, in the decisions Polish authorities express the opinion that the situation in the western part of the country is stable, so Ukrainians from conflict zones in the east could settle there and have access to the necessary facilities. As supporting evidence they point to the new law on internally displaced persons adopted in Ukraine.<sup>112</sup>

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<sup>112</sup> Information based on numerous cases handled by HFHR in 2014.

## Reception Conditions

### A. Access and forms of reception conditions

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

##### Indicators:

- Are asylum seekers entitled to material reception conditions according to national legislation :
  - o During the accelerated procedure?  
 Yes                       Yes, but limited to reduced material conditions                       No
  - o During admissibility procedures:  
 Yes                       Yes, but limited to reduced material conditions                       No
  - o During the regular procedure:  
 Yes                       Yes, but limited to reduced material conditions                       No
  - o during the Dublin procedure:  
 Yes                       Yes, but limited to reduced material conditions                       No
  - o During the appeal procedure (first appeal and onward appeal):  
 Yes                       Yes, but limited to reduced material conditions                       No
  - o In case of a subsequent application:  
 Yes                       Yes, but limited to reduced material conditions                       No
- Is there a requirement in the law that only asylum seekers who lack resources are entitled to material reception conditions?     Yes                       No

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

Asylum seekers are entitled to material reception conditions after claiming asylum, from the moment they register in one of the first reception centres. They should register here within 2 days after applying for asylum, otherwise their procedure will be discontinued.<sup>113</sup> Only medical assistance can be granted from the moment of claiming asylum (before registration in a reception centre) in special situations, in case of threat to life and health.<sup>114</sup> The fact that a foreigner applied for asylum is confirmed by the temporary ID issued by the Border Guard after submitting the claim. However, according to the Office for Foreigners, the lack of such a document is not a problem for registering at the reception centre<sup>115</sup>. For instance, such a situation occurs in Dublin procedures – when an asylum seeker is returned and their case is re-opened, the Border Guard does not issue the temporary ID and directs asylum seekers to the reception centre.

As a general rule, reception conditions (material assistance, accommodation, medical care) are provided until 2 months after the decision on the asylum application becomes final (either positive or negative).

<sup>113</sup> Article 42 section 1 point 1a of the Law on Protection.

<sup>114</sup> J. Białas, *Niezgodność zasad pomocy socjalnej zapewnianej osobom ubiegającym się o nadanie statusu uchodźcy z wyrokiem Trybunału Sprawiedliwości UE (Incompatibility of social assistance granted to foreigners applying for a refugee status with CJEU judgement)*, in Helsinki Foundation for Human Rights, *W poszukiwaniu ochrony. Wybrane problemy dotyczące realizacji praw cudzoziemców ubiegających się o nadanie statusu uchodźcy i objętych ochroną międzynarodową w latach 2012-2014. Obserwacje Programu Pomocy Prawnej dla Uchodźców i Migrantów Helsińskiej Fundacji Praw Człowieka (In search of protection. Selected problems concerning the enforcement of rights of foreigners who apply for refugee status and are under international protection in the years 2012-2014. Observations of the Legal Assistance for Refugees and Migrants Programme of the Helsinki Foundation for Human Rights)*, 2014, [http://www.hfhr.pl/wp-content/uploads/2014/12/HFPC\\_w\\_poszukiwaniu\\_ochrony.pdf](http://www.hfhr.pl/wp-content/uploads/2014/12/HFPC_w_poszukiwaniu_ochrony.pdf), p. 52-53. (PL).

<sup>115</sup> Information obtained from Department for Social Assistance, Office For Foreigners, 25.03.2014.

However when the procedure is terminated with the decision on discontinuing the procedure (e.g. in admissibility procedures), reception conditions are provided until 14 days after the decision becomes final<sup>116</sup>. Reception conditions are provided in practice in this time frame. In principle, during the onward appeal procedure before the Voivodeship Administrative Court in Warsaw<sup>117</sup> asylum seekers are not entitled to material reception conditions. Although in practice, when the court suspends enforcement of the contested decision of the Refugee Board for the time of the court proceedings, asylum seekers are re-granted material reception conditions to the same extent as during the administrative asylum procedure, until the ruling of the court<sup>118</sup>. The problem is that the court sometimes suspends enforcement of the decision after 2-3 months<sup>119</sup> from the moment of submitting the complaint, which leaves an asylum seeker without assistance for some time.

Good practice reported by some asylum seekers is that they were allowed to stay in the centre even though the period during which they were entitled to assistance had ceased after the above mentioned timeframes. On the other hand, some asylum seekers living outside the centres were afraid to go to the office or the centre to get the benefits they were entitled to after the negative decision became final, because of controls of the Border Guard on the pay day – this practice was reported by asylum seekers in the specialised reception centre for women and children and in the centre in Linin.

The provision of reception conditions does not depend on the financial situation of asylum seekers.

Some asylum seekers are not entitled to material reception conditions e.g. beneficiaries of subsidiary protection, humanitarian stay or “tolerated stay”, applying for asylum again<sup>120</sup>, foreigners staying in Poland on the basis of temporary stay permit, permanent stay permit or long-term residence permit, foreigners staying in youth care facility or detention centre or pre-trial custody or arrested.<sup>121</sup>

There are some practical obstacles reported in accessing material reception conditions. Asylum seekers can apply to change assistance granted in the centre to assistance granted outside of the centre. If the Office for Foreigners agrees to that, then in practice an asylum seeker is entitled to stay in the centre until the end of the month and from the next month they are entitled to financial allowance. The problem is that in law and in practice the financial allowance is not paid on the 1<sup>st</sup> day of the month, but by the 15<sup>th</sup> of each month.<sup>122</sup> It means that foreigners have to move from the centre at the end of the month, but do not get any financial resources to rent an apartment or even buy food for a couple days or even weeks – such cases were reported to the Helsinki Foundation for Human Rights.<sup>123</sup> The Office for Foreigners claims that asylum seekers can stay in the reception centre until the first day of the payment, but then the monthly payment is smaller, so asylum seekers decide themselves to get allowance for a whole month and not only for the part during which they were living in a centre.<sup>124</sup>

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

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<sup>116</sup> Article 74 section 1 point 2 of the Law on Protection.

<sup>117</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 and there is a fee applicable to the procedure.

<sup>118</sup> This is the interpretation of the Legal Department of the Office for Foreigners.

<sup>119</sup> Letter from the President of the Voivodeship Administrative Court in Warsaw to HFHR Prez-060/7/14 from 18 April 2014.

<sup>120</sup> In practice some foreigners after the end of the asylum procedure, in which they were granted subsidiary protection, ask for asylum again in order to be granted refugee status

<sup>121</sup> Article 70 section 2 of the Law on Protection.

<sup>122</sup> §6 section 3 of the Ordinance on amount of assistance for asylum seekers

<sup>123</sup> HFHR's letter to the Office for Foreigners from 9 September 2013, available [here \(PL\)](#).

<sup>124</sup> Letter from Office For Foreigners from 23 September 2013, available at: <http://programy.hfhr.pl/uchodzcy/files/2013/10/odp-UDSC-pomoc-socjalna.pdf> (PL)

A further obstacle to receiving support is encountered by formerly detained asylum seekers. Those who have been detained are not entitled to support after being released from the detention centre. They are granted material reception conditions only from the moment of registration in a reception centre, which is very often located far away from the detention centre. As a result asylum seekers have problems covering the cost of transport to the reception centre.<sup>125</sup>

Moreover it was reported that asylum seekers in the process of appealing a decision were sometimes not granted social assistance, for the simple reason that the Office for Foreigners' system had no record that their appeal had been lodged.<sup>126</sup>

## 2. Forms and levels of material reception conditions

### Indicators:

- Amount of the financial allowance/vouchers granted to asylum seekers on 31/12/2013 (per month,): PLN 750 - EUR 180.84 (for a single person, outside of the centre)

In the legislation there are 2 forms of reception conditions<sup>127</sup>:

1) assistance granted in the centre, including:

- a) accommodation,
- b) provision of all meals in the centre or its financial equivalent (PLN 9<sup>128</sup> – EUR 2,17<sup>129</sup> per day per person),
- c) allowance for personal expenses (PLN 50 – EUR 12,06 per month),
- d) permanent financial assistance for purchase of hygienic articles (PLN 20 – EUR 4,82 per month),
- e) one-time financial assistance or coupons for purchase of clothing and footwear (PLN 140 – EUR 33,75),
- f) Polish language course and basic materials supplies necessary for the course,
- g) Supplies for school for children enjoying education and care of public institutions, primary schools, gymnasia or grammar schools and covering, as far as possible the expenses of extracurricular classes and sports and recreational classes,
- h) financing of tickets for public transport:
  - \* in order to take part in the proceedings for granting the refugee status,
  - \* in order to attend medical examinations or vaccinations,
  - \* in other particularly justified cases

<sup>125</sup> J. Białas, J. Białas, *Niezgodność zasad pomocy socjalnej zapewnianej osobom ubiegającym się o nadanie statusu uchodźcy z wyrokiem Trybunału Sprawiedliwości UE (Incompatibility of social assistance granted to foreigners applying for a refugee status with CJEU judgement)*, in Helsinki Foundation for Human Rights, *W poszukiwaniu ochrony. Wybrane problemy dotyczące realizacji praw cudzoziemców ubiegających się o nadanie statusu uchodźcy i objętych ochroną międzynarodową w latach 2012-2014. Obserwacje Programu Pomocy Prawnej dla Uchodźców i Migrantów Helsińskiej Fundacji Praw Człowieka (In search of protection. Selected problems concerning the enforcement of rights of foreigners who apply for refugee status and are under international protection in the years 2012-2014. Observations of the Legal Assistance for Refugees and Migrants Programme of the Helsinki Foundation for Human Rights)*, 2014, [http://www.hfhr.pl/wp-content/uploads/2014/12/HFPC\\_w\\_poszukiwaniu\\_ochrony.pdf](http://www.hfhr.pl/wp-content/uploads/2014/12/HFPC_w_poszukiwaniu_ochrony.pdf), p. 53. (PL).

<sup>126</sup> M. Łysienia, *Prawidłowe funkcjonowanie systemu POBYT jako gwarancja przestrzegania praw cudzoziemców (Proper functioning of POBYT system as a guarantee for respect of foreigners' rights)*, in Helsinki Foundation for Human Rights, *W poszukiwaniu ochrony. Wybrane problemy dotyczące realizacji praw cudzoziemców ubiegających się o nadanie statusu uchodźcy i objętych ochroną międzynarodową w latach 2012-2014. Obserwacje Programu Pomocy Prawnej dla Uchodźców i Migrantów Helsińskiej Fundacji Praw Człowieka (In search of protection. Selected problems concerning the enforcement of rights of foreigners who apply for refugee status and are under international protection in the years 2012-2014. Observations of the Legal Assistance for Refugees and Migrants Programme of the Helsinki Foundation for Human Rights)*, 2014, [http://www.hfhr.pl/wp-content/uploads/2014/12/HFPC\\_w\\_poszukiwaniu\\_ochrony.pdf](http://www.hfhr.pl/wp-content/uploads/2014/12/HFPC_w_poszukiwaniu_ochrony.pdf), p. 49. (PL).

<sup>127</sup> Article 71 of the Law on Protection.

<sup>128</sup> All amounts of assistance granted to asylum seekers are specified in: Ordinance on amount of assistance for asylum seekers.

<sup>129</sup> Exchange rate as of 31 December 2013.

2) assistance granted outside the centre, i.e. financial allowance for covering all the costs of the asylum seeker's stay in Poland, including accommodation (PLN 25 – EUR 6,03 per day for a single person, PLN 20 – EUR 4,82 per day per person in case of two family members, PLN 15 – EUR 3,62 per day per person in case of three family members, PLN 12,5 – EUR 3,01 per day per person in the case of four or more family members).

Assistance granted outside the centre also includes <sup>130</sup>:

- a) Polish language course and basic materials supplies necessary for the course;
- b) School supplies for children enjoying education and care of public institutions, primary schools, gymnasia or grammar schools and covering, as far as possible the expenses of extracurricular classes and sports and recreational classes.

Both forms of reception conditions include medical care.

Under the law, the assistance granted in the centre is a rule and it is granted to all asylum seekers. An asylum seeker can obtain assistance granted out of the centre upon request, examined by the Head of the Office for Foreigners. It can be granted for organisational, safety or family reasons or to prepare asylum seekers for an independent life after they have been granted any form of protection <sup>131</sup>.

All of the above mentioned reception conditions are used in practice. As of 26 January 2015, 1349 asylum seekers benefited from assistance in the centres and 2410 asylum seekers were granted assistance outside the centres. <sup>132</sup>

The amount of social assistance that asylum seekers receive is generally not sufficient to ensure an adequate standard of living in Poland. Especially it is very difficult to rent an apartment or even a room in Warsaw, where most of asylum seekers stay during the procedure, receiving only PLN 750-775 per month. <sup>133</sup> Because of the fact that the amount of financial allowance is not enough to rent a 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>134</sup> Social assistance for families of 4 members amounts to PLN 1500 per month and in practice is enough only to rent an apartment. As a result material reception conditions are considered insufficient to ensure a decent standard of living as mentioned in the CJEU judgment C-79/13 Saciri and Others from 27 February 2014. <sup>135</sup>

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<sup>130</sup> Office for Foreigners claims that it includes also financing tickets for public transport.

<sup>131</sup> Article 72 section 1 of the Law on Protection.

<sup>132</sup> <http://udsc.gov.pl/statystyki/raporty-specjalne/dane-dotyczące-pomocy-socjalnej/> (PL). Information provided by the Office for Foreigners, e-mail from 26.01.2015.

<sup>133</sup> N. Kłorek, *Ochrona zdrowia nieudokumentowanych migrantów i osób ubiegających się o ochronę międzynarodową w opini cudzoziemców (Healthcare of the undocumented migrants and persons seeking international protection in the opinion of foreigners)*, in A. Chrzanowska, W. Klaus, ed., *Poza systemem. Dostęp do ochrony zdrowia nieudokumentowanych migrantów i cudzoziemców ubiegających się o ochronę międzynarodową w Polsce (Outside the system. Access to health care of undocumented migrants and foreigners seeking international protection in Poland)*, Stowarzyszenie Interwencji Prawnej, 2011, p. 56, available [here](#)

<sup>134</sup> 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 (Where is my home? Homelessness and access to housing among asylum seekers, refugees and persons granted international protection in Poland)*, UNHCR, 2013, available at: <http://www.unhcr-centraleurope.org/pl/pdf/robimy/promowanie-integracji/bezdomnosc-uchodzcow-w-polsce-2012.html> (PL) p. 14.

<sup>135</sup> J. Białas, *Niezgodność zasad pomocy socjalnej zapewnianej osobom ubiegającym się o nadanie statusu uchodźcy z wyrokiem Trybunału Sprawiedliwości UE (Incompatibility of social assistance granted to foreigners applying for a refugee status with CJEU judgement)*, in Helsinki Foundation for Human Rights, *W poszukiwaniu ochrony. Wybrane problemy dotyczące realizacji praw cudzoziemców ubiegających się o nadanie statusu uchodźcy i objętych ochroną międzynarodową w latach 2012-2014. Obserwacje Programu Pomocy Prawnej dla Uchodźców i Migrantów Helsińskiej Fundacji Praw Człowieka (In search of protection. Selected problems concerning the enforcement of rights of foreigners who apply for refugee status and are under international protection in the years 2012-2014. Observations of the Legal Assistance for Refugees and Migrants Programme of the Helsinki Foundation for Human Rights)*, 2014, [http://www.hfhr.pl/wp-content/uploads/2014/12/HFPC\\_w\\_poszukiwaniu\\_ochrony.pdf](http://www.hfhr.pl/wp-content/uploads/2014/12/HFPC_w_poszukiwaniu_ochrony.pdf), p. 52.

The amount of social assistance that asylum seekers receive is not adjusted to their state of health, their age or disability, which is incompatible with CJEU judgment C-79/13 from 27 February 2014.<sup>136</sup>

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

According to the law, in case an asylum seeker performs cleaning work for the centre, provides translation or interpretation that facilitates communication between the personnel of the centre and asylum seekers, or provides cultural and educational activities for other asylum seekers who stay in the centre, the amount of the allowance for personal expenses may be raised to PLN 100 (e.g. in second half of 2014 - such an increased allowance was paid in 430 cases<sup>137</sup>).

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

### 3. Types of accommodation

#### Indicators:

- Type of accommodation most frequently used in a regular procedure :  
 Reception centre     Hotel/hostel     Emergency shelter     private housing     other
- Type of accommodation most frequently used in an accelerated procedure :  
 Reception centre     Hotel/hostel     Emergency shelter     private housing     other
- Number of places in all the reception centres (both permanent and for first arrivals):    2420
- Number of reception centres: 12
- Are there any problems of overcrowding in the reception centres?     Yes     No
- Are there instances of asylum seekers not having access to reception accommodation because of a shortage of places?     Yes     No
- What is, if available, the average length of stay of asylum seekers in the reception centres? No data made available under request
- Are unaccompanied children ever accommodated with adults in practice?     Yes     No

In Poland there are 12 reception centres which provide altogether 2300 places<sup>138</sup>. There is no problem of overcrowding in these centres. Two centres serve for first reception<sup>139</sup> (asylum seekers are directed there

<sup>136</sup> J. Białas, *Niezgodność zasad pomocy socjalnej zapewnianej osobom ubiegającym się o nadanie statusu uchodźcy z wyrokiem Trybunału Sprawiedliwości UE (Incompatibility of social assistance granted to foreigners applying for a refugee status with CJEU judgement)*, in Helsinki Foundation for Human Rights, *W poszukiwaniu ochrony. Wybrane problemy dotyczące realizacji praw cudzoziemców ubiegających się o nadanie statusu uchodźcy i objętych ochroną międzynarodową w latach 2012-2014. Obserwacje Programu Pomocy Prawnej dla Uchodźców i Migrantów Helsińskiej Fundacji Praw Człowieka (In search of protection. Selected problems concerning the enforcement of rights of foreigners who apply for refugee status and are under international protection in the years 2012-2014. Observations of the Legal Assistance for Refugees and Migrants Programme of the Helsinki Foundation for Human Rights)*, 2014, [http://www.hfhr.pl/wp-content/uploads/2014/12/HFPC\\_w\\_poszukiwaniu\\_ochrony.pdf](http://www.hfhr.pl/wp-content/uploads/2014/12/HFPC_w_poszukiwaniu_ochrony.pdf), p. 52.

<sup>137</sup> Information obtained in Department for Social Assistance, Office For Foreigners, e-mail from 26.01.2015. No information available on the average length of stay in the centres or equivalent.

<sup>138</sup> Information provided by the Office for Foreigners, e-mail from 26.01.2015. In 2013 the number of asylum seekers in Poland significantly increased (from a total of 10753 applications for refugee status in 2012 to 10407 applications only in the first 6 months of 2013). Until 21 November 2013 there were 14 759 asylum applications. The Office for Foreigners had to open two new centres (both in Bezwola) and buy more places for foreigners in existing centres (Office For Foreigners' letter DPS-WPŚ-510-3590/2013/MRS from 24 September 2013).

<sup>139</sup> N. Kłorek, *Ochrona zdrowia nieudokumentowanych migrantów i osób ubiegających się o ochronę międzynarodową w opinii cudzoziemców (Healthcare of the undocumented migrants and persons seeking international protection in the opinion of foreigners)*, in A. Chrzanowska, W. Klaus, ed., *Poza systemem. Dostęp do ochrony zdrowia nieudokumentowanych migrantów i cudzoziemców ubiegających się o ochronę międzynarodową w Polsce (Outside the system. Access to health care of undocumented migrants and foreigners*

after applying for asylum in order to register and carry out medical examinations). The other ten are accommodation centres.

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>140</sup> Currently 8 reception centres are managed by private contractors (private owners and companies).<sup>141</sup> The Office for Foreigners monitors the situation in centres managed by private contractors e.g. by unexpected visits.<sup>142</sup> Asylum seekers also can complain to the Office for Foreigners on the situation in the centres and they use this opportunity in practice.<sup>143</sup>

Other types of accommodation such as hotels can be used only in emergency situations, for short periods of time (e.g. when staying in the centre would put an asylum seeker at risk, e.g. in case of a serious conflict with other asylum seekers staying in the centre). This possibility was not used in practice yet.<sup>144</sup>

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

Only one centre is designed to host a special group of asylum seekers, i.e. single women or single women with children. It is located in Warsaw and is managed by a private contractor.<sup>145</sup>

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 can stay with a professional foster family functioning as emergency shelter or in a youth care facility for crisis situations<sup>146</sup>.

To prevent gender based violence the Office for Foreigners concluded a special agreement with the Police, UNHCR, "La Strada" Foundation and Halina Niec Legal Aid Centre, in 2008, aiming to better identification, prevention and response to gender based violence in reception centres<sup>147</sup>. In all reception centres special teams have been created, consisting of one representative from the Office for Foreigners, the Police and an NGO. Their task is to effectively prevent acts of violence in reception centres and respond to any which do occur quickly. In 2013, 22 cases of violence were reported by teams (mainly domestic violence).<sup>148</sup>

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*seeking international protection in Poland*), Stowarzyszenie Interwencji Prawnej, 2011, p. 55. Information obtained also in Department for Social Assistance, Office for Foreigners, 7.02.2013.

<sup>140</sup> Article 79 section 2 of the Law on Protection

<sup>141</sup> Urząd do Spraw Cudzoziemców, *Informator Departamentu Pomocy Socjalnej*, 21.01.2013 and 25.03.2014.

<sup>142</sup> European Migration Network, *The Organisation of Reception Facilities for Asylum Seekers in different Member States. National Contribution of Poland*, 2013, p. 24-25, and information obtained from Department for Social Assistance, Office For Foreigners, 25.03.2014.

<sup>143</sup> Information obtained from Department for Social Assistance, Office For Foreigners, 25.03.2014.

<sup>144</sup> Information obtained in Department for Social Assistance, Office For Foreigners, 7.02.2013 and 25.03.2014.

<sup>145</sup> Urząd do Spraw Cudzoziemców, *Informator Departamentu Pomocy Socjalnej*, 2014, <http://udsc.gov.pl/uchodzcy-2/pomoc-socjalna/informatory-do-pobrania/informator-departamentu-pomocy-socjalnej/>

<sup>146</sup> Article 61 and article 62 of the Law on Protection.

<sup>147</sup> *Porozumienie w sprawie standardowych procedur postępowania w zakresie rozpoznawania, przeciwdziałania oraz reagowania na przypadki przemocy seksualnej lub przemocy związanej z płcią wobec cudzoziemców przebywających w ośrodkach dla osób ubiegających się o nadanie statusu uchodźcy* (Agreement on standard procedures to identify, prevent and respond to incidents of sexual violence or gender-based violence against foreigners staying in reception centres), 25.03.2008.

<sup>148</sup> *Realizacja Porozumienia w sprawie przemocy seksualnej lub przemocy związanej z płcią - 2013* (Enforcement of the Agreement on sexual violence or gender-based violence - 2013), 2013, [http://www.pomocprawna.org/images/stories/pomoc\\_uchodcom/raport\\_GE\\_za\\_2013.pdf](http://www.pomocprawna.org/images/stories/pomoc_uchodcom/raport_GE_za_2013.pdf) (PL).

#### 4. Conditions in reception facilities

The main form of accommodation that is currently being used are reception centres.<sup>149</sup> Living conditions differ in reception centres. In the centres managed by private contractors ensuring certain minimum living conditions standards is obligatory on the basis of agreements between these contractors and the Office for Foreigners e.g. centres have to have furnished rooms for foreigners, separate common-room for men and for women, kindergarten, space to practice religion, recreation area, schoolrooms, specified number of refrigerators and washing machines.<sup>150</sup> Other conditions are dependent on the willingness and financial situation of the contractor.<sup>151</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 located in the countryside. Some are located far away from any towns (Bezwola, Dębak, Czerwony Bór).<sup>152</sup>

Asylum seekers are responsible for cleaning their rooms and common areas such as kitchens and bathrooms.<sup>153</sup> In all centres there is a problem with insects. During the monitoring in reception centre in Warsaw<sup>154</sup> all women pointed out that there is a lot of insects in the centre and even showed bites. Women claimed that pest control procedures are occasionally carried out but they are not effective.

Rooms in the centres are designed for 2, 4 or more people depending on family's needs.<sup>155</sup> Single adults can share a room. The Office for Foreigners claims that the amount of toilet facilities and showers is sufficient, although some people complained that it is not the case.<sup>156</sup>

Only in one centre (Czerwony Bór) asylum seekers have to cook for themselves. In other centres asylum seekers are getting food from the centre (3 meals per day), although there is a kitchen in all centres and asylum seekers can also cook for themselves. Asylum seekers can get specific diets (vegetarian, , adapted to their religion or health state, for pregnant women and children). The food provided has to be in accordance with the Act of 25 August 2006 on food safety and nutrition. The nutritional values are checked by the Office for Foreigners from time to time.<sup>157</sup>

Polish language courses are organised in all reception centres, except the one in Biała Podlaska. Different workshops are organised in the centres by NGOs, although it is dependent on their financing.

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<sup>149</sup> Information obtained from Department for Social Assistance, Office For Foreigners, 25.03.2014.

<sup>150</sup> Office for Foreigners, Brochure of the Department for Social Assistance (*Informator Departamentu Pomocy Socjalnej*), 2014, also European Migration Network European Migration Network, *The Organisation of Reception Facilities for Asylum Seekers in different Member States. National Contribution of Poland*, 2013, p. 13.

<sup>151</sup> Rzecznik Praw Obywatelskich (Polish Ombudsman), [Realizacja prawa małoletnich cudzoziemców do edukacji. Raport RPO](#) (PL) (*Implementation of the right to education for foreign minors. Polish Ombudsman report*), 2013, p. 22,

<sup>152</sup> List of reception centres available at: <http://udsc.gov.pl/uchodzczy-2/pomoc-socjalna/osrodki-dla-cudzoziemcow/mapka-osrodkow/> (PL).

<sup>153</sup> Information obtained from the Department for Social Assistance, Office For Foreigners, 25.03.2014

<sup>154</sup> *Monitoring* concluded in September 2013 in reception centre in Warsaw by different NGOs, the Office for Foreigners and UNHCR.

<sup>155</sup> European Migration Network, European Migration Network, [The Organisation of Reception Facilities for Asylum Seekers in different Member States. National Contribution of Poland](#), 2013, available at: [http://ec.europa.eu/dgs/home-affairs/what-we-do/networks/european\\_migration\\_network/reports/docs/emn-studies/20a.poland\\_national\\_report\\_reception\\_facilities\\_september2013\\_en\\_final\\_en.pdf](http://ec.europa.eu/dgs/home-affairs/what-we-do/networks/european_migration_network/reports/docs/emn-studies/20a.poland_national_report_reception_facilities_september2013_en_final_en.pdf) (EN) p. 17.

<sup>156</sup> During the monitoring in reception centre in Warsaw concluded in September 2013 women living in the centre claimed that one of the bathrooms is closed for longer period of time because of a damage. As a result they could use only one bathroom, which ended up with very long queues. See the report [here](#).

<sup>157</sup> Information obtained from Department for Social Assistance, Office For Foreigners, 25.03.2014. See also European Migration Network, European Migration Network, *The Organisation of Reception Facilities for Asylum Seekers in different Member States. National Contribution of Poland*, 2013, available at: [http://ec.europa.eu/dgs/home-affairs/what-we-do/networks/european\\_migration\\_network/reports/docs/emn-studies/20a.poland\\_national\\_report\\_reception\\_facilities\\_september2013\\_en\\_final\\_en.pdf](http://ec.europa.eu/dgs/home-affairs/what-we-do/networks/european_migration_network/reports/docs/emn-studies/20a.poland_national_report_reception_facilities_september2013_en_final_en.pdf) (EN) p. 21.

Not all centres have a library and access to the internet (computer rooms exist in 4 centres, in 3 there is internet access).<sup>158</sup>

Asylum seekers can go outside from the centre whenever they want, during the day, but they should be back before 11pm.<sup>159</sup>

At present, one employee is in charge of approximately 114 asylum seekers (staying in and out of the centres) and 60 asylum seekers (if only those staying in the centres are taken into account).<sup>160</sup> There are not enough employees in the centres (2-4 workers per centre).<sup>161</sup> As of January 2015 there are 33 employees working in all the centres.

In 2013 and 2014 no protests or hunger strikes in centres were reported.<sup>162</sup> However, in March 2014 a group of Ukrainian asylum seekers had numerous concerns about the conditions in the reception centre in Debak - Podkowa Lesna, which were reported by the media. Those concerns related mostly to the presence of insects and the unsanitary conditions.<sup>163</sup>

In all centres there is a special room designed for religious practices.<sup>164</sup> If the asylum seekers want to participate in religious services outside of the centre, they have such right, although in practice remoteness from the closest place of worship can prevent them from participating in such services.

## 5. Reduction or withdrawal of reception conditions

### Indicators:

- Does the legislation provide for the possibility to reduce material reception conditions?  
 Yes       No
- Does the legislation provide for the possibility to withdraw material reception conditions?  
 Yes       No

The legislation provides for a possibility to reduce or withdraw material reception conditions: an asylum seeker who grossly violates the rules of social coexistence in the centre is deprived of social assistance. The decision on depriving social assistance is issued by the Head of the Office for Foreigners. It can be re-granted to the same extent as previously, but if the violation occurs again, it can be re-granted only in the form of a payment of 1/3 of the regular financial allowance provided to asylum seekers.<sup>165</sup>

If an asylum seeker seriously breaches the rules in the centre, in practice they receive three warnings before any further consequences. If they still breach the rules after those warnings, they can be deprived of material reception conditions. Other sanctions are not applied.<sup>166</sup>

<sup>158</sup> Information provided by the Office for Foreigners, e-mail from 26.01.2015.

<sup>159</sup> §10 point 3 Regulation on rules of stay in the centre for asylum seekers.

<sup>160</sup> Information obtained from Department for Social Assistance, Office For Foreigners, e-mail from 26.01.2015.

<sup>161</sup> European Migration Network, European Migration Network, *The Organisation of Reception Facilities for Asylum Seekers in different Member States. National Contribution of Poland*, 2013, available at: [http://ec.europa.eu/dgs/home-affairs/what-we-do/networks/european\\_migration\\_network/reports/docs/emn-studies/20a.poland\\_national\\_report\\_reception\\_facilities\\_september2013\\_en\\_final\\_en.pdf](http://ec.europa.eu/dgs/home-affairs/what-we-do/networks/european_migration_network/reports/docs/emn-studies/20a.poland_national_report_reception_facilities_september2013_en_final_en.pdf) (EN) p. 23, 35.

<sup>162</sup> Information obtained from Department for Social Assistance, Office For Foreigners, 25.03.2014. Polskie Radio, "[Brud i smród" - uchodźcy z Ukrainy skarżą się na warunki w polskim ośrodku](#)" ("Dirty and stinky" - refugees from Ukraine complain about the conditions in a Polish reception centre), 27 March 2014.

<sup>164</sup> Information obtained from Department for Social Assistance, Office For Foreigners, 25.03.2014.

<sup>165</sup> Article 76 and 78 of the Law on Protection.

<sup>166</sup> Information obtained from Department for Social Assistance, Office For Foreigners, 25.03.2014.

Social assistance can be reduced to 1/3 of the financial allowance provided to asylum seekers also in case of a refusal to undergo medical examinations or necessary sanitary treatment of the asylum seeker themselves and their clothes<sup>167</sup>.

The above mentioned rules of withdrawal and reduction of social assistance are used in practice very rarely (around 5 times in 2013, in 2014 there was only one case of withdrawal). The 5 people concerned asked to be re-granted social assistance and it was re-granted to them.<sup>168</sup> No information is available about the reasons of such a withdrawal or reduction.

Moreover, in case an asylum seeker benefiting from social assistance in the centre stays outside this centre for a period exceeding 2 days, granting such assistance should be withheld by law until the moment of their return<sup>169</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.

Since 1<sup>st</sup> January 2012, the Ministry of Interior has a possibility to reduce asylum seekers' social assistance and/or medical care, if the limit of expenses allocated for this assistance per year (PLN 100.000.000) is likely to be exceeded or if, in a certain period of time, expenses exceed the forecasted amount for this period by at least 10%.<sup>170</sup> Such situation can occur in the case of an increased number of asylum seekers arriving to Poland. The Ministry has not used this opportunity yet.

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

## 6. Access to reception centres by third parties

### Indicators:

- 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.

Asylum seekers may receive visits in the centre from 10.00 to 16.00 in a place indicated by the director of the centre. In particularly justified cases the visiting hours in the centre may be prolonged upon permission of the director of the centre, till no later than 22.00.<sup>171</sup>

Each entry of a non-resident into the premises of the centre requires a permission of:

- 1) the director of the centre – in the case of asylum seekers receiving social assistance on the basis of the law;
- 2) the Head of the Office for Foreigners – in other cases.

<sup>167</sup> Article 81 section 3 of the Law on Protection.

<sup>168</sup> Information obtained in Department for Social Assistance, Office For Foreigners, 7.02.2013 and 25.03.2014. No such cases in 2014.

<sup>169</sup> Article 77 of the Law on Protection.

<sup>170</sup> Article 19 of the Law of 28 July 2011 on the legalisation of the stay of certain foreigners on Polish territory, Journal of Laws 2011 no 191 position 1133 (*Ustawa z dnia 28 lipca 2011 r. o zalegalizowaniu pobytu niektórych cudzoziemców na terytorium Rzeczypospolitej Polskiej oraz o zmianie ustawy o udzielaniu cudzoziemcom ochrony na terytorium Rzeczypospolitej Polskiej i ustawy o cudzoziemcach*, Dz. U. 2011 nr 191 poz. 1133), available [here](#)

<sup>171</sup> Article 7 of the Annex to the Ordinance on rules of stay in the centre for asylum seekers.

The above mentioned rules do not apply to the representative of the UNHCR, who may enter the centre anytime provided that the director of the centre was notified in advance. In case of NGOs, whose statutory tasks include asylum-related matters and providing legal assistance to asylum seekers, the Head of the Office for Foreigners may issue a permit to enter the centre for the period of their activities performed for the asylum seekers residing in the centre.<sup>172</sup>

During their stay in the centre, asylum seekers communicate with legal advisers, UNHCR or NGOs mainly by phone, fax, e-mail, etc. Eight out of the twelve 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.<sup>173</sup> It does not make the contact effective<sup>174</sup> (see section on legal assistance, in the regular procedure).

## 7. Addressing special reception needs of vulnerable persons

### Indicators:

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

In Polish legislation there are four categories of asylum seekers that are considered vulnerable: unaccompanied children, disabled people, victims of violence and – to the some extent – single women (including with children). Elderly people, who are not seriously ill, pregnant women, if they are not single and single fathers with children are not considered vulnerable by law and in practice.<sup>175</sup>

**Victims of violence and disabled people:** The Head of the Office for Foreigners ensures that medical or psychological examinations are carried out for asylum seekers who inform the authority that they were a victim of violence or are disabled or whose psychophysical status allows to assume that they were a victim of violence.<sup>176</sup> In the legislation there is no other mechanism specified to identify this vulnerable groups. The existing mechanism is not considered sufficient and effective<sup>177</sup>. In practice the Office for Foreigners has not developed the process of identifying people with special needs, including victims of violence and traumatic experiences<sup>178</sup> (see section on special procedural guarantees, under Procedures for further comments).

<sup>172</sup> Article 6 of the Annex to the Ordinance on rules of stay in the centre for asylum seekers.

<sup>173</sup> In 2015 NGOs who financed their legal assistance from EU funds most probably will have to reduce or cease their assistance granted also in reception centres (<http://interwencjaprawna.pl/fundusz-azylu-migracji-integracji-opoznienia-konsekwencje/>). Some NGOs, like Legal Intervention Association, had to reduce their activities from 1.01.2015 (<http://interwencjaprawna.pl/uwaga-zmiana-systemu-udzielania-porad/>).

<sup>174</sup> A. Gutkowska, *Ewaluacja funkcjonowania poradnictwa prawnego dla uchodźców - analiza prawna i praktyczna (Evaluation of the functioning of legal counseling for refugees - legal and practical analysis)* in J. Frelak, W. Klaus, ed., *Słabe ogniwa. Wyzwania dla funkcjonowania systemu ochrony uchodźców w Polsce (Weak links. Challenges for the functioning of the system of refugee protection in Poland)*, Instytut Spraw Publicznych, 2011, p. 146-147.

<sup>175</sup> Information obtained from Department for Social Assistance, Office For Foreigners, 25.03.2014.

<sup>176</sup> Article 68 section 1 of the Law on Protection.

<sup>177</sup> A. Chrzanowska, W. Klaus, *Rekomendacje dla polityki lokowania ośrodków dla uchodźców (Recommendations for policy on placement of the centres for refugees)*, in A. Chrzanowska, W. Klaus, A. Kosowicz, ed., *Polityka wyboru i lokalizacji ośrodków dla uchodźców. Analiza i rekomendacje (The policy on selection and location of the centres for refugees. Analysis and recommendations)*, Stowarzyszenie Interwencji Prawnej, Fundacja Polskie Forum Migracyjne, 2011, p. 17.

<sup>178</sup> P. Nikiel, *Raport z wyników badań i obserwacji zrealizowanych podczas projektu „Kampania na rzecz uchodźców i działań monitoringowe w ośrodkach dla cudzoziemców w Bytomiu i w Grotnikach (Report on the results of the research and observations carried out during the "Campaign for refugees and monitoring activities in the centres for foreigners in Bytom and Grotniki")*, Centrum Pomocy Prawnej im. H. Nieć, 2011, p. 14.

If a medical examination confirmed that an asylum seeker is a victim of violence or is disabled, the activities related to granting assistance in the centre can be carried out by a person of the sex indicated by the asylum seeker and who was trained to work with victims of crimes or violence and with persons with disabilities.<sup>179</sup>

In special circumstances, justified by an asylum seeker's health condition, some of the activities and formalities related to the asylum procedure can be held in the place of their residence. An asylum seeker placed in the centre, if this is justified by their psychical or psychological status, can be provided with transportation in order to give testimonies and statements in the asylum proceedings or undergo medical treatment.<sup>180</sup> Some of the reception centres are adapted to the needs of disabled asylum seekers.<sup>181</sup>

**Unaccompanied children:** The only safeguards related to special reception needs of unaccompanied children are those referring to their place of stay (youth care facilities, so that they are separated from adults). The law also refers to the qualified personnel that should undertake activities in the refugee status procedure concerning unaccompanied children (a defined profile of higher education, 2 years of relevant experience).<sup>182</sup>

**Single women:** 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 the situation of single women.<sup>183</sup> There is also one reception centre for single women and single women with children.<sup>184</sup>

There are no other specific measures provided by law or provided in practice for vulnerable groups or people with special needs to address those needs (e.g. separate accommodation for traumatised asylum seekers, specific reception centres for unaccompanied asylum seeking children, etc.).<sup>185</sup> According to the Office for Foreigners, staff of the centres monitors the asylum seekers' needs, so as to react properly if they appear during the asylum procedure.<sup>186</sup>

## 8. Provision of information

The provisions in law on information of asylum seekers concerning social assistance are formulated in a general way. The authority registering the asylum application has to inform the applicant in a language understandable to them, about the asylum procedure itself, the asylum seeker's rights, obligations, and the legal consequences of not respecting these obligations. It also provides the asylum seeker with the address of the centre to which they have to report.<sup>187</sup>

Upon admission to the centre, the asylum seeker receives (in writing and 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) and information on regulations governing the provision of assistance for asylum seekers.<sup>188</sup> Moreover the

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<sup>179</sup> Article 69 of the Law on Protection.

<sup>180</sup> Article 68 section 2-4 of the Law on Protection.

<sup>181</sup> Information obtained in Department for Social Assistance, Office For Foreigners, 7.02.2013 and 25.03.2014

<sup>182</sup> Article 66 of the Law on Protection

<sup>183</sup> Article 72 section 1 point 1 of the Law on Protection.

<sup>184</sup> Urząd do Spraw Cudzoziemców, *Informator Departamentu Pomocy Socjalnej*, 2014, <http://udsc.gov.pl/uchodzczy-2/pomoc-socjalna/informatory-do-pobrania/informator-departamentu-pomocy-socjalnej/> (PL)

<sup>185</sup> UNHCR National Office Poland notes that in 2008 UNHCR, Office for Foreigners, Police, Halina Niec Legal Aid Centre and La Strada Foundation signed an Agreement introducing the Standard Operating Procedures on sexual and gender-based violence ("SOPs on SGBV") in order to prevent and, if need be, respond to SGBV risks and incidents in the given reception facility.

<sup>186</sup> Information obtained from Department for Social Assistance, Office For Foreigners, 25.03.2014.

<sup>187</sup> Article 29 section 1 point 6 of the Law on Protection.

<sup>188</sup> The Office for Foreigners published a guide for asylum seekers "First steps in Poland", which is handed to them upon admission to the centre. Accessible in English, Arabic, Chechen, French, Georgian, Polish, Ukrainian and Russian, available at: <http://udsc.gov.pl/uchodzczy-2/pomoc-socjalna/informatory-do-pobrania/pierwsze-kroki-w-polsce/>

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. In the reception centre in Biała Podlaska new-coming asylum seekers also participate in a course on basic information about Poland.<sup>189</sup>

It is not envisaged in the legislation into which languages the rules of stay in the centre, information about the rights and the obligations and on regulations governing the provision of assistance for asylum seekers should be translated. It states that information has to be accessible "in an understandable language". The rules of stay in the centre and above-mentioned information are translated in practice into English, Russian, Arabic, French, Georgian, Chechen and Ukrainian.<sup>190</sup>

## 9. Freedom of movement

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 should be withheld by law until the moment of their return.<sup>191</sup> Asylum seekers should inform the director of the centre if they want to leave for a longer period and then the assistance will still be granted.<sup>192</sup>

The Office for Foreigners decides in which reception centre asylum seekers will be allocated. Decisions are made taking into consideration family ties (asylum seeker should be allocated in the same centre than their family), vulnerability (e.g. asylum seekers with special needs can be allocated only in the centres which are adapted to their needs), continuation of medical treatment (when it cannot be continued in other premises), safety of the asylum seeker and capacity of the centres, Asylum seekers can also apply to be allocated in a centre of their choice, but such a request has to be justified. In March 2014 a group of Ukrainians complained about the conditions in the reception centre in Podkowa Lesna – Debak and as a result were moved to another one in Lukow.<sup>193</sup> The possibility for nuclear families to stay in a same centre is not a problem in practice.<sup>194</sup>

Under the law an asylum seeker staying in one centre can be required to move to another facility if this is justified for organizational reasons.<sup>195</sup> Polish authorities in practice interpret such rule as applying only to transfers from first-reception centres to an accommodation centre.<sup>196</sup> As a result asylum seekers are forced to move only from a first reception centre to the other centres. Afterwards if they are allocated in one centre they are very rarely moved to another. If so, it happens only upon request of the asylum seeker. There is no decision concerning transfers from one centre to the other so it cannot be appealed.

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<sup>189</sup> Information obtained in Department for Social Assistance, Office For Foreigners, 7.02.2013 and 8.01.2014.

<sup>190</sup> Information obtained in Department for Social Assistance, Office For Foreigners, 7.02.2013, 25.03.2014 and 25.01.2015.

<sup>191</sup> Article 77 on the Law on Protection.

<sup>192</sup> Information received from UNHCR National Office Poland and Office for Foreigners, Department for Social Assistance (25.03.2014)

<sup>193</sup> Polskie Radio, "[Bруд i smród" - uchodźcy z Ukrainy skarżą się na warunki w polskim ośrodku](#)" ("Dirty and stinky" - refugees from Ukraine complain about the conditions in a Polish reception centre), 27 March 2014

<sup>194</sup> Information obtained from the Department for Social Assistance, Office For Foreigners, 25.03.2014, also European Migration Network, The Organisation of Reception Facilities for Asylum Seekers in different Member States. National Contribution of Poland, 2013, available at: [http://ec.europa.eu/dgs/home-affairs/what-we-do/networks/european\\_migration\\_network/reports/docs/emn-studies/20a.poland\\_national\\_report\\_reception\\_facilities\\_september2013\\_en\\_final\\_en.pdf](http://ec.europa.eu/dgs/home-affairs/what-we-do/networks/european_migration_network/reports/docs/emn-studies/20a.poland_national_report_reception_facilities_september2013_en_final_en.pdf) (EN) p. 6.

<sup>195</sup> Article 82 section 1 point 6 on the Law on Protection.

<sup>196</sup> European Migration Network, The Organisation of Reception Facilities for Asylum Seekers in different Member States. National Contribution of Poland, 2013, available at: [http://ec.europa.eu/dgs/home-affairs/what-we-do/networks/european\\_migration\\_network/reports/docs/emn-studies/20a.poland\\_national\\_report\\_reception\\_facilities\\_september2013\\_en\\_final\\_en.pdf](http://ec.europa.eu/dgs/home-affairs/what-we-do/networks/european_migration_network/reports/docs/emn-studies/20a.poland_national_report_reception_facilities_september2013_en_final_en.pdf) (EN) p. 19.

Reasons of public interest and public order do not have any impact on the decision on asylum seeker's place of stay.<sup>197</sup>

## B. Employment and education

### 1. Access to the labour market

#### Indicators:

- Does the legislation allow for access to the labour market for asylum seekers?  Yes  No
- If applicable, what is the time limit after which asylum seekers can access the labour market: 6 months
- Are there restrictions to access employment in practice?  Yes  No

The legislation allows for access to the labour market for asylum seekers after six months from the date of submission of an asylum application if a first instance decision has not been given within this time, and if the procedure was prolonged for reasons beyond the asylum seeker's control. 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>198</sup>. The certificate is valid during the appeal procedure (first appeal only), when it was issued during the first instance procedure.

Access to employment is not limited to certain sectors, but can be problematic in practice. Many employers do not know, that the above mentioned certificate with a temporary ID document gives an asylum seeker a right to work or do not want to employ a person for such a short time (i.e. 6 months, as the employers are unaware that the procedure will actually take longer than the validity of a single ID). Secondly asylum seekers often live in centres which are located far away from big cities, which makes it difficult in practice to find a job. Moreover most asylum seekers do not know Polish well enough to get a job in Poland.<sup>199</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 leading to disaccustoming them from independent functioning and getting dependent on social assistance.<sup>200</sup>

There is no access to vocational training for asylum seekers provided under the law. The only educational activities that adults have access to are courses of Polish language organised in all centres except the reception centre in Biała Podlaska, where asylum seekers mostly stay for a couple of weeks. The course's level is considered insufficient by some NGOs<sup>201</sup>. There are some initiatives of NGOs, organising

<sup>197</sup> Information obtained from the Department for Social Assistance, Office For Foreigners, 25.03.2014. See also Rzecznik Praw Obywatelskich, (Polish Ombudsman), [Realizacja prawa małoletnich cudzoziemców do edukacji. Raport RPO \(Implementation of the right to education for foreign minors. Polish Ombudsman report\)](#), 2013, p. 38.

<sup>198</sup> Article 36 of the Law on Protection.

<sup>199</sup> M. Abdouvakhabova, [Problemy cudzoziemców w Polsce w świetle funkcjonowania Fundacji Ocalenie \(The problems of the foreigners in Poland in light of functioning of the Ocalenie Foundation\)](#), in M. Duszczyk, P. Dąbrowski, ed., [Przestrzeganie praw cudzoziemców w Polsce. Monografia \(Respect for the rights of foreigners in Poland. Monograph\)](#), Rzecznik Praw Obywatelskich, 2012, p. 46.

<sup>200</sup> 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 \(Where is my home? Homelessness and access to housing among asylum seekers, refugees and persons granted international protection in Poland\)](#), UNHCR, 2013, available at: <http://www.unhcr-centraleurope.org/pl/pdf/corobimy/promowanie-integracji/bezdomnosc-uchodzcow-w-polsce-2012.html> (PL) p. 14.

<sup>201</sup> M. Abdouvakhabova, [Problemy cudzoziemców w Polsce w świetle funkcjonowania Fundacji Ocalenie \(The problems of the foreigners in Poland in light of functioning of the Ocalenie Foundation\)](#), in M. Duszczyk, P. Dąbrowski, ed., [Przestrzeganie praw cudzoziemców w Polsce. Monografia \(Respect for the rights of foreigners in Poland. Monograph\)](#), Rzecznik Praw Obywatelskich, 2012, p. 45. The Office for Foreigners claims that asylum seekers are generally not interested in Polish language lessons. Those asylum seekers who participate in classes

other courses in the centres, including vocational training. These courses are sometimes publicly funded to a certain extent<sup>202</sup>.

## 2. Access to education

### Indicators:

- Does the legislation provide for access to education for asylum seeking children?  Yes  No
- Are children able to access education in practice?  Yes  No

All the children staying in Poland have a constitutional right to education. Education is mandatory until the age of 18. It is provided to asylum-seeking children in regular schools and it is not limited by law. Monitoring took place by the Polish Ombudsman in 2011/2013 and it was determined that in most of the centres all children were attending schools regularly. Only in four centres some children were not attending school (mostly because they were admitted to the centre at the end of a school year or they were still waiting to be enrolled to the school)<sup>203</sup>.

There are different obstacles in practice for asylum seeking children to access education. The biggest problem is a language and cultural barrier. Children do not know Polish, but they are obliged to participate in classes in Polish. However, in all centres except the reception centre in Biała Podlaska (where asylum seekers stay about 2-3 weeks), there are courses of Polish language for children being organised<sup>204</sup> and social assistance includes providing children with basic supplies necessary for learning Polish<sup>205</sup>. In one centre in 2011/2012 children were first attending a Polish language course for a couple of weeks and only after were enrolled in the regular school.<sup>206</sup>

Moreover, children are entitled to additional, free Polish language classes, which should be organised by the authority managing the school, to which asylum seekers are attending.<sup>207</sup> Children can also participate in additional lessons on other subjects if their education level is different from this of the class. Both forms of assistance can be granted for a maximum of 12 months.<sup>208</sup> Preparatory lessons and additional Polish language classes can last for a maximum of 5 hours per week for one child. In practice, schools organise 2-10 hours of additional Polish language lessons per week. In some schools they are not organised at all.<sup>209</sup> Children have also a right to assistance of a person who knows the language of their country of origin, which can be employed as a teacher's assistant by the director of the school. This

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are assessing them positively (based on Department for Social Assistance in Office for Foreigners' own research).

<sup>202</sup> Information obtained from the Department for Social Assistance, Office For Foreigners, 7.02.2013. See also European Migration Network, *The Organisation of Reception Facilities for Asylum Seekers in different Member States. National Contribution of Poland*, 2013, available at: [http://ec.europa.eu/dgs/home-affairs/what-we-do/networks/european\\_migration\\_network/reports/docs/emn-studies/20a.poland\\_national\\_report\\_reception\\_facilities\\_september2013\\_en\\_final\\_en.pdf](http://ec.europa.eu/dgs/home-affairs/what-we-do/networks/european_migration_network/reports/docs/emn-studies/20a.poland_national_report_reception_facilities_september2013_en_final_en.pdf) (EN) p. 40.

<sup>203</sup> Rzecznik Praw Obywatelskich, (Polish Ombudsman), *Realizacja prawa małoletnich cudzoziemców do edukacji. Raport RPO (PL) (Implementation of the right to education for foreign minors. Polish Ombudsman report)*, 2013, p. 22-23.

<sup>204</sup> Information obtained in the Department for Social Assistance, Office For Foreigners, 7.02.2013 and 25.03.2014.

<sup>205</sup> Article 71 section 1 point 1f of the Law on protection.

<sup>206</sup> Rzecznik Praw Obywatelskich, (Polish Ombudsman), *Realizacja prawa małoletnich cudzoziemców do edukacji. Raport RPO (PL) (Implementation of the right to education for foreign minors. Polish Ombudsman report)*, 2013, p. 23.

<sup>207</sup> Article 94a section 4 of the *Law of 7 September 1991 on the education system*, Journal of Laws 2004 no 256 position 2572, (Ustawa z dnia 7 września 1991 r. o systemie oświaty, Dz. U. 2004 nr 256 poz. 2572).

<sup>208</sup> Article 94a section 4a and section 4c of the Law of 7 September 1991 on the education system

<sup>209</sup> Rzecznik Praw Obywatelskich, (Polish Ombudsman), *Realizacja prawa małoletnich cudzoziemców do edukacji. Raport RPO (PL) (Implementation of the right to education for foreign minors. Polish Ombudsman report)*, 2013, p. 32.

help is limited to a maximum of 12 months. During the Polish ombudsman monitoring held in 2011/2012, only six schools (from 16 schools visited) employed such “cultural assistant”.<sup>210</sup>

The above mentioned measures are not considered sufficient by the teachers and directors of the schools concerned. In, particular they criticise the limitation to 5 hours of preparatory and additional Polish language lessons per week, as their practice showed the additional classes should take at least 6 hours per week. NGOs criticise the automatic limitation of the duration of provision of additional assistance to 12 months, as it should be adjusted individually<sup>211</sup>. In some schools, additional Polish language lessons are organised, but it often happens that the teachers have not received training in teaching Polish as a second language, nor have experience in working in a multicultural environment.<sup>212</sup> During the Polish ombudsman monitoring held in 2011/2012, these classes were taught by teachers trained to learn Polish language as a second language only in 4 schools.<sup>213</sup>

Asylum seekers benefit from education in public secondary schools under the same conditions as Polish citizens until the age of 18 or completion of the secondary school.<sup>214</sup> Currently all children in Poland (Polish and foreign) have a problem with pre-school learning – there is not enough places for them in public kindergartens, so it is difficult to enrol a child there.<sup>215</sup> As a result in most of the centres some form of kindergarten is organised (by the foreigners themselves or by NGOs).<sup>216</sup>

If the child cannot enter the regular education system (e.g. because of illness) their special needs are being addressed by the Office for Foreigners, e.g. by placing a child in special school, or by NGOs (there was a case when one NGO gave lessons for disabled foreigners in the centre).<sup>217</sup>

There is no access to vocational training for asylum seekers provided under the law. The only educational activities, that adults have access to, are courses of Polish language organised in all centres except the reception centre in Biała Podlaska, where asylum seekers mostly stay for a couple of weeks. The course’s level is considered insufficient by some NGOs.<sup>218</sup> There are some initiatives of NGOs, organising other courses in the centres, including vocational training. These courses are sometimes publicly funded to a certain extent.<sup>219</sup>

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<sup>210</sup> Rzecznik Praw Obywatelskich (Polish Ombudsman), [Realizacja prawa małoletnich cudzoziemców do edukacji. Raport RPO \(PL\) \(Implementation of the right to education for foreign minors. Polish Ombudsman report\)](#), 2013, p. 32-33.

<sup>211</sup> W. Klaus, [Prawo do edukacji cudzoziemców w Polsce \(Foreigners’ right to education in Poland\)](#), Stowarzyszenie Interwencji Prawnej, 2011, p. 8.

<sup>212</sup> A. Kosowicz, [Access to Quality Education by Asylum-Seeking and Refugee Children. Poland Country Report, Situational Analysis](#), Polskie Forum Migracyjne, 2007, p. 3.

<sup>213</sup> Rzecznik Praw Obywatelskich (Polish Ombudsman), [Realizacja prawa małoletnich cudzoziemców do edukacji. Raport RPO \(Implementation of the right to education for foreign minors. Polish Ombudsman report\)](#), 2013, p. 32.

<sup>214</sup> Article 94a section 1a of the Law of 7 September 1991 on the education system, Journal of Laws 2004 no 256 position 2572, (Ustawa z dnia 7 września 1991 r. o systemie oświaty, Dz. U. 2004 nr 256 poz. 2572).

<sup>215</sup> Information obtained from the Department for Social Assistance, Office for Foreigners, 25.03.2014.

<sup>216</sup> Rzecznik Praw Obywatelskich (Polish Ombudsman), [Realizacja prawa małoletnich cudzoziemców do edukacji. Raport RPO \(Implementation of the right to education for foreign minors. Polish Ombudsman report\)](#), 2013, p. 23.

<sup>217</sup> Information obtained from the Department for Social Assistance, Office for Foreigners, 25.03.2014.

<sup>218</sup> M. Abdoulvakhabova, *Problemy cudzoziemców w Polsce w świetle funkcjonowania Fundacji Ocalenie (The problems of the foreigners in Poland in light of functioning of the Ocalenie Foundation)*, in M. Duszczyk, P. Dąbrowski, ed., [Przestrzeganie praw cudzoziemców w Polsce. Monografia \(Respect for the rights of foreigners in Poland. Monograph\)](#), Rzecznik Praw Obywatelskich, 2012, p. 45. Office for Foreigners claims that asylum seekers are generally not interested in Polish language lessons. Those asylum seekers who participate in classes are assessing them positively (based on Department for Social Assistance in Office for Foreigners’ own research).

<sup>219</sup> Information obtained in the Department for Social Assistance, Office For Foreigners, 7.02.2013, also European Migration Network, *The Organisation of Reception Facilities for Asylum Seekers in different Member States. National Contribution of Poland*, 2013, available at: [http://ec.europa.eu/dgs/home-affairs/what-we-do/networks/european\\_migration\\_network/reports/docs/emn-studies/20a.poland\\_national\\_report\\_reception\\_facilities\\_september2013\\_en\\_final\\_en.pdf](http://ec.europa.eu/dgs/home-affairs/what-we-do/networks/european_migration_network/reports/docs/emn-studies/20a.poland_national_report_reception_facilities_september2013_en_final_en.pdf) (EN), p. 40.

## C. Health care

### Indicators:

- Is access to emergency health care for asylum seekers guaranteed in national legislation?  
 Yes       No
- In practice, do asylum seekers have adequate access to health care?  
 Yes       with limitations       No
- Is specialised treatment for victims of torture or traumatised asylum seekers available in practice?  
 Yes       Yes, to a limited extent       No
- If material reception conditions are reduced/ withdrawn are asylum seekers still given access to health care?  Yes       No       with limitations

Access to health care for asylum seekers is guaranteed in the national legislation to the same extent as for Polish nationals, who have health insurance. Health care for asylum seekers is publicly funded. Basic health care is organised in medical offices within each of the reception centres. Moreover, asylum seekers can benefit from medical assistance granted in institutions contracted by the Central Clinical Hospital of the Ministry of Interior, with whom the Office for Foreigners has signed an agreement to coordinate medical care for asylum seekers.<sup>220</sup>

Health care for asylum seekers includes treatment for persons suffering from mental health problems. Currently, psychologists work in all the centres.<sup>221</sup> Their help is limited though to basic consultations.<sup>222</sup> Asylum seekers can also be directed to a psychiatrist or a psychiatric hospital. According to some experts, specialised treatment for victims of torture or traumatised asylum seekers is not available in practice.<sup>223</sup>

The biggest obstacle in accessing health care that asylum seekers face is the lack of knowledge of foreign languages among doctors and nurses.<sup>224</sup> Polish authorities do not provide interpretation free of

<sup>220</sup> K. Maśliński, *Prawne regulacje w zakresie dostępu do ochrony zdrowia nieudokumentowanych migrantów i cudzoziemców ubiegających się o ochronę międzynarodową w Polsce (Legal regulations on access to health care of undocumented migrants and foreigners seeking international protection in Poland)*, in A. Chrzanowska, W. Klaus, ed., *Poza systemem. Dostęp do ochrony zdrowia nieudokumentowanych migrantów i cudzoziemców ubiegających się o ochronę międzynarodową w Polsce (Outside the system. Access to health care of undocumented migrants and foreigners seeking international protection in Poland)*, Stowarzyszenie Interwencji Prawnej, 2011, p. 30.

<sup>221</sup> Information obtained from Department for Social Assistance, Office For Foreigners, 25.03.2014. See also also European Migration Network, *The Organisation of Reception Facilities for Asylum Seekers in different Member States. National Contribution of Poland*, 2013, available at: [http://ec.europa.eu/dgs/home-affairs/what-we-do/networks/european\\_migration\\_network/reports/docs/emn-studies/20a.poland\\_national\\_report\\_reception\\_facilities\\_september2013\\_en\\_final\\_en.pdf](http://ec.europa.eu/dgs/home-affairs/what-we-do/networks/european_migration_network/reports/docs/emn-studies/20a.poland_national_report_reception_facilities_september2013_en_final_en.pdf) (EN) p. 39.

<sup>222</sup> The Office for Foreigners claims that those psychologists' assistance concentrates on psychological support and counseling and also on diagnosis of mental disorders, including PTSD.

<sup>223</sup> M. Książak, *Dostęp do pomocy medycznej i psychologicznej osób ubiegających się o status uchodźcy w Polsce (Access to medical and psychological care of asylum seekers in Poland)*, in A. Chrzanowska, W. Klaus, *Poza systemem. Dostęp do ochrony zdrowia nieudokumentowanych migrantów i cudzoziemców ubiegających się o ochronę międzynarodową w Polsce (Outside the system. Access to health care of undocumented migrants and foreigners seeking international protection in Poland)*, Stowarzyszenie Interwencji Prawnej, 2011, p. 180-182. This opinion is contested by the Office for Foreigners, claiming that psychological diagnosis and diagnosis of PTSD are provided to asylum seekers.

<sup>224</sup> M. Książak, *Dostęp do pomocy medycznej i psychologicznej osób ubiegających się o status uchodźcy w Polsce (Access to medical and psychological care of asylum seekers in Poland)*, in A. Chrzanowska, W. Klaus, *Poza systemem. Dostęp do ochrony zdrowia nieudokumentowanych migrantów i cudzoziemców ubiegających się o ochronę międzynarodową w Polsce (Outside the system. Access to health care of undocumented migrants and foreigners seeking international protection in Poland)*, Stowarzyszenie Interwencji Prawnej, 2011, p. 174-176.

charge and most of the asylum seekers are not able to pay for such assistance on their own. The second problem is the fact that some of the clinics and hospitals, that signed an agreement with the Office for Foreigners, are situated far away from the centres, so an asylum seeker cannot be assisted by the closest medical facility (except for emergency situations).<sup>225</sup> Another problem identified by the experts is a lack of intercultural competence among doctors.<sup>226</sup>

From 1<sup>st</sup> January 2012, the Ministry of Interior has a possibility to reduce the medical care granted to asylum seekers to basic health care in case of a substantial influx of asylum seekers, if the limit of expenses allocated for this assistance per year (PLN 100.000.000) may be exceeded or if the amount budgeted for a certain period of time expenses is exceeded by at least 10%.<sup>227</sup> The Ministry has not used this opportunity yet. The term substantial influx is not further defined in the legislation.

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

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Office For Foreigners argues that all the doctors working in the centres know English and Russian and the nurses working there know mainly Russian.

<sup>225</sup> N. Kłerek, *Ochrona zdrowia nieudokumentowanych migrantów i osób ubiegających się o ochronę międzynarodową w opinii cudzoziemców (Healthcare of the undocumented migrants and persons seeking international protection in the opinion of foreigners)*, in A. Chrzanowska, W. Klaus, ed., [Poza systemem. Dostęp do ochrony zdrowia nieudokumentowanych migrantów i cudzoziemców ubiegających się o ochronę międzynarodową w Polsce](#) (*Outside the system. Access to health care of undocumented migrants and foreigners seeking international protection in Poland*), Stowarzyszenie Interwencji Prawnej, 2011, p. 93-94.

<sup>226</sup> H. Grzymała-Moszczyńska, *Uchodźcy jako wyzwanie dla polskiego systemu opieki zdrowotnej (Refugees as a challenge for the Polish health care system)*, in A. Chrzanowska, W. Klaus, [Poza systemem. Dostęp do ochrony zdrowia nieudokumentowanych migrantów i cudzoziemców ubiegających się o ochronę międzynarodową w Polsce](#) (*Outside the system. Access to health care of undocumented migrants and foreigners seeking international protection in Poland*), Stowarzyszenie Interwencji Prawnej, 2011, p. 143.

<sup>227</sup> Article 19 of the Law of 28 July 2011 on the legalization of the stay of certain foreigners on Polish territory (*Ustawa z dnia 28 lipca 2011 r. o zalegalizowaniu pobytu niektórych cudzoziemców na terytorium Rzeczypospolitej Polskiej oraz o zmianie ustawy o udzielaniu cudzoziemcom ochrony na terytorium Rzeczypospolitej Polskiej i ustawy o cudzoziemcach*, Dz. U. 2011 nr 191 poz. 1133)

### D. General

#### Indicators:

- Total number of asylum seekers detained in the previous year (including those detained in the course of the asylum procedure and those who applied for asylum from detention) 1119 (data for 2013)
- Number of asylum seekers detained or an estimation at the end of the previous year: not available
- Number of detention centres: 6 guarded centres
- Total capacity: not available

There are two types of detention centres in Poland: six guarded centres for foreigners<sup>228</sup> and – more rigorous – two detention centres for the purpose of expulsion (in Białystok and Przemyśl).<sup>229</sup> The name of the latter was changed in the new law which entered into force on 1 May 2014 to simply “detention centre for foreigners”, but in the report the previous name will be used for the purpose of clear distinction between the two. Both centres are used to detain asylum seekers and foreigners subject to return procedures. In 2013, 1119 foreigners were detained in relation with the asylum procedure, out of which 799 actually applied for asylum before entering detention.<sup>230</sup> Given that 15 177 persons applied for asylum in Poland in 2013, it cannot be said that the majority of asylum seekers in Poland are detained. However, what is worth noting, many of the detainees are children. In the early 2014, when the NGO monitoring of the detention centres was conducted, there were 347 persons in all the detention centres – out of which 84 were children, which is almost one fourth of all the detainees.<sup>231</sup>

No data was made available by the Border Guards for the legal grounds for detention. Generally it can be said that it depends on the particular centre – e.g. the majority of asylum seekers placed in detention in Ketrzyn are those returned to Poland within the Dublin proceedings. In this case, the basis is irregular border crossing while leaving Poland. There were no cases of overcrowding in detention centres.<sup>232</sup>

<sup>228</sup> Detention centres are situated in: Biała Podlaska, Białystok, Lesznowola, Kętrzyn, Krosno Odrzańskie and Przemyśl.

<sup>229</sup> Order no 72 of the Ministry of Interior of 28 November 2012 on the designation of areas in which the arrest for the purpose of expulsion is executed, available [here](#) (Zarządzenie nr 72 Ministra Spraw Wewnętrznych z dnia 28 listopada 2012 r. w sprawie wyznaczenia pomieszczeń, w których jest wykonywany areszt w celu wydalenia). Until mid-December 2012 there were 5 detention centres for the purpose of expulsion.

<sup>230</sup> Data collected during monitoring of the detention centres in January-February 2013..

<sup>231</sup> J.Białas, W.Klaus, (Ed) *Wciąż za kratami. Raport z monitoringu strzeżonych ośrodków dla cudzoziemców przeprowadzonego przez Helsińską Fundację Praw Człowieka i Stowarzyszenie Interwencji Prawnej*, (Still behind the bars. Report from the monitoring of the guarded centres for foreigners conducted by the Helsinki Foundation for Human Rights and Legal Intervention Association, 2014, p.10-11 , available in Polish [http://www.hfhr.pl/wp-content/uploads/2014/05/HFPC\\_SIP\\_raport\\_wciaz\\_za\\_kratami.pdf](http://www.hfhr.pl/wp-content/uploads/2014/05/HFPC_SIP_raport_wciaz_za_kratami.pdf)

<sup>232</sup> Letter from the Border Guard KG-OI-124/III/13 from 8 February 2013.

## E. Grounds for detention

### Indicators:

- In practice, are most asylum seekers detained
  - o on the territory:  Yes  No
  - o at the border:  Yes  No
- Are asylum seekers detained in practice during the Dublin procedure?  
 Frequently  Rarely  Never
- Are asylum seekers detained during a regular procedure in practice?  
 Frequently  Rarely  Never
- Are unaccompanied asylum-seeking children detained in practice?  
 Frequently  Rarely  Never
  - o If frequently or rarely, are they only detained in border/transit zones?  
 Yes  No
- Are asylum seeking children in families detained in practice?  
 Frequently  Rarely  Never
- What is the maximum detention period set in the legislation (inc extensions): 12 months (for both asylum and return procedures counted together), from 1 May 2014 it is maximum 6 months for asylum seekers and 18 months for failed asylum seekers and other migrants in return procedures. In practice, how long on average are asylum seekers detained? Not available

Under the law, asylum seekers shall not be placed in a detention centre unless it is necessary to:

- 1) establish their identity;
- 2) prevent them from abusing the asylum procedure;
- 3) prevent them from constituting a threat to other people safety, health, life or property;
- 4) protect the defence or safety of the state or public order and safety.

Moreover asylum seekers can be placed in detention, if:

- 1) they illegally crossed or attempted to cross the border, unless:
  - a) they are so called “directly arriving” (i.e. arrived from the territory where they could be subject to persecutions/serious harm) and ,
  - b) they submit an application for granting refugee status immediately and
  - c) they explain the reasons of illegal entry;
- 2) their behaviour (or behaviour of the person on whose behalf the application is submitted) poses a threat to safety, health or life of other foreigners staying in the reception centre or for employees of the reception centre.<sup>233</sup>

An asylum seeker can be placed in a more rigorous detention centre for the purpose of expulsion only if it is necessary for the reasons of defence or safety of the state or public order and safety.

According to the law, asylum seekers, whose psychophysical state leads to believe that they are victims of violence or have a disability, are not placed in detention centres, unless their behaviour poses a threat to safety, life or health of other foreigners staying in the reception centre or employees of the reception centre.<sup>234</sup> In practice it happens that those vulnerable asylum seekers are detained in any other

<sup>233</sup> Article 87 of the Law on Protection.

<sup>234</sup> Article 88 section 3 point 2 of the Law on Protection.

circumstances, even when they were diagnosed as having mental problems as a result of past events.<sup>235</sup> Polish legislation does not include any provisions concerning effective methods of identification of these groups of foreigners. There is no definition of a “vulnerable person” in law or in any policy documents. Even if the personnel in the detention centre would consider an asylum seeker as a vulnerable one, there are no procedures or instructions about what should be done. As a result, in practice, victims of violence are placed in the guarded centres. Only in January – April 2013 there were 85 vulnerable asylum seekers in detention centres.<sup>236</sup>

Apart from the provisions on vulnerable asylum seekers, generally no detention of a foreigner should be ordered by a judge if it may cause a serious threat to their life or health.<sup>237</sup> However, as the experience of some NGO lawyers<sup>238</sup> show, the physical rather than the psychological condition is taken into account by the judges. Analysis of the justifications of the courts’ rulings concerning detention leads to the conclusion that in a large number of cases mental health is not considered by judges or there is no reference to the health of the foreigner at all<sup>239</sup>.

In 2013 there was a family transferred from Germany to Poland on the basis of the Dublin Regulation. In Germany the man was diagnosed with post-traumatic stress disorder (PTSD) and had a rich supporting documentation, preceded by a clinical examination. The family was placed in the detention centre in Ketrzyn on 28 November 2013.<sup>240</sup> Although in the appeal the lawyer mentioned the father’s PTSD and presented the medical documentation, the father was not released. A motion for release from 3 January 2014 also did not succeed. On 22 January 2014 their detention was prolonged.<sup>241</sup> The psychiatrist in Ketrzyn did not confirm the diagnosis for PTSD. Moreover, the family was issued a negative decision of the second instance very promptly.<sup>242</sup> The decision was delivered to the applicants on Friday 14 February 2014 and they were deported on Monday 17 February 2014, on the day on which the lawyer received the decision.<sup>243</sup>

According to the law, unaccompanied asylum-seeking children should not be detained, 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.

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

Asylum-seeking children who are with the members of their family can be placed in detention centres together with accompanying adults.<sup>244</sup> In 2011 a coalition of Polish NGOs started a public campaign to stop the detention of children in Poland.<sup>245</sup> The Polish Ombudsman (*Rzecznik Praw Obywatelskich*) also

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<sup>235</sup> T. A. Dębowczyk, J. Oleszkowicz, [Praktyka sądowa stosowania detencji cudzoziemców w Polsce](#) (*The jurisprudence of the use of foreigners’ detention in Poland*) in T.Sieniow ed., *Stosowanie detencji wobec cudzoziemców. Raport z monitoringu i rekomendacje* (*The use of foreigners’ detention. Monitoring Report and Recommendations*), Fundacja Instytut na rzecz Państwa Prawa, 2013, p. 38.

<sup>236</sup> Centrum Pomocy Prawnej im. Haliny Niec [Halina Niec Legal Aid Centre] [Cudzoziemcy szczególnej troski w Polsce: identyfikacja, detencja, orzecznictwo. Analiza 2012-2013](#) [Vulnerable foreigners in Poland: identification, detention, jurisprudence. Analysis 2012-2013], p. 21

<sup>237</sup> Article 400 point 1 of the Law on Foreigners.

<sup>238</sup> i.a. from the Legal Intervention Association (*Stowarzyszenie Interwencji Prawnej*)

<sup>239</sup> T. A. Dębowczyk, J. Oleszkowicz, op. cit., p. 35.

<sup>240</sup> ruling of the District Court for Szczecin Prawobrzeże Zachód, no VI Ko/Cu 64/13

<sup>241</sup> ruling of the District Court in Ketrzyn, no II Ko 176/14

<sup>242</sup> The decision of the Head of the Office for Foreigners was issued on 17 January 2014, while the decision of the Refugee Board, after appeal – on 11 February 2014.

<sup>243</sup> Information obtained from lawyers of the Helsinki Foundation for Human Rights

<sup>244</sup> Although it happens in practice that some members of the family are placed in the reception centre and some in the detention - T. Sieniow, *Wnioski z monitoringu wraz z rekomendacjami* (*Conclusions from monitoring with recommendations*) in T.Sieniow ed., op. cit., p. 50, 59.

<sup>245</sup> Information about a coalition of NGOs against the detention of child migrants, available [here](#)

got involved in the matter and made numerous interventions to the Ministry of Interior.<sup>246</sup> The Ministry of Interior declared at the end of 2012 that their priority was to reduce to the minimum the period during which children are detained and to further adjust the detention conditions in the two guarded centres so that they are more suitable for children, but the Ministry will not introduce a general legal ban on the detention of children.<sup>247</sup> NGOs continue to advocate for the general ban on detention of children in 2015, as the law is being amended to transpose the Procedures and Reception Directives.

Asylum seekers are not automatically detained on the territory of Poland or at the Polish border. Although in some cases foreigners asking for asylum at a border were detained in order to prevent them from abusing the asylum procedure (also in case of first-time applicants).<sup>248</sup> According to an NGO report, in 2012 1% of the applicants who asked for refugee status at the Polish border in Terespol were detained on the basis of the abuse of the asylum procedure, upon the request of the Head of the Office for Foreigners<sup>249</sup>. In 2013 there were 640 cases in which the Head of the Office requested detention because of a risk of abuse of the asylum procedure. According to the Office for Foreigners, the risk of abusing the asylum procedure arises when:

- a foreigner lodges a subsequent asylum application and brings up the same reasons for their new claim as were pointed out in the previous one
- a foreigner lodges an asylum application only to avoid return (e.g. from a detention centre)
- a foreigner lodges an asylum application in order to enter the territory, after receiving a few refusals of entry at the border.

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

Detention is possible (in law and in practice) in all asylum procedures (admissibility/accelerated/ Dublin procedure, especially in the case of illegally crossing the border and being transferred back.

There was a case of an asylum seeker being detained even during the first appeal procedure (even though she stayed legally on the territory of Poland). She was detained during the appeal procedure, because her appeal, although lodged within the time-limits, was not entered into the registration system in a timely fashion. As a result she was mistakenly considered as an irregular migrant. Even though it was a mistake, neither the second instance court, nor the Head of the Office for Foreigners agreed to release her from the detention centre. She was only released after being granted a tolerated stay permit (which was granted within the asylum procedure until 1 May 2014). She spent more than 5 months in the detention centre. Helsinki Foundation for Human Rights (HFHR) lawyers lodged a complaint to the European Court of Human Rights on her behalf.<sup>250</sup> In September 2013 the Polish Government was informed about the complaint (application number 78244/11).<sup>251</sup> In February 2014 the government offered to settle the case and pay the amount requested by the applicant.

Until 1 May 2014, there was only one alternative to detention provided under Polish law<sup>252</sup>. An asylum seeker (or a person on whose behalf application for asylum was made) may be ordered, by means of the decision rendered by the Head of the Office for Foreigners, to stay in a specified place, which they cannot leave without permission. An asylum seeker may also be required to report to the authority indicated in the decision at specified intervals of time. The above mentioned decision can be issued if:

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<sup>246</sup> More information: Biuletyn Rzecznika Praw Obywatelskich nr 11, Warszawa 2012, available [here](#)

<sup>247</sup> Ministry of Interior's statement available [here](#)

<sup>248</sup> , See T. Sieniow, op.cit. p. 57.

<sup>249</sup> T.Sieniow, op. cit. p. 57.

<sup>250</sup> J. Białas, *Sprawa D.D. (D.D. Case)*, Kwartalnik o prawach człowieka Helsińskiej Fundacji Praw Człowieka, no. 1, Warszawa 2012.

<sup>251</sup> Letter to HFHR from the European Court on Human Rights from 13.09.2013.

<sup>252</sup> Article 89c of the Law on Protection.

1. an asylum seeker has not been placed in the guarded centre or in the detention centre for the purpose of expulsion because it could cause a serious threat to their life or health or
2. an asylum seeker was released from the guarded centre on the basis of the Head of the Office for Foreigners' decision issued because the evidence of the case indicated that the asylum seeker meets the conditions for being recognised as a refugee or for being granted subsidiary protection.

The problem with this measure is that detention is a measure "of first resort" and only if deemed impossible, above mentioned alternative can be applied instead. Moreover it was not used in practice in 2012.<sup>253</sup>

It is important to bear in mind that the Law on Foreigners, applicable since 1 May 2014, introduces alternatives to detention both for asylum seekers and returnees. In the case of asylum seekers, these include an obligation to report, bail options, the obligation to stay in a designated place. Alternatives can be applied by the Border Guard which apprehended the asylum seeker concerned or by the court (after the Border Guard decided not to apply alternatives and submitted a motion for detention to the court). The law does not explicitly require a proof that alternatives to detention cannot be effectively applied before asylum seekers can be detained. There is no statistical information about the practical use of alternatives in asylum seeker's detention cases.

The decision to detain an asylum seeker is issued for a period of 30 to 60 days by a court, upon the motion of the Border Guard. If a negative decision issued by the first instance authority is delivered to the asylum seeker prior to the expiry of the above mentioned period, the period of stay in the detention centre may be extended for a specified period of time, necessary to issue a final decision or execute a return decision.

Until 1 May 2014, the period of stay in the guarded centre or in the detention centre for the purpose of expulsion could not exceed one year.<sup>254</sup> This was the total time-limit of detention for all migration-related purposes, regardless of the proceedings a third country national was subject to. There was one case reported where the maximum detention time limit was exceeded. In 2012, one asylum seeker was detained for 398 days. The Border Guard claims that this extension was due to the fact that they did not know the duration for which the person had stayed in another guarded centre when transferred to a new detention centre. The Border Guard claims that the foreigner was released straight away after they received official information that the allowable period of his detention has been exceeded.<sup>255</sup> As the monitoring of the detention centres for 2013 showed, there was also a case of exceeding the maximum detention period.<sup>256</sup>

From 1 May 2014 the maximum detention period for asylum seekers is 6 months. For failed asylum seekers and other migrants in return procedures it is 12 months, but detention can be prolonged for another 6 months if the person concerned submits a complaint to the administrative court against a return decision.<sup>257</sup>

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<sup>253</sup> Letters from the Head of the Office For Foreigners BWM-08-502/2012/AWJ from 1 August 2012 and BWM-08-03/2013/RW from 10 January 2013.

<sup>254</sup> Article 89 of the Law on Protection.

<sup>255</sup> W. Klaus, K. Rusiłowicz, ed., *Migracja to nie zbrodnia. Raport z monitoringu strzeżonych ośrodków dla cudzoziemców (Migration Is Not a Crime. Report on the Monitoring of Guarded Centres for Foreigners)*, Stowarzyszenie Interwencji Prawnej, Helsińska Fundacja Praw Człowieka, 2012, p. 10, available [here \(in Polish\)](#) [and here in English](#)

<sup>256</sup> J.Białas, W.Klaus, (Ed) [Wciąż za kratami. Raport z monitoringu strzeżonych ośrodków dla cudzoziemców przeprowadzonego przez Helsińską Fundację Praw Człowieka i Stowarzyszenie Interwencji Prawnej](#), ( *Still behind the bars. Report from the monitoring of the guarded centres for foreigners conducted by the Helsinki Foundation for Human Rights and Legal Intervention Association*, 2014, p.24.

<sup>257</sup> Article 404 section 5 of the new Law on Foreigners.

If the foreigner lodges an application for asylum while in detention, their stay is prolonged for 90 days, counted from the day in which the above mentioned application was made.<sup>258</sup> Under the regulations in place before 1 May 2014 the prolongation was obligatory – from 1 May 2014 the court has a margin of discretion on whether or not to prolong detention for 90 days. If within this period of time a negative decision is issued, it constitutes a basis for further prolonging detention.

Asylum seekers have a right to request their release from detention anytime, by submitting a “motion for release”. A release motion is directed to the Border Guard managing the centre. Their decision can be appealed to the respective District Court, but only if the motion for release was submitted at least one month after the issuance of the decision on application or prolongation of detention (for one month after placement in detention, possibility to appeal is not granted and the foreigner cannot ask for release). The District Court has 7 days to examine it.<sup>259</sup> This procedure generally focuses not on the lawfulness of detention but rather on changes in the person’s personal situation (e.g.: the person becomes ill while in detention and a longer stay could put their life and health at risk).

According to an NGO report,<sup>260</sup> detention orders lack individual reasoning and sometimes are brief, containing only two sentences. The Court assessment is generally based on the information provided by the Head of the Office for Foreigners and the Border Guard relating mostly to the matter of illegal crossing of the border. The risk of absconding is assessed by the Court only when ruling on detention of irregular migrants, not asylum seekers. The necessity and proportionality test is not implemented.

Generally, most asylum seekers are unlikely to spend the whole status determination procedure in detention. If they apply for asylum from detention, their stay in detention can be prolonged for 90 days and if their application is considered negative within this period of time, their stay in detention can be prolonged even if they lodge an appeal against the negative asylum decision. This means that there are instances of asylum seekers who spent their whole asylum proceedings in detention, but it is hard to say that this is the case for most of them.

## F. Detention conditions

### Indicators:

- Does the law allow to detain asylum seekers in prisons for the purpose of the asylum procedure (i.e. not as a result of criminal charges)?  Yes  No
- If so, are asylum seekers ever detained in practice in prisons for the purpose of the asylum procedures?  Yes  No
- Do detainees have access to health care in practice?  Yes  No
  - o If yes, is it limited to emergency health care?  Yes  No
- Is access to detention centres allowed to
  - o Lawyers:  Yes  Yes, but with some limitations  No
  - o NGOs:  Yes  Yes, but with some limitations  No
  - o UNHCR:  Yes  Yes, but with some limitations  No
  - o Family members:  Yes  Yes, but with some limitations  No

Asylum seekers are detained in specialised facilities called guarded centres for foreigners (and detention centres for the purpose of expulsion in certain circumstances, see General section, Detention). These

<sup>258</sup> Article 89 of the Law on Protection.

<sup>259</sup> Article 406 section 2, 3, and 4 of the new Law on Foreigners.

<sup>260</sup> Sieniow Tomasz (ed.) Fundacja Instytut na rzecz państwa prawa [Rule of Law Institute] [Stosowanie detencji wobec cudzoziemców. Raport z monitoring i rekomendacje](#). [Detention of foreigners. Monitoring report and recommendations], 2013, available in Polish, available at: [http://panstwoprawa.org/site\\_media/storage/files/2013-07/stosowanie-detencji-wobec-cudzoziemcow.pdf](http://panstwoprawa.org/site_media/storage/files/2013-07/stosowanie-detencji-wobec-cudzoziemcow.pdf) (PL) p. 51-52

centres are only for migration-related purposes and the Border Guard is in charge of the management. Asylum seekers are never placed in regular prisons with ordinary prisoners, but stay together with migrants in an irregular situation. There is no special facility in which only asylum seekers are detained. The Border Guard officers running 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 Border Guard addressed foreigners by numbers assigned to them in their administrative files or used bad language.<sup>261</sup> The Law on Foreigners, which entered into force on 1 May 2014, contains a section on detention conditions, rights and obligation of the foreigners. It is much more detailed than the previous regulations. Some practices related to the functioning of the centres have now been framed into the legal provisions. Below we present how the conditions are in practice.

The persons who are identified as vulnerable can be detained. There is no mechanism in the detention centres to identify persons with special reception needs (see chapter on Grounds for Detention). Psychologists in the centres are not trained to conduct a therapy of persons with post-traumatic stress disorder (PTSD), etc.<sup>262</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 wires.

Four centres (Białystok, Ketrzyn, Białopodlaska, Przemysl) are relatively new and in good condition (they were built after 2008), and the one in Lesznowola (will be closed from 1 of July) and Krosno Odrzańskie are being renovated.

Rooms are not sufficiently furnished: the main equipment consists of beds, small wardrobes and a small table. As a result, people placed in the centres cannot have all their belongings in their room, and have to place them in external storage space in the centre. Some of their belongings are also placed there for safety reasons and can be accessed only upon request. A sufficient space between beds is provided. There were no reported problems with overcrowding. As for privacy matters, the rooms cannot be locked at night and in some centres the Border Guard checks several times per night if foreigners are present. There were also concerns about privacy in sanitary facilities in the men's part of the building in some centres.

As a rule, the parts of the detention centres which are directly used by the detainees (rooms, bathrooms, toilets, kitchens etc.) are cleaned by the cleaning staff, employed by the Border Guard on a regular basis, since the end of 2013. They clean bathrooms and toilets while foreigners eat meals. It was an improvement because earlier these parts of the detention centres were cleaned by the detainees themselves.<sup>263</sup> The obligation to clean the common toilets was one of the reasons of the protest (including a hunger strike) which took place in 4 out of 6 of the guarded centres on 16-22 October 2012.<sup>264</sup> More than 70 foreigners took part in this protest, which was unprecedented in Poland. Mostly, the foreigners did not demand their release from the detention centre but above all they contested the conditions in which they were accommodated. They also complained about the behaviour of the border guard officers towards them.<sup>265</sup> As a consequence of these protests, the Ministry of Interior ordered five guarded centres

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<sup>261</sup> J.Białas, W.Klaus, (Ed) [Wciąż za kratami. Raport z monitoringu strzeżonych ośrodków dla cudzoziemców przeprowadzonego przez Helsińską Fundację Praw Człowieka i Stowarzyszenie Interwencji Prawnej](#), ( *Still behind the bars. Report from the monitoring of the guarded centres for foreigners conducted by the Helsinki Foundation for Human Rights and Legal Intervention Association*, 2014, p.24.

<sup>262</sup> This was confirmed during the monitoring of the detention centres in February 2014 by the personnel in Ketrzyn, where the majority of applicants placed are families returned under the Dublin procedure.

<sup>263</sup> Helsińska Fundacja Praw Człowieka (HFHR), Stowarzyszenie Interwencji Prawnej (SIP), J.Białas, W.Klaus, (Ed), [Wciąż za kratami. Raport z monitoringu strzeżonych ośrodków dla cudzoziemców przeprowadzonego](#) ( *Still behind the bars . Report on the Monitoring of Guarded Centres for Foreigners*), , 2014, p. 8

<sup>264</sup> Information in English available [here](#)

<sup>265</sup> W. Klaus, K. Rusiłowicz, ed., *Migracja to nie zbrodnia. Raport z monitoringu strzeżonych ośrodków dla cudzoziemców (Migration Is Not a Crime. Report on the Monitoring of Guarded Centres for Foreigners)*, Stowarzyszenie Interwencji Prawnej, Helsińska Fundacja Praw Człowieka, 2012, p. 10, available [here \(in Polish\)](#) [and here in English](#) p. 5.

to be inspected and afterwards decided to make significant changes in this regard (i.e. families with children are accommodated only in two centres which are the most suitable for children; detainees are allowed to move more freely within the centre).<sup>266</sup> A second monitoring conducted in the same manner (with NGOs representatives) in January-February 2014 was aimed at verifying whether the changes were in fact introduced. The monitoring concluded with the publication of the report "Still behind bars".<sup>267</sup>

In 2013 the detention centres' system was amended. Currently in three detention centres (Białystok, Lesznowola, Krosno Odrzańskie) only men, are held and in another two (Kętrzyn, Biała Podlaska)- only families with children in school age... In the detention centre in Przemysl families with children (not in school age) and single men are placed. They are located in separated wings. In one of the centres (Ketrzyn), there is a separate part for unaccompanied irregular migrant children. Families are placed together in one room as far as possible both under the law<sup>268</sup> and in practice.<sup>269</sup> There is no separate space for other vulnerable persons.

In all guarded centres there is a sport and recreation space.<sup>270</sup> In 2013 a number of significant changes were introduced. Previously, the time that detainees could spend outside generally did not exceed one or two hours per day plus it depended on the weather. The regime changed in 2013: 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 basis. Detainees cannot leave the building, only during the meals. There are no additional restrictions. In 2014 video game consoles were bought and provided to the foreigners (Kętrzyn, Biała Podlaska, Białystok). In some centres there is access to the internet<sup>271</sup> and some computers were bought (Lesznowola). Foreigners can watch television without any limitations, even until late at night.

The detainees have access to reading and leisure materials. There are libraries - with a number of books and newspapers in several languages – Russian, English, French. New books or newspapers are provided regularly in some centres (Ketrzyn, Białystok). They also have popular games to play (e.g. chess, cards.) Concerts and sport competitions are organised for adults and children in Ketrzyn take part in cultural activities and prepare shows for their parents.

Detention centres provide rooms for religious practices.

Children staying in the guarded centres are - like all other children staying on the territory of Poland – subject to obligatory education until they are 18. However, this obligation set in the Polish Constitution is not fulfilled in the case of children staying in guarded centres.<sup>272</sup> None of the children staying there attends regular school. Schools near the detention centres in Ketrzyn and Biała Podlaska, where the children in school age are placed, delegate teachers to work in detention facilities for foreigners. This is the result of agreements between the Border Guard, educational institutions and local authorities. However, education is limited in time to a couple of hours per week (e.g. in Ketrzyn 8 hours a week) and teachers are not sufficiently prepared to work with foreign children, so it mainly concentrates on Polish language lessons and arts activities. In both centres where the school children are placed (Biała Podlaska and Ketrzyn) the organization of activities is the responsibility of the teachers and directors of the schools and each time the programme is adapted to the children who are currently in the detention centre.

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<sup>266</sup> Ministry of Interior's statement available [here](#)

<sup>267</sup> Helsińska Fundacja Praw Człowieka (HFHR), Stowarzyszenie Interwencji Prawnej (SIP), J.Bialas, W.Klaus, (Ed), [Wciąż za kratami. Raport z monitoringu strzeżonych ośrodków dla cudzoziemców przeprowadzonego](#) (Still behind the bars. *Report on the Monitoring of Guarded Centres for Foreigners*)

<sup>268</sup> Article 115 of the Law on Foreigners (article 414 section 3 and 5 on the new Law on Foreigners).

<sup>269</sup> HFHR, SIP, [Wciąż za kratami](#) (Still behind the bars) , 2014, p.17.

<sup>270</sup> § 8 of the Ordinance on conditions and rules of stay in detention centres.

<sup>271</sup> HFHR, SIP, [Wciąż za kratami](#), 2014

<sup>272</sup> HFHR, SIP, [Wciąż za kratami](#), 2014, p. 46

Classes are carried out jointly for all children, regardless of their age, level of education, or fluency in Polish. This means that children aged 6 can be placed in school alongside others aged 17. The school certificates are not issued to children, only the overall certificate upon request. Children are not subject to the system of classification, or promotion, they do not take any external exams. The lessons for children speaking only their mother language is limited to arts activities. Polish language lessons are conducted also for adults – e.g. in Bialystok they are performed by the Border Guard officer who has a university degree in pedagogical studies.

Generally the right to education for children in detention centres for foreigners is not properly implemented. Topics and activities offered to foreigners do not meet the requirements of the general education curriculum. There are no legal regulations that specify the obligations of the Border Guard, educational authorities and schools themselves in teaching children in detention centres. The law does not indicate, in particular, on what basis such teaching is to be executed or who should finance the lessons. The Ombudsman stated that the right to education of children placed in detention centres<sup>273</sup> is not observed and they should have the possibility to attend public schools. The Ombudsman stressed that the Border Guard should ensure that classes are conducted by qualified teachers and the curriculum implemented. The programme must include lessons of Polish as a foreign language as well as lessons concerning other topics.

According to the law, all detainees have access to regular health care. In all centres there is medical staff working, at least one physician and one nurse, but there are often more (e.g. in Ketrzyn there are two doctors and six nurses and one paramedic available on shifts). In case of emergency or the need for a specialist's assistance (e.g. gynaecologist), detainees are transferred to hospitals or clinics. The doctors present in the detention centres generally know some foreign languages (Russian, English). In practice if they do not know the patient's mother tongue, an interpreter is made available. The interpreter is usually a Border Guard employee working in the education section in the centre. In some centres (Ketrzyn, Przemysl) it was stressed by the Border Guard that they provide translation for rare languages, but there has been no possibility to confirm it in a concrete case. There is also access to psychological care, but no therapy for serious disorders is provided. The psychologists speak many of the languages spoken by detainees. Psychologists do not issue a certificate on the detainee's state of mental health. In one detention centre (Bialystok) information on availability of psychological care is displayed in several languages on boards in the corridors.

In some detention centres, the food is prepared on site, by external providers. In others, it is prepared in the centres. There are several specific diets e.g., vegetarian, adapted to Muslims, adapted to pregnant or breastfeeding women. Other diets can be respected on prescription of the physician.

The legislation allows for lawyers, NGOs or UNHCR to have access to detention centres. 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). 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. The Head of the Office for Foreigners and UNHCR should be informed about it.<sup>274</sup> This provision is not used in practice. NGOs provide legal assistance, unfortunately not on a regular basis. In 2013 UNHCR visited detention centres 15 times. They provide information to the detained asylum seekers by phone on a regular basis.

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. Only non-governmental or international organisations granting legal assistance to foreigners, Polish state authorities, diplomatic missions or consular offices of a foreign country, for

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<sup>273</sup> Rzecznik Praw Obywatelskich, (Polish Ombudsman), [Realizacja prawa małoletnich cudzoziemców do edukacji. Raport RPO](#) (Implementation of the right to education for foreign minors. Polish Ombudsman report), 2013, p. 55.

<sup>274</sup> Article 89a section 1 and 2 of the Law on Protection

personal and official matters are not obliged to obtain the permission of the authorities for a meeting with an asylum seeker.<sup>275</sup> 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 Border Guard unit managing the detention centre.

In practice, NGOs who want to meet with more than one or with unspecified asylum seekers, monitor conditions in a detention centre etc. ask in writing the Border Guard Commander in Chief for a permission to visit a detention centre. Since March 2013 such consent is given by the Commander of the Regional Unit of the Border Guard.<sup>276</sup> In this situation, visits are generally not limited to visiting hours. Non-governmental organisations in 2013 generally did not face problems in accessing the centres

The visits from relatives, friends or religious representatives are authorized. The detainee, or family members or friends, have to submit a written request to the director of the detention centre. The permission issued can be for a single visit or for several visits. On the first request, the director of the detention centre has to obtain the positive opinion of the Border Guard unit which ordered the detention of the foreigner. The opinion has to be issued within 3 working days. If there is no answer, the director of the centre gives their consent for the visit. In the centre in Bialystok visits can last only 1 hour, though it can be prolonged to 2 hours. Two adults have a right to take part in the meeting. The number of children is not limited. In practice the visits can take place each week day from 8 to 17. Unexpected visitors do not have a possibility to meet with the detained foreigner. In another centre (Ketrzyn) the policy is flexible and consent can be issued within an hour and depending on the situation more people can be allowed or the duration of the visit can be unlimited.

Detainees are able to maintain regular contact with people outside the centre. There is no limitation in using cell phones (without audio- and video recording system) or public phones. Border Guards have several hundreds of substitute cell phones without a camera which they provide to foreigners in case they only have smartphones. The cell phones are handed over for the whole day for free. The foreigners can also use the public phones, sufficient privacy is provided. In both cases detainees themselves pay for the calls. There is a possibility to order a phone card. The Border Guard officers go and do shopping for foreigners usually twice a week. If the foreigner does not have money to buy a telephone card, there is a possibility of using the Border Guard's equipment in justifiable cases.

The Law on Foreigners which came into force on 1 May 2014 introduced also a legal possibility to impose a sanction on a detainee who does not obey the rules in the detention centre. There are two possibilities: banning participation in sport and leisure activities (except for using the library) or banning the purchase of food and cigarettes from outside the centre. Deciding on application of the punishment, the Border Guard 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.

## G. Procedural safeguards and judicial review of the detention order

### Indicators:

- Is there an automatic review of the lawfulness of detention?  Yes  No

Detention is ordered by the District Court upon request of the Border Guard on specific grounds (see above, grounds for detention). Prolongation of the detention is also ordered by the District Court upon

<sup>275</sup> §20 of the Rules of foreigners' stay in the guarded centre and arrest for the purpose of expulsion (annex to the Ordinance on conditions and rules of stay in detention centres).

<sup>276</sup> Letter from Border Guard Commander in Chief FAX-KG/CU/1981/IW/13 from 13 March 2013.

request of the Border Guard. The asylum seeker's stay in the detention centre can be prolonged only if they receive the Office for Foreigners' decision refusing to grant them refugee status and subsidiary protection before the end of the period for which they were initially detained (30-60 days or 90 days in case of submitting an asylum claim form the detention centre).

The 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 foreigner. From 1 May 2014 the court has a clear obligation to hear the person concerned before rendering a decision. In some guarded centres, when the person is admitted to the centre, there is a meeting during which a foreigners is given basic information about the centre and their situation.. 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 foreigners' rights and/or the rules of stay in the detention centre, meal times, contact details of NGOs and – depending on the centre – on access to the doctor and psychologist, In some centres (Ketrzyn, Bialystok) each foreigner 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 generally in 15 languages: Arabic, English, Farsi, Ukrainian, Russian, French, Armenian, Belarusian, Chinese, Georgian, Hindi, Spanish, Mongolian, Persian, Urdu, and Vietnamese. 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.

The national legislation provides for a judicial review of the lawfulness of detention. Asylum seekers can appeal against a district court ruling to the Regional Court within 7 calendar days from the day the ruling is pronounced (in prolongation cases it is 7 days from the delivery of the ruling to an asylum seeker).<sup>277</sup> In this appeal the detainee can dispute the grounds of their detention. Asylum seekers receive rulings in the language they understand (it is a literal translation of a ruling rendered in Polish). Until 1 May 2014, there were no specified time limits for the Regional Court to decide on the appeal, but it should have been done "immediately".<sup>278</sup> In practice there were no legal consequences for not examining the appeal immediately. Sometimes the appeals were not even examined before the period for which an asylum seeker was placed in a detention centre finishes.<sup>279</sup> Now the Law on Foreigners envisages 7 days for the examination of the appeal.<sup>280</sup>

Some courts – although they have such a legal obligation – do not provide information about the right to the appeal in the judgement or even write there that the judgement cannot be appealed.<sup>281</sup> Automatic periodic review of the detention is ensured by limiting the period of time within which a ruling on detention is issued – in the ruling the court can prolong the detention for 3 months. The new law introduced a monitoring of the detention to be carried out by a penitentiary judge of the regional court.<sup>282</sup>

The court procedure concerning detention orders is not considered effective. Courts are very often deciding on detention of asylum seekers without in-depth analysis of their personal situation, and reasons

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<sup>277</sup> Courts differently interpret 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, [Stosowanie detencji wobec cudzoziemców. Raport z monitoringu i rekomendacje](http://panstwoprava.org/site_media/storage/files/2013-07/stosowanie-detencji-wobec-cudzoziemcow.pdf) (*The use of foreigners' detention. Monitoring Report and Recommendations*), Fundacja Instytut na rzecz Państwa Prawa, 2013, available at: [http://panstwoprava.org/site\\_media/storage/files/2013-07/stosowanie-detencji-wobec-cudzoziemcow.pdf](http://panstwoprava.org/site_media/storage/files/2013-07/stosowanie-detencji-wobec-cudzoziemcow.pdf) (PL), p. 54.

<sup>278</sup> Article 106 of the Law on Foreigners.

<sup>279</sup> T. Sieniow, [Stosowanie detencji wobec cudzoziemców. Raport z monitoringu i rekomendacje](http://panstwoprava.org/site_media/storage/files/2013-07/stosowanie-detencji-wobec-cudzoziemcow.pdf) (*The use of foreigners' detention. Monitoring Report and Recommendations*), Fundacja Instytut na rzecz Państwa Prawa, 2013, available at: [http://panstwoprava.org/site\\_media/storage/files/2013-07/stosowanie-detencji-wobec-cudzoziemcow.pdf](http://panstwoprava.org/site_media/storage/files/2013-07/stosowanie-detencji-wobec-cudzoziemcow.pdf) (PL) p. 56.

<sup>280</sup> Article 403 section 8 of the new Law on Foreigners.

<sup>281</sup> T. Sieniow, op. cit., p. 53.

<sup>282</sup> Article 426 of the new Law on Foreigners.

for detention mentioned in the judgment are indicated very generally - without direct reference to a personal situation. The court's approval of the Border Guard's request to detain a third country nationals is very often automatic, and third country nationals are not heard in the appeal procedure before the Regional court.<sup>283</sup>

NGOs have highlighted this problem for some time, but in 2013 the President of the District Court in Biała Podlaska, handling a lot of asylum seekers' detention cases (Terespol border crossing point is covered by this court jurisdiction) addressed a letter to the Border Guard Commander in Chief about cases concerning prolongation of detention. The President of the Court noted in her letter<sup>284</sup>, that the Border Guard often submits the motions for extending the detention of asylum seekers on the last day of their stay, which does not give the court enough time to look into the case and analyse all the circumstances, inform the legal representative of the asylum seeker, hear the person concerned, etc. In the opinion of the President of the Court, this may infringe the right to a fair trial.<sup>285</sup>

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

## H. Legal assistance

### Indicators:

- Does the law provide for access to free legal assistance for the review of detention?  
 Yes       No
- 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. 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>286</sup>. Most asylum seekers do not know about such a possibility or do not know how to fill in the form in Polish. As a result they are dependent on legal assistance granted by NGO lawyers, most of whom are not entitled to represent them before courts and do not visit detention centres on a regular basis to provide such assistance whenever needed.

It can be said that generally legal assistance in detention centres is not effective because of the lack of a centralised or well-managed system of granting it. NGOs pay visits to the detention centres mostly depending on the project they currently implement. It happens that two lawyers come to a particular detention centre on one week and afterwards there is no lawyer visiting this centre for another two weeks.

The draft law transposing the recast Procedures Directive creates a state legal aid system. It includes lawyers' visits to the detention centres.<sup>287</sup>

<sup>283</sup> P. Nikiel, *Raport o stosowaniu detencji wobec osób starających się o nadanie statusu uchodźcy w Polsce. Analiza orzecznictwa sądów (Report on detention of asylum seekers in Poland. Analysis of the jurisdiction)*, Centrum Pomocy Prawnej im. H. Nieć, 2010, p. 20, available [here](#), also T. Sieniow, *op. cit.*, 2013, p. 49-50, 54-55.

<sup>284</sup> The letter of the President of the District Court in Biała Podlaska to the Border Guard Commander in Chief from 12 April 2013 nr adm. 5102-8/2013/K/VII. The letter was also sent to other institutions, including HFHR.

<sup>285</sup> Also: T. Sieniow, *op. cit.* p. 60.

<sup>286</sup> Article 78 of the Law of 6 June 1997 on Code of Penal Proceedings, Journal of Laws 1997 no 89 position 555, available [here](#) (Ustawa z dnia 6 czerwca 1997 r. Kodeks Postępowania Karnego, Dz. U. 1997 nr 89 poz. 555)

<sup>287</sup> Draft law as of 1 December 2014 available at: <http://bip.msw.gov.pl/bip/projekty-aktow-prawnyc/2014/23325,Projekt-ustawy-o-zmianie-ustawy-o-udzielaniu-cudzoziemcom-ochrony-na-terytorium-.html> (PL).

## Annex I – Transposition of the CEAS in National Legislation

### Directives transposed

Directive	Date of transposition (N/A if not yet transposed)	Official title of corresponding national legal act (and weblink)
Recast Asylum procedures Directive	N/a	-
Recast Reception Conditions Directive	N/a	-
Recast Qualification Directive	Act of 26 June 2014, Entry into force – 30 August 2014	Ustawa z dnia 26 czerwca 2014 r. o zmianie ustawy o udzielaniu cudzoziemcom ochrony na terytorium Rzeczypospolitej Polskiej oraz niektórych innych ustaw (Dz.U. 2014, poz. 1004) <a href="http://isap.sejm.gov.pl/DetailsServlet?id=WDU20140001004">http://isap.sejm.gov.pl/DetailsServlet?id=WDU20140001004</a>

### Pending transposition and reforms

Legislation	Stage of transposition	NGOs consulted (Yes/No)
Recast Asylum procedures Directive	Draft law currently being drafted	Yes
Recast Reception Conditions Directive	Draft law currently being drafted	Yes
Recast Qualification Directive	Transposed, entered into force 30 August 2014	Yes

### Main changes adopted/planned

This information relates to the current stage of developments, and is subject to change in the near future.

#### Asylum Procedures

The most important change is the introduction of a state legal aid system. Free legal aid will cover appeal and second instance proceedings. The possibility of prolonging the asylum procedure up to 15 months is planned. Tabled amendments also include the provision of a time limit making it no longer possible to reopen a discontinued case after a period of 9 months has elapsed.

With regard to the admissibility procedure, changes will include the new notion of “country of first asylum” as defined in the recast Asylum Procedures Directive.

#### Reception conditions

Draft of the legislation foresees a wider definition of vulnerable applicants and safeguards for them. The definition includes minors, disabled, elderly, pregnant, single parent, human trafficking victim, bedridden, mentally disordered, subject to torture, subject to psychological, physical, sexual violence or violence related to their sex, sexual orientation or sexual identity.

Asylum seekers who flagrantly violate the house rules in the accommodation centre or are aggressive towards other persons staying in the centre will be deprived of social assistance. After two such incidents,

social assistance will be re-granted only in the form of assistance granted outside the centre, decreased by half of the amount granted in regular cases.

#### Detention of asylum seekers

The notion of the risk of absconding will be introduced –the “significant risk of absconding” arises when the asylum seeker does not have any identity documents, crossed or attempted to cross the border illegally (except for directly coming asylum seekers) or entered Poland while their personal data were in SIS or national register.

Rules on prolongation of detention when the person applies for asylum from the detention centre will change. According to the proposed amendments, every time a detained person applies for asylum, the court will have to examine the legal conditions for the detention of the asylum seeker. This direct reference to the legal conditions for detention of asylum seekers allows to expect that there will be no differentiation between asylum seekers who are detained after having applied for asylum and those applying for asylum from detention.