

Country Report: Poland



2018
Update

Acknowledgements & Methodology

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

The information in this report is up-to-date as of 31 December 2018, unless otherwise stated.

The Asylum Information Database (AIDA)

The Asylum Information Database (AIDA) is coordinated by the European Council on Refugees and Exiles (ECRE). It aims to provide up-to date information on asylum practice in 23 countries. This includes 20 EU Member States (AT, BE, BG, CY, DE, ES, FR, GR, HR, HU, IE, IT, MT, NL, PL, PT, RO, SE, SI, UK) and 3 non-EU countries (Serbia, Switzerland, Turkey) which is accessible to researchers, advocates, legal practitioners and the general public through the dedicated website www.asylumineurope.org. The database also seeks to promote the implementation and transposition of EU asylum legislation reflecting the highest possible standards of protection in line with international refugee and human rights law and based on best practice.



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Glossary & List of Abbreviations

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

Statistics

Overview of statistical practice

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

Applications and granting of protection status at first instance: 2018

	Applicants in 2018	Pending at end 2018	Refugee status	Subsidiary protection	Rejection	Refugee rate	Subs. Prot. rate	Rejection rate
Total	4,131	3,065	168	191	2,128	6.75%	7.76%	85.56%

Breakdown by countries of origin of the total numbers

Russia	2,721	2,246	9	61	1,212	0.70%	4.75%	94.53%
Ukraine	466	309	11	74	443	2.08%	14.01%	83.90%
Tajikistan	144	95	10	14	77	9.90%	13.86%	76.23%
Iraq	71	27	19	8	11	50%	21.05%	28.94%
Armenia	70	36	0	0	52	0%	0%	100%
Turkey	61	37	26	0	20	56.52%	0%	43.47%
Georgia	52	62	0	0	49	0%	0%	100%
Belarus	45	25	5	5	20	16.66%	16.66%	66.66%
Iran	45	17	9	0	12	42.85%	0	57.14%
Afghanistan	44	15	8	3	3	57.14%	21.42%	21.42%

Source: Office for Foreigners

¹ Office for Foreigners, *Weekly report*, available in Polish at: <http://bit.ly/2l6FUCB>.

Gender/age breakdown of the total number of applicants: 2018

	Number	Percentage
Total number of applicants	4,131	
Men	1,262	30.54%
Women	982	23.77%
Children	1,888	45.70%
Unaccompanied children	125	3.02%

Source: Office for Foreigners

Comparison between first instance and appeal decision rates: 2018

	First instance		Appeal	
	Number	Percentage	Number	Percentage
Total decisions (persons)	4,445	-	1,844	-
Positive decisions	359	8.07%	47	2.54%
• <i>Refugee status</i>	168	3.77%	17	0.92%
• <i>Subsidiary protection</i>	191	4.29%	30	1.62%
Negative decisions	2,128	47.87%	1,697	91.48%

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

Overview of the legal framework

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

Title (EN)	Original Title (PL)	Abbreviation	Web Link
Law of 13 June 2003 on granting protection to foreigners within the territory of the Republic of Poland (Journal of Laws 2012 pos. 680)	Ustawa z dnia 13 czerwca 2003 r. o udzielaniu cudzoziemcom ochrony na terytorium Rzeczypospolitej Polskiej (Dz.U. 2012 poz. 680)	Law on Protection	http://bit.ly/1eHn2b2 (PL)
Law of 12 December 2013 on foreigners (Journal of Laws 2013 pos. 1650)	Ustawa z dnia 12 grudnia 2013 r. o cudzoziemcach (Dz.U. 2013 poz. 1650)	Law on Foreigners	http://bit.ly/1HebFUe (PL)
Law of 14 June 1960 Code of administrative procedure (Journal of Laws 2013 pos. 267)	Ustawa z dnia 14 czerwca 1960 r. Kodeks Postępowania Administracyjnego (Dz.U. 2013 poz. 267)	Code of Administrative Procedure	http://bit.ly/1TNeKhC (PL)

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

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

Overview of the main changes since the previous report update

The report was previously updated in **February 2018**.

Asylum procedure

- ❖ **Access to the territory:** The main challenge regarding access to the asylum procedure and the territory remain the push backs at the Terespol border crossing point. Notwithstanding several interim measures imposed by the ECHR on the Polish authorities prohibiting removal where the applicant expressed an intention to apply for asylum, this practice continued in 2018 and the Commissioner for Human Rights as well as NGOs continued to challenge this practice. There have been some judgments with regard to push backs at the national level, while the cases challenged before ECtHR are still pending. A May 2018 judgment of the Supreme Administrative Court, dismissing Border Guard practice whereby only a memo instead of a full protocol is issued concerning interviews to establish the purpose of stay, is ignored by the Polish authorities on the basis that this is not required under the Schengen Borders Code.
- ❖ **Identification:** Identification of persons in need of special procedural guarantees remains problematic, in particular for asylum seekers in detention.
- ❖ **Legal assistance:** Access to legal assistance remains problematic due to lack of funding for NGOs and obstacles for asylum seekers to access the aid system. Whereas 1,929 appeals were lodged to the Refugee Board in 2018 according to the Office for Foreigners,² only 356 asylum seekers benefited from free legal aid.

Reception conditions

- ❖ **Access to material reception conditions:** Asylum seekers report the lack of access to any material reception conditions if they have to wait for submitting an asylum application (by law they can wait up to three working days, in case of a massive influx ten working days).
- ❖ **Access to education:** Following an amendment introduced in the law on the Polish education system in 2016, preparatory classes for foreign children are being organized in some schools (particularly those where asylum-seeking minors are attending).

Detention of asylum seekers

- ❖ **Detention of vulnerable groups:** The situation of asylum seekers in detention has not changed since the last update. The timely identification of victims of violence remains the main problematic issue. The algorithm used by the Border Guard to identify victims of violence does not allow for immediate release of foreigners who are alleged victims of violence from the guarded centre.

Content of international protection

- ❖ **Long-term residence:** Since 12 February 2018 foreigners have to prove additionally knowledge of the Polish language at least on level B1 to obtain the EU long-term residence card.
- ❖ **Cessation:** Beneficiaries of international protection from the Russian Federation continued to be deprived of international protection status in Poland in 2018, although the cessation and withdrawal is not systematically applied to them. Russian citizens were deprived of refugee status on the basis that they have voluntarily accepted the protection of the Russian Federation. Subsidiary protection was withdrawn from Russian citizens predominantly on the basis that the

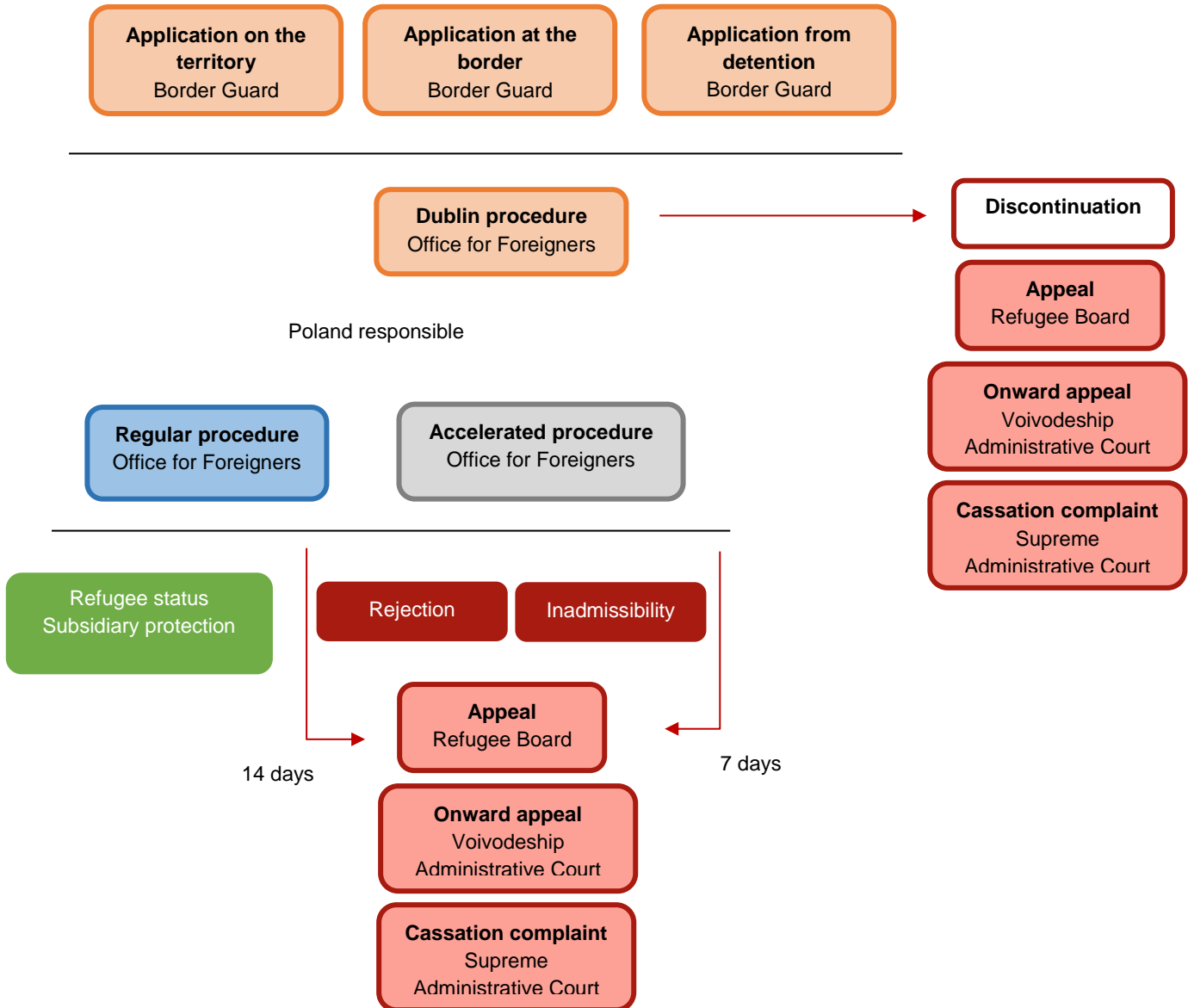
² According to the Refugee Board the number of appeals in 2018 was 945.

reason for granting international protection no longer existed or have changed in such a way that protection is no longer required.

Asylum Procedure

A. General

1. Flow chart



2. Types of procedures

Indicators: Types of Procedures

Which types of procedures exist in your country?

❖ Regular procedure:	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No
▪ Prioritised examination: ³	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
▪ Fast-track processing: ⁴	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
❖ Dublin procedure:	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No
❖ Admissibility procedure:	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No
❖ Border procedure:	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
❖ Accelerated procedure: ⁵	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No

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

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

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

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

Name in English	Number of staff	Ministry responsible	Is there any political interference possible by the responsible Minister with the decision making in individual cases by the first instance authority?
Office for Foreigners	36	Ministry of Interior	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No

Out of the 36 staff members of the Office for Foreigners, 31 staff members are responsible for writing decisions and 5 staff members are responsible for coordination and supervision.

5. Short overview of the asylum procedure

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

First instance: The main asylum authority is the Head of the Office for Foreigners, for which the Ministry of Interior is responsible. It is an administrative authority specialised in asylum and is responsible for

³ For applications likely to be well-founded or made by vulnerable applicants. See Article 31(7) recast Asylum Procedures Directive.

⁴ Accelerating the processing of specific caseloads as part of the regular procedure.

⁵ Labelled as "accelerated procedure" in national law. See Article 31(8) recast Asylum Procedures Directive.

examining, granting, refusing and withdrawing protection, in Poland, as well as for Dublin procedures. A Dublin procedure is applied whenever there is evidence or any sign that another State may be responsible for examining the claim.⁶ However, Poland is principally a “receiving” country, rather than a country which requests and carries out transfers to other countries.

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

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

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

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

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

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

The Refugee Board may then:

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

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

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

⁶ The Dublin procedure should be applied in every case: Article 36(1) Law on Protection.

B. Access to the procedure and registration

1. Access to the territory and push backs

Indicators: Access to the Territory

1. Are there any reports (NGO reports, media, testimonies, etc.) of people refused entry at the border and returned without examination of their protection needs? ☒ Yes ☐ No

The previous updates of this report referred to persisting cases of persons denied access to the territory at the border-crossing point in **Terespol** on the Belarusian border, which is the main entry point in Poland for asylum seekers, during 2012-2017, with a significant deterioration of the situation in 2017.

Most importantly, several cases have been brought before the European Court of Human Rights (ECtHR). Currently, there are four cases pending before the ECtHR concerning the pushbacks at Terespol, which have been communicated to the Polish government.⁷ Three cases concern Chechen nationals and the fourth (*D.A. v. Poland*) Syrian nationals who travelled to the Terespol border crossing in order to seek asylum in Poland. In all cases the Court granted interim measures under Rule 39 of the Rules of the Court, indicating to the Government that the applicants should not be removed to Belarus. According to Warsaw Bar Council, HFHR and Association for Legal Intervention, Poland did not comply with the measures and returned the applicants to Belarus.⁸ The Ministry of Foreign Affairs stated that the person was not returned since he had not been admitted in the first place. In its statement, the Ministry noted that the foreigner had not crossed the Polish border and was hence not expelled and had not filed an application for international protection during a border check.⁹ The Commissioner for Human Rights has also intervened in the cases of non-compliance with the measures issued by the ECtHR. Eventually, the applicants in the case of *MA and others v. Poland* have been admitted into Poland.¹⁰ As of 31 December 2018 all cases were still pending.

In 2018 NGOs and the Commissioner for Human Rights continued to challenge this practice in order to guarantee access to the procedure to those in need of protection on the Eastern border. The Commissioner for Human Rights paid another unexpected visit to the Terespol border crossing on 15 May 2018. One of the recommendations (identical to the 2016 recommendation after the previous visit) was to impose an obligation on the Border Guard officers at the border to submit a protocol of the so called 'first interview' (i.e. a full transcript of what has been said during the interview) and not only a memo (i.e. In general terms, a summary of the interview, drafted by the Border Guard officer, without verification by the person interviewed).¹¹

On 17 May 2018 the Supreme Administrative Court issued a judgment dismissing a cassation complaint of the Border Guard Commander-in-chief regarding a push-back at the border in Terespol. The Court stated that the Border Guard should not have only submitted a *memo*. Circumstances such as the purpose of stay or intention to apply for protection cannot be established through a memo. A memo could be regarded as additional evidence substantiating the individual's claim but cannot be considered as the only piece of evidence. When the Border Guard conducts an interview during which it establishes the purpose of stay, a *protocol* should be drafted. Otherwise the principle of trust in the state authorities is infringed.¹²

⁷ ECtHR, *M.K. v. Poland*, Application No 40503/17; *M.A. and Others v. Poland*, Application No 42902/17; *M.K. v. Poland*, Application No 43643/17; *D.A. v. Poland*, Application No 51246/17.

⁸ HFHR, 'Attorneys at border: Poland failed to implement ECtHR judgment', 9 June 2017, available at: <http://bit.ly/2ucnHMH>.

⁹ Ministry of Foreign Affairs, 'Wyjaśnienie MSZ w sprawie zarządzenia Europejskiego Trybunału Praw Człowieka z 8 czerwca 2017r.', available in Polish at: <http://bit.ly/2oke75z>.

¹⁰ ECtHR, *M.A. and Others v. Poland*, Application No 42902/17, available at: <http://bit.ly/2VttZ4B>.

¹¹ Commissioner for Human Rights, letter dd. 24 September 2018, available in Polish at: <http://bit.ly/2NwydFV>.

¹² Supreme Administrative Court, Judgment 17 May 2018, II OSK 2766/2017 available in Polish at: <http://bit.ly/2GNOupv>.

The Ministry of Interior refused to change its practice into submitting a protocol after the first interview at the border, claiming that there is no such practice on any border crossing point and that such a practice is not required under the Schengen Border Code.¹³ The Ministry of Interior also disagreed with the suggestion of the Commissioner for the Rights of the Child to introduce audio-visual recording of the first interviews.¹⁴ The Commissioner for Human Rights reported that although the situation at the border changed comparing to 2016 (less applicants, in 2018 only 1454 persons applied for international protection in Terespol border crossing point),¹⁵ the problem of push backs persists.

2. Registration of the asylum application

Indicators: Registration

1. Are specific time limits laid down in law for asylum seekers to lodge their application?
☐ Yes ☒ No
2. If so, what is the time limit for lodging an application?

Asylum applications should be submitted to the Border Guard (SG) which will then transfer them to the Head of the Office for Foreigners. If the application is lodged at the border or in detention, the relevant authority receiving it is the SG unit responsible for the border check point or the detention facility. If the application is lodged in the territory, it can be submitted to any SG unit. There is also a possibility to express the intention to apply for asylum by post for i.e. elderly persons, persons with disabilities, pregnant women, persons in hospitals or imprisoned.¹⁶

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

When applying for asylum, the asylum seeker has to surrender their travel document (e.g. passport) to the SG. Travel documents are kept by the Head of the Office for Foreigners. Asylum seekers are issued a temporary ID document entitling them to stay on the territory of Poland, the Foreigner's Identity Temporary Certificate (*Tymczasowe Zaświadczenie Tożsamości Cudzoziemca*). The document is initially valid for 90 days – 10 days in case of Dublin returnees – then for 6 months and can be prolonged every 6 months by the Head of the Office for Foreigners until the end of the asylum procedure.¹⁷

The SG is entitled to inform an asylum seeker that it is impossible to apply for asylum on a day when said individual comes to the SG unit and instead to set a date and place when it will be possible.¹⁸ In such a situation (e.g. when there is a need to ensure an interpreter is available), the intention to apply for protection is laid down in a protocol and registered and the Border Guard has 3 working days to ensure the application is lodged and registered (in case of massive influx it is 10 working days). In 2018 the Border Guard provided no information about the waiting time to submit an application in their unit in Warsaw.¹⁹ However, the Border Guard provided information that in January-June 2018 in case of 112 persons their intention to apply for protection was noted in a protocol and registered and they were informed that the registration of their application will be postponed (there is no information on the eventual waiting period in these cases). Such information is provided in writing and is available in 21 languages.²⁰

¹³ Ministry of Interior, response from 29 October 2018, available in Polish at: <http://bit.ly/2C0Sjd7>.

¹⁴ Commissioner for the rights of the Child, "Lista problemów dzieci w Polsce, available in Polish at: <http://bit.ly/2GVHsPB>.

¹⁵ Information provided by the Border Guard, 12 February 2019.

¹⁶ Article 28(2) Law on Protection.

¹⁷ Article 55(1) and (2) and Article 55a(2) Law on Protection.

¹⁸ Article 28(1) Law on Protection.

¹⁹ Information provided by the Border Guard, 14 January 2019.

²⁰ Information provided by the Border Guard, 13 August 2018.

C. Procedures

1. Regular procedure

1.1. General (scope, time limits)

Indicators: Regular Procedure: General

1. Time limit set in law for the determining authority to make a decision on the asylum application at first instance: 6 months
2. Are detailed reasons for the rejection at first instance of an asylum application shared with the applicant in writing? ☒ Yes ☐ No
3. Backlog of pending cases at first instance as of 31 December 2018: 3,065

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

The time limit set in law for the Head of the Office for Foreigners to make a decision on the asylum application is 6 months.²¹ This can be prolonged to 15 months if the case is complicated (319 cases in 2018),²² if there are many asylum seekers applying at the same time (11 cases in 2018) or if the asylum seeker did not fulfil the obligation of presenting all the evidence and documents or attending the interview (1 case in 2018).²³

In 2018 the average processing time for a decision on the merits was 171 days. The longest processing time took 1,864 days and the shortest 1 day.²⁴

According to the law, if the decision is not issued within 6 months, the general provisions on inaction of the administrative authority apply,²⁵ therefore 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. In practice, information is provided in a very general way and complaints to the second-instance authority hardly ever happen. The most significant consequence for the applicant of not issuing a decision on asylum application within 6 months is a possibility to apply for a work permit on this basis (see [Access to the Labour Market](#)).²⁶ 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.

According to lawyers working on cases at the HFHR, there is a backlog in both first and second-instance proceedings. As of 31 December 2018 there were 3,065 persons whose cases were pending before the Office for Foreigners.

1.2. Prioritised examination and fast-track processing

The Office for Foreigners has confirmed that vulnerable applicants and detainees are prioritised but due to the complexity of these cases the processing time is long.²⁷ According to the Office for Foreigners no

²¹ Article 34(1) Law on Protection.

²² Information provided by the Office for Foreigners, 15 January 2019.

²³ Article 34 Law on Protection.

²⁴ Information provided by the Office for Foreigners, 15 January 2019.

²⁵ Articles 36-38 Code of Administrative Proceedings.

²⁶ Article 35 Law on Protection.

²⁷ Information provided by the Office for Foreigners, 15 January 2019.

other types of cases are prioritised. The average time to process Syrian cases is shorter than the general average (167 days) and so is that of Ukrainian cases (84 days).

1.3. Personal interview

Indicators: Regular Procedure: Personal Interview

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

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

- ❖ A decision on granting refugee status can be issued on the basis of evidence already gathered; or
- ❖ An applicant is not fit to be interviewed (e.g. due to health or psychological problems).²⁸

According to the Office for Foreigners, interviews are conducted in the majority of cases in a regular procedure. The Office for Foreigners stated that in 2018 there were cases where the interview was not conducted because the applicant was not fit for interview, but it does not process statistical data concerning interviews.²⁹

Interpretation

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. In 2018 reported problems concerned very rare languages, like Sinhala, Tamil, Bengali (Bangla) or Sorani dialect of Kurdish. Interpreters of these languages are available, but not at any time, that is why the waiting time for interview can be prolonged.³⁰

Recording and report

Audio or video recording is possible under national legislation if an applicant was informed about this fact and technical means allow for it. If videoconferencing is challenging taking into account the need to ensure interpretation, the Office agrees to hear the applicant directly.³¹ The Office for Foreigners does not record such statistics, but HFHR lawyers confirm that videoconferencing is used in detention centres, even in cases of vulnerable applicants.

The law provides that a copy of the report of the interview should be handed in to the applicant after a personal interview. In some cases the applicants do not take or keep them, but they can ask for a copy at any stage of the proceedings. The report is prepared in Polish and contains all the questions asked and

²⁸ Article 44(1) and (2) Law on Protection.

²⁹ Information provided by the Office for Foreigners, 15 January 2019.

³⁰ Information provided by the Office for Foreigners, 15 January 2019.

³¹ Information provided by the Office for Foreigners, 1 February 2018.

responses received, but it is not a verbatim transcript. The report is handwritten, which sometimes makes it unreadable; however, some officers at the Office for Foreigners do use computers. At the end of the interview the report is read to the applicant in an understandable language and before signing it, interviewees can make corrections (and are informed about such possibility). This practice remains valid to date.³²

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

1.4. Appeal

Indicators: Regular Procedure: Appeal

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

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

2. Average processing time for the appeal body to make a decision: 235 days

1.4.1. Appeal before the Refugee Board

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

The Refugee Board is an administrative body, consisting of twelve members, supported in their work by six employees, not involved in the decision-making process.³³ In the regular procedure, decisions are taken by three members. The procedure includes an assessment of the facts and there is a possibility of hearing applicants. The Head of the Office for Foreigners is not a party to these proceedings. The time limit set in law for the appeal procedure is 1 month.³⁴ The appeal has suspensive effect.³⁵ Neither hearings nor decisions of the Refugee Board are made public.

In 2017, the average processing time for the Refugee Board to issue a decision in appeal proceedings was 104.5 days. In 2018, it was 235 days, however, this number includes also the duration of some proceedings before the Office for Foreigners or administrative courts. The data comparable to those for 2017 were not made available in 2018. The longest processing time took 350 days in 2017 and 1313 days in 2018 (again, the number for 2018 includes the court proceedings) and the shortest 1 day in 2017 and 2 days in 2018. In 35 cases (down from 63 in 2017) the Refugee Board decided to hear the applicant, and in three cases a witness (up from one case in 2017).³⁶

The Refugee Board may: annul the first instance decision; overturn it; or confirm the decision of the Head of the Office for Foreigners. In the majority of cases, the decisions of the Head of the Office for Foreigners were confirmed. This was the case for 733 out of 860 decisions in 2018.³⁷

³² Information provided by HFHR lawyers representing asylum seekers before the Office for Foreigners.

³³ Information provided by the Refugee Board, 27 August 2015.

³⁴ Article 35(3) Code of Administrative Proceedings.

³⁵ Article 130(1) and (2) Code of Administrative Proceedings.

³⁶ Information provided by the Refugee Board, 27 February 2019.

³⁷ Information provided by the Refugee Board, 27 February 2019.

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.³⁸

1.4.2. Onward appeal before the Administrative Court

After the administrative appeal procedure before the Refugee Board, the latter's decision can be further appealed to the Voivodeship Administrative Court in Warsaw within 30 days, but only points of law can be litigated at this stage.³⁹ The case is revised *ex tunc*. There is no fee for the procedure. This onward appeal does not have a suspensive effect on a final administrative decision. However, asylum seekers can ask the court to suspend a decision for the time of the court proceedings, if the decision can cause irreversible harm. The court procedure is adversarial; both the Refugee Board and the asylum seeker are parties before the court. The ruling of the Voivodeship Administrative Court in Warsaw can itself be appealed to the Supreme Administrative Court by lodging a cassation complaint, based exclusively on the legal conditions foreseen in the law, also accompanied by a request for suspension of the administrative decision.⁴⁰

The Law on Foreigners separates asylum proceedings and return proceedings, which means that a return decision is no longer issued within the asylum procedure. However, it can be issued after the administrative asylum procedure is concluded and before the Voivodeship Administrative Court in Warsaw examines the appeal against the final administrative decision refusing protection to the applicant. The jurisprudence of the Voivodeship Administrative Court in Warsaw and Supreme Administrative Court on this issue is not consistent since 2015. In 2018, the Supreme Administrative Court in numerous cases decided not to grant suspensive effect to an appeal against a final negative asylum decision, on the basis that it does not impose an obligation to leave the territory (only a return decision does so), and therefore the condition of a risk of irreparable harm is not fulfilled.⁴¹ In the 20 December 2018 ruling, the Supreme Administrative Court held that, although in numerous cases the same Court was of the opinion that suspensive effect due to the threat of irreparable harm can only be granted to an appeal against a final return decision, this can be an insufficient safeguard and therefore decided to suspend the enforcement of the final negative asylum decision.⁴² According to the information provided by the Voivodeship Administrative Court, in 2018 the Court refused in 86 cases to grant suspensive effect and only in one case decided to grant suspensive effect to the onward appeal against a negative asylum decision.⁴³

According to the statistics of the Refugee Board, in 2017 there were 317 complaints submitted to the Voivodeship Administrative Court against the decisions of the Refugee Board (down from 324 in 2017). The Voivodeship Administrative Court in Warsaw annulled the Refugee Board's decision in 18 cases, in 265 cases it dismissed the complaint. In 80 cases cassation complaints were lodged. The Supreme Administrative Court annulled the judgment of the Voivodeship Administrative Court as well as the decision of the Refugee Board in 4 cases. In 81 cases the cassation complaint was dismissed.⁴⁴

³⁸ Article 48a Law on Foreigners.

³⁹ Regulated in the Law of 30 August 2002 on the proceedings before administrative courts, Journal of Laws 2012 pos. 270 (*ustawa z dnia 30 sierpnia 2002 r. Prawo o postępowaniu przed sądami administracyjnymi*, Dz.U. 2012, poz. 270).

⁴⁰ *Ibid.*

⁴¹ See e.g. Supreme Administrative Court, II OZ 872/18, 14 September 2018, available at: <http://bit.ly/2Haucpl>.

⁴² Supreme Administrative Court, II 1239/18, 20 December 2018, available at: <http://bit.ly/2T6Zq8d>.

⁴³ Information provided by the Voivodeship Administrative Court, 11 January 2019.

⁴⁴ Information provided by the Refugee Board, 17 January 2018 and 27 February 2019.

1.5. Legal assistance

Indicators: Regular Procedure: Legal Assistance

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

A State legal aid system was introduced in 2015, whereas there is still no state-funded legal aid for citizens.⁴⁵ The legal aid system covers:

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

The system is managed by the Head of the Office for Foreigners who contracts advocates, legal counsellors and NGO lawyers. Legal aid is provided by approximately 140 legal counsellors, 200 advocates and 3 NGOs: the Association for Legal Intervention (LIA), The Rule of Law Institute and Halina Niec Legal Aid Centre.⁴⁶

In 2018, 356 asylum seekers benefited from the system of free legal aid. Taking into account the overall number of appeals (2,785) in 2018,⁴⁷ the capacity for providing legal aid is definitely not sufficient. In 295 cases the aid was granted by an advocate or legal counsellor (up from 49 cases in 2017) and in 53 cases by an NGO lawyer (down from 366 cases in 2017).⁴⁸ This change is probably caused by the turnover of workers from NGOs since the government blocked the funding under the Asylum, Migration and Integration Fund (AMIF). However, the internal statistics of some NGOs differ from the official data.

Before the system of legal aid was created, legal assistance had been provided by NGOs under European Refugee Fund (ERF)-funded projects. This funding, now provided under AMIF, practically has been suspended since mid 2015. First one call for projects was made invalid, others were cancelled, after the announcement of the results had been postponed three times.⁴⁹ On 19 December 2016 19 NGOs sent letters to the Ministry of the Interior and to the European Commission Representation in Poland about this issue,⁵⁰ which remained unanswered at the time of writing. In September 2017 two NGOs (the HFHR and the Association for Legal Intervention) prepared a report where the history of (lack of) funding and its consequences for NGOs have been presented.⁵¹

The situation did not change in 2018. NGOs are forced to limit their personnel and fields of assistance provided so far (legal, psychological or integration assistance). Some NGOs report that in 2018 in

⁴⁵ Article 69c-69m Law on Protection.

⁴⁶ The list of legal counsellors, advocates and NGOs is available at: <https://bit.ly/2TYEAUW>.

⁴⁷ Information provided by the Office for Foreigners, 1 February 2018.

⁴⁸ Under Article 69f(1)(2) Law of Protection.

⁴⁹ See more at Wyborcza, 'MSWiA ma miliony na integrację cudzoziemców, ale w 2016 r. nie wydało na to ani złotych', 9 January 2017, available in Polish at: <http://bit.ly/2lguY9N>.

⁵⁰ Information provided by the Polish Migration Forum, 7 January 2017.

⁵¹ Witold Klaus, Ewa Ostaszewska-Zuk and Marta Szczepanik, *The role of European funds in supporting the integration of migrants in Poland*, November 2017, available at: <http://bit.ly/2EVdzxq>.

Warsaw the waiting time to see a lawyer was one month.⁵² They organise fundraising events to be able to continue their activities⁵³ or rely on voluntary work. However, as NGOs note themselves, some fields of assistance (such as psychological assistance) cannot be provided on a voluntary basis of voluntary by the staff.⁵⁴ Available funding under AMIF has so far been distributed among the Voivodes (local governors), which can implement projects in partnership with NGOs (as of mid 2018 there were only 5 such projects). However, these projects concern migrants, not asylum seekers.

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

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

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.

⁵² Foundation Ocalenie cited "Assistance to refugees blocked: NGOs without access to European Funds", 14 August 2018, available at: <https://bit.ly/2T5Y6S3>.

⁵³ Refugee.pl cited in „Refugee.pl has helped foreigners for years. The Government blocks funding, will you help?” 14 December 2018, available at: <https://bit.ly/2ScoFkb>.

⁵⁴ Legal Intervention Association cited in "Assistance to refugees blocked: NGOs without access to European Funds", 14 August 2018, available at: <https://bit.ly/2T5Y6S3>.

2. Dublin

2.1. General

Dublin statistics: 2018

Outgoing procedure			Incoming procedure		
	Requests	Transfers		Requests	Transfers
Total	176	95	Total	4301	877
Germany	61	41	Germany	2037	657
France	21	:	France	1418	:
Greece	18	:	Netherlands	177	46
Lithuania	:	12	Austria	:	48
Italy	:	9			

Source: requests - Office for Foreigners, transfers - the Border Guard.

Application of the Dublin criteria

According to the Dublin Unit at the Office for Foreigners, a Dublin request may be initiated at any stage of the asylum procedure if any circumstances justifying the request arise. The vast majority of Dublin incoming requests was based on Eurodac hits, only 76 requests concerned family provisions.⁵⁵ According to the Office for Foreigners, the requests accepted by Poland concerned 3,623 persons in total (down from 4,932 accepted requests in 2017). 2,874 persons were expected to be transferred according to the Border Guard and eventually 877 persons were transferred to Poland. No data on evidence required for transfer requests on the basis of family provisions are recorded by the Office for Foreigners.

The dependent persons and discretionary clauses

The humanitarian clause was applied in 5 cases in 2018. The sovereignty clause was used on 2 occasions.⁵⁶ No information on the circumstances was provided.

2.2. Procedure

Indicators: Dublin: Procedure

1. On average, how long does a transfer take after the responsible Member State has accepted responsibility? 3-19 days

The Head of the Office for Foreigners is responsible for Dublin procedures and the Border Guard for transfers.⁵⁷ All asylum seekers over the age of 14 are fingerprinted and checked in Eurodac at the time of lodging their asylum application. In all cases the Head of the Office for Foreigners applies the Dublin procedure.⁵⁸ The ruling of the CJEU in *Mengesteab*,⁵⁹ allowing Member States to apply the Dublin procedure as of the moment of registration before the lodging of the application, has not changed the practice of the Office for Foreigners, which starts the Dublin procedure as of the moment of lodging of the application.

⁵⁵ Information provided by the Office for Foreigners, 15 January 2019.

⁵⁶ Information provided by the Office for Foreigners, 15 January 2019.

⁵⁷ Article 36(2) Law on Protection.

⁵⁸ Article 36(1) Law on Protection.

⁵⁹ CJEU, Case C-670/16, *Tsegezab Mengesteab v. Bundesrepublik Deutschland* (GC), Judgment of 26 July 2017.

According to the Office for Foreigners, if the authorities decide to apply the Dublin procedure, asylum seekers are informed about it. They are informed about the following steps of the procedure e.g. decision received from another Member State, or the need to submit additional documents. Asylum seekers and their legal representatives can contact the Dublin Unit in person, in writing or by phone.⁶⁰

Individualised guarantees

The *Tarakhel v. Switzerland* judgment of the European Court of Human Rights (ECtHR) has not influenced the practice of the Head of the Office for Foreigners in Dublin cases vis-à-vis Italy in 2015-2017, as there are not many Dublin cases concerning Italy. The Office for Foreigners noted however that the only foreigners transferred from Poland to Italy are single men, while vulnerable persons are allowed to stay in Poland.⁶¹ Also in 2018 there were no cases where the *Tarakhel* judgment would have been relevant.⁶²

In 2018 the Office for Foreigners submitted requests to any relevant country without restriction, unless the case concerned vulnerable persons. In the latter case, it is unclear whether in 2018 the sovereignty clause was applied automatically. Where Greece, Hungary or Bulgaria accepted the request, Poland asked these countries to present individual guarantees for the applicants concerned. When the guarantees were not presented, Poland did not perform the transfer and proceeded with the application for international protection.⁶³

Transfers

According to the Border Guard, the transfer is organised within days from the moment the decision on transfer becomes final.

Asylum seekers are transferred under escort only when there is a risk of absconding or if the asylum seeker has already absconded before. In 2018, the Border Guard informed that they transferred 95 (up from 80 in 2017) persons under coercion.⁶⁴

There is also a legal basis for detention in Dublin outgoing procedures, based on the risk of absconding (see section on [Grounds for Detention](#)).⁶⁵ The Border Guard reported that in 2018 82 (up from 80 in 2017) persons were transferred under Dublin from detention centres; no information about the legal grounds of the detention was provided.⁶⁶

2.3. Personal interview

There is no separate interview where an applicant's case falls under the Dublin Regulation. Additional questions for the Dublin procedure form an integral part of the asylum application form.⁶⁷

⁶⁰ Information provided by the Office for Foreigners, 27 August 2015.

⁶¹ Information provided by the Office for Foreigners, 1 February 2018.

⁶² Information provided by the Office for Foreigners, 14 January 2019.

⁶³ Information provided by the Office for Foreigners, 14 January 2019.

⁶⁴ Information provided by the Border Guard, 14 January 2019.

⁶⁵ Article 398(1)(3a) Law on Foreigners.

⁶⁶ Information provided by the Border Guard, 14 January 2019.

⁶⁷ Regulation of the Ministry of the Interior of 4 November 2015 on the asylum application form (Rozporządzenie Ministra Spraw Wewnętrznych z dnia 4 listopada 2015 r. w sprawie wzoru formularza wniosku o udzielenie ochrony międzynarodowej), available in Polish at: <http://bit.ly/1I97b7F>.

2.4. Appeal

Indicators: Dublin: Appeal

☒ Same as regular procedure

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

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

Asylum seekers can appeal against decisions taken in the Dublin procedure to the Refugee Board (and then to the Voivodeship Administrative Court in Warsaw and the Supreme Administrative Court) within 14 days following the same procedure described in the section on appeals in the [Regular Procedure: Appeal](#). The average time for the appeal procedure in Dublin cases in 2018 was 45 (down from 71.5 days in 2017). In 2018 the Refugee Board issued 13 decisions (down from 19 in 2017) in Dublin proceedings, out of which 9 (down from 11 in 2017) confirmed the decision of the Head of the Office for Foreigners.⁶⁸

2.5. Legal assistance

Indicators: Dublin: Legal Assistance

☒ Same as regular procedure

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

	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> With difficulty	<input type="checkbox"/> No
❖ Does free legal assistance cover:	<input type="checkbox"/> Representation in interview		
	<input checked="" type="checkbox"/> Legal advice		
2. Do asylum seekers have access to free legal assistance on appeal against a Dublin decision in practice?

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

Free legal assistance is offered as described in the section on [Regular Procedure: Legal Assistance](#). State legal aid covers preparing an appeal and representation in the second instance.⁶⁹

2.6. Suspension of transfers

Indicators: Dublin: Suspension of Transfers

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

	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
❖ If yes, to which country or countries?		

In 2018 requests were submitted to any country, unless the case concerned vulnerable persons. Greece, Hungary and Bulgaria were asked to present individual guarantees for the applicants concerned.⁷⁰

2.7. The situation of Dublin returnees

There is no information on obstacles in accessing the asylum procedure by the Dublin returnees. There were cases when HFHR, trying to follow the asylum seekers transferred back from another country, learned from the SG that they applied straight away for voluntary return and left the territory. The reason why they chose return over a (re)examination of their asylum claim is not known. The time limit to reopen the procedure is 9 months. Contrary to Article 18(2) of the Dublin III Regulation, in cases where e.g. the applicant did not wait for examination of his or her asylum claim in Poland but went to another Member

⁶⁸ Information provided by the Refugee Board, 17 January 2018.

⁶⁹ Article 69e Law on Protection.

⁷⁰ Information provided by the Office for Foreigners, 14 January 2019.

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.⁷¹

In 2018, 1,717 decisions (down from 2,480 in 2017) discontinuing the procedure were issued because the applicant had explicitly withdrawn the application, left Poland, had not reached or left the reception centre.⁷² In 2018 no information was provided whether any person applied for reopening the procedure within 9 months.

In September 2017 the Commissioner for Human Rights published a report within the National Mechanism for the Prevention of Torture, in which cases of improper detention of Dublin returnees with PTSD were described.⁷³ According to the report, the problems occurred due to numerous procedural shortcomings during the transfer of the family to Poland by the German police, as well as the lack of appropriate operational algorithms that should have been implemented in order to promptly identify victims of torture and violence as well as persons whose mental and physical condition rule out their placement in detention (see [Identification](#)). In 2018, the Commissioner for Human Rights, after visits in detention centers, confirmed that the problem with identification persists.⁷⁴

3. Admissibility procedure

3.1. General (scope, criteria, time limits)

An admissibility procedure is provided for in national legislation.⁷⁵ The Head of the Office for Foreigners is the authority responsible for taking a decision on admissibility. If an asylum application is deemed inadmissible, the Head of the Office for Foreigners issues a decision on the inadmissibility of the application.⁷⁶

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

- a. Another Member State has granted refugee status to the applicant;
- b. A third country can be considered a [First Country of Asylum](#) with regard to the applicant;
- c. The applicant submitted a subsequent application after receiving a final decision, based on the same circumstances;
- d. A spouse of an applicant lodged a new asylum application after the applicant received a final decision and when the spouse’s case was a part of an application made on their behalf and there are no facts justifying a separate application of the spouse.⁷⁷

The application is considered inadmissible if there is a first country of asylum where the applicant is treated as a refugee and can enjoy protection there or is protected against *refoulement* in any other way.⁷⁸

⁷¹ Article 40(6) Law on Protection.

⁷² Information provided by the Office for Foreigners, 14 January 2019.

⁷³ Commissioner for Human Rights, *Report on the activities of the National Mechanism for the Prevention of Torture in 2016, 2017*, available at: <http://bit.ly/2sBpmvy>, 76.

⁷⁴ Commissioner for Human Rights, *Raport Krajowego Mechanizmu Prewencji Tortur z wizytacji Strzeżonego Ośrodka dla Cudzoziemców w Lesznowoli (wyciąg)*, 18 December 2018: <http://bit.ly/2SO3DgP>, report from Biała Podlaska, 7 January 2019, <http://bit.ly/2BU7ej5>.

⁷⁵ Article 38 Law on Protection.

⁷⁶ Article 38(4) Law on Protection.

⁷⁷ Article 38 Law on Protection.

⁷⁸ Article 38 Law on Protection.

The Office for Foreigners delivered the following inadmissibility decisions in 2018:

Inadmissibility decisions: 2018	
Ground for inadmissibility	Number
Subsequent application	1,024
Application by dependant (spouse)	11
Refugee status in another Member State	2
First country of asylum	0
Total	1,037

Source: Office for Foreigners

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

3.2. Personal interview

Indicators: Admissibility Procedure: Personal Interview

☒ Same as regular procedure

- Is a personal interview of the asylum seeker in most cases conducted in practice in the admissibility procedure?

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

 - ❖ If so, are questions limited to identity, nationality, travel route?

<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
------------------------------	--
 - ❖ If so, are interpreters available in practice, for interviews?

<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No
---	-----------------------------
- Are interviews conducted through video conferencing?

<input type="checkbox"/> Frequently	<input checked="" type="checkbox"/> Rarely	<input type="checkbox"/> Never
-------------------------------------	--	--------------------------------

The rules concerning personal interview are the same as in the [Regular Procedure: Personal Interview](#). There is no data on how many interviews were conducted in admissibility procedures in 2018. For the admissibility procedures much depends on the case whether it is a detailed interview, as in the regular procedure, or whether it focuses only on specific issues (e.g. new circumstances). The scope of the interview is not limited to identity, nationality, and travel route.⁷⁹

3.3. Appeal

Indicators: Admissibility Procedure: Appeal

☒ Same as regular procedure

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

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

 - ❖ If yes, is it

<input type="checkbox"/> Judicial	<input checked="" type="checkbox"/> Administrative
-----------------------------------	--
 - ❖ If yes, is it suspensive

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

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

⁷⁹ Information provided by the Office for Foreigners, 1 February 2017.

3.4. Legal assistance

Indicators: Admissibility Procedure: Legal Assistance

☒ Same as regular procedure

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

Free legal assistance is offered in the same context as described in the section on [Regular Procedure: Legal Assistance](#). State legal aid covers preparing an appeal and representation in the second instance.⁸⁰

4. Border procedure (border and transit zones)

There is no border procedure in Poland. However, on 30 January 2017, the Minister of the Interior and Administration presented a draft amendment to the Law on Protection, which introduces a border procedure for granting international protection. The Ombudsman, as well as the main NGOs in Poland, have criticized the draft law for failing to provide sufficient safeguards such as limited access to effective remedies and for introducing detention for the duration of the procedure. The draft is still under discussion at the time of writing. However, the proposal is updated as of 6 February 2019.⁸¹ According to the proposal, if the decision issued in the border procedure is negative, the Office for Foreigners will also decide on return in the same decision. There would be 7 days to appeal this decision to the Voivodeship Administrative Court (not to Refugee Board, as in the regular procedure) and the appeal will not have an automatic suspensive effect. The draft law also provides for the adoption of a list of safe countries of origin and safe third countries.

5. Accelerated procedure

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

The application for international protection is subject to an accelerated procedure if the applicant:⁸²

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

⁸⁰ Article 69e Law on Protection.

⁸¹ Draft law available at: <http://bit.ly/2lqboVu>.

⁸² Article 39 Law on Protection.

The statistics obtained from the Office for Foreigners show that in 2018 the Head of the Office for Foreigners examined 178 applications in accelerated procedure. These concerned the following grounds:

Applications channelled in the accelerated procedure: 2017-2018		
Grounds	2017	2018
Reasons unrelated to grounds for international protection	164	143
Misleading authorities by withholding or presenting false information or documents	1	0
Inconsistent, contradictory, improbable or insufficient statements	18	25
Application solely to delay or frustrate return	3	9
Threat to national security or public order	0	1

Source: Office for Foreigners, 1 February 2018 and 15 January 2019.

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.⁸³ There are no consequences if this time limit is not respected.

5.2. Personal interview

Indicators: Accelerated Procedure: Personal Interview

☒ Same as regular procedure

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

The interview in the accelerated procedure is conducted according to the same rules as in the regular procedure (see [Regular Procedure: Personal Interview](#)).⁸⁴ There is no information on the number of cases in which the interview takes place – Office for Foreigners does not aggregate such data. The interview does not differ from the one in a regular procedure – it is in the same form and the same rules apply.⁸⁵

5.3. Appeal

Indicators: Accelerated Procedure: Appeal

☐ Same as regular procedure

- Does the law provide for an appeal against the decision in the accelerated procedure?
 - ❖ If yes, is it ☒ Yes ☐ No
 - ❖ If yes, is it suspensive ☐ Judicial ☒ Administrative
 - ☒ Yes ☐ No

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

- (1) The time limit to lodge an appeal is 7 calendar days instead of 14;⁸⁶

⁸³ No data was made available upon request if the time limit is respected in practice in 2016 and 2017.

⁸⁴ Article 44 Law on Protection.

⁸⁵ Information provided by the Office for Foreigners, 1 February 2017.

⁸⁶ Article 39(2)(3) Law on Protection.

- (2) Decisions on the appeal in this procedure are issued by only one member of the Refugee Board, instead of three as in the regular procedure.⁸⁷

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

5.4. Legal assistance

Indicators: Accelerated Procedure: Legal Assistance

☒ Same as regular procedure

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

Free legal assistance is offered in the same context described in the section on [Regular Procedure: Legal Assistance](#). State legal aid covers preparing an appeal and representation in the second instance.⁸⁸

D. Guarantees for vulnerable groups

1. Identification

Indicators: Identification

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

Applicants who need special treatment are defined in particular as:⁸⁹

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

⁸⁷ Article 39(2) Law on Protection.

⁸⁸ Article 69e Law on Protection.

⁸⁹ Article 68(1) Law on Protection.

1.1. Screening of vulnerability

The Head of the Office for Foreigners is obliged to make an assessment whether these persons need special treatment in the proceedings regarding granting international protection or regarding social assistance. In order to make this assessment, the authority can arrange for a medical or psychological examination of the applicant, funded by the state. In case the Head of the Office for Foreigners does not arrange for the medical or psychological examination, it is obliged to inform the person that might require special treatment that they can arrange for such an examination themselves and bear the costs. If a person does not agree to be subjected to medical or psychological examination, they should be considered a person that does not require special treatment. The Head of the Office for Foreigners should make the assessment immediately after the submission of the application for international protection and at any other time until the procedure is finished, in case any new circumstances arise.⁹⁰

The Office for Foreigners and NGOs confirm that the assessment takes place in practice, but NGOs stress that it often has to be triggered by the asylum seeker anyway, so support of NGOs or legal representative is needed.

In 2015-2016 there was a project “I recognise, I help – integration and development of the activities and procedures of the Office for Foreigners and the Border Guard with the purpose of a complex identification of vulnerable persons seeking protection in the territory of Poland”, implemented by the Office for Foreigners, the Border Guard and the [Foundation Różnosfera](#). The detailed description of the integrated system of complex identification of vulnerable groups is to be a final product of the project.⁹¹ On the website of the Foundation Różnosfera, there are leaflets in Polish, Russian and Ukrainian explaining the purpose, the consequences and the process of the identification mechanism, including the rights of the asylum seekers. However, some NGOs are of the opinion that the tool used for the identification within this assessment was superficial, while at this stage of the procedure an in-depth analysis should be conducted.⁹²

Under the current asylum application form,⁹³ apart from the self-identification mechanism including questions concerning medical conditions, disability, pregnancy, a SG officer registering the application assesses whether an applicant (or any person covered by the application) may belong to one of these two groups: victims of trafficking in human beings or persons subject to torture. The SG Headquarters applies an algorithm prepared in 2014 on how to handle vulnerable applicants. It defines aims, ways and rules for the SG actions in case of identifying a vulnerable person. The objective is to ensure optimal conditions guaranteeing the assistance of medical personnel and psychologists whenever needed.⁹⁴ NGOs point out that this preliminary identification is conducted at the time of lodging asylum application, so often at the border, where the conditions are difficult. Some are of the opinion that the questions from the application for international protection cannot be considered an early identification at all.⁹⁵ Clear evidence that vulnerable persons are not identified correctly is the fact that victims of violence are still placed in detention, while the law prohibits their detention. NGOs generally confirm that the system of identification envisaged in the law does not work in practice.

In September 2017 the Commissioner for Human Rights published a report within the National Mechanism for the Prevention of Torture, in which it is clearly confirmed that there is an ongoing problem with the system of identification of vulnerable groups in Poland. The Commissioner for Human Rights notices that psychologists employed in detention centres are charged with many tasks relating to the

⁹⁰ Article 68(3)-(6) Law on Protection.

⁹¹ Office for Foreigners, ‘Trwa realizacja 9 projektów w partnerstwie z NGO’s’, 10 June 2016, available in Polish at: <http://bit.ly/2JUzIL>.

⁹² Information provided by LIA, November 2016.

⁹³ Regulation of 5 November 2015 on the asylum application form (Rozporządzenie Ministra Spraw Wewnętrznych z dnia 5 listopada 2015 r. w sprawie wzoru formularza wniosku o udzielenie ochrony międzynarodowej), available in Polish at: <http://bit.ly/1hljviW>.

⁹⁴ Information provided by the Border Guard, 24 August 2015.

⁹⁵ Information provided by LIA, November 2016.

recruitment, psychological support and training of border guard officers, and care provided to migrants is merely one of them.⁹⁶ Moreover, pursuant to the Border Guard internal document cited in the report, psychologists may render psychological aid in the case of traumatic events at the written request of the doctor examining the applicant. Thus, applicant themselves may not initiate a psychological evaluation which could result in an official psychological opinion. According to the report, this restriction impedes identification of potential victims of torture.

Furthermore, during inspections undertaken in 2016, the Commissioner for Human Rights representatives discovered individual cases of persons whose detention in the centres – according to the report - attest to the ineffective functioning of the system for identifying victims of torture and violence, which should protect these persons from placement in closed centres.⁹⁷ Details of the cases, identified in three out of four visited detention centres, were further elaborated in the letter to the Chief Commander of the Border Guard dated 30 June 2017.⁹⁸ In this letter the Commissioner for Human Rights notes that persons seeking international protection can be left in a less favourable situation than the returnees, according to the Border Guard internal guidelines concerning vulnerable persons.

In 2018 the Commissioner for Human Rights visited another 3 detention centres and in the reports the Commissioner reminds that the internal algorithm, on the basis of which the identification is performed, does not clearly state, that vulnerable persons, once identified, should be immediately released from detention. The Commissioner observes that lack of accessible treatment and therapy in the detention centres is rather deepening the trauma.⁹⁹ Torture survivors are present in detention centres and even if they are identified at a later stage – they are not released from detention. There is a lack of expertise among medical staff and psychologists in the detention centers (poor knowledge of Istanbul Protocol).¹⁰⁰ The Office for Foreigners does not collect statistics on the number of asylum seekers identified as vulnerable.¹⁰¹ According to the Office for Foreigners, identification of vulnerable applicants takes place also during regular psychological counselling, available in every reception centre and at the Office for Foreigners. Psychologists have a minimum 4 duty hours a week per 120 foreigners (see [Health Care](#)).¹⁰²

1.2. Age assessment of unaccompanied children

Polish law provides for an identification mechanism for unaccompanied children.¹⁰³ An asylum seeker who claims to be a child, in case of any doubts as to their age, may have to undergo medical examinations – with their consent or with the consent of their legal representative – in order to determine their actual age. There are no additional criteria set in law.

In case of lack of consent, the applicant is considered an adult. Results of the medical examination should contain the information, if an asylum seeker is an adult. In case of any doubts, the applicant is considered as a minor. The responsibility for undertaking a medical examination is triggered by the authorities and shall be ensured by the SG.¹⁰⁴

⁹⁶ Commissioner for Human Rights, *Report on the activities of the National Mechanism for the Prevention of Torture in 2016, 2017*, available at: <http://bit.ly/2sBpmvy>, 76.

⁹⁷ *Ibid*, 82.

⁹⁸ Commissioner for Human Rights, Letter to the Chief Commander of the Border Guard, 30 June 2017, available in Polish at: <http://bit.ly/2Cy89Tu>.

⁹⁹ Commissioner for Human Rights, *Raport Krajowego Mechanizmu Prewencji Tortur z wizytacji Strzeżonego Ośrodka dla Cudzoziemców w Lesznowoli (wyciąg)*, 18 December 2018, available in Polish at <http://bit.ly/2SO3DgP>; *Raport Krajowego Mechanizmu Prewencji Tortur z wizytacji Strzeżonego Ośrodka dla Cudzoziemców w Białej Podlaskiej*, 7 January 2019, available in Polish at: <http://bit.ly/2BU7ej5>.

¹⁰⁰ Conference presentation of the representative of the National Mechanism for the Prevention of Torture, 3 December 2018, Mediolan, information available in Polish at: <http://bit.ly/2T5YvE7>.

¹⁰¹ Information provided by the Office for Foreigners, 1 August 2017.

¹⁰² Information provided by the Office for Foreigners, 1 February 2018.

¹⁰³ Article 32 Law on Protection.

¹⁰⁴ Article 32 Law on Protection.

There are no requirements as to which methods should be chosen and used and what qualifications doctors should have. The law only states that examination should be done in a manner respecting dignity and using the least invasive technique.¹⁰⁵ However, since the end of 2013 there is an algorithm of conducting medical examination of age assessment in return and asylum proceedings applied by the SG. It was drafted following the guidelines of the Study Group on Forensic Age Diagnostics and foresees three methods: (1) a general examination; (2) a wrist X-ray; and (3) a teeth examination (pantomogram).

They are applied following that order – from the least to the most invasive – and in case of establishing a minor's age no additional examinations are conducted.¹⁰⁶ In case the assessment cannot establish an exact age, young people are usually given the benefit of the doubt.¹⁰⁷

During the first half of 2015 three age assessments were conducted in the detention centre in **Kętrzyn**. In all three cases the applicants were minors.¹⁰⁸ In 2016, 2017 and 2018 the Border Guard provided no information about the number of age assessments conducted. The Border Guard mentioned only that in December 2016 there were new guidelines on medical examination conducted for the purpose of identification of unaccompanied children, but no further information was provided upon request.¹⁰⁹

2. Special procedural guarantees

Indicators: Special Procedural Guarantees

1. Are there special procedural arrangements/guarantees for vulnerable people?

☐ Yes ☒ For certain categories ☐ No

❖ If for certain categories, specify which:

2.1. Adequate support during the interview

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

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

Upon the request of the applicant considered requiring special treatment, in cases justified by their needs, the actions in the proceedings regarding granting international protection are performed by a person of the same gender, and in the presence of a psychologist, medical doctor or an interpreter, of a gender indicated by the foreigner.¹¹⁰

Also, the Head of the Office ensures that the interview is conducted by a person trained in the techniques of hearing such persons and in using the country of origin information.¹¹¹ The Office for Foreigners does not have a specialised unit dealing with vulnerable groups, however caseworkers are trained by psychologists and European Asylum Support Office (EASO) experts on interviewing vulnerable persons when starting work. In addition, in October 2016, 20 employees of the Office took part in training courses organised by Różnosfera under the "I recognise, I help" project.

¹⁰⁵ Article 32(4) Law on Protection.

¹⁰⁶ Information provided by the Border Guard, 24 August 2015.

¹⁰⁷ Article 32(5) Law on Protection.

¹⁰⁸ Information provided by the Border Guard, 18 August 2015.

¹⁰⁹ Information provided by the Border Guard, 14 January 2019.

¹¹⁰ Article 69 Law on Protection.

¹¹¹ Article 44(4)(1) Law on Protection.

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

The Office for Foreigners has stated that children are always interviewed in their place of residence. The Office also confirms that there were cases of omission of an interview in 2018 because of the condition of the applicant.

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

2.2. Exemption from special procedures

In 2018 the Office for Foreigners stressed that the law does not exclude the application of the accelerated procedure towards vulnerable applicants (apart from some restrictions concerning unaccompanied children, where it is only allowed to examine their application in an accelerated procedure where they pose a threat to national security) and did not present any statistical data on the use of the accelerated procedure in their case.¹¹²

3. Use of medical reports

Indicators: Use of Medical Reports

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

The law provides that a medical or psychological examination can be conducted in order to assess whether a person needs special treatment with regard to procedural safeguards and reception.¹¹³ There is no medical examination for the purpose of confirming past persecution or serious harm.

In 2013 the Office for Foreigners stated that the methodology set in the Istanbul protocol is not used.¹¹⁴ In 2016 it answered that the matter of methodology of the medical examination (conducted for the purpose of identification of persons requiring special treatments in the procedure) is part of medical documentation and is not disclosed to the Office.¹¹⁵ Most of the NGOs did not report a case of conducting medical examination to confirm past persecutions in 2016 to 2018.

According to the Commissioner for Human Rights, there is a poor knowledge of the Istanbul Protocol among medical staff and psychologists in the detention centres.¹¹⁶

¹¹² Information provided by the Office for Foreigners, 15 January 2019.

¹¹³ Article 68 Law on Protection.

¹¹⁴ Information provided by the Office for Foreigners, 22 February 2013.

¹¹⁵ Information provided by the Office for Foreigners, 1 February 2017.

¹¹⁶ Conference presentation of the representative of the National Mechanism for the Prevention of Torture, 3 December 2018, Mediolan, information available in Polish at: <http://bit.ly/2T5YvE7>.

4. Legal representation of unaccompanied children

Indicators: Unaccompanied Children

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

☒ Yes

☐ No

The Law on Protection provides for the appointment of a legal representative to an unaccompanied child - special guardian (*kurator*).¹¹⁷ There are no exceptions; each child has to have a legal representative and all unaccompanied children get one in practice. The Head of the Office for Foreigners or the SG immediately lodges the request to the district custodial court. The court appoints the legal representative. Under the law, the deadline for appointing the guardian is 3 days. There is no information on compliance with this rule in practice. One guardian is appointed for the following proceedings: international protection, Dublin, social assistance, voluntary return.

There is no special requirement in the Law on Protection for being eligible as a representative of an unaccompanied child for an asylum procedure: the representative should be an adult and have legal capacity. Under the law, only the person who undertakes procedural acts in the proceedings in granting international protection to an unaccompanied minor should fulfill certain conditions.¹¹⁸ There is no remuneration for being a legal representative. In practice in the last years there were problems arising from the insufficient numbers of trained legal representatives for unaccompanied children. NGO personnel and students of legal clinics at universities are appointed as guardians. The legal representative should be present during the interview, together with a psychologist, and may ask questions and make comments.¹¹⁹

The Border Guard reports that since December 2017 they use a list of NGO workers who declared their willingness to be a representative of a child.¹²⁰ However, as the Border Guard confirms, due to the lack of funding, some NGOs withdrew their representatives from the list. Currently there are representatives of 3 NGOs on the list. Their presence on that list is not binding.¹²¹

In 2018 the Commissioner for the Rights of the Child called on the Ministry of Justice to introduce a special type of legal representation of unaccompanied foreign children in Poland. In the opinion of the Commissioner that would allow for a complex and stable representation of a foreign child on the Polish territory, bearing in mind their best interest. The Commissioner criticised that currently guardians are appointed for a concrete proceedings or group of proceedings and do not have a closer relation with a child, which impedes decision-making and taking into account the children's best interest in other fields (such as education, medical care, etc.).¹²²

Currently unaccompanied children are placed in various intervention facilities in Poland, instead of in a central institution. After the court ruling appointing the representative they can be placed in foster care facilities or foster families. In 2018, as in the past years, unaccompanied minors were mostly placed in Ketrzyn (12 persons) – due the proximity to the detention centre in Ketrzyn, from which they are released because of age - or in Warsaw (4 persons). In other locations only singular persons one unaccompanied child was placed per location.¹²³ There is no information on whether the personnel speaks foreign languages there, this is not one of the criteria.¹²⁴

¹¹⁷ Article 61 Law on Protection.

¹¹⁸ Article 66 Law on Protection.

¹¹⁹ Article 65(3) and (4) Law on Protection.

¹²⁰ Information provided by the Border Guard, 11 January 2018.

¹²¹ Information provided by the Border Guard, 14 January 2019.

¹²² The Commissioner for the Rights of the Child, letter to the Ministry of Justice, 2 July 2018, available in Polish at: <http://bit.ly/2SemiZK>.

¹²³ Information provided by the Office for Foreigners, 15 January 2019.

¹²⁴ Information provided by the Office for Foreigners, 27 August 2015.

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

In 2018 there were 125 unaccompanied children (up from 113 in 2017) applying for international protection in Poland.¹²⁵ According to the Office for Foreigners the vast majority of procedures are discontinued because of implicit withdrawal of the application (the minors leave the centres and do not return), in case of some nationalities (e.g. Vietnamese) the percentage of discontinued applications is 100%.¹²⁶

E. Subsequent applications

Indicators: Subsequent Applications

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

Subsequent applications are subject to an [Admissibility Procedure](#). If there are no new grounds for the application, a decision on inadmissibility is issued. In 2018 there were 1621 subsequent applications, submitted mainly by Russian, Ukrainian and Tajik nationals.¹²⁷

In a significant judgment of 2011,¹²⁸ the Supreme Administrative Court 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.¹²⁹

If the application is considered admissible, i.e. containing new circumstances relevant for the case, the Head of the Office for Foreigners issues a decision considering the application admissible.¹³⁰ In 2018 there were 87 such decisions issued by the Office for Foreigners, while 1024 subsequent applications were dismissed as inadmissible.¹³¹

The first subsequent application has suspensive effect on a return decision until it is dismissed as inadmissible (or until protection is refused).¹³²

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

¹²⁵ Information provided by the Office for Foreigners, 15 January 2019.

¹²⁶ Information provided by the Office for Foreigners, 15 January 2019.

¹²⁷ Information provided by the Office for Foreigners, 15 January 2019.

¹²⁸ Supreme Administrative Court, Decision No, II OSK 557/10, 24 February 2011.

¹²⁹ Voivodeship Administrative Court Warsaw, Decision V SA/Wa 2332/11, 13 June 2012. See also Refugee Board, *Activity report 2014 (Sprawozdanie z działalności Rady do Spraw Uchodźców za 2014 r.)*, January 2015.

¹³⁰ Article 38(5) Law on Protection.

¹³¹ Information provided by the Office for Foreigners, 15 January 2019.

¹³² Article 330(2) and (3) Law on Foreigners.

F. The safe country concepts

Indicators: Safe Country Concepts

1. Does national legislation allow for the use of “safe country of origin” concept? ☐ Yes ☒ No
 - ❖ Is there a national list of safe countries of origin? ☐ Yes ☒ No
 - ❖ Is the safe country of origin concept used in practice? ☐ Yes ☒ No
2. Does national legislation allow for the use of “safe third country” concept? ☐ Yes ☒ No
 - ❖ Is the safe third country concept used in practice? ☐ Yes ☒ No
3. Does national legislation allow for the use of “first country of asylum” concept? ☒ Yes ☐ No

Since the 2015 reform of the law, the safe country of origin concept is not applicable in Poland. The draft law submitted in 2017 (and updated in February 2019) but which is not adopted at the time of writing, introduces the safe country of origin concept and foresees the adoption of national lists of safe countries of origin and safe third countries.¹³³

The concept of first country of asylum is included in the law and reflects the wording of Article 35 of the recast Asylum Procedures Directive. However, this provision was not applied in 2018.¹³⁴

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

1. Provision of information on the procedure

Indicators: Information on the Procedure

1. Is sufficient information provided to asylum seekers on the procedures, their rights and obligations in practice? ☐ Yes ☒ With difficulty ☐ No
 - ❖ Is tailored information provided to unaccompanied children? ☐ Yes ☒ No

The same level of information on the asylum procedure is provided to applicants during all types of procedures. The Border Guard officer who receives an asylum application has to inform in writing the applicant in a language that they understand on:¹³⁵

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

This information, covering the list of NGOs, is provided at the border crossing points and is available in 22 languages.¹³⁶

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

¹³³ Draft law available in Polish at: <http://bit.ly/2lqboVu>.

¹³⁴ Information provided by the Office for Foreigners, 15 January 2019.

¹³⁵ Article 30(1)(5) Law on Protection.

¹³⁶ Information provided by the Border Guard, 11 January 2018.

In addition, the Office for Foreigners also offers information in the form of a booklet entitled “First steps in Poland – Guidebook for foreigners applying for international protection.”¹³⁷ It was published in 2011 under a project co-financed by the European Refugee Fund (ERF) and then updated in 2015. It is now available in 6 languages (Russian, English, Georgian, Arabic, French and Polish) and contains basic information on Poland, Polish law regarding asylum seekers and social assistance.

Asylum seekers are informed about the Dublin procedure when they apply for international protection in accordance with the Dublin III Regulation and the Commission Implementing Regulation, including the separate leaflet for unaccompanied children.¹³⁸

Information about the possibility to contact UNHCR is available in the Office for Foreigners (in English, Russian, French, Arabic and Vietnamese) and in reception and detention centres. The instructions for asylum applicants provided by the Border Guard contain information about the possibility to contact UNHCR and NGOs. According to the Border Guards they are provided at the border and are available in 22 languages.¹³⁹

2. Access to NGOs and UNHCR

Indicators: Access to NGOs and UNHCR

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

Since mid-2015 there is an ongoing problem with distributing AMIF funding, which significantly reduces the capacity of NGOs to provide information and assistance in reception centres. Since then, every year NGOs are forced to limit their personnel and fields of assistance provided so far (legal, psychological or integration assistance). Some NGOs report that in 2018 in Warsaw there was a one month waiting time for asylum seekers to see a lawyer.¹⁴⁰

NGOs organise fundraising events to be able to continue their activities¹⁴¹ or rely on voluntary work. However, as NGOs note themselves, psychological assistance cannot be provided by their staff on a voluntary basis.¹⁴² Available funding under AMIF has so far been distributed among the Voivodes (local governors), which can implement projects in partnership with NGOs (as of mid-2018 there were only 5 such projects). However, these projects concern migrants, not asylum seekers.

¹³⁷ Office for Foreigners, *First steps in Poland handbook*, available at: <http://bit.ly/2BEraXC>.

¹³⁸ Information provided by the Border Guard, 11 January 2018.

¹³⁹ Information provided by the Border Guard, 11 January 2018.

¹⁴⁰ Foundation Ocalenie cited “Assistance to refugees blocked: NGOs without access to European Funds”, 14 August 2018, available at: <http://bit.ly/2U2ZYZe>.

¹⁴¹ Refugee.pl cited in “Refugee.pl has helped foreigners for years. The Government blocks funding, will you help?” 14 December 2018, available at: <http://bit.ly/2BH0g0A>.

¹⁴² Legal Intervention Association cited in “Assistance to refugees blocked: NGOs without access to European Funds”, 14 August 2018, available at: <http://bit.ly/2U2ZYZe>.

H. Differential treatment of specific nationalities in the procedure

Indicators: Treatment of Specific Nationalities

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

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

HFHR has 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 Law on Protection.¹⁴³ Due to the conditions in which such meetings take place, it is hard to identify these cases in practice. Similarly questionable was the visit of the Ministry of Interior of Kazakhstan to the reception centre near Warsaw on 24 March 2018. The Commissioner for Human Rights intervened in this case and asked the Head of the Office for Foreigners whether any Kazakh nationals were placed in the centre at that time.¹⁴⁴ The Office for Foreigners stated that Kazakh applicants were not present there.¹⁴⁵

Ukrainians constituted 11 % of all applicants in 2018. As of 31.12.2018 there were 309 ongoing proceedings in Ukrainian cases. The rejection rate is 95%. At the same time more and more persons apply for (and are granted) a permit for temporary stay (140,268 applications in 2018 compared to 112,903 in 2017).

Applications from Syrian nationals are no longer automatically considered manifestly well-founded, as in 2018 there were 16 persons granted refugee status, 3 subsidiary protection and 2 persons received negative decisions.

As of 31 December 2018 no returns are carried out to the following countries: Syria, Eritrea, Yemen.¹⁴⁶

¹⁴³ 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.

¹⁴⁴ Commissioner for Human Rights, letter to the Head of the Office for Foreigners, 26 July 2018, available in Polish at: <http://bit.ly/2DXGePP>.

¹⁴⁵ Prawo, "Szef MSW Kazachstanu u uchodźców - RPO zaniepokojony", 31 July 2018, available in Polish at <http://bit.ly/2XcnlvE>.

¹⁴⁶ Information provided by the Border Guard, 14 January 2019.

Reception Conditions

A. Access and forms of reception conditions

1. Criteria and restrictions to access reception conditions

Indicators: Criteria and Restrictions to Reception Conditions

1. Does the law make material reception conditions to asylum seekers in the following stages of the asylum procedure?

❖ Regular procedure	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> Reduced material conditions	<input type="checkbox"/> No
❖ Dublin procedure	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> Reduced material conditions	<input type="checkbox"/> No
❖ Admissibility procedure	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> Reduced material conditions	<input type="checkbox"/> No
❖ Accelerated procedure	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> Reduced material conditions	<input type="checkbox"/> No
❖ First appeal	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> Reduced material conditions	<input type="checkbox"/> No
❖ Onward appeal	<input type="checkbox"/> Yes	<input type="checkbox"/> Reduced material conditions	<input checked="" type="checkbox"/> No
❖ Subsequent application	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> Reduced material conditions	<input type="checkbox"/> No

2. Is there a requirement in the law that only asylum seekers who lack resources are entitled to material reception conditions?

<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
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The provision of reception conditions does not depend on the financial situation of asylum seekers.¹⁴⁷

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

Asylum seekers are entitled to material reception conditions during all asylum procedures in Poland. There is no difference between regular, accelerated and admissibility procedures, as well as first appeal.¹⁴⁸

Asylum seekers are entitled to material reception conditions after claiming asylum, from the moment they register in one of the first reception centres. They should register there within two days after applying for asylum, otherwise their procedure will be discontinued.¹⁴⁹ Only medical assistance can be granted from the moment of claiming asylum (i.e. before registration in a first reception centre) in special situations, in case of threat to life and health.¹⁵⁰ Proof of an asylum application is confirmed by the temporary ID issued by the SG after submitting the claim.¹⁵¹ However, according to the Office for Foreigners, the lack of such a document is not a problem for registering at the reception centre.¹⁵² Asylum seekers are also entitled to the temporary ID when they are returned to Poland on the basis of the Dublin Regulation, if they claimed for asylum before departing from Poland and they state that they want to continue the asylum procedure in Poland.¹⁵³

Material reception conditions are not provided when an asylum seeker is waiting for submitting an asylum application, i.e. for up to 3 working days (in case of massive influx - 10 working days). Exceptionally, the SG is entitled to inform an asylum seeker that it is impossible to apply for asylum the day he/she presents him/herself at the SG unit and instead fix a later date and place to submit the asylum application.¹⁵⁴ Between January and June 2018, such later date was given in 112 cases.¹⁵⁵ In such a situation only the

¹⁴⁷ Articles 70-74 Law on Protection.

¹⁴⁸ Article 70 Law on Protection.

¹⁴⁹ Article 40(1)(2) in conjunction with Article 40 (2)(1) Law on Protection.

¹⁵⁰ J. Białas, 'Niezgoda na zasady pomocy socjalnej zapewnianej osobom ubiegającym się o nadanie statusu uchodźcy z wyrokiem Trybunału Sprawiedliwości UE', in HFHR, *W poszukiwaniu ochrony. Wybrane problemy dotyczące realizacji praw cudzoziemców ubiegających się o nadanie statusu uchodźcy i objętych ochroną międzynarodową w latach 2012-2014. Obserwacje Programu Pomocy Prawnej dla Uchodźców i Migrantów Helsińskiej Fundacji Praw Człowieka*, 2014, available in Polish at: <http://bit.ly/1eiVxDF>, 52-53.

¹⁵¹ Article 80(1) Law on Protection.

¹⁵² Information obtained from the Office for Foreigners, 25 March 2014 and confirmed on 1 February 2017.

¹⁵³ Article 55(2) and (3) Law on Protection.

¹⁵⁴ Article 28(1) Law on Protection.

¹⁵⁵ See Letter from the SG to the HFHR of 13 August 2018.

intention to apply for international protection is registered which is not entitling an asylum seeker to any form of material reception conditions in Poland.

As a general rule, reception conditions (material assistance, accommodation, medical care) are provided up until 2 months after the decision on the asylum application becomes final (either positive or negative).¹⁵⁶ However, when the procedure is terminated through a decision discontinuing the procedure (e.g. in admissibility procedures), reception conditions are provided until 14 days after the decision becomes final.¹⁵⁷ Moreover, reception conditions are not provided, as soon as the period within which an asylum seeker was obliged to leave Poland voluntarily has passed.¹⁵⁸ Asylum seekers as a rule are obliged to leave Poland in 30 days from the day when the final decision of the Refugee Board was delivered or in 30 days from the moment when decision of the Office for Foreigners becomes final (if they do not appeal).¹⁵⁹ In practice it means that most often reception conditions are provided only for 30 days, not 2 months, in case of a negative decision. Reception conditions are provided in practice in this time frame.

In principle, during the onward appeal procedure before the Voivodeship Administrative Court in Warsaw, asylum seekers are not entitled to material reception conditions.¹⁶⁰ 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.¹⁶¹ However, since 2016 the Court has mostly refused to suspend enforcement of negative decisions on international protection (see [Regular Procedure: Appeal](#)) for the time of the court proceedings, which leaves asylum seekers without any material reception conditions for this period. In 2018 the court decided to suspend the enforcement of the negative asylum decision only once and refused such suspension 86 times.¹⁶²

Good practice has been reported by some asylum seekers who were allowed to stay in the centre even though the period during which they were entitled to assistance had ceased after the abovementioned timeframes.

Some asylum seekers are not entitled to material reception conditions in an asylum procedure e.g. beneficiaries of subsidiary protection (applying for asylum again)¹⁶³, humanitarian stay or “tolerated stay”, foreigners staying in Poland on the basis of temporary stay permit, permanent stay permit or long-term residence permit, foreigners staying in youth care facilities or detention centres or a pre-trial custody or detention for criminal purposes.¹⁶⁴ Beneficiaries of subsidiary protection, foreigners staying in Poland on the basis of a permanent stay permit, long-term residence permit or – in some cases – temporary stay permit are entitled to state benefits (general social assistance system) to the same extent as Polish citizens. Foreigners who were granted humanitarian stay or tolerated stay are entitled to state benefits only in the form of shelter, food, necessary clothing and a benefit for specified purpose.¹⁶⁵

¹⁵⁶ Article 74(1)(2) Law on Protection.

¹⁵⁷ *Ibid.*

¹⁵⁸ Article 74(2)(2) Law on Protection.

¹⁵⁹ Article 299(6)(2) Law on Foreigners.

¹⁶⁰ 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.

¹⁶¹ This is the interpretation of the Legal Department of the Office for Foreigners: Information confirmed by the Office for Foreigners, 1 February 2017, 1 February 2018 and 15 January 2019.

¹⁶² See information provided by the Voivodeship Administrative Court in Warsaw, 11 January 2019. See also Voivodeship Administrative Court in Warsaw, Decision No IV SA/Wa 698/15, 13 April 2015; Decision No OZ 41/15, 28 January 2015; Decision No IV SA/Wa 3808/15, 23 May 2016. For more information on the courts' differential practice in this area, see Maja Łysienia, 'Prawo cudzoziemca ubiegającego się o udzielenie ochrony międzynarodowej do pobytu na terytorium Polski' in D Pudziałowska (ed), *Status cudzoziemca w Polsce wobec współczesnych wyzwań międzynarodowych* (Wolters Kluwer SA, 2016).

¹⁶³ 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.

¹⁶⁴ Article 70(2) Law on Protection.

¹⁶⁵ Article 5(2) Law of 30 August 2002 on social assistance.

1.2. Obstacles to accessing reception

There are some practical obstacles reported in accessing material reception conditions. Asylum seekers can apply to change assistance granted in the centre to assistance granted outside of the centre. If the Office for Foreigners agrees then in practice asylum seekers are entitled to stay in the centre until the end of the month and from the next month they are entitled to the financial allowance. Currently the payments of this allowance are made through the post services¹⁶⁶. It is a positive development, as asylum seekers are no longer obliged to personally receive payments every month in the centre or in the Office for Foreigners, which led to many practical problems. However, now the date of receiving money is unpredictable¹⁶⁷, as it depends on the swiftness of sending the allowance by the Office for Foreigners and – more – on the efficacy of the post office. It means that foreigners have to move from the centre at the end of the month, but it is possible that they do not get any financial resources to rent an apartment or even buy food for a couple days or even weeks. Moreover, they are not entitled to any payments in advance, despite the fact that owners often require paying a first rent or a deposit before they rent an apartment.

A further obstacle to receiving support is encountered by formerly detained asylum seekers. Those who have been detained are not entitled to support immediately after being released from the detention centre. They are granted material reception conditions only from the moment of registration in a reception centre, which is very often located far away from the detention centre. As a result, asylum seekers have problems covering the cost of transport to the reception centre.¹⁶⁸ The SG is obliged to provide the transport to a reception centre for some groups of asylum seekers released from a detention centre: pregnant women, single parents, elderly and disabled people. In justified cases, food for them should be also provided.¹⁶⁹ The Border Guard does not keep data on the application of this provision in practice.¹⁷⁰

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.¹⁷¹

Asylum seekers who are subject to a Dublin transfer from Poland are entitled to additional assistance, upon request. Reception conditions are provided for such asylum seekers as long as they should leave Poland to other EU country;¹⁷² it is an exception from the general rules concerning the period in which reception conditions are provided described above. A request for this assistance has to be made in a specific term (30 days from the moment when the final decision on transfer is delivered to the asylum seeker). After this time, the demand of the asylum seeker is left without consideration.¹⁷³ The assistance in case of the transfer to another EU country covers: travel costs, administrative payments for travel documents or visas and permits, cost of food and medical assistance during the travel.¹⁷⁴

¹⁶⁶ Since 1 January 2019 the payments through the post services are made in case of all asylum seekers who were granted the financial allowance (in the period 2017-2018 some of them were excluded from this new solution). Information provided by the Office for Foreigners on 15 January 2019.

¹⁶⁷ Office for Foreigners, *Harmonogram wypłat*, available in Polish at: <http://bit.ly/2ttgDt5>.

¹⁶⁸ Jacek Białas, 'Niezgoda na zasad pomocy socjalnej zapewnianej osobom ubiegającym się o nadanie statusu uchodźcy z wyrokiem Trybunału Sprawiedliwości UE', in HFHR, *W poszukiwaniu ochrony. Wybrane problemy dotyczące realizacji praw cudzoziemców ubiegających się o nadanie statusu uchodźcy i objętych ochroną międzynarodową w latach 2012-2014. Obserwacje Programu Pomocy Prawnej dla Uchodźców i Migrantów Helsińskiej Fundacji Praw Człowieka*, 2014, available in Polish at: <http://bit.ly/1eiVxDF>, 53.

¹⁶⁹ Article 89cb Law on Protection.

¹⁷⁰ Information provided by the Border Guard, 11 January 2018 and 14 January 2019.

¹⁷¹ M. Łysienia, 'Prawidłowe funkcjonowanie systemu POBYT jako gwarancja przestrzegania praw cudzoziemców' in HFHR, *W poszukiwaniu ochrony*, 2014, 49.

¹⁷² Article 74(3)(3) Law on Protection.

¹⁷³ Article 75a(2) in conjunction with Article 75(3) and (3a) Law on Protection.

¹⁷⁴ Article 75a(2) in conjunction with Article 75(2) Law on Protection.

2. Forms and levels of material reception conditions

Indicators: Forms and Levels of Material Reception Conditions

1. Amount of the monthly financial allowance/vouchers granted to asylum seekers as 31 December 2018 (in original currency and in €):
 - ❖ Accommodated, incl. food 50 PLN / 12 €
 - ❖ Private accommodation 775 PLN / 185 €

The Regulation on the amount of assistance to asylum seekers sets the level of financial allowances for all amounts related to reception conditions. In the law there are 2 forms of reception conditions, depending on whether the applicant is accommodated or not in a reception centre.¹⁷⁵ Conditions offered to both categories equally cover:

- Polish language course and basic materials supplies necessary for the course;
- Supplies for school for children enjoying education and care of public institutions, primary and higher schools and covering, as far as possible the expenses of extra-curricular classes and sports and recreational classes;
- Public transport to (a) attend interviews as part of the asylum procedure; (b) medical examinations or vaccinations; or (c) other particularly justified cases;
- Medical care.

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

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

According to the law, in case an asylum seeker performs cleaning work for the centre, provides translation or interpretation that facilitates communication between the personnel of the centre and asylum seekers, or provides cultural and educational activities for other asylum seekers who stay in the centre, the amount of the allowance for personal expenses may be raised to PLN 100 (23,24€). In 2018 this raise was applied 569 times¹⁷⁶.

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

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

Under the law, the assistance granted in the centre is granted as a rule to all asylum seekers. An asylum seeker can obtain assistance granted out of the centre upon request, examined by the Head of the Office for Foreigners. It can be granted for organisational, safety or family reasons or to prepare asylum seekers

¹⁷⁵ Article 71 Law on Protection.

¹⁷⁶ Information provided by the Office for Foreigners, 15 January 2019.

for an independent life after they have been granted any form of protection.¹⁷⁷ Most of the requests are accepted¹⁷⁸.

All of the abovementioned reception conditions are used in practice. As of 31 December 2018, 1,260 (down from 1,403 in 2017) asylum seekers benefited from assistance in the centres and 1,619 (down from 2,017 in 2017) asylum seekers were granted assistance outside the centres. In 2018, on average 1,361 (down from 1,742 in 2017) asylum seekers benefited from assistance in the centres and 1,730 (down from 2,169 in 2017) asylum seekers were granted assistance outside the centres.¹⁷⁹

The amount of social assistance that asylum seekers receive is generally not sufficient to ensure an adequate standard of living in Poland.¹⁸⁰ With only PLN 750-775 per month, it is very difficult to rent an apartment or even a room in **Warsaw**, where most asylum seekers stay during the procedure¹⁸¹, particularly taking into account that owners are often unwilling to rent an apartment to foreigners, especially asylum seekers, and tend to increase a rent or deposit in such situations¹⁸². As the amount of financial allowance is not enough to rent separate accommodation, asylum seekers are often forced to live in overcrowded and insecure places¹⁸³. 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.¹⁸⁴ Social assistance for families of four members amounts to PLN 1,500 per month and in practice is enough only to rent an apartment. Insufficient amounts of social assistance forces asylum seekers to work in Poland illegally in order to maintain and pay the rent.¹⁸⁵

The amount of social assistance is below the so called “social minimum” (indicator which evaluates the cost of living in Poland). The asylum seeker receives from one and half to two times less than what is essential according to the “social minimum”. The amount of social assistance for asylum seekers has not been raised since 2003¹⁸⁶, even though the costs of living in Poland have risen by 35% to 50% depending on the type of the household.¹⁸⁷

¹⁷⁷ Article 72(1) Law on Protection.

¹⁷⁸ In 2018, 995 requests for the social assistance granted outside a centre were registered, 868 were accepted (information provided by the Office for Foreigners, 15 January 2019).

¹⁷⁹ Information provided by the Office for Foreigners, 15 January 2019.

¹⁸⁰ Commissioner for Human Rights, Letter to the Ministry of Interior of 7 December 2015, in which the Polish Commissioner for Human Rights is asking to consider the increase the amount of financial assistance for asylum seekers, available in Polish at: <http://bit.ly/2kSuaa4>.

¹⁸¹ N. Klorek, ‘Ochrona zdrowia nieudokumentowanych migrantów i osób ubiegających się o ochronę międzynarodową w opinii cudzoziemców’ in A. Chrzanowska, W. Klaus, ed., *Poza systemem. Dostęp do ochrony zdrowia nieudokumentowanych migrantów i cudzoziemców ubiegających się o ochronę międzynarodową w Polsce*, LIA, 2011, available in Polish at <https://interwencjaprawna.pl/docs/poza-systemem.pdf>, 56.

¹⁸² W. Goszczyński, R. Baczyński-Sielaczek, J. Suchomska, J. Stankowska and M. Wróblewski. ‘Lokalne systemy integracji uchodźców – badania’ in Fundacja EMIC and Pracownia Zrównoważonego Rozwoju, *Wielogłos. Integracja uchodźców w polskich gminach* (2016), available in Polish at <http://wieloglos.emic.com.pl/>, 81.

¹⁸³ W. Klaus, ‘Rozwiązania prawne stosowane w odniesieniu do osób starających się o ochronę w Polsce’ in A. Górny, H. Grzymała-Moszczyńska, W. Klaus and S. Łodziński, *Uchodźcy w Polsce. Sytuacja prawna, skala napływu i integracja w społeczeństwie polskim oraz rekomendacje* (PAN 2017), available in Polish at: <https://bit.ly/2XEdsfZ>, 22.

¹⁸⁴ K. Wysieńska, *Gdzie jest mój dom? Bezdomność i dostęp do mieszkań wśród ubiegających się o status uchodźcy, uchodźców i osób z przyznaną ochroną międzynarodową w Polsce*, UNHCR, 2013, available in Polish at: <http://bit.ly/2IriKrA>, 14.

¹⁸⁵ Stowarzyszenie Interwencji Prawnej, A. Chrzanowska, I. Czerniejewska, “Mieszkamy tutaj, bo nie mamy innego wyjścia... Raport z monitoringu warunków mieszkaniowych uchodźców w Polsce, Analizy, raporty, ekspertyzy Nr 2/2015, 55, available in Polish at: <http://bit.ly/1Lq2Hie>.

¹⁸⁶ W. Klaus, ‘Rozwiązania prawne stosowane w odniesieniu do osób starających się o ochronę w Polsce’ in A. Górny, H. Grzymała-Moszczyńska, W. Klaus and S. Łodziński, *Uchodźcy w Polsce. Sytuacja prawna, skala napływu i integracja w społeczeństwie polskim oraz rekomendacje* (PAN 2017), available in Polish at: <http://bit.ly/2DVccfr>, 22.

¹⁸⁷ M. Jaźwińska, M. Szczepanik, “All quiet on the Eastern front: asylum trends and reception of refugees in Poland during the 2013-2015 Europe’s migration crisis” in Corvinus Society for Foreign Affairs and Culture, (Biztpol Affaires 2015 Summer Vol. 3 No 2), available at: <http://bit.ly/2SQKPgQ>. See also letter from Helsinki

As a result, material reception conditions are considered insufficient to ensure a decent standard of living as highlighted in the CJEU judgment in *Saciri*.¹⁸⁸ The amount of social assistance that asylum seekers receive is not adjusted to their state of health, their age or disability, which is incompatible with *Saciri*.¹⁸⁹

In 2015 the Polish Commissioner for Human Rights, UNHCR, HFHR and the LIA appealed to the Ministry of Interior to increase the amount of the social assistance granted to asylum seekers. Their motions were not accepted by the authorities, who concluded that the amount of financial support granted outside of the centres is satisfactory, because it is only an additional form of the material reception conditions. The basic form is the assistance granted in the reception centres, which is sufficient.¹⁹⁰ There were no changes in the amounts of social assistance for asylum seekers since then.

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. Reduction or withdrawal of reception conditions

Indicators: Reduction or Withdrawal of Reception Conditions

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

The law provides for the possibility to withdraw material reception conditions, if an asylum seeker grossly violates the rules in the centre or acts violently towards employees of the centre or other foreigners staying there.¹⁹¹ The decision on depriving reception conditions is issued by the Head of the Office for Foreigners. It can be re-granted to the same extent as previously (upon an asylum seeker's request), but if the violation occurs again, it can be re-granted only in the form of a payment of half of the regular financial allowance provided to asylum seekers.¹⁹²

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.¹⁹³

Foundation for Human Rights to the Ministry of Interior of 27 October 2015, available in Polish at: <http://bit.ly/2l82tbT>.

¹⁸⁸ CJEU, Case C-79/13 *Saciri*, Judgment of 27 February 2014; J. Białas, 'Niezgodność zasad pomocy socjalnej zapewnianej osobom ubiegającym się o nadanie statusu uchodźcy z wyrokiem Trybunału Sprawiedliwości UE', in HFHR, *W poszukiwaniu ochrony. Wybrane problemy dotyczące realizacji praw cudzoziemców ubiegających się o nadanie statusu uchodźcy i objętych ochroną międzynarodową w latach 2012-2014. Obserwacje Programu Pomocy Prawnej dla Uchodźców i Migrantów Helsińskiej Fundacji Praw Człowieka*, 2014, available in Polish at: <http://bit.ly/1eiVxDF>, 52; Commissioner for Human Rights, Letter of 7 December 2015 to the Ministry of Interior, in which he is asking to consider the increase the amount of financial assistance for asylum seekers, available in Polish at: <http://bit.ly/2kSuaa4>.

¹⁸⁹ J. Białas, 'Niezgodność zasad pomocy socjalnej zapewnianej osobom ubiegającym się o nadanie statusu uchodźcy z wyrokiem Trybunału Sprawiedliwości UE', in HFHR, *W poszukiwaniu ochrony. Wybrane problemy dotyczące realizacji praw cudzoziemców ubiegających się o nadanie statusu uchodźcy i objętych ochroną międzynarodową w latach 2012-2014. Obserwacje Programu Pomocy Prawnej dla Uchodźców i Migrantów Helsińskiej Fundacji Praw Człowieka*, 2014, available in Polish at: <http://bit.ly/1eiVxDF>, 52.

¹⁹⁰ Letters from Polish Commissioner for Human Rights, HFHR, Association for Legal Intervention and UNHCR, as well as Ministry of Interior's response, available in Polish at: <http://bit.ly/2lyW3Va>.

¹⁹¹ Article 76(1) Law on Protection.

¹⁹² Articles 76 and 78 Law on Protection.

¹⁹³ Information obtained from Department for Social Assistance, Office for Foreigners, 25 March 2014.

Social assistance can be reduced to half of the financial allowance provided to asylum seekers also in case of a refusal to undergo medical examinations or necessary sanitary treatment of asylum seekers themselves and their clothes.¹⁹⁴

The abovementioned rules of withdrawal and reduction of social assistance are used in practice very rarely. In 2018 only one asylum seeker was deprived of reception conditions and he did not apply for re-granting¹⁹⁵. There were 3 cases in 2017, and another 3 in 2016. In 2017, 2 applicants were able to re-access assistance. No information is available about the specific reasons of such a withdrawal or reduction.¹⁹⁶

Moreover, in case an asylum seeker benefiting from social assistance in the centre stays outside this centre for a period exceeding two days, granting such assistance should be withheld by law until the moment of his return.¹⁹⁷

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

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 (100,000,000 PLN) 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%.¹⁹⁸ 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 requested to refund any costs of material reception conditions.

4. Freedom of movement

Indicators: Freedom of Movement

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

Officially there is no restriction to the freedom of movement of asylum seekers: they can travel around Poland wherever they want. However, when an asylum seeker accommodated in a centre stays outside this centre for more than 2 days, the assistance will be withheld by law until the moment of their return.¹⁹⁹ Asylum seekers should inform the employees of the centre if they want to leave for a longer period and then the assistance will still be granted.²⁰⁰

The Office for Foreigners decides in which reception centre asylum seekers will be allocated. This decision cannot be formally challenged. In practice, decisions are made taking into consideration family ties (asylum seekers should be allocated in the same centre as their families), vulnerability (e.g. asylum seekers with special needs can be allocated only to the centres which are adapted to their needs),

¹⁹⁴ Article 81(3) Law on Protection.

¹⁹⁵ Information provided by the Office for Foreigners, 15 January 2019.

¹⁹⁶ Information provided by the Office for Foreigners, 1 February 2017 and 1 February 2018.

¹⁹⁷ Article 77 Law on Protection.

¹⁹⁸ Article 19 Law of 28 July 2011 on the legalisation of the stay of certain foreigners on Polish territory, available in Polish at: <http://bit.ly/1NyZMY8>.

¹⁹⁹ Article 77 Law on Protection.

²⁰⁰ Information received from UNHCR Poland and the Office for Foreigners, 25 March 2014.

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. For example, 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**.²⁰¹

The possibility for nuclear families to stay in the same centre is not a problem in practice.²⁰²

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.²⁰³ Polish authorities in practice interpret such rule as applying only to transfers from first-reception centres to an accommodation centre.²⁰⁴ As a result, asylum seekers are forced to move only from a first reception centre to the other centres. In practice it can take a few to several days (depending on how long the epidemiological filter procedure lasts and whether the interview is conducted in the first reception centre – as a rule it should be conducted there in the first asylum procedure).²⁰⁵ Afterwards if they are allocated to one centre they are very rarely moved to another. If so, it happens only upon request of the asylum seeker. In the period of 2016-2018 there were no cases of moving an asylum seeker to another facility without their request. If an asylum seeker submits such a request, it is mostly because of the location of the centre (e.g. it is far from school or shops).²⁰⁶ In 2018 family reasons prevailed in the requests (47 in total, 23 accepted).²⁰⁷ Reasons of public interest and public order do not have any impact on the decision on an asylum seeker's place of stay.²⁰⁸ There is no decision concerning transfers from one centre to the other so it cannot be appealed.

B. Housing

1. Types of accommodation

Indicators: Types of Accommodation

- | | | |
|---|-----|-------|
| 1. Number of reception centres: | 209 | 11 |
| 2. Total number of places in the reception centres: | | 2,231 |
| 3. Total number of places in private accommodation: | | N/A |
| 4. Type of accommodation most frequently used in a regular procedure: | | |
| <input checked="" type="checkbox"/> Reception centre <input type="checkbox"/> Hotel or hostel <input type="checkbox"/> Emergency shelter <input checked="" type="checkbox"/> Private housing <input type="checkbox"/> Other | | |
| 5. Type of accommodation most frequently used in an accelerated procedure: | | |
| <input checked="" type="checkbox"/> Reception centre <input type="checkbox"/> Hotel or hostel <input type="checkbox"/> Emergency shelter <input checked="" type="checkbox"/> Private housing <input type="checkbox"/> Other | | |

Poland has eleven reception centres which altogether provide 2,231 places. At the end of 2018, 1,260 (down from 1,403 in 2017) asylum seekers were residing in the centres.²¹⁰ Another 1,619 (down from 2,017 in 2017) asylum seekers were receiving assistance outside the centres.

²⁰¹ Polskie Radio, "Brud i smród" - uchodźcy z Ukrainy skarżą się na warunki w polskim ośrodku, 27 March 2014, available at: <http://bit.ly/NY8bKX>.

²⁰² Information provided by Office for Foreigners, 15 January 2019; EMN, *The Organisation of Reception Facilities for Asylum Seekers in different Member States. National Contribution of Poland*, 2013, 6.

²⁰³ Article 82(1)(6) Law on Protection.

²⁰⁴ EMN, *The Organisation of Reception Facilities for Asylum Seekers in different Member States. National Contribution of Poland*, 2013, 19.

²⁰⁵ Information provided by the Office for Foreigners, 27 August 2015.

²⁰⁶ Information provided by the Office for Foreigners, 1 February 2017 and 1 February 2018.

²⁰⁷ Information provided by the Office for Foreigners, 15 January 2019.

²⁰⁸ Information provided by Office for Foreigners, 25 March 2014. See also Commissioner for Human Rights, *Realizacja prawa małoletnich cudzoziemców do edukacji. Raport RPO*, 2013, available in Polish at: <http://bit.ly/1Hz4N4a>, 38.

²⁰⁹ Both accommodation and for first arrivals.

²¹⁰ Information provided by the Office for Foreigners, 1 February 2018.

Two centres (**Dębak**, **Biała Podlaska**) serve for first reception, where asylum seekers are directed after applying for asylum in order to register and carry out medical examinations.²¹¹ The other nine are accommodation centres.²¹²

There is no problem of overcrowding in these centres. As of 31 December 2018, the occupancy rate was 48,2% (down from 50% in 2017) in first reception centres and 58,7 (down from 71% in 2017) in the accommodation centres.²¹³

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**, **Grupa** and **Linin** are located in the woods.²¹⁴ These centres are therefore not easily accessible; in **Dębak** residents have to walk 3km through the woods to access public transport. The centre in **Warsaw** (for single women with children) is situated far away from the city centre, near factories and a construction company. Nearby there are no shops or other service points, to get to the centre asylum-seeking women have to walk through a densely tree-lined road which is not sufficiently lit. This raises concerns with regard to safety of single women living there.²¹⁵

Spatial exclusion as a result of the present location of the centres is considered as the main problem by some NGOs²¹⁶. Isolation of the centres leads to limitation of contact with Polish citizens and Polish institutions, including NGOs, which affects the effectiveness of the integration process.²¹⁷

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

2. Conditions in reception facilities

Indicators: Conditions in Reception Facilities

1. Are there instances of asylum seekers not having access to reception accommodation because of a shortage of places? ☐ Yes ☒ No
2. What is the average length of stay of asylum seekers in the reception centres? 121 days
3. Are unaccompanied children ever accommodated with adults in practice? ☐ Yes ☒ No

The Head of the Office for Foreigners is responsible for the management of all the centres. This authority can delegate its responsibility for managing the centres to social organisations, associations, etc.²¹⁸

²¹¹ Information provided by the Office for Foreigners, 27 August 2015.

²¹² Office for Foreigners, *Informator Departamentu Pomocy Socjalnej 2017*, available in Polish at: <http://bit.ly/2CzDOE3>, 3.

²¹³ Information provided by the Office for Foreigners, 15 January 2019.

²¹⁴ List and map of reception centres available at: <http://bit.ly/1JzdU5c>.

²¹⁵ Centrum Pomocy Prawnej im. Haliny Nieć, K. Przybysławska (Ed.), *Raport: Przemoc seksualna i przemoc ze względu na płeć w ośrodkach dla osób ubiegających się o nadanie statusu uchodźcy 2012-2014*, December 2014, available in Polish at: <http://bit.ly/1L1SxFG>, 8-10.

²¹⁶ See i.a. W. Goszczyński, R. Baczyński-Sielaczek, J. Suchomska, J. Stankowska and M. Wróblewski. 'Lokalne systemy integracji uchodźców – badania' in Fundacja EMIC and Pracownia Zrównoważonego Rozwoju, *Wielogłos. Integracja uchodźców w polskich gminach* (2016), available in Polish at <http://wieloglos.emic.com.pl/>, 58.

²¹⁷ Institute of Public Affairs, *Analiza przygotowania lokalnych instytucji do przyjęcia uchodźców z programu relokacji i przesiedleń. Raport końcowy z badań fokusowych*, 2016, available in Polish at: <http://bit.ly/2GBfKr4>, 12-14.

²¹⁸ Article 79(2) Law on Protection.

Currently 7 reception centres are managed by the private contractors (private owners and companies).²¹⁹ In 2016 the Office for Foreigners faced some problems concerning delegation of the responsibility for managing the centres to other entities. Only nine entities (seven previous centres and two new ones) presented offers to manage ten reception centres. New offers though met with wide protests from local community and authorities, which was associated with the rising fear for asylum seekers in connection with the increase in arrivals in Europe in 2015. As a result, the call for proposals was cancelled in case of those two new locations in order to ensure asylum seekers' safety.²²⁰

The Office for Foreigners monitors the situation in the centres managed by private contractors on a daily basis through the Office's employees working in those centres and through the overall inspections taking place two times a year.²²¹ Asylum seekers can complain to the Office for Foreigners on the situation in the centres and they use this opportunity in practice.²²² In 2017 there were only 2 complaints, none of which was considered legitimate.²²³ In 2018, 8 complaints were registered: 4 – considered other foreigners staying in the centre, 1 – medical assistance, 1 – improper behaviour of the centre's employee and 1 – the food in the centre²²⁴.

2.1. Overall living conditions

Living conditions differ across the reception centres. In the centres managed by private contractors ensuring certain minimum living conditions standards is obligatory on the basis of agreements between these contractors and the Office for Foreigners. Thus, centres have to have furnished rooms for asylum applicants, a separate common room for men and for women, kindergarten, space to practice religion, a recreation area, school rooms, specified number of refrigerators and washing machines.²²⁵ Other conditions are dependent on the willingness and financial situation of the contractor.²²⁶

The Supreme Audit Office (during an audit which took place in years 2012-2014) assessed living conditions in 10 controlled centres as good.²²⁷ However, generally, asylum seekers assess the conditions in the centres rather low²²⁸. In the research conducted in the centre in Grupa foreigners predominantly complained on the food served in the centre. They assessed the centre's cleanliness, appearance and furnishings mostly as 'average' or 'bad'²²⁹. No more recent monitoring has been conducted.

None of the centres was built in order to serve as a centre for foreigners. Most of them were used for different purposes before, as army barracks, hostels for workers or holiday resorts. The standard in those centres is diverse, but generally rather low. Most often one family stays in one room, without separated bedrooms or kitchen. Moreover, usually the centres do not offer separated bathrooms and kitchens, only the common ones²³⁰.

²¹⁹ Office for Foreigners, *Informator Departamentu Pomocy Socjalnej 2017*, available in Polish at: <http://bit.ly/2CzDOE3>, 3.

²²⁰ EMN, *Problemy z rostrzygnięciem przetargu na ośrodki recepcyjne dla cudzoziemców*, 9 March 2016, available in Polish at: <http://bit.ly/2IRrQRU>.

²²¹ Information provided by the Office for Foreigners, 15 January 2019.

²²² Information provided by the Office for Foreigners, 25 March 2014; Para 17 of the Annex to the Regulation on rules of stay in the centre for asylum seekers.

²²³ Information provided by the Office for Foreigners, 1 February 2018.

²²⁴ Information provided by the Office for Foreigners, 15 January 2019.

²²⁵ Office for Foreigners, *Informator Departamentu Pomocy Socjalnej 2017*, available in Polish at: <http://bit.ly/2CzDOE3>, 3.

²²⁶ Commissioner for Human Rights, *Realizacja prawa małoletnich cudzoziemców do edukacji. Raport RPO*, 2013, available in Polish at: <http://bit.ly/1Hz4N4a>, 22.

²²⁷ Supreme Audit Office, *Pomoc społeczna dla uchodźców. Informacja o wynikach kontroli*, November 2015, available in Polish at: <http://bit.ly/2IP90Z4>, 20-21.

²²⁸ See i.a. W. Goszczyński, R. Baczyński-Sielaczek, J. Suchomska, J. Stankowska and M. Wróblewski. 'Lokalne systemy integracji uchodźców – badania' in Fundacja EMIC and Pracownia Zrównoważonego Rozwoju, *Wielogłos. Integracja uchodźców w polskich gminach* (2016), available in Polish at <http://wieloglos.emic.com.pl/>, 64.

²²⁹ *Ibid*, 65-67.

²³⁰ *Ibid*, 63, 67.

The Office for Foreigners reports that in the reception centre in **Dębak** there is a renovated building of high standard in use since 2016, fully adjusted to the needs of persons with disabilities. In **Biała Podlaska** the rooms, corridors and preschool area have been renovated as well.²³¹

No protests or hunger strikes in centres have been reported in years 2014-2017.²³² In 2018 an asylum seeker informed the Office for Foreigners in writing that he has started a hunger strike due to the fact that his and his wife's asylum procedures had been separated because they had split up.²³³

In every centre, there are two kinds of workers: employees of the Office for Foreigners and other employees (as kitchen aids, cleaners etc.). As regards the staff rate, in 2018, one employee of the Office for Foreigners was on average in charge of 75,6 (up from 42 in 2017) asylum seekers (staying outside centres) and 51,6 asylum seekers (living in the centres).²³⁴ As of December 2018, there were 27 employees of Office for Foreigners working in all the centres and a variable number of other workers.²³⁵ Staff in the centre is working from Monday to Friday from 7:00 to 18:00. At night and on weekends only guards are present in the centre, which is not sufficient. Security staff is available in all centres everyday 24 hours a day.²³⁶ In the research conducted in the centre in Grupa the employers of the centre were evaluated by asylum seekers positively²³⁷.

2.2. Activities in the centres

Asylum seekers can go outside from the centre whenever they want, during the day, but they should be back before 23:00 in the evening.²³⁸

Polish language courses are organised in all reception centres, also for children. Those courses are considered the only integration activity provided by the Office for Foreigners.²³⁹ See more in [Access to Education](#).

Different workshops are organised in the centres by NGOs, although it is dependent on their financing. In 2018 NGOs organised *inter alia* sport, music, artistic, handicraft, theatrical and cooking activities. Asylum seekers could participate in activities aiming at getting them acquainted with Poland and Polish culture as well as in the workshops regarding discrimination and violence against women.²⁴⁰ However, the scope of those activities depends on the centre: in some of these centres asylum seekers can choose from multiple activities, while in others only a limited range of workshops is on offer (e.g. Grupa, Horbów, Linin).

Since 2014 there are also "Open days" in all centres, during which asylum seekers can present their culture and customs to polish society.²⁴¹

²³¹ Information provided by the Office for Foreigners, 1 February 2017.

²³² Information provided by the Office for Foreigners, 1 February 2018.

²³³ Information provided by the Office for Foreigners, 15 January 2019.

²³⁴ *Ibid.*

²³⁵ *Ibid.*

²³⁶ Office for Foreigners, *Informator Departamentu Pomocy Socjalnej 2017*, available in Polish at: <http://bit.ly/2CzDOE3>, 8.

²³⁷ W. Goszczyński, R. Baczyński-Sielaczek, J. Suchomska, J. Stankowska and M. Wróblewski. 'Lokalne systemy integracji uchodźców – badania' in Fundacja EMIC and Pracownia Zrównoważonego Rozwoju, *Wielogłos. Integracja uchodźców w polskich gminach* (2016), available in Polish at <http://wieloglos.emic.com.pl/>, 68.

²³⁸ Para 12(3) Regulation on rules of stay in the centre for asylum seekers.

²³⁹ W. Goszczyński, R. Baczyński-Sielaczek, J. Suchomska, J. Stankowska and M. Wróblewski. 'Lokalne systemy integracji uchodźców – badania' in Fundacja EMIC and Pracownia Zrównoważonego Rozwoju, *Wielogłos. Integracja uchodźców w polskich gminach* (2016), available in Polish at <http://wieloglos.emic.com.pl/>, 69.

²⁴⁰ Information provided by the Office for Foreigners, 15 January 2019.

²⁴¹ Information provided by the Office for Foreigners, 27 August 2015.

Centres usually have libraries (only one centre does not have one). In all centres access to internet is provided.²⁴²

In all centres there is a special room designed for religious practices.²⁴³ If asylum seekers want to participate in religious services outside of the centre, they have such a right, although in practice remoteness from the closest place of worship can prevent them from participating in such services.

C. Employment and education

1. Access to the labour market

Indicators: Access to the Labour Market

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

The law allows for access to the labour market for asylum seekers after six months from the date of submission of an asylum application if a first instance decision has not been taken within this time and if the delay is not attributed to any fault of the asylum seeker.²⁴⁴ 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.²⁴⁵ The certificate is valid until the day the decision concerning international protection becomes final.²⁴⁶ The temporary ID document is valid for 90 days and can be subsequently prolonged for renewable periods of 6 months.

Access to employment is not limited to certain sectors, but can be problematic in practice. Many employers do not know, that the above mentioned certificate with a temporary ID document gives an asylum seeker a right to work or do not want to employ a person for such a short time (i.e. up to 6 months, as the employers are unaware that the procedure will actually take longer than the validity of a single temporary ID document), which causes that those certificates have no practical significance.²⁴⁷ 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.²⁴⁸

²⁴² Information provided by the Office for Foreigners, 15 January 2019.

²⁴³ *Ibid.* See also Supreme Audit Office, *Pomoc społeczna dla uchodźców. Informacja o wynikach kontroli*, November 2015, available in Polish at: <http://bit.ly/2IP90Z4>, 9.

²⁴⁴ Article 35 Law on Protection.

²⁴⁵ *Ibid.*

²⁴⁶ Article 35 (3) Law on Protection. The Refugee Board's decision is final. If an asylum seeker does not appeal, the decision of the Office for Foreigners, the latter becomes final 14 days following notification of such decision.

²⁴⁷ W. Klaus, 'Rozwiązania prawne stosowane w odniesieniu do osób starających się o ochronę w Polsce' in A. Górny, H. Grzymała-Moszczyńska, W. Klaus and S. Łodziński, *Uchodźcy w Polsce. Sytuacja prawna, skala napływu i integracja w społeczeństwie polskim oraz rekomendacje* (PAN 2017), available in Polish at: <http://bit.ly/2DVccfr>, 23.

²⁴⁸ M. Abdoulvakhabova, 'Problemy cudzoziemców w Polsce w świetle funkcjonowania Fundacji Ocalenie' in M. Duszczek and P. Dąbrowski (ed.), *Przestrzeganie praw cudzoziemców w Polsce. Monografia* (Rzecznik Praw Obywatelskich, 2012), available at: <http://bit.ly/1RTIHbU>, 46. See also M. Pawlak, 'Zatrudnienie' in A. Górka,

Experts point out that the fact that asylum seekers cannot work for the first 6 months of the refugee procedure is one of the factors which leads to a lack of independence and reliance on social assistance.²⁴⁹

2. Access to education

Indicators: Access to Education

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

All children staying in Poland have a constitutional right to education. Education is mandatory until the age of 18. It is provided to asylum-seeking children in regular schools and it is not limited by law. Asylum seekers benefit from education in public schools under the same conditions as Polish citizens until the age of 18 or the completion of higher school.²⁵⁰ In September 2018, 878 asylum-seeking children attended approx. 45 public schools in Poland. Most of them (491) stayed in the reception centres, predominantly in Białystok, Łuków and Warsaw.²⁵¹

In 2018, the Ministry of Interior and Administration proposed the amendment to Polish law enabling teaching asylum-seeking children in the reception centres instead of public schools. The proposal was grossly criticized as *inter alia* violating children's rights and leading to discrimination and separation from Polish society.²⁵² The Ministry explained that the aim of the proposal is not to change the current model of teaching applied to those children, but to provide the possibility to react in case of a massive influx of foreigners.²⁵³ However, due to widespread criticism, the Ministry withdrew from this idea.²⁵⁴

There are different obstacles to accessing education in practice. The biggest problem is a language and cultural barrier. Children do not know Polish but they are obliged to participate in classes in Polish. However, in all centres there are courses of Polish language for children being organised,²⁵⁵ and social assistance includes providing children with basic supplies necessary for learning Polish.²⁵⁶ In 2017 the Office for Foreigners together with Linguae Mundi Foundation created a comprehensive programme and materials for teaching Polish language in the centres.²⁵⁷

Moreover, children are entitled to additional, free Polish language classes, which should be organised by the authority managing the school which asylum seekers are attending.²⁵⁸ Those classes are organized as long as it is needed. Children can also participate in additional lessons on other subjects if their education level is different from this of the class (compensatory classes). This form of assistance can be

M. Koss-Goryszewska, J. Kucharczyk (eds), *W stronę krajowego mechanizmu ewaluacji integracji: Diagnoza sytuacji beneficjentów ochrony międzynarodowej w Polsce* (Instytut Spraw Publicznych 2019), 35.

²⁴⁹ UNHCR, *Gdzie jest mój dom? Bezdomność i dostęp do mieszkań wśród ubiegających się o status uchodźcy, uchodźców i osób z przyznaną ochroną międzynarodową w Polsce*, 2013, 14.

²⁵⁰ Article 165 (1) and (2) of Law of 14 December 2016 on education.

²⁵¹ Office for Foreigners, 'Nowy rok szkolny dla dzieci w procedurze uchodźczej', 3 September 2018, available in Polish at: <http://bit.ly/2IsQuF5>.

²⁵² See *i.a.* Commissioner for the Rights of the Child, 'W trosce o równe szanse małoletnich cudzoziemców w dostępie do edukacji', 2018, available in Polish at <http://bit.ly/2T3jFml>; LIA, Letter to Ministry of Interior and Administration, 5 March 2018, available in Polish at: <http://bit.ly/2U0qZw6>; Dziennik.pl, 'Getta edukacyjne dla uchodźców, dzieci nie będą się uczyć z polskimi rówieśnikami. "Już na starcie ich wykluczamy"', 26 February 2018, available in Polish at: <http://bit.ly/2SMmPel>.

²⁵³ Ministry of Interior and Administration, Letter to Commissioner for the Rights of the Child, 3 April 2018, available in Polish at: <http://bit.ly/2IsRfxV>.

²⁵⁴ DGP, 'MSWiA: Nie będzie gett edukacyjnych', 4 April 2018, available in Polish at: <http://bit.ly/2SOFIDp>.

²⁵⁵ Office for Foreigners, *Informator Departamentu Pomocy Socjalnej 2017*, available in Polish at: <http://bit.ly/2CzDOE3>, 5.

²⁵⁶ Article 71(1)(1f) Law on Protection.

²⁵⁷ Information provided by the Office for Foreigners, 1 February 2018.

²⁵⁸ Article 165 (7) of Law of 14 December 2016 on education.

granted for a maximum of twelve months.²⁵⁹ Compensatory lessons and additional Polish language classes can last for a maximum of five hours per week for one child. In practice, schools organise two to ten hours of additional Polish language lessons per week (most of the times it is 2 hours per week which is not sufficient). In some schools they are not organised at all.²⁶⁰ Schools criticise the limitation of compensatory and additional Polish language lessons to five hours per week, as their practice shows the additional classes should take at least six hours per week. NGOs criticise the automatic limitation of the duration of provision of additional assistance to twelve months, as it should be adjusted individually.²⁶¹

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.²⁶² This help is limited to a maximum of twelve months, which is considered not enough.²⁶³ Moreover, the remuneration of such assistants is too low²⁶⁴. In some schools NGOs provide support as teacher's assistant in the framework of their projects.²⁶⁵ Such support is dependent on the NGOs' funding, however.

Experts also point out that there are no legal provisions concerning assessment and promotion to higher classes of foreign children who do not know the Polish language sufficiently. Those children are also obliged to write exams at the end of the school, even if they have joined school a couple of days before. Nevertheless, they can use dictionaries and simplified forms during an exam.²⁶⁶

Moreover, schools admitting foreign children often have to cope with a lack of sufficient financial means to organise proper education for this special group of pupils. Moreover, teachers working with foreign children are not receiving sufficient support, like courses and materials.²⁶⁷

The current education system is not taking into account the special needs of foreign children.²⁶⁸ As a result, adaptation of the education programme to the needs and abilities of the individual child is dependent on the goodwill and capacity of teachers and directors. Moreover, as a factor impeding effective teaching, schools also report the problem of the big fluctuation of the foreign children as a result of families' migration to Western Europe.²⁶⁹ As a consequence, asylum-seeking and refugee children are

²⁵⁹ Article 165 (10) of Law of 14 December 2016 on education.

²⁶⁰ Commissioner for Human Rights, *Realizacja prawa małoletnich cudzoziemców do edukacji. Raport RPO*, 2013, p. 32.

²⁶¹ W. Klaus, *Prawo do edukacji cudzoziemców w Polsce*, Stowarzyszenie Interwencji Prawnej, 2011, p. 8, available at: <http://bit.ly/2T2hvDA>.

²⁶² Article 165 (8) of the Law of 14 December 2016 on education.

²⁶³ K. Sołtan-Kościelecka, 'Klasy powitalne. Realna szansa na poprawę warunków kształcenia cudzoziemców czy pozorne rozwiązanie?', *Biuletyn Migracyjny* no. 57, June 2018, available in Polish at <http://bit.ly/2EkclF8> (accessed 26 January 2019).

²⁶⁴ *Ibid.*

²⁶⁵ Commissioner for Human Rights, *Obecność uchodźców w małych gminach. Doświadczenia Góry Kalwarii i Podkowy Leśnej w integracji uchodźców i edukacji ich dzieci*, 2016, available in Polish at: <http://bit.ly/2IKSM6n>, 30-31.

²⁶⁶ *Ibid.*

²⁶⁷ Commissioner for Human Rights, *Obecność uchodźców w małych gminach. Doświadczenia Góry Kalwarii i Podkowy Leśnej w integracji uchodźców i edukacji ich dzieci*, 2016, available in Polish at: <http://bit.ly/2IKSM6n>, 23-24; Iglicka, Krystyna, 'Chechen's Lesson. Challenges of Integrating Refugee Children in a Transit Country: A Polish Case Study', *Central and Eastern European Migration Review*, Vol. 6, No. 2, 2017, 132; available in Polish at: <http://bit.ly/2GPIKiV>.

²⁶⁸ See e.g. Iglicka, Krystyna, 'Chechen's Lesson. Challenges of Integrating Refugee Children in a Transit Country: A Polish Case Study', *Central and Eastern European Migration Review*, Vol. 6, No. 2, 2017, 132; available in Polish at: <http://bit.ly/2GPIKiV>.

²⁶⁹ Institute of Public Affairs, *Analiza przygotowania lokalnych instytucji do przyjęcia uchodźców z programu relokacji i przesiedleń. Raport końcowy z badań fokusowych*, 2016, 57-62; available in Polish at: <http://bit.ly/2GBfKr4>.

disappearing from Polish education system.²⁷⁰ Another problem is that too many foreign children are admitted to one class, which impedes education of both Polish and foreign children.²⁷¹

It happens that a school refuses to admit a foreigner because it is unable to cope with the challenge.²⁷² Parents have a right to appeal such refusal,²⁷³ but by law authorities are obliged to provide a place in a different school.²⁷⁴

If the child cannot enter the regular education system e.g. due to illness, their special needs are addressed by the Office for Foreigners, for instance by placing a child in special school, or by NGOs. There was a case when one NGO gave lessons for asylum seekers who were disabled in the centre.²⁷⁵

2.1. Preparatory classes

Since 2016, schools have a possibility to organise preparatory classes for foreign children who do not have sufficient knowledge of the Polish language. A foreign minor can join preparatory classes anytime during the school year. After the end of the school year, his participation in those classes can be prolonged, when needed, for max. one more year. The preparatory classes last for 20-26 hours a week. If a school decides to organise such classes, foreign children are not obliged to participate in regular classes. Learning Polish as a foreign language is limited only to 3 hours per week,²⁷⁶ which raise serious doubts concerning the effectiveness of such solution.²⁷⁷

Preparatory classes have been met with mixed reactions. In the opinion of the Ministry of Education, the implemented solution enables individual treatment of foreign children and adaptation of the methods and forms of education to their needs. According to the critics of this solution, children are placed exclusively in foreign classes, thus impeding their integration into Polish society and fuelling separation.²⁷⁸ Furthermore, the preparatory classes were not designed as 'welcome classes' which have their own program, separate from the regular classes and adapted to foreign minors' needs.²⁷⁹ Teachers are obliged to implement the same curriculum in the preparatory classes as in the regular ones, the only difference is that all children in a class are foreign and a teacher can adapt his method of teaching to their special needs.²⁸⁰ Meanwhile, the program of such classes should concentrate on learning Polish.²⁸¹

²⁷⁰ Iglicka, Krystyna, 'Chechen's Lesson. Challenges of Integrating Refugee Children in a Transit Country: A Polish Case Study', Central and Eastern European Migration Review, Vol. 6, No. 2, 2017, available in Polish at <http://bit.ly/2GPiKiV>, 123, 130.

²⁷¹ Institute of Public Affairs, *Analiza przygotowania lokalnych instytucji do przyjęcia uchodźców z programu relokacji i przesiedleń. Raport końcowy z badań fokusowych*, 2016, 57-62; available in Polish at: <http://bit.ly/2GBfKr4>.

²⁷² Iglicka, Krystyna, 'Chechen's Lesson. Challenges of Integrating Refugee Children in a Transit Country: A Polish Case Study', Central and Eastern European Migration Review, Vol. 6, No. 2, 2017, 132-133; available in Polish at: <http://bit.ly/2GPiKiV>. Schools are entitled to refuse admission on a basis of Article 166 of the Law of 14 December 2016 on education, when due to the demographic reasons such admission would require changes in the organisation of a school.

²⁷³ Para 15 Ordinance of the Ministry of National Education of 23 August 2017 on education of persons without Polish citizenship and Polish citizens who learned in schools in other countries (w sprawie kształcenia osób niebędących obywatelami polskimi oraz osób będących obywatelami polskimi, które pobierały naukę w szkołach funkcjonujących w systemach oświaty innych państw).

²⁷⁴ Article 166(1)-(2) Law of 14 December 2016 on education.

²⁷⁵ Information provided by the Office for Foreigners, 25 March 2014.

²⁷⁶ Para 16(9) Ordinance of the Ministry of National Education of 23 August 2017 on education of persons without Polish citizenship and Polish citizens who learned in schools in other countries (w sprawie kształcenia osób niebędących obywatelami polskimi oraz osób będących obywatelami polskimi, które pobierały naukę w szkołach funkcjonujących w systemach oświaty innych państw).

²⁷⁷ K. Sołtan-Kościelecka, 'Klasy powitalne. Realna szansa na poprawę warunków kształcenia cudzoziemców czy pozorne rozwiązanie?', Biuletyn Migracyjny no. 57, June 2018, available in Polish at <http://bit.ly/2EkclF8>.

²⁷⁸ Commissioner for Human Rights, *Posiedzenie Komisji Ekspertów ds. Migrantów*, 12 December 2016, available in Polish at: <http://bit.ly/2odhX16>.

²⁷⁹ K. Sołtan-Kościelecka, 'Klasy powitalne. Realna szansa na poprawę warunków kształcenia cudzoziemców czy pozorne rozwiązanie?', Biuletyn Migracyjny no. 57, June 2018, available in Polish at <http://bit.ly/2EkclF8>.

²⁸⁰ Para 16(3) Ordinance of the Ministry of National Education of 23 August 2017 on education of persons without Polish citizenship and Polish citizens who learned in schools in other countries (w sprawie kształcenia osób

Moreover, one preparatory class can be organised for children of different ages (e.g. children qualifying to classes I to III of primary school can be gathered in one preparatory class), which means that a teacher may be obliged to implement the curriculum even for three classes at once.²⁸² Furthermore, experts point out that there is no system which would prepare teachers to work in preparatory classes with foreigners.²⁸³

According to data of the Office for Foreigners, the preparatory classes for foreign children were organized in 2017/2018 – in schools in Grupa, Michał, Grotniki and Łuków; and in 2018/2019 – in a school in Warsaw.²⁸⁴

2.2. Kindergarten

Currently all children in Poland have a problem with pre-school learning as there are not enough places for them in public kindergartens. As a result, in all of the reception centres, some form of kindergarten is organised, supported by NGOs in some. This day care is provided minimum 5 times a week for 5 hours a day.²⁸⁵ Moreover, in 2018, the additional play and educational classes for children were organised in the centres on Saturdays.²⁸⁶

At the end of 2017 one of the NGOs stated that as a result of the lack of financing due to the suspension of AMIF it cannot continue to provide pre-school care in **Linin** and **Dębak**. The organisation has been providing this assistance everyday for 8 hours for two years, and also equipped the rooms for kindergarten in the two centres.²⁸⁷ The Office for Foreigners explained, however, that kindergarten in Linin and Dębak will not be closed and that pre-school care will be organised by the Office itself.²⁸⁸ In fact, in 2018 in both centres the pre-school care was provided by the Office for 100 hours a month.²⁸⁹

2.3. Educational activities for adults

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

The only educational activities that adults have constant access to are courses of Polish language organised in all centres.²⁹⁰ The course's level is considered insufficient by some NGOs. Foreigners evaluate those classes in general positively.²⁹¹ However, only a limited number of asylum seekers decides to participate in those classes (e.g. 45% in the research conducted in 2016, up to 17% according

niebędących obywatelami polskimi oraz osób będących obywatelami polskimi, które pobierały naukę w szkołach funkcjonujących w systemach oświaty innych państw).

²⁸¹ M. Koss-Goryszewska, 'Edukacja' in A. Górka, M. Koss-Goryszewska, J. Kucharczyk (eds), *W stronę krajowego mechanizmu ewaluacji integracji: Diagnoza sytuacji beneficjentów ochrony międzynarodowej w Polsce* (Instytut Spraw Publicznych 2019), 50-51.

²⁸² Commissioner for Human Rights, *Posiedzenie Komisji Ekspertów ds. Migrantów*, 12 December 2016, available in Polish at: <http://bit.ly/2odhX16>.

²⁸³ M. Koss-Goryszewska, 'Edukacja' in A. Górka, M. Koss-Goryszewska, J. Kucharczyk (eds), *W stronę krajowego mechanizmu ewaluacji integracji: Diagnoza sytuacji beneficjentów ochrony międzynarodowej w Polsce* (Instytut Spraw Publicznych 2019), 51.

²⁸⁴ This is not the exhaustive list, but it shows the scope of the application of this new solution in the context of asylum-seeking children, especially those staying in the centres. Information provided by the Office for Foreigners, 15 January 2019.

²⁸⁵ Information provided by the Office for Foreigners, 1 February 2018 and 15 January 2019. See also: Office for Foreigners, 'Opieka przedszkolna w ośrodkach dla cudzoziemców', available in Polish at: <http://bit.ly/2Nfwx3q>.

²⁸⁶ Information provided by the Office for Foreigners, 15 January 2019. See also: Office for Foreigners, 'Opieka przedszkolna w ośrodkach dla cudzoziemców', available in Polish at: <http://bit.ly/2Nfwx3q>.

²⁸⁷ Refugee.pl, 'SOS dla przedszkoli!', 6 December 2017, available in Polish at: <http://bit.ly/2EEVvnM>.

²⁸⁸ Information provided by the Office for Foreigners, 1 February 2018.

²⁸⁹ Information provided by the Office for Foreigners, 15 January 2019.

²⁹⁰ *Ibid.*

²⁹¹ R. Baczyński-Sielaczek, *Język polski w ośrodkach. Wyniki badania ewaluacyjnego*, Instytut Spraw Publicznych 2016, 19-22.

to the Supreme Audit Office).²⁹² The research showed that the low participation rate results i.a. from the fact that asylum seekers are not willing to stay in Poland or are aware that the chances for obtaining international protection in Poland are low so they have no motivation to learn the language. The time of language classes is also not adapted to the needs of working asylum seekers.²⁹³

There are some initiatives by NGOs, organising other courses in the centres, including vocational training, but these have been impacted by the lack of funding. In 2017 research was conducted on the impact of the suspension of AMIF in Poland on Polish NGOs and foreigners. The research showed that 9 out of 13 NGOs had to limit their legal and integration assistance for foreigners, 7 NGOs had to decrease the amount of trainings for foreigners, including Polish language lessons and vocational training.²⁹⁴ NGOs were facing the same limitations in 2018. In 2016 and 2017 NGOs carried out projects in partnership with the Office for Foreigners which aimed at general integration, learning Polish, vocational training, cultural activities, psychological and legal assistance.²⁹⁵ In 2018 NGOs organized i.a. sport, music, artistic, handicraft, theatrical and cooking activities. Asylum seekers could participate in activities aiming at getting them acquainted with Poland and Polish culture as well as in the workshops regarding discrimination and violence against women²⁹⁶. However, the scope of those activities depends on the centre: in some of them asylum seekers can choose from multiple activities, while in others only limited range of workshops is on offer (e.g. Grupa, Horbów, Lenin).

D. Health care

Indicators: Health Care

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

Access to health care for asylum seekers is guaranteed in the law under the same conditions as for Polish nationals who have health insurance.²⁹⁷ Health care for asylum seekers is publicly funded.

Basic health care is organised in medical offices within each of the reception centres. The Office for Foreigners confirmed that in 2018 the medical doctor in the centres has 10 duty hours per 120 asylum seekers, while the nurse has 20 hours for the same number of possible patients. Both have 3 hours a week more for every additional 50 asylum seekers.²⁹⁸

Health care for asylum seekers includes treatment for persons suffering from mental health problems. Currently, psychologists work in all the centres for at least 4 hours a week for every 120 asylum seekers. This is extended for 1 hour for every additional 50 asylum seekers.²⁹⁹ Their help is limited to basic consultations, however.³⁰⁰ Asylum seekers can also be directed to a psychiatrist or a psychiatric hospital.

²⁹² R. Baczyński-Sielaczek, *Język polski w ośrodkach. Wyniki badania ewaluacyjnego*, Instytut Spraw Publicznych 2016, 18, 28.

²⁹³ *Ibid*, 34.

²⁹⁴ W. Klaus, E. Ostaszewska-Żuk and M. Szczepanik, *Fundusze Europejskie i ich rola we wspieraniu integracji cudzoziemców w Polsce*, September 2017, 9.

²⁹⁵ Information provided by the Office for Foreigners, 1 February 2018.

²⁹⁶ Information provided by the Office for Foreigners, 15 January 2019.

²⁹⁷ Article 73(1) Law on Protection.

²⁹⁸ Information provided by the Office for Foreigners, 15 January 2019.

²⁹⁹ *Ibid*.

³⁰⁰ The Office for Foreigners claims that those psychologists' assistance concentrates on psychological support and counselling and also on diagnosis of mental disorders, including PTSD.

According to some experts and many NGOs, specialised treatment for victims of torture or traumatised asylum seekers is not available in practice.³⁰¹ NGOs still point at the lack of proper treatment of persons with PTSD. The available psychological assistance is considered an intervention, not a regular therapy.³⁰² Moreover, there are only three specialised NGOs that provide psychological consultations and treatment to asylum seekers.³⁰³ In 2018, only in three reception centres some form of psychological support was provided by NGOs.³⁰⁴

Moreover, asylum seekers can benefit from medical assistance provided from 1 July 2015 by private contractor Petra Medica,³⁰⁵ with whom the Office for Foreigners has signed an agreement to coordinate medical care for asylum seekers and monitors the application of this agreement. There are several critiques concerning the quality of medical assistance in reception centres.³⁰⁶

In April 2017 the “Epidemiological Filter” facility started operating. This medical facility, located near the Belarusian border, where most asylum seekers cross the Polish border, is aimed at providing medical assistance exclusively to foreigners who have just applied for protection in Poland and to reduce epidemiological risks for the whole of Poland by prompt diagnosis of infectious diseases.³⁰⁷

The biggest obstacle in accessing health care that asylum seekers face is the lack of intercultural competence and knowledge of foreign languages amongst doctors and nurses³⁰⁸. Polish authorities do not provide interpretation free of charge (it is although sometimes ad hoc provided by NGOs or local authorities)³⁰⁹ and most of the asylum seekers are not able to pay for such assistance on their own. However, the medical care contractor is obliged to ensure interpretation during the medical and psychological consultation, if it is needed.³¹⁰ During the monitoring in **Bezwola** and **Białystok** conducted in 2015, Russian speaking asylum seekers confirmed that doctors and psychologists working in these centres know the Russian language. NGOs informed in 2016 that interpretation is still problematic in some cases,³¹¹ namely for asylum seekers speaking French and Arabic who could not communicate with doctors in the first reception centre in **Dębak** and in a medical point in the Office for Foreigners in **Warsaw**. However, interpretation services were not provided.³¹² In 2018 these language problems still occurred.

Another challenge is the fact that some clinics and hospitals providing medical assistance to asylum seekers are located far away from the centres, so an asylum seeker cannot be assisted by the closest medical facility, except for emergency situations. The Office for Foreigners noticed that for those asylum seekers living far away from the centres health care is provided in voivodeship cities in Poland and that coordination of visits is conducted by the helpline of the contractor, where the asylum seeker can get to know the time of the visit and ways to get the prescription.³¹³

³⁰¹ See e.g. M. Szczepanik, *Right to healthcare and access to medical services for asylum seekers and beneficiaries of international protection in Poland*, May 2017, available at: <http://bit.ly/2CxXokd>.

³⁰² Information provided by the Association for Legal Intervention, October 2016.

³⁰³ M. Szczepanik, *Right to healthcare and access to medical services for asylum seekers and beneficiaries of international protection in Poland*, May 2017, available at: <http://bit.ly/2CxXokd>.

³⁰⁴ Information provided by the Office for Foreigners, 15 January 2019.

³⁰⁵ Information from the Office for Foreigners website: <http://bit.ly/1XqYMIQ>; Office for Foreigners, *Informator Departamentu Pomocy Socjalnej 2017*, 6-7.

³⁰⁶ UNHCR's observation in a framework of the Age Gender Diversity Participatory Assessment 2016 presented during a meeting on 16 November 2016 in Warsaw.

³⁰⁷ Office for Foreigners, 'Filtr epidemiologiczny rozpoczął działalność', 8 June 2017, available in Polish at: <http://bit.ly/2ECXOrf>; *Informator Departamentu Pomocy Socjalnej 2017*, 18.

³⁰⁸ M. Koss-Goryszewska, 'Służba zdrowia' in A Górską, M Koss-Goryszewska, J Kucharczyk (eds), *W stronę krajowego mechanizmu ewaluacji integracji: Diagnoza sytuacji beneficjentów ochrony międzynarodowej w Polsce* (Instytut Spraw Publicznych 2019), 43.

³⁰⁹ Ibid., 41.

³¹⁰ Information provided by the Office for Foreigners, 1 February 2017.

³¹¹ Centrum Pomocy Prawnej im. H. Nieć, *Situation of Dublin Returnees in Poland. HNLAC Information Note – July 2016*, available at <http://bit.ly/2IkV08v>, 8.

³¹² HFHR, Letter to the Head of the Office for Foreigners, 1765/2016/BD, 13 September 2016.

³¹³ Information provided by the Office for Foreigners, 1 February 2017.

If an asylum seeker is deprived of material reception conditions or they are limited, they are still entitled to health care.³¹⁴

E. Special reception needs of vulnerable groups

Indicators: Special Reception Needs

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

Persons who need special treatment are defined particularly as:³¹⁵

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

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

- ❖ Accommodate him or her in a reception centre adapted to the needs of the disabled people or ensuring a single room or designed only for women or women with children;
- ❖ Place him or her in special medical premises (like a hospice);
- ❖ Place him or her in a foster care corresponding to the psychophysical situation of the asylum seeker;
- ❖ Adapt his or her diet to his or her state of health.³¹⁶

If an asylum seeker is a person who needs special treatment, his needs concerning accommodation and alimentation are taken into account when providing material reception conditions.³¹⁷ An asylum seeker who needs special treatment should be accommodated in the reception centre by taking into account his special needs.³¹⁸

The Border Guard ensures transport to the reception centre and – in justified cases – food during the transport after claiming for asylum only to: disabled or elderly people, single parents and pregnant women.³¹⁹ The same groups can benefit from this transport after the Dublin transfer and release from a detention centre³²⁰. However, there is no information on the practical application of these provisions.

Some of the reception centres are adapted to the needs of disabled asylum seekers. All of the centres managed by the Office for Foreigners have special entrance for disabled foreigners and bathrooms adapted to the needs of the asylum seekers on wheelchairs. Other centres have some conveniences for such asylum seekers. There is also a provision of rehabilitation services to this group of persons. The

³¹⁴ Articles 76(1) and 70(1) Law on Protection.

³¹⁵ Article 68(1) Law on Protection.

³¹⁶ Article 68(2) Law on Protection.

³¹⁷ Article 69a Law on Protection.

³¹⁸ Para 5.3 Annex to the Regulation on rules of stay in the centre for asylum seekers.

³¹⁹ Article 30(1)(8) Law on Protection.

³²⁰ Article 40a and Article 89cb Law on Protection.

Office for Foreigners bought in the period of 2017-2018 2 cars and 2 buses that are adapted to the transportation of the disabled persons.³²¹

On 2 November 2015, the Office for Foreigners adopted Procedure No 1/2015 which concerns the granting of social assistance to vulnerable groups. The document contains the steps of identification for the purpose of providing adequate support by the employees of the Social Assistance Department, dividing the vulnerable groups into categories mentioned in the law (e.g. elderly persons, disabled, minors, torture victims, etc.). There are no separate accommodation centres for traumatised asylum seekers, or other vulnerable persons but some of them (including torture victims) can be placed in a single room if there is such a need.³²²

1. Reception of women and children

Only one centre is designed to host single women or single women with children. It is located in **Warsaw** and it is managed by the private contractor.³²³ Moreover, social assistance may be granted outside of the centre when it is necessary in order to ensure the safety of the asylum seeker, with special consideration to the situation of single women.³²⁴

To prevent gender-based violence the Office for Foreigners has a special agreement with the Police, UNHCR, "La Strada" Foundation and Halina Niec Legal Aid Centre since 2008, aiming to better identify, prevent and respond to gender-based violence in reception centres.³²⁵ 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. There were 23 cases of violence in 2016, 28 in 2017 and 13 in 2018.³²⁶

In 2017 and 2018, the Office for Foreigners in partnership with NGOs implemented a comprehensive system of child protection against violence in the centres. In the framework of the project "We protect children in the centres for foreigners", trainings of centre staff were organised and standards of child protection were developed.³²⁷

2. Reception of unaccompanied children

The only safeguards related to special reception needs of unaccompanied children are those referring to their place of stay. Unaccompanied children are not accommodated in the centres. The custody court places them in a youth care facility, so unaccompanied children are not accommodated with adults in practice. Until the court makes a decision on placing a child in a regular youth care facility, an unaccompanied child stays with a professional foster family functioning as emergency shelter or in a youth care facility for crisis situations³²⁸.

The law also refers to qualified personnel that should undertake activities in the asylum procedures concerning unaccompanied children (a defined profile of higher education, 2 years of relevant experience).³²⁹

³²¹ Information provided by the Office for Foreigners, 1 February 2018 and 15 January 2019.

³²² Procedure 1/2015 of the Office for Foreigners.

³²³ Office for Foreigners, *Informator Departamentu Pomocy Socjalnej* 2017, 10.

³²⁴ Article 72(1)(1) Law on Protection.

³²⁵ *Porozumienie w sprawie standardowych procedur postępowania w zakresie rozpoznawania, przeciwdziałania oraz reagowania na przypadki przemocy seksualnej lub przemocy związanej z płcią wobec cudzoziemców przebywających w ośrodkach dla osób ubiegających się o nadanie statusu uchodźcy*, 25 March 2008.

³²⁶ Information provided by the Office for Foreigners, 1 February 2017, 1 February 2018 and 15 January 2019.

³²⁷ Office for Foreigners, "Chronimy dzieci w ośrodkach dla cudzoziemców", 11 August 2017, available in Polish at: <http://bit.ly/2GuQHBK>.

³²⁸ Article 62 (2) Law on Protection.

³²⁹ Article 66 Law on Protection.

When providing material reception conditions to child, the need to safeguard their interests should be taken into account, especially taking into consideration family unity, best interests of the child and their social development, security and protection (particularly if they are a victim of human trafficking) and the minor's opinion according to his age and maturity.³³⁰

Whereas previously they were mainly placed in a youth care facility in **Warsaw**, currently unaccompanied asylum-seeking children are placed in facilities all around Poland, in 2018 mainly in **Kętrzyn** and **Warsaw**.³³¹

F. Information for asylum seekers and access to reception centres

1. Provision of information on reception

The provisions in law on information for asylum seekers concerning social assistance are formulated in a general way. The Border Guard, upon admitting the asylum application, has to inform the applicant in a language understandable to him or her and in writing about i.e. the asylum procedure itself, the asylum seeker's rights, obligations, and the legal consequences of not respecting these obligations, as well as the extent of the material reception conditions. It also provides the asylum seeker with the address of the centre to which they have to report.³³² According to the Border Guard it is provided in 22 languages.³³³

Upon admission to the centre, asylum seekers receive (in writing or in the form of an electronic document, in a language understandable to them) the rules of stay in the centre (set in law), information about their rights and obligations (which includes all the basic information, including on access to the labour market or on their legal status), information on regulations governing the provision of assistance for asylum seekers and about procedures used in case of the person has been subjected to violence, especially against minors.³³⁴ Moreover, the rules of stay in the centre shall be displayed in a visible place in the premises of the centre, in Polish and in languages understandable to the asylum seekers residing in the centre.³³⁵ In the reception centres in **Biała Podlaska** and **Dębak** new-coming asylum seekers also participate in a course on basic information about Poland and the asylum procedure, with presentations and information package provided on USB.³³⁶

It is not envisaged in the legislation which languages the rules of stay in the centre, information about rights and obligations and on regulations governing the provision of assistance for asylum seekers should be translated into. It states that information has to be accessible "in an understandable language". The rules of stay in the centre and above-mentioned information issued on the basis of the current law were translated in practice into English, Russian, Arabic, French, Georgian, Chechen and Ukrainian.³³⁷

2. Access to reception centres by third parties

Indicators: Access to Reception Centres

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

³³⁰ Article 69b Law on Protection.

³³¹ Information provided by the Office for Foreigners, 15 January 2019.

³³² Article 30(1)(5) Law on Protection.

³³³ Information provided by the Border Guard, 11 January 2018.

³³⁴ Para 3 of the Annex to the Regulation on rules of stay in the centre for asylum seekers. The Office for Foreigners published a guide for asylum seekers "First steps in Poland", which is handed to them upon admission to the centre. Available in English, Arabic, French, Georgian, Polish, and Russian, available at: <http://bit.ly/2V8ilXm>, accessed 24 January 2019.

³³⁵ Para 18 of the Annex to the Regulation on rules of stay in the centre for asylum seekers.

³³⁶ Information provided by the Office for Foreigners, 27 August 2015 and 1 February 2017. See also Office for Foreigners, Pomoc socjalna w trakcie procedury uchodźczej, available in Polish at: <http://bit.ly/2GU32mu>, accessed 24 January 2019.

³³⁷ Information provided by the Office for Foreigners, 1 February 2017.

Asylum seekers staying in the centres have the right to be visited by family members, legal advisors, UNHCR, NGOs, etc. in the rooms intended for that purpose.³³⁸

Asylum seekers may receive visits in the centre from 9:00 to 16:00 in a place agreed with the employee of the centre. In particularly justified cases the visiting hours in the centre may be prolonged upon permission of the employee of the centre, till no later than 22:00.³³⁹

Each entry of a non-resident into the premises of the centre requires the permission of:³⁴⁰

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

The Head of the Office for Foreigners or an employee of the centre can refuse to give permission to enter the centre or withdraw it, if this is justified with regards to the interest of the third country national or necessary to ensure the safety or for epidemiological and sanitary reasons.³⁴¹

The above mentioned rules do not apply to the representative of the UNHCR, who may enter the centre anytime provided that the staff of the centre was notified in advance.³⁴² In the case of NGOs, whose tasks include the provision of assistance to asylum seekers, and entities which provide legal assistance to asylum seekers, the Head of the Office for Foreigners may issue a permit to enter the centre for the period of their activities performed for asylum seekers residing in the centre.³⁴³

In all centres audited by the Supreme Audit Office in 2012-2014, asylum seekers had access to the information about entities providing free legal assistance.³⁴⁴ During their stay in the centre, asylum seekers communicate with legal advisers, UNHCR or NGOs mainly by phone, fax, e-mail, etc. Eight out of the eleven centres are located in small villages, far away from big cities, where most of the legal advisers, UNHCR and NGOs in Poland have their premises, and accessing them can be an obstacle. As a result, asylum seekers are often contacted only remotely, especially when NGOs do not have the funds for travelling to these centres. In 2015 the situation worsened due to the lack of funding of the NGOs' activities from EU funds, as a result of which NGOs had to diminish or terminate most of their activities in the centres.³⁴⁵ Since 2016 NGOs have been again present in the centres to some extent. There are projects carried out for granting legal assistance directly at the centre or remotely (by phone or email) in most of them (according to the Office for Foreigners no projects involving legal assistance carried out in two centres: Dębak and Czerwony Bór in 2018, while in 9 other centres some projects were implemented)³⁴⁶. However, accessing funding from AMIF is still problematic for NGOs (see [Regular Procedure: Legal Assistance](#)) and it continues to have negative impact on the NGOs' presence in the centres.³⁴⁷

³³⁸ Paras 7-9 of the Annex to the Regulation on rules of stay in the centre for asylum seekers.

³³⁹ Para 9 of the Annex to the Regulation on rules of stay in the centre for asylum seekers.

³⁴⁰ Para 7.2 of the Annex to the Regulation on rules of stay in the centre for asylum seekers.

³⁴¹ Para 7.5 of the Annex to the Regulation on rules of stay in the centre for asylum seekers.

³⁴² Para 7.6 and 7.7 of the Annex to the Regulation on rules of stay in the centre for asylum seekers.

³⁴³ Para 7.4 of the Annex to the Regulation on rules of stay in the centre for asylum seekers.

³⁴⁴ Supreme Audit Office, *Pomoc społeczna dla uchodźców. Informacja o wynikach kontroli*, November 2015, available in Polish at: <http://bit.ly/2IP90Z4>, 21.

³⁴⁵ In 2015 NGOs who financed their legal assistance from EU had to reduce or cease their assistance granted in reception centres. NGOs informed about that Polish authorities, available at: <http://bit.ly/1Cd5nSW>. Some NGOs, like Legal Intervention Association, had to reduce their activities from 1.01.2015, available at: <http://bit.ly/1j98zXB>, some from 1 July 2015 (like HFHR).

³⁴⁶ Information provided by the Office for Foreigners, 15 January 2019.

³⁴⁷ Witold Klaus, Ewa Ostaszewska-Żuk and Marta Szczepanik, *The role of European funds in supporting the integration of migrants in Poland*, November 2017, available at: <http://bit.ly/2EVdzxq>, 9.

G. Differential treatment of specific nationalities in reception

There is no difference in treatment with respect to reception based on asylum seekers' nationality. All asylum seekers have the same rights and obligations.

Detention of Asylum Seekers

A. General

Indicators: General Information on Detention

1. Total number of asylum seekers detained in 2018:	Not available
2. Number of asylum seekers in detention at the end of 2018:	121
3. Number of detention centres:	6
4. Total capacity of detention centres:	590

1152 foreigners were detained in Poland in 2018. As of 31 December 2018, 121 asylum seekers were in detention out of 225 persons in detention at that point time. Given that 4,131 persons applied for asylum in Poland in 2018, it cannot be said that the majority of asylum seekers in Poland are detained. There were no cases of overcrowding in detention centres during that year.³⁴⁸ Foreigners are obliged to pay for their stay in a detention centre calculated on the basis of algorithm, set in the Polish law.

Contrary to 2017 (total of 246 asylum seekers detained throughout the year) there is no information on the total number of asylum seekers that was detained in guarded centres in 2018. According to the Border Guard it is not possible to estimate the number of asylum seekers detained in general in 2018. No data were made available by the Border Guard on the legal grounds for detention or the number of foreigners released from detention centre due to poor health condition.³⁴⁹

There are six detention centres in Poland, which are generally profiled: **Lesznowola**, **Białystok** and **Krosno Odrzańskie** are for men. Women and families with children are placed in **Kętrzyn**, **Biała Podlaska** and **Przemyśl**. Unaccompanied children are placed in the detention centre in **Kętrzyn**. Only the detention centres in Krosno Odrzańskie and Biała Podlaska have rooms with barred windows.³⁵⁰

According to the Office for Foreigners, the asylum cases of asylum applicants placed in detention are prioritised but it does not mean that they are examined more quickly when it concerns complex cases.³⁵¹ The interview is conducted through videoconference in the presence of a psychologist (e.g. in the detention centre in Kętrzyn). According to NGOs, sometimes psychologists are only available in the premises of the Head of the Office for Foreigners and not in the centre where the individual is detained.

B. Legal framework of detention

1. Grounds for detention

Indicators: Grounds for Detention

- | | | |
|---|--|--|
| 1. In practice, are most asylum seekers detained | | |
| ❖ on the territory: | <input type="checkbox"/> Yes | <input checked="" type="checkbox"/> No |
| ❖ at the border: | <input type="checkbox"/> Yes | <input checked="" type="checkbox"/> No |
| 2. Are asylum seekers detained in practice during the Dublin procedure? | <input checked="" type="checkbox"/> Frequently | <input type="checkbox"/> Rarely <input type="checkbox"/> Never |
| 3. Are asylum seekers detained during a regular procedure in practice? | <input checked="" type="checkbox"/> Frequently | <input type="checkbox"/> Rarely <input type="checkbox"/> Never |

³⁴⁸ Information provided by the Border Guard, 11 January 2018.

³⁴⁹ Information provided by the Border Guard, 14 and 25 January 2019.

³⁵⁰ Commissioner for Human Rights, Wyciąg, Strzeżony Ośrodek dla Cudzoziemców w Białej Podlaskiej, 18-19 July 2018, available in Polish at: <https://bit.ly/2TBZ3OY>.

³⁵¹ Information provided by the Office for Foreigners, 15 January 2019.

Asylum seekers are placed in a detention centre if alternatives to detention cannot be used and for the following reasons:³⁵²

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

A "risk of absconding" of the asylum seekers exists particularly if they:³⁵³

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

Detention is possible in law and in practice in all asylum procedures, especially in the case of illegal crossing of the border and transfer under the Dublin Regulation. According to Border Guards 82 out of 95 Dublin transfers to other EU countries implemented in 2018 involved detention. Courts justify detention as necessary to gather additional information, high risk of absconding and the lack of permanent address.

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

2. Alternatives to detention

Indicators: Alternatives to Detention

1. Which alternatives to detention have been laid down in the law?
☒ Reporting duties
☐ Surrendering documents
☒ Financial guarantee
☒ Residence restrictions
☐ Other
2. Are alternatives to detention used in practice?
☒ Yes ☐ No

The Law on Protection sets out the following alternatives to detention for asylum seekers:

1. An obligation to report;
2. Bail options;
3. The obligation to stay in a designated place.

SG can use more than one alternative in the case of any foreigner.³⁵⁴ Alternatives can be applied by the SG which apprehended the asylum seeker concerned or by the court (subsequent to a SG's decision not to apply alternatives and who have submitted a motion for detention to the court).³⁵⁵ An asylum seeker

³⁵² Articles 87(1) and 88a(1) Law on Protection.

³⁵³ Articles 87(2) and 88a(1) Law on Protection.

³⁵⁴ Article 88(3) of the Law on Protection.

³⁵⁵ Articles 88(2) and 88b(2)-(3) Law on Protection.

can be detained only if the alternatives to detention cannot be applied.³⁵⁶ In practice asylum seekers are placed in detention, and alternatives to detention are not considered, properly justified and explained.³⁵⁷ In 2018, 1,336 foreigners were subject to alternatives to detention.

In 2016, 2017 and 2018, alternatives to detention were used as follows for foreigners, including asylum seekers and returnees:

Alternatives to detention in Poland: 2016-2018			
Type of alternative	2016	2017	2018
Reporting obligations	1,193	2,094	1,327
Residence in a designated place	1,286	1,818	1,058
Bail	3	4	1
Surrendering travel documents	0	49	29
Total	1,411	2,314	2,415

Source: Border Guard, 14 January 2018; Border Guard, 14 and 25 January 2019.

3. Detention of vulnerable applicants

Indicators: Detention of Vulnerable Applicants

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

3.1. Detention of persons with health conditions

According to the law, asylum seekers whose psychophysical state leads to believe that they are victims of violence or have a disability as well as unaccompanied minors cannot be placed in detention centres. This is also applicable to asylum seekers whose detention causes a serious threat to their life or health,³⁵⁸ as under the law, an asylum seeker should be released if further detention constitutes a threat to their life or health.³⁵⁹ This means that, for example, children, if they stay in Poland with parents or other legal guardians, can still be detained, as can pregnant women if they are healthy.

In practice it also happens that vulnerable asylum seekers are detained, even when they were diagnosed as having mental health problems as a result of past events.³⁶⁰ Indeed, a poor mental condition is hardly ever accepted by courts as sufficient grounds for not placing in or releasing an asylum seeker from detention. According to the Commissioner for Human Rights sometimes foreigners are placed in a detention centre despite not having been examined by a physician. Courts do not accept psychological opinions submitted by independent psychologists (e.g. from NGOs)³⁶¹, and rely on a short opinion (very often it is one sentence stating there are no obstacles to prolonging the stay in guarded centre) of the physician who works in detention centre for foreigners and looks after foreigners there. In practice, only courts of higher instance call on experts to give evidence, but it happens very rarely. Additionally, courts do not conduct their own evidentiary proceedings.

³⁵⁶ Article 88a(1) Law on Protection.

³⁵⁷ Commissioner for Human Rights, *Wyciąg Strzeżony Ośrodek dla Cudzoziemców w Krośnie Odrzańskim*, 30 January 2018, available in Polish at: <http://bit.ly/2F2ptCr>.

³⁵⁸ Article 88a(3) Law on Protection.

³⁵⁹ Article 406(1)(2) Law on Foreigners.

³⁶⁰ T Dęboczyk and J Oleszkowicz, 'Praktyka sądowa stosowania detencji cudzoziemców w Polsce', 38.

³⁶¹ Supreme Court, Decision No III KK 33/14, 4 February 2015, available at: <http://bit.ly/1OiPpZE>.

In 2017 and 2018, the Border Guard stated that it does not gather information on the number of persons released on the basis of health considerations. As the experience of lawyers of NGOs such as the Association for Legal Intervention shows, a person's psychological condition is rarely taken into account by the courts. An analysis of the justifications of the courts' rulings concerning detention leads to the conclusion that in a large number of cases mental health is not considered by judges or there is no reference to the health of the foreigners at all.³⁶²

In March 2018 the Commissioner for Child Rights sent a letter to the presidents of courts of appeal in which he shared his observations regarding the provisions on the prohibition to hold victims of violence in detention centers. In his opinion, placing a foreigner in detention when it is known that he or she is a victim of violence is against the law. The conclusion that a foreigner is a victim of violence can be drawn from medical or psychological opinions or foreigners' credible statements submitted in the asylum application. Furthermore foreigners should be present in court during a hearing regarding their appeal against the decision prolonging their stay in a guarded centre (on the different types of detention centres, see) in order to enable the judge to assess the foreigner's behaviour and conduct its own evidentiary proceedings in order to verify if a foreigner is a victim of violence by appointing a court expert.³⁶³

Practice shows that neither the Border Guard nor the courts take the initiative to assess if an asylum seeker is a victim of violence.

In March 2017, the Supreme Court ruled in a case of compensation for moral damage suffered by a mother with two minor children unlawfully placed in the detention centre in **Przemyśl**. The Court reversed the judgment of the Court of Appeal in Warsaw and remanded the case. The family were victims of violence in the country of origin and they were not identified as victims of torture and other forms of serious violence despite the fact that Border Guard was informed about their history. The Supreme Court stressed that the court is obliged to summon an expert witness when assessing the influence of detention on the mental state of a foreigner.³⁶⁴

In July 2017, the Regional Court of Przemyśl released a family from the detention centre in Przemyśl after being detained for 10-months. The family was placed in the detention centre in October 2016, after multiple attempts to apply for asylum at the border crossing point in Medyka on the Ukrainian border. During their stay, the mother was diagnosed with adaptation and depressive disorders related to violence and torture at a police station in her country of origin and detention in Poland which had a negative impact on her and her children. In June 2017 she tried to commit suicide. Although her and her children's poor mental state was confirmed in successive psychological and psychiatric assessment reports, Border Guards refused to release her and her family. HFHR filed a complaint to the ECtHR on her behalf.³⁶⁵ On 8 January 2018 the European Court of Human Rights communicated the case of *M.Z and Others against Poland*.³⁶⁶

In another case a family from Tajikistan was placed in the detention centre in **Przemyśl** for 200 days despite the fact that the father had informed the Border Guard that he was a victim of torture in the country of origin, while he applied for asylum in Poland. His bad mental condition, diagnosed PTSD, was later confirmed by expert opinion written by the psychologist employed by the Border Guard. Furthermore, the worsening mental condition of his wife was reported to the psychologist and the son was also diagnosed with PTSD. The family was released in May 2017, after the psychologist informed the

³⁶² Information provided by Legal Intervention Association, January 2019.

³⁶³ Commissioner for Child's Rights, Letter 6 March 2018, available in Polish at: <https://bit.ly/2GgwX8T>.

³⁶⁴ HFHR, 'Supreme Court rules on unlawful placement in guarded immigration centre', 13 April 2017, available at: <http://bit.ly/2ESHTIF>.

³⁶⁵ HFHR, 'Torture victim released after 10 months in immigration custody', 12 July 2017, available at: <http://bit.ly/2ocUY6q>.

³⁶⁶ ECtHR, *M.Z. and Others against Poland*, Application No 79752/16, lodged on 25 April 2017, available at: <http://bit.ly/2twM4mw>.

administration of the detention centre that prolonged stay in a guarded centre would be a threat to their life.³⁶⁷

Another case concerns a single mother with four children aged 17, 14, 11 and 10. They were placed in the detention centre in **Kętrzyn** in July 2017. Despite the fact that children were victims of domestic violence and their abilities to cope with stress felt in the detention centre were impeded, and two private expert opinions on their poor mental state, the family was not released from the guarded centre.³⁶⁸

In September 2017, the Commissioner for Human Rights published a report within the National Mechanism for the Prevention of Torture, in which cases of improper detention of **Dublin Returnees** with PTSD were described. According to the report, the problems occurred due to numerous procedural shortcomings during the transfer of the family to Poland by the German police as well as due to the lack of appropriate operational algorithms that should have been implemented in order to promptly identify victims of torture and violence as well as persons whose mental and physical condition rule out their placement in detention.

3.2. Detention of children

According to the law, unaccompanied asylum-seeking children should not be detained,³⁶⁹ but in practice it happens when there are doubts as to their age or if they were placed in detention as irregular migrants (which is possible under the law) and only then applied for international protection. Unaccompanied children are placed only in a detention centre in **Kętrzyn**, where adequate rooms (with 15 beds) are separated.

Asylum-seeking children who are with members of their family can be placed in detention centres together with accompanying adults.³⁷⁰ At the end of 2018, 25 children were placed in detention centres in **Kętrzyn**, **Biała Podlaska** and **Przemyśl**, and 248 in total for the year 2018 (unaccompanied children and children in families).³⁷¹ In the first half of 2018, children stayed in detention centres in average for 115 days (in the guarded centre of Kętrzyn even 166 days).³⁷² In 2018 the best interest of the child is still not considered in decisions on detention.³⁷³ When placing a child in a guarded center together with parents, the courts justify detention relying on the best interest of the child principle. In addition, the courts place families in guarded centres for a maximum period of time, rather than for the shortest period.³⁷⁴

In March 2018 the Commissioner for Child Rights sent a list of newest international recommendations concerning decisions on placing children in detention centers for foreigners to the presidents of courts of appeal (prezesa sądów apelacyjnych). Moreover the Commissioner underlined that placing children in detention is never in the best interest of a child,³⁷⁵ always against their fundamental rights and could have a negative impact on their psycho-physical development. In addition, in the Commissioner's assessment, courts check the possibility of using alternatives to detention in a superficial way. Courts held very often that it is not possible to impose an alternative to detention on the basis that asylum seekers have no place to stay ignoring the fact that asylum seekers have a right to live in open centers for foreigners managed by the Head of the Office for Foreigners.³⁷⁶

³⁶⁷ Information provided by the Association for Legal Intervention, January 2018.

³⁶⁸ *Ibid.*

³⁶⁹ Article 88a(3) Law on Protection.

³⁷⁰ Although it happens in practice that some members of the family are placed in the reception centre and some in the detention centre. See for instance, T. Sieniow, 'Wnioski z monitoringu wraz z rekomendacjami', 59.

³⁷¹ Information provided by Border Guard, 25 January 2019.

³⁷² Information provided by Border Guard, 14 January 2019.

³⁷³ *Ibid.*, 34.

³⁷⁴ HFHR, *Prawa osób pozbawionych wolności*, May 2017, available in Polish at <http://bit.ly/2GTFPAX>.

³⁷⁵ Commissioner for Child's Rights, *Wystąpienie do Prezesa Rady Ministrów*, 3 December 2018, available in Polish at: <https://bit.ly/2TCZ45d>.

³⁷⁶ Commissioner for Child's Rights, 6 March 2018, available in Polish at: <https://bit.ly/2GgwX8T>.

In December 2018, the Commissioner for Child Rights in his letter to the Prime Minister indicated that all internal SG documents on the detention of children should be lawful and they should not render rules on releasing victims of violence ineffective.

On 8 January 2018 the European Court of Human Rights communicated the case of *M.Z and Others against Poland*.³⁷⁷ The application was lodged on 25 April 2017 and concerned a family with two children from Tajikistan, placed in the detention centre in Przemyśl for more than 8 months. During their detention, the mental state of the applicant was worsening and she suffered from depression and showed symptoms of adjustment disorder. She tried to commit suicide and she was in psychiatric hospital a few times. The applicants complained that their detention resulted in inhuman and degrading treatment; was arbitrary and contrary to the domestic law. Moreover the situation of children was not taken into account and the length of detention had an impact on their family life. An application for a compensation for unlawful detention of the family was submitted and will be considered by the District Court in Warsaw. The motion was based, among others, on the fact that the family was deprived of liberty, despite of the fact that the applicant's psychophysical condition indicated that she was a victim of violence and that her health deteriorated because of detention. The application also emphasised that impact on minor children was not investigated properly when deciding on detention.³⁷⁸

On 10 April 2018, the European Court of Human Rights issued a judgment in case of *Bistieva and others against Poland* (application no. 75157/14). The case concerned a family of five, placed in the detention centre in Kętrzyn for almost 6 months. In this case, the court ruled that their right to family life was violated and Polish authorities did not assess the impact of the detention on the family, did not consider alternatives to detention and detention as a measure of a last resort. Furthermore, the Court held that no sufficient reason was provided to justify the detention and the best interest of the child was not taken into account. The court held that the family was in the detention centre for too long and that the preceding concerning family with children should be conducted faster and with greater diligence. Now an action plan is awaited.

If a decision to release a foreigner from the detention centre is issued and the asylum seeker is disabled, elderly, pregnant or single parent, the SG is obliged to organise the transport to the reception centre, and – in justified cases – provide food during the transport.³⁷⁹ There is no information in how many cases such a transport was organised.

According to the opinion of the Commissioner for Human Rights, detention of children has an influence on their mental state and on their future functioning in the society. In their opinion, the law and practice should allow children to live in local communities during immigration-related proceedings.³⁸⁰ In the opinion of Commissioner for Children Rights,³⁸¹ HFHR and other NGOs in Poland, children detention should be forbidden by law in all cases because detention, regardless of children's migration status and their parents' decisions, can never be in the best interest of a child.³⁸²

³⁷⁷ ECtHR, *M.Z. and Others against Poland*, Application No 79752/16, lodged on 25 April 2017, available at: <http://bit.ly/2twM4mw>.

³⁷⁸ HFHR, *Warsaw court to rule on moral damages for family's wrongful immigration detention*, 6 February 2019, available in English at: <https://bit.ly/2SpFFbi>.

³⁷⁹ Article 89cb Law on Protection.

³⁸⁰ Commissioner for Human Rights, *Wyciąg Strzeżony Ośrodek dla Cudzoziemców w Przemyślu*, 7 February 2018, available in Polish at: <http://bit.ly/2EXIR4y>.

³⁸¹ Commissioner for Child's Rights, *Wystąpienie do Prezesa Rady Ministrów*, 3 December 2018, available in Polish at: <https://bit.ly/2TCZ45d>.

³⁸² HFHR, "Rights of persons deprived of liberty-fundamental legal and practical issues. HFHR perspective", July 2018, available in English at: <https://bit.ly/2SktNaF>.

4. Duration of detention

Indicators: Duration of Detention

- | | |
|--|----------|
| 1. What is the maximum detention period set in the law (incl. extensions): | 6 months |
| 2. In practice, how long in average are asylum seekers detained? | 97 days |

The decision to detain an asylum seeker is issued for a period up to 60 days by a court, upon the motion of the SG.³⁸³ If a foreigner claims asylum during the stay in the detention centre, the period of detention is prolonged only if the [Grounds for Detention](#) of an asylum seeker mentioned before are met. If so, then the applicant's stay in the detention centre is prolonged for up to 90 days from the day of filing the asylum application.³⁸⁴ The period of a stay in a detention centre can also be prolonged if before the end of the previous period of detention, the final decision concerning international protection was not issued and the reasons to detain the applicant still exist. In this case, detention can be prolonged by a court for a specified period of time. There are no timeframes set in law other than the maximum total period of asylum seekers' detention, which is 6 months for asylum seekers and 12 to 18 months for persons facing removal.³⁸⁵ Prolongation is not possible if the procedure concerning reasons of detention is still ongoing e.g. the identity of the asylum seeker still is not verified, and this delay cannot be attributed to any fault on the part of the applicant.³⁸⁶

Figures on the average duration of detention of asylum seekers in 2018 are still not available,³⁸⁷ but in the first half of 2018, asylum seekers were detained on average for 97 days.³⁸⁸ The average duration of detention of children during that period was 115 days.

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

C. Detention conditions

1. Place of detention

Indicators: Place of Detention

- | | | |
|--|------------------------------|--|
| 1. Does the law allow for asylum seekers to be detained in prisons for the purpose of the asylum procedure (i.e. not as a result of criminal charges)? | <input type="checkbox"/> Yes | <input checked="" type="checkbox"/> No |
| 2. If so, are asylum seekers ever detained in practice in prisons for the purpose of the asylum procedure? | <input type="checkbox"/> Yes | <input checked="" type="checkbox"/> No |

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

1.1. Guarded centres

These are 6 such centres with a total capacity of 590 (down from 608 in 2017) places for foreigners, located in:

³⁸³ Article 89(1) Law on Protection.

³⁸⁴ Article 89(2)-(3) Law on Protection.

³⁸⁵ Article 89(4)-(5) Law on Protection; Article 404(5) Law on Foreigners.

³⁸⁶ Article 89(4a) Law on Protection.

³⁸⁷ Information provided by Border Guard, letter, 14 and 25 January 2019.

³⁸⁸ Information provided by Border Guard, letter to Legal Intervention Association, 25 January 2019.

Capacity and occupancy of guarded centres: 2018		
Centre	Maximum capacity	Occupancy end 2018
Biała Podlaska	130	32
Białystok	122	20
Lesznowola	50	46
Kętrzyn	122	25
Krosno Odrzańskie	64	55
Przemyśl	102	38
Total	590	216

Source: Border Guard, 14 and 25 January 2019.

Currently in three detention centres (**Białystok**, **Krosno Odrzańskie**, **Lesznowola**) only men are held and in another three (**Kętrzyn**, **Biała Podlaska**, **Przemyśl**) only families with children who are at a school age are held. In one of the centres (**Kętrzyn**), there is a separate part for unaccompanied irregular migrant children.³⁸⁹ Families are placed together in one room as far as possible both under the law³⁹⁰ and in practice.³⁹¹ There are 2 places for individuals with a certificate of disability in Kętrzyn.

1.2. “Rigorous detention centres” (*areszt dla cudzoziemców*)

The term, literally translated as “arrests for foreigners”, replaced that of “pre-removal centres” as of 1 May 2014. These impose more rigorous conditions of detention than guarded centres.³⁹² Until December 2012 there were 5 such centres. Currently, there is one centre with a capacity of 25 (down from 33 in 2017) places in **Przemyśl**.³⁹³

An asylum seeker can be placed in a more rigorous detention centre for foreigners only if there is a risk that they will not obey the rules in force in a guarded centre or the applicant has already disobeyed these rules.³⁹⁴ These detention centres are more prison-like than guarded centres. An asylum seeker placed in such a centre cannot freely move around (he or she is closed in the ward), cannot go outside for a walk whenever he or she wants except for two hours per day etc.³⁹⁵

All detention centres are for migration-related purposes and the SG is in charge of their management. Asylum seekers are never placed in regular prisons with ordinary prisoners, but stay together with migrants in an irregular situation in a guarded centre or rigorous detention centre. There is no special facility where only asylum seekers are detained. The SG officers who run the centres are trained and there are no major issues reported concerning the staff behaviour. It was reported that in 2013 and in 2014 in some centres the SG addressed foreigners by numbers assigned to them in their administrative files or used bad language.³⁹⁶ NGOs visiting detention centres notice a positive change in that matter, although in 2016 foreigners with whom lawyers were talking on duty days in detention centres knew their administrative numbers. This SG behaviour was reported in 2017 in CPT report on Poland. Detainees in guarded centers in Lesznowola and Białystok complained about racist remarks, being called by their case numbers and being woken at night by officers verifying the presence of foreigners. Border Guards officers

³⁸⁹ Information provided by the Border Guard, 14 and 25 January 2019; Article 414(4) Law on Foreigners.

³⁹⁰ Article 414(3) and (5) Law on Foreigners.

³⁹¹ HFHR and Association for Legal Intervention, *Wciąż za kratami*, 2014, available at: <http://bit.ly/1JBxxXm>, 17. Information provided by the Border Guard, 14 and 25 January 2019.

³⁹² Order No 23 of the Ministry of Interior of 1 July 2014 on the designation of areas in which the arrest for foreigners is executed.

³⁹³ Information provided by the Border Guard, 14 and 25 January 2019.

³⁹⁴ Article 88a(2) Law on Protection.

³⁹⁵ Centrum Pomocy Prawnej im. Haliny Nieć, K. Przybysławska (Ed.), *Monitoring of Forced Returns from Poland July 2014-June 2015*, 35-36.

³⁹⁶ HFHR and Association for Legal Intervention, *Wciąż za kratami*, 2014, available at: <http://bit.ly/1JBxxXm>, 24.

were using flash light, removing blankets and slamming the door. In response to the CPT report, the management of the guarded centre for foreigners in Białystok was obliged to cease such procedures, i.e. by ordering night checks only if they are absolutely necessary.

The CPT delegation also highlighted the problem of violence between detainees and recommended applying appropriate measures to combat it, i.e. by identifying victims and perpetrators, reporting cases of violence and investigating incidents.³⁹⁷

On the other hand, Border Guard officers who are on duty in the detention centre of **Krosno Odrzańskie** do not have any identifiers with their name or official identification number.³⁹⁸

The design and layout of some of the centres create the impression of a very prison-like environment: thick walls, bars in the windows and on the corridors. In addition all centres are surrounded by high walls topped with barbed wire. In 2015 the Polish authorities decided to remove bars in the windows in the detention centres and install special secure windows in **Lesznowola**, and in **Kętrzyn, which do not have handles**. On the other hand, in the detention centre in **Biała Podlaska**, where families with children are staying, windows have still bars.³⁹⁹ In 2017 detainees in **Lesznowola** complained about the lack of fresh air in rooms as the windows can be opened only with assistance of staff on duty who have a key. Foreigners have to request Border Guard officers to open or close the windows.⁴⁰⁰

Additionally, until the beginning of 2018 there were no curtains in the rooms and detainees covered the windows with blankets in order to protect from the sun and heat. In March 2018 all detention centres were obliged to verify which rooms are at the highest risk of exposure to the sun and to install curtains or roller blinds.⁴⁰¹ Unfortunately, in July 2018, a delegation of a Commissioner for Human Rights in the guarded centre in Lesznowola, noted that foreigners covered the windows with black foil in spite of the CPT 2017 recommendation and SG guidelines.⁴⁰²

The Border Guard does not plan to remove bars in other detention centres in 2019.⁴⁰³

2. Conditions in detention facilities

Indicators: Conditions in Detention Facilities

- | | | |
|---|---|--|
| 1. Do detainees have access to health care in practice? | <input checked="" type="checkbox"/> Yes | <input type="checkbox"/> No |
| ❖ If yes, is it limited to emergency health care? | <input type="checkbox"/> Yes | <input checked="" type="checkbox"/> No |

The Law on Foreigners contains a section on detention conditions, rights and obligations of foreigners.⁴⁰⁴ Some practices relating to the functioning of the centres have now been framed into the legal provisions. Below we present how the conditions are in practice.

2.1. Overall conditions

Six centres (**Białystok**, **Kętrzyn**, **Biała Podlaska**, **Przemyśl**, **Lesznowola**, **Krosno Odrzańskie**) are relatively new and in good condition (they were built after 2008), **Krosno Odrzańskie** and **Lesznowola**

³⁹⁷ Report to the Polish Government on the visit to Poland carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 11 to 22 May 2017, 25 July 2018 (hereafter 'CPT report 2018'), 23; available in English at <https://bit.ly/2HVZlTc>.

³⁹⁸ Commissioner for Human Rights, *Wyciąg Strzeżony Ośrodek dla Cudzoziemców w Krośnie Odrzańskim*, 30 January 2018, available in Polish at: <http://bit.ly/2F2ptCr>.

³⁹⁹ Commissioner for Human Rights, *Wyciąg Strzeżony Ośrodek dla Cudzoziemców w Białej Podlaskiej*, 18-19 July 2018, available in Polish at: <https://bit.ly/2TBZ3OY>.

⁴⁰⁰ CPT Report 2018, 23; available in English at: <https://bit.ly/2HVZlTc>.

⁴⁰¹ *Ibid.*

⁴⁰² Commissioner for Human Rights, *Wyciąg Strzeżony Ośrodek dla Cudzoziemców w Lesznowoli*, 18 December 2018, available in Polish at: <https://bit.ly/2WRAJKV>.

⁴⁰³ Information provided by the Border Guard, 14 and 25 January 2019.

⁴⁰⁴ Articles 410-427 Law on Foreigners.

have been renovated in recent years (e.g. Białystok and Krosno Odrzańskie are being modernised). The guarded centre in Białystok was being renovated until the end of 2018. In 2018 the SG bought equipment for all guarded centres: furniture (tables, beds, cupboards, sofas), smoking cabin, home appliance (supplies for bathroom and kitchens), multimedia equipment for educational classrooms and 4 cars for foreigners transportation.⁴⁰⁵ However, the Commissioner for Human Rights underlined that rooms and washrooms in detention centre in Biała Podlaska should be renovated.⁴⁰⁶

In **Krosno Odrzańskie** where only men are placed, foreigners stay in eight, six or four-bed rooms.⁴⁰⁷ In Lesznowola rooms have adequate access to natural light and double rooms measure 14 m2 each. In Białystok rooms are well -lit and ventilated.⁴⁰⁸

The main equipment in a room consists of beds, small wardrobes and a small table. In Lesznowola there is a television in each room, a room for preparing meals by their own, laundry, drying room, gym and outdoor pitch. On the other hand there is only one smoking room per two blocks, which is inaccessible after 10 p.m. for detainees from the other block.⁴⁰⁹ If people placed in the centres cannot have all their belongings in their room, they have to place them in external storage space in the centre. Some of their belongings are also placed there for safety reasons and can be accessed only upon request. A sufficient space between beds is provided. As for privacy matters, the rooms cannot be locked at night and in some centres the SG checks per night if the detainees are present (e.g. in Białystok and Lesznowola in 2017). There were also concerns about privacy in sanitary facilities in the men's part of the building in some centres(e.g. in 2017 in Białystok).⁴¹⁰

Before the foreigners' admission to the guarded centre and in situations justified on grounds of safety and order, foreigners are subject to detail check. Foreigners have to take off all clothing and underwear. According to a 2016 Commissioner for Human Rights report, foreigners complained about the conditions in which the check was carried out,⁴¹¹ although the Border Guard implemented new standardised guidelines on a two-stage checking of the foreigner, i.e. from the waist up and after dressing up from the waist down.⁴¹² The CPT reported that this two stage approach was not duly followed in practice.⁴¹³ SG did not confirm any complaints on this issue but the management of all detention centres was reminded about this rule in March 2018.

On the other hand, the personal checks in **Krosno Odrzańskie** are conducted in a warehouse which violates people's dignity. There are no windows but only metal shelves along the walls. Personal checks take place in a fairly narrow space between the bookshelves.⁴¹⁴

In February 2018, the Commissioner for Human Rights published a report of a visit to the detention centre in **Przemyśl** in October 2017, describing cases of improper conditions of arrests for foreigners. Problems in sanitary facilities are visible and the privacy and intimacy of detained persons are not ensured.⁴¹⁵

⁴⁰⁵ Information provided by Border Guards on 14 and 25 January 2019.

⁴⁰⁶ Commissioner for Human Rights, *Wyciąg Strzeżony Ośrodek dla Cudzoziemców w Lesznowoli*, 18-19 July 2018, available in Polish at: <https://bit.ly/2TBZ3OY>.

⁴⁰⁷ Commissioner for Human Rights, *Wyciąg Strzeżony Ośrodek dla Cudzoziemców w Krośnie Odrzańskim*, 30 January 2018, available in Polish at: <http://bit.ly/2F2ptCr>.

⁴⁰⁸ CPT Report 2018, 24; available in English at: <https://bit.ly/2HVZltc>.

⁴⁰⁹ Commissioner for Human Rights, *Wyciąg Strzeżony Ośrodek dla Cudzoziemców w Lesznowoli*, 18 December 2018, available in Polish at: <https://bit.ly/2WRAJKV>.

⁴¹⁰ CPT Report 2018, 24; available in English at: <https://bit.ly/2HVZltc>.

⁴¹¹ Commissioner for Human Rights, *Wyciąg Strzeżony Ośrodek dla Cudzoziemców w Kętrzynie*, available in Polish at: <http://bit.ly/2kPbgCA>.

⁴¹² *Ibid.*

⁴¹³ CPT Report 2018, 28; available in English at: <https://bit.ly/2HVZltc>.

⁴¹⁴ Commissioner for Human Rights, *Wyciąg Strzeżony Ośrodek dla Cudzoziemców w Krośnie Odrzańskim*, 30 January 2018, available in Polish at: <http://bit.ly/2F2ptCr>.

⁴¹⁵ Commissioner for Human Rights, *Wyciąg Strzeżony Ośrodek dla Cudzoziemców w Przemyślu*, 7 February 2018, available in Polish at: <http://bit.ly/2EXIR4y>.

Conditions in Biała Podlaska and in Ketrzyn⁴¹⁶ detention centre are good, especially premises for additional classes for children. They are adapted to the needs and interests of children placed in the Center, which has a positive impact on their development.

Foreigners are subject to constant monitoring, which is disproportionate to their situation and stricter than the regime applied in the penitentiary system to particularly dangerous prisoners. In addition, foreigners do not have access to the toilet at all times because there are no sanitary facilities in the cells. Foreigners have to ask the guard every time to allow them to use the toilet. The Commissioner for Human Rights noticed some urinated plastic bottles and considered such conditions to be inhumane.⁴¹⁷

In some detention centres, the food is prepared on site, by external providers. In others, it is prepared in the centres (e.g. in Białystok). Additionally, foreigners have access to the microwave e.g. in Białystok or a separate place where food can be prepared by foreigners in Lesznowola. There are several specific diets e.g., vegetarian, vegan, adapted to Muslims, adapted to pregnant or breastfeeding women or diabetics. Other diets can be respected on prescription of the physician.⁴¹⁸ In 2017 foreigners complained to the CPT delegation about the quality and quantity of food, served in the guarded centre in **Białystok**. In **Lesznowola** detainees complained that there was only one warm meal per day.⁴¹⁹

In the opinion of the Commissioner for Human Rights, one of the part of the detention centres – of limited use, dedicated to men – in **Przemyśl** needs to be renovated and adapted to the needs of foreigners of both genders. At the moment, the entrance to the laundry room is situated through the bathroom, which cannot be functional if the number of persons in the centre is high.

Additionally, the Border Guard officers on duty in a guarded centre and in Przemyśl are always equipped with an electric rifle, visible to the detainees. In the opinion of the Commissioner for Human Rights, this kind of equipment should be stored out of the sight of foreigners, with restricted access, only by authorised officers, and only in case of need. Electric rifles should not be part of the standard equipment of Border Guard officers who have direct contact with a foreigner.⁴²⁰ Furthermore, in 2017, SG officers in guarded centre in **Białystok** were equipped with coercion tools such as long truncheons and tasers permanently visible to the detained foreigners.⁴²¹ In 2018 the Border Guard verified this practice in all detention centres and ordered that means of coercion should be applied only if there is a need.

2.2. Activities and education

In all guarded centres there is a sport and recreation space.⁴²² 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. However some foreigners interviewed by the CPT delegation in the guarded centre in **Białystok** did not know of this free access.⁴²³ There are no additional restrictions, but occasionally the management of the guarded centre in Lesznowola (in 2017 and 2018) and in Białystok (in 2017) limited the access to outdoor exercise area⁴²⁴. In 2014 video game consoles were bought and provided to the detainees (**Kętrzyn**, **Biała Podlaska**, and **Białystok**). Detainees can watch television

⁴¹⁶ Commissioner for Childs' Rights, informacja o wynikach wizytacji SOc w Kętrzynie, 6 September 2018, available in Polish at: <https://bit.ly/2X2PBGG>.

⁴¹⁷ *Ibid.*

⁴¹⁸ Commissioner for Human Rights, *Wyciąg Strzeżony Ośrodek dla Cudzoziemców w Przemyślu*, 7 February 2018, available in Polish at: <http://bit.ly/2EXIR4y>.

⁴¹⁹ CPT Report 2018, 24; available in English at: <https://bit.ly/2HVZlIc>.

⁴²⁰ Commissioner for Human Rights, *Wyciąg Strzeżony Ośrodek dla Cudzoziemców w Przemyślu*, 7 February 2018, available in Polish at: <http://bit.ly/2EXIR4y>.

⁴²¹ CPT Report 2018, 27; available in English at: <https://bit.ly/2HVZlIc>.

⁴²² Paras 2 and 9 Regulation on detention centres.

⁴²³ CPT Report 2018, 24.

⁴²⁴ Commissioner for Human Rights, *Wyciąg Strzeżony Ośrodek dla Cudzoziemców w Lesznowoli*, 18 December 2018, available in Polish at: <https://bit.ly/2WRAJKV>.

without any limitations, even until late at night.⁴²⁵ According to the CPT, the management of guarded centres in Lesznowola and Białystok should enlarge the offer of organised activities.

In all centres there is access to the internet and in all of them there are computers which can be used by detainees. On the other hand, the foreigners placed in detention centre in **Krosno Odrzańskie** complained that there is restricted access to internet. They cannot send directly emails or fax to the NGO which provide legal assistance, this is done by the administration of the guarded centre. It is worth noting that foreigners are under constant supervision of the Border Guard officer who additionally records the personal data and the exact time of their use of internet.⁴²⁶ In 2018, Lesznowola detainees could use the internet only for 30 minutes per session.⁴²⁷ Furthermore, the Border Guard Chief Commander ordered on 27 January 2017 the blocking of sites with terrorist-related and extremist content, social media and instant messaging platforms. New technologies such as VoIP (Voice over Internet Protocol) are also forbidden for security reasons despite the fact that the CPT recommended this kind of communication to be available for use by the foreigners in detention centres.⁴²⁸ Clearance of the internet usage was also introduced.⁴²⁹

The detainees have access to reading and leisure materials. There are libraries – with a number of books and newspapers in several languages – Russian, English, and French. New books or newspapers, dictionaries, handbooks, maps and other materials were provided to all libraries in 2018. There are plans to buy additional material in 2019.⁴³⁰ They also have popular games to play (e.g. chess, cards). Concerts and sport competitions are organised for adults and children in **Kętrzyn**.

Detention centres provide rooms for religious practices.

In all centres, in the corridors of each floor there are boards which provide information in at least 1 or 2 main foreign languages (Russian and/or English). They provide information on the asylum applicants' rights and/or the rules of stay in the detention centre, meal times, and contact details of NGOs and – depending on the centre – on access to the doctor and psychologist.

In all centres each asylum applicant and irregular migrant has an officer appointed to their case with a scheduled meeting to discuss their case. The rules of stay in the detention centres are available in 16 languages: Arabic, English, Ukrainian, Russian, French, Armenian, Chinese, Georgian, Hindi, Spanish, Mongolian, Turkish, Farsi, Urdu, Bengali and Vietnamese.⁴³¹ Not all the language versions are displayed, as the vast majority of asylum seekers are Russian-speaking. Depending on the centre they are available on each floor of the detention centre or in the common-rooms, etc.

Children staying in the guarded centres are – like all other children staying on the territory of Poland – subject to obligatory education until they are 18. However, this obligation, set in the Polish Constitution, is not fulfilled in the case of children staying in guarded centres.⁴³² None of the children staying there regularly attends school. Schools near the detention centres in Przemyśl, **Kętrzyn** and **Biała Podlaska** delegate teachers to work in detention facilities. Special classrooms are prepared in these centres. This is the result of agreements between the Border Guard, educational institutions and local authorities.⁴³³

⁴²⁵ Information provided by the Border Guard, 18 August 2015.

⁴²⁶ Commissioner for Human Rights, *Wyciąg Strzeżony Ośrodek dla Cudzoziemców w Krośnie Odrzańskim*, 30 January 2018, available in Polish at: <http://bit.ly/2F2ptCr>.

⁴²⁷ Commissioner for Human Rights, *Wyciąg Strzeżony Ośrodek dla Cudzoziemców w Lesznowoli*, 18 December 2018, available in Polish at: <https://bit.ly/2WRAJKV>.

⁴²⁸ CPT Report 2018, 28; available in English at: <https://bit.ly/2HVZlIc>. See also Commissioner for Human Rights, *Wyciąg Strzeżony Ośrodek dla Cudzoziemców w Białej Podlaskiej*, 7 January 2019, available in Polish at: <https://bit.ly/2TBZ3OY>

⁴²⁹ Information provided by the Border Guard, 14 and 25 January 2019.

⁴³⁰ Information provided by the Border Guard, 14 and 25 January 2019.

⁴³¹ Information provided by the Border Guard, 18 August 2015.

⁴³² HFHR and Association for Legal Intervention, *Wciąż za kratami*, 2014, available at: <http://bit.ly/1JBxxXm>, 46.

⁴³³ Regulation on education foreigners and Polish citizens who were learning abroad, 23 August 2017, available in Polish at: <https://bit.ly/2XkPupP>.

However, education is limited to a couple of hours per week e.g. 27 hours in **Kętrzyn** since September 2017, 12 hours per week in primary school in **Biała Podlaska**. Due to the limited number of hours, education mainly concentrates on four topics: natural science, social science, Polish and arts activities. The organisation of activities is the responsibility of the teachers and directors of the classes, and are carried out in groups according to their age, level of education and fluency in Polish. Teachers in the detention centre in Kętrzyn speak Russian or English, but in Biała Podlaska lessons are held in Polish, although teachers speak Russian.

In the guarded centre for foreigners in **Przemyśl**, compulsory schooling is implemented as of January 2018.⁴³⁴ Two preparatory departments (oddziały przygotowawcze) have been created. The lessons are held in Polish. Classes for children (aged between 7-9) lasts 20 hours a week and include 14 hours of early school education, 3 hours of Physical Education., 2 hours of English, 1 hour of computer science. The older group (aged 10 till 14) has 24 hours of education: 5 hours of Polish, 4 hours of Maths, 4 hours of P.E, 3 hours of English, 2 hours of Nature Arts, and one hour of Music, History, Computer Science, Technics.

Moreover, educational departments in guarded centres organise additional classes for children, e.g., compensatory classes and for adults, e.g. Mother's Day, father's Day, Refugee day.⁴³⁵

Generally the right to education for children in detention centres for asylum applicants is not properly implemented. There are no legal regulations that specify the obligations of the SG, educational authorities and schools themselves in teaching children in detention centres. The law does not indicate, in particular, on what basis such teaching is to be executed or who should finance the lessons. The Commissioner for Human Rights stated that the right to education of children placed in detention centres is not observed and they should have the possibility to attend public schools. The Commissioner for Human Rights stressed that the SG should also ensure that classes are conducted by qualified teachers and that the curriculum be implemented. The programme must include lessons of Polish as a foreign language as well as lessons concerning other topics. In October 2016, representative of National Prevention Mechanism, who visited the guarded centre in **Kętrzyn** underlined that providing the right to education in Kętrzyn is an example of a good practice since the law on foreigners and law on protection does not ensure it.

2.3. Special needs and health care in detention

According to the law, all detainees have access to regular health care.⁴³⁶ In all centres, medical staff are present and working, there is at least one physician and one nurse, but there are often more. Nurses are present on a daily basis from 7.30 and 9.30 p.m. For 2017 and 2018, there is no information about specialists hired in detention centres. In case of an emergency or the need for a specialist (e.g. gynaecologist), detainees are transferred to hospitals or clinics. As of March 2018, SG officers trained in first aid should be present during night shifts in all guarded centers. The management of all detention centres was also obliged to make sure that there will be a physician in the center every day of the week.

As revealed in the opinion of the CPT, in 2017 medical examinations of detainees were conducted in the presence of SG officers. However, the Polish government stated that presence of a SG officer during a medical check-up is at the request of the physician's conducting the examination.

In September 2015, the Border Guard prepared the document entitled "Rules of SG proceedings with foreigners who need special treatment (algorithm)" because there is no definition of persons who need special treatment and there are no methods for their identification set out in law. The algorithm consists of: (i) a definition of foreigners who are in need of special treatment, (ii) a list of persons involved in

⁴³⁴ Information provided by the Border Guard, 11 January 2018.

⁴³⁵ See INFORMACJA O WYNIKACH WIZYTACJI Strzeżonego Ośrodka dla Cudzoziemców w Kętrzynie, przeprowadzonej w dniu 26 lipca 2018 r.; available in Polish at: <http://bit.ly/2EmgyOi>.

⁴³⁶ Articles 415(1)(5) and 417 Law on Foreigners.

identification, (iii) a set of solutions which simplify identification, (iv) a procedure which should be implemented before a foreigner is placed in detention centre and (v) a procedure when a foreigner is already in detention. However, early identification of victims of torture and violence is not carried out during the preliminary examination of a foreigner on admission in practice. Additionally foreigners are not asked about any medical documentation which they could have from another EU country (see also [Identification](#)).⁴³⁷

In the opinion of the Commissioner for Human Rights,⁴³⁸ and the Commissioner for Child Rights,⁴³⁹ the algorithm used by Border Guard to identify victims of violence is inconsistent with Polish law, the Istanbul Protocol and other international standards. This algorithm does not allow for the immediate release of foreigners who are alleged victims of violence from the guarded centre. The report also highlights that the available treatment and therapy in the detention centre for identified victims of torture only exacerbates their mental trauma. The Commissioner for Child Rights called on the Minister of Interior and Administration to oblige the SG to develop new set of rules on action on foreigners whose mental state presume that they were violence victims.⁴⁴⁰

According to the Commissioner for Human Rights, still in 2018, the identification of torture victims was ineffective, the victims were detained, and medical and psychological personnel was not well prepared to identify victims of torture.⁴⁴¹ For example, in the dispensary in detention centre in Lesznowola, there was no set of documents with guidelines on how to handle sensitive groups, the algorithm, the Istanbul Protocol with Appendix. Moreover, the staff was not trained on how to identify victims of violence and inhuman treatment. Furthermore the SG was not conducting a medical assessment of traces on the body reported by foreigners as traces of violence and torture.⁴⁴²

According to the HFHR, the Polish authorities (SG and courts on own motion) do not identify victims of violence in an effective way. Such identification should be done at the earliest possible stage while deciding on whether the person should be placed in detention. Additionally, the SG and courts should on their own motion exclude the use of detention. Asylum seekers who in their asylum application declare that they were torture victims, are in practice sometimes placed in detention centres. Moreover some courts placed victims in detention centres stating that there is no objection to placing a victim in detention because they will have access to psychological assistance in the guarded centre. The same opinion is presented in the SG guidelines, according to which, a foreigner will not be released if a psychological assistance can be provided in the guarded centre.⁴⁴³

In three cases concerning Syrians, courts of second instance held that it was unlawful to place a foreigner in a guarded center only if he or she was the victim of intentional violence justified by political repression or other. Such a justification is against the Polish law.⁴⁴⁴

During the visit of Commissioner for Human Rights in the guarded centre in **Lesznowola**, the delegation identified two victims of violence:

- The first case concerned a single man, whose family – pregnant wife with five children was not with him and living outside the detention centre. He stayed in the detention centre for 4,5 months. He informed the authorities immediately that he had epilepsy and was a victim of physical and

⁴³⁷ Commissioner for Human Rights, *Wyciąg Strzeżony Ośrodek dla Cudzoziemców w Kętrzynie*, available in Polish at: <http://bit.ly/2kPbgCA>.

⁴³⁸ Commissioner for human Rights, *Wystąpienie do Komendanta Głównego Straży Granicznej w sprawie identyfikacji ofiar tortur*, available in Polish at: <https://bit.ly/2SvtzZJ>.

⁴³⁹ Commissioner for Child Rights, *Wystąpienie do Ministra spraw Wewnętrznych*, 5 September 2018, available in Polish at: <https://bit.ly/2GAvoBc>.

⁴⁴⁰ *Ibid.*

⁴⁴¹ Commissioner for Human Rights, *Wyciąg Strzeżony Ośrodek dla Cudzoziemców w Lesznowoli*, 18 December 2018, available in Polish at: <https://bit.ly/2WRAJKV>.

⁴⁴² *Ibid.*

⁴⁴³ HFHR, *Rights of persons deprived of liberty-fundamental legal and practical issues*. HFHR perspective, July 2018, available in English at: <https://bit.ly/2SktNaF>.

⁴⁴⁴ *Ibid.*

psychological violence. The staff knew about these facts in the first week (the information was in psychologists' notes and in the health book). The first consultation took place four weeks after the request of a physician, psychologist and a detainee. He was treated several times in hospital and several experts' opinions were issued. It stated three times that the stress experienced during detention may increase the frequency of epileptic seizures, and a psychologist confirmed twice that the foreigner should not be in the centre due to his mental condition and threat to his life. Despite the certificate about the threat to life and health, the detention lasted for the next 5.5 weeks. During this time the psycho-physical state of the foreigner deteriorated. During his stay in the detention centre, the Border Guard did not release him as recommended by specialists, and no one examined the traces of torture on his body.

- The second case concerned a single man who informed the SG immediately that he was a violence victim and traumatized. His consultation was translated by another detainee whose language skills were not verified.⁴⁴⁵

During the visit of the Commissioner for Human Rights to **Przemyśl**, the experts identified persons who were victims of torture:

- The first case concerned a married couple of Chechen origin. The man claimed that he had been tortured and alleged inhuman treatment in the country of origin; his leg was shot through. He has a certificate of disability and a history of psychiatric treatment from Germany. Furthermore, he had numerous descriptions of symptoms indicating deterioration of his health under the influence of detention. His wife was distressed and kept saying that she could not stand being in a detention centre.
- The second case also related to a person of Chechen origin who constantly stated that he had been tortured in the country of origin, where the fingers of his left hand were broken during torture, he had many scars in his body and could not straighten his left finger. His mental state corroborated the reported violence.
- The third case referred to a woman with an 18-month-old child. She reported torture in the country of origin, her mental condition was deteriorating in the detention centre and PTSD and depression were developing.
- The last case concerned a Syrian national (according to his statement) who was placed in the arrest as a response to a suicide attempt. He suffered a suicidal crisis due to prolonged detention. His mental state justified immediate intervention and he was placed at once in a psychiatric hospital due to threat to his life.

There is also access to psychological care. Looking after foreigners is one of many responsibilities of psychologists in **Krosno Odrzańskie**, and they provide psychological assistance only if there is a traumatic incident, and only on written request of a doctor who examined a patient. This means that foreigners cannot have access to psychologists upon their own request and curtails the effective identification of potential victims of torture. Additionally, psychologists are present only one day per week for 4 hours, they are not trained in the Istanbul Protocol and the identification of victims of torture.⁴⁴⁶

In all detention centres, information on the availability of medical and psychological care is displayed on boards in the corridors, but in practice people are not always aware of it.⁴⁴⁷

In **Przemyśl**, an external psychologist for foreigners is available 4 hours a week. The capacity of that guarded centre is for 103 foreigners, which means that the access to the psychologist is limited. The

⁴⁴⁵ Commissioner for Human Rights, *Wyciąg Strzeżony Ośrodek dla Cudzoziemców w Lesznawoli*, 18 December 2018, available in Polish at: <https://bit.ly/2WRAJKV>.

⁴⁴⁶ Commissioner for Human Rights, *Wyciąg Strzeżony Ośrodek dla Cudzoziemców w Krośnie Odrzańskim*, 30 January 2018, available in Polish at: <http://bit.ly/2F2ptCr>.

⁴⁴⁷ Commissioner for Human Rights, *Wyciąg Strzeżony Ośrodek dla Cudzoziemców w Kętrzynie*, available in Polish at: <http://bit.ly/2kPbgCA>.

Commissioner for Human Rights estimated that foreigners would have to wait for an examination from 4 to 10 months and in their opinion the early identification of victims of violence is not ensured.⁴⁴⁸

According to the CPT report, consultant psychologists visited the guarded centre in **Lesznowola** whenever there was a need.⁴⁴⁹ There is no limit of frequency and length of psychological consultation which increased the availability of support for foreigners. Consultation were provided only in English and Russian. On the other hand, the Commissioner for Human Rights reported lots of irregularities in psychological assistance and underlined that the number, the frequency and the description of the consultations showed that these consultations only consisted of preliminary interviews and diagnosis. Long-term psychological support was not provided. Additionally, the Commissioner pointed out that the fact there was only one psychologist limits the availability of psychological support. There is a high risk that this psychologist will not be available when her support during a foreigner's mental crisis is needed and there will be no one who could substitute her and provide psychological assistance. Moreover foreigners should have the possibility to choose a psychologist. Otherwise a detainee who is unable to trust an available psychologist, will not have access to effective psychological support

Furthermore, consultation with the psychologist was possible only after submitting written demand which had to be done every time when a foreigner wanted to meet. It was not even possible to schedule a meeting. Consultations were held in the dispensary where privacy and confidentiality were not guaranteed. The psychological documentation was stored together with medical records in defiance of the Polish regulations.

The Commissioner also pointed out that the staff in the guarded centre were not aware of the system to ensure interpreters' presence during consultations, which languages were available and how long the foreigners had to wait for translation. There were no criteria for the selection of interpreters or the minimum requirements that they should meet.

The interpretation was not provided during psychological services in one case of a man who had two psychological and two psychiatric consultations. Despite the fact that his level of English was not sufficient, the interpreter was not called and translation was provided by another foreigner placed in the detention centre in Lesznowola. In a second case, the psychological consultation was not carried out due to the fact that the foreigner had not been informed that the translator would be present during the psychological consultation and he refused to take part in it. Consequently, the psychologist refused to carry out the consultation without the interpreter.⁴⁵⁰

The Commissioner for Human Rights also noted that in the guarded centre in Lesznowola, a list with foreigners names and prescribed medicines was placed in a visible place on the board in the corridor.⁴⁵¹

In **Białystok** one psychologist was hired part time (4 hours, twice a week), but foreigners complained about the lack of interpretation during the meetings. The second post was vacant for several months.⁴⁵² In 2018 until the renovation began, the psychologist had fixed duty days, foreigners could make an appointment by themselves, and visit psychologist whenever they needed. They were not escorted to the psychiatrist. The duty hours were placed on the door of the consultation room and the psychologist was introduced to each new foreigner in a detention centre. In accordance with the provisions of the contracts (with a psychologist, with a clinic) psychological services should be guaranteed within 2 days from the moment of notification by SG of such need and the services are implemented up to date.⁴⁵³ Since

⁴⁴⁸ Commissioner Human Rights, *Wyciąg Strzeżony Ośrodek dla Cudzoziemców w Przemyślu*, 7 February 2018, available in Polish at: <http://bit.ly/2EXIR4y>.

⁴⁴⁹ CPT Report 2018, 26; available in English at: <https://bit.ly/2HVZlTc>.

⁴⁵⁰ Commissioner for Human Rights, *Wyciąg Strzeżony Ośrodek dla Cudzoziemców w Lesznowoli*, 18 December 2018, available in Polish at: <https://bit.ly/2WRAJKV>.

⁴⁵¹ Ibid.

⁴⁵² CPT Report 2018, 26; available in English at: <https://bit.ly/2HVZlTc>.

⁴⁵³ Commissioner for Human Rights, *Wyciąg Strzeżony Ośrodek dla Cudzoziemców w Białymstoku*, 31 January 2019, available at: <https://bit.ly/2Sk0zE4>.

October 2018, the availability of the psychologist has been decreasing. The new contract provides only for 80 hours of consultations per year. Additionally, there is a problem in providing interpretation during psychological assistance due to the low availability of interpreters, low remuneration for interpreters which is barely sufficient to cover their costs and travel time. As a result, interpretation is provided by the staff of the center or by other detainees, which is a violation of the right to privacy and confidentiality of psychological support.

Moreover there were no standards or guidance for preparing psychological documentation or how to ensure that elements in the diagnosis which constitute reasons why a person should not be detained are presented properly. The medical documentation was kept together with psychological documentation. According to the Commissioner for Human Rights delegation, staff in detention centre should be trained, and documents which are to be signed by foreigners should be translated in to a language they understand.⁴⁵⁴

During the visit of the Commissioner for Human Rights in **Białystok**, experts in the delegation identified a number of persons who were victims of violence:

-in case of a man detained for 5 months and 15 days there was no information in his medical files on anamnesis or on his first interview with a social guardian. He had 10 meetings with a psychologist, consultation in the emergency department of a psychiatric hospital, was suicidal, suffered from insomnia, adjustment disorder, PTSD and was aggressive. Only four months after the first psychological opinion, he was identified as a victim of violence and a psychological opinion was prepared by the psychologist, where it was stated that keeping him in a detention centre is a threat to his life.

- In the case of a man, who was a victim of sexual violence, the Commissioner for Human Rights delegation did not find any medical or psychological examination assessing whether there were reasons to exclude detention in his file. There was no anamnesis (a person's medical history) taken, although this is required by the guidelines of the Border Guards. Despite the fact that he was qualified as a person who required special treatment, psychiatric and psychological examination was not ordered for one month since he was qualified as such. Furthermore, the psychiatrist ordered additional psychological consultation twice, but this did not occur. Moreover, despite the existence of indications that the man could be a victim of violence, was diagnosed with post-traumatic stress disorder, adaptive disorder and anxiety, no steps were taken to release him from the guarded center. The foreigner stayed in detention for the entire period designated by the court, until he returned to his country of origin;

- A blind man was placed in detention centre which was not adapted to the needs of people with disabilities, pending a Dublin transfer. The guardians helped him with laundry and eating. During his stay in the detention centre, the person self-mutilated, licked his wounds, refused to eat meals because of fear of being poisoned and had an adoption disorder. Coercive measures were used against him. None of four psychiatric consultations was diagnostic and no action was taken to identify him as a victim violence and the risk of self-harm which was life-threatening. As a consequence, he was not released from detention centre before have been transferred to the Netherlands.

- A man who was transferred from another EU country to Poland, informed the authorities on the day of arrival of the fact that he survived torture, psychological and physical violence and handed over a medical diagnosis prepared as part of the program for the rehabilitation of victims of torture (Rehabilitation Program for Victims of Torture). In 2013 he was diagnosed with post-traumatic stress disorder. No procedure was implemented. Unfortunately the physician and nurse were not trained in diagnosing foreigners who were victims of violence and did not have any knowledge about the procedure which should be implemented in this case.⁴⁵⁵

⁴⁵⁴ *Ibid.*

⁴⁵⁵ Commissioner for Human Rights, Wyciąg Strzeżony Ośrodek dla Cudzoziemców w Białymstoku, 31 January 2019, available at: <https://bit.ly/2Sk0zE4>.

Three psychologists are hired in **Biała Podlaska**, both man and woman; two as staff members of Border Guards and one as an external expert. Additionally, psychologists were holding also other positions than psychologist in the guarded centre. A cooperation with a child psychologist and a child psychiatrist was established and consultation happened on a short notice. Furthermore, the staff working in the detention centre was well trained in 2017 and 2018. However, there were no fixed hours of consultation with the psychologists. Therefore, detainees did not know how to access therapy.

Finally, it should be note that while escorting foreigners to the hospital or to other medical facilities, border guard officers use a handcuffs as a rule.⁴⁵⁶ In **Krosno Odrzańskie**, the person is escorted to the doctor in handcuffs, even though the distance between the centre and the physician's office does not exceed a few hundred meters. According to foreigners, it also happens that they are handcuffed in the doctor's office throughout their stay.⁴⁵⁷

3. Access to detention facilities

Indicators: Access to Detention Facilities

1. Is access to detention centres allowed to

- | | | | |
|-------------------|---|----------------------------------|-----------------------------|
| ❖ Lawyers: | <input checked="" type="checkbox"/> Yes | <input type="checkbox"/> Limited | <input type="checkbox"/> No |
| ❖ NGOs: | <input checked="" type="checkbox"/> Yes | <input type="checkbox"/> Limited | <input type="checkbox"/> No |
| ❖ UNHCR: | <input checked="" type="checkbox"/> Yes | <input type="checkbox"/> Limited | <input type="checkbox"/> No |
| ❖ Family members: | <input checked="" type="checkbox"/> Yes | <input type="checkbox"/> Limited | <input type="checkbox"/> No |

The law allows lawyers, NGOs and UNHCR to have access to detention centres.⁴⁵⁸ Detained asylum seekers are entitled to maintain contact with UNHCR and organisations dealing with asylum issues or granting legal assistance (directly and by means of correspondence and telephone calls). Direct contact with UNHCR and organisations can be limited or restricted completely by the head of the detention centre if it is necessary to ensure safety and public order or to observe the rules of stay in the detention centre. The decision of the head of the centre is final.⁴⁵⁹ The Head of the Office for Foreigners and UNHCR should be informed about it.⁴⁶⁰ This provision is not used in practice. NGOs provide legal assistance, but unfortunately not on a regular basis. NGOs had to diminish their assistance, including legal assistance, in the detention centres, due to lack of financial means as a result of delay in the implementation of AMIF; delay in the announcement of the call for proposals and delay in publishing the results co-financed by AMIF.⁴⁶¹

As a general rule, NGOs have to ask for the consent of a manager of the detention centre to meet with a specific asylum seeker. Lawyers, family members and friends, or NGOs can meet with a detainee during visiting hours. There are no limitations concerning the frequency of such visits. UNHCR Poland notes that they are not limited in accessing detention centres. The media and politicians have access to detention centres under general rules; they have to ask for the consent of the SG unit managing the detention centre.

In practice, NGOs who want to meet with more than one or with unspecified asylum seekers, monitor conditions in a detention centre etc. must ask the SG Commander in Chief in writing for permission to visit a detention centre. Since 2017 permission is authorised by the Border Guard Headquarters. Nevertheless

⁴⁵⁶ Commissioner for Human Rights, Wyciąg Strzeżony Ośrodek dla Cudzoziemców w Lesznowoli, 18 December 2018, available in Polish at: <https://bit.ly/2WRAJKV>.

⁴⁵⁷ Commissioner Human Rights, Wyciąg Strzeżony Ośrodek dla Cudzoziemców w Krośnie Odrzańskim, 30 January 2018, available in Polish at: <http://bit.ly/2F2ptCr>.

⁴⁵⁸ Article 415(1)(2), (3) and (19) Law on Foreigners and Article 89a(1)(2) Law on Protection.

⁴⁵⁹ According to the Law on Protection, it will be a possibility only to limit such contact.

⁴⁶⁰ Article 89a(1) and (2) Law on Protection.

⁴⁶¹ W Klaus, E Ostaszewska-Żuk and M Szczepanik, *The role of European Funds in supporting the integration of migrants in Poland*, September 2017, available at: <http://bit.ly/2EVdzxq>.

visits are generally not limited to visiting hours. NGOs generally do not face problems in accessing the centres.

Visits from relatives, friends or religious representatives are authorised. Any visit should not last more than 90 minutes, but it can be prolonged in justified cases by the manager of the centre. Two adults have a right to take part in the meeting. The number of children is not limited.⁴⁶² Non-scheduled visitors as a rule do not have a possibility to meet with the asylum applicant (but the manager of the detention centre can make exceptions from the above mentioned rules, especially when it is needed to maintain family ties and care over a children).⁴⁶³

Detainees are able to maintain regular contact with people outside the centre. There is no limitation in using cell phones (without audio- and video recording system). The SG's have several hundreds of substitute cell phones without a camera which they provide to foreigners in case they only have smartphones. The cell phones are handed over for the whole day for free. Detainees themselves pay for the calls. There are some problems to order a phone card and foreigners use phone card which were bought in other EU countries. The Border Guard officers go and do shopping for detainees usually twice a week. If the asylum applicant does not have money to buy a telephone card, there is a possibility of using the SG's equipment in justifiable cases.

The Law on Foreigners foresees a legal possibility to impose sanction on a detainee who does not obey the rules in the detention centre. There are two possibilities: banning participation in sport and leisure activities (except for using the library); or banning the purchase of food and cigarettes from outside the centre.⁴⁶⁴

When deciding upon the application of either of these two sanctions, the SG Regional Commander takes into account the general behaviour of the detainee, the level of disobedience, cultural background, etc. Before adopting the law, such punishments were applied in practice without any legal basis. In 2015 and in 2016, such punishment was used 26 times.⁴⁶⁵ No data are available for 2018. In practice there seems to be no need to impose sanctions, because, in the opinion of the CPT, foreigners know that in case of serious violations, they could be transferred to rigorous detention centre in Przemyśl.⁴⁶⁶

D. Procedural safeguards

1. Judicial review of the detention order

Indicators: Judicial Review of Detention

1. Is there an automatic review of the lawfulness of detention? ☒ Yes ☐ No
2. If yes, at what interval is the detention order reviewed?

Detention is ordered by the District Court upon request of the SG. Prolongation of the detention is also ordered by the District Court upon request of the SG. Asylum seekers stay in the detention centre can be prolonged if before the end of the previous period of the detention, the final decision concerning the application for international protection is not issued and the reasons to detain the applicant still exist.⁴⁶⁷

⁴⁶² Para 21 of the Rules of foreigners' stay in guarded centre and arrest for foreigners (Annex to the Regulation on detention centres).

⁴⁶³ Para 23 of the Rules of foreigners' stay in guarded centre and arrest for foreigners (Annex to the Regulation on detention centres).

⁴⁶⁴ Article 421(2) Law on Foreigners.

⁴⁶⁵ Information provided by the Border Guard, 19 January 2017.

⁴⁶⁶ Report to the Polish Government on the visit to Poland carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 11 to 22 May 2017, 25 July 2018, available in English at: <https://bit.ly/2HVZlItc>.

⁴⁶⁷ Article 89(4) Law on Protection.

Asylum seekers are informed of the reasons of their detention, legal remedies and their rights. Information on the reasons for detention is given first in the court, orally, translated into a language understandable for the asylum applicant. The court has a clear obligation to hear the person concerned before rendering a decision.⁴⁶⁸ In all guarded centres, when the person arrives at the centre, there is a meeting during which a detainee receives information about the centre, although, in practice asylum seekers do not understand the reasons of their detention and have basic information on their rights.⁴⁶⁹ For example it has happened that asylum seekers supported the SG requests to detain them which is surprising, especially in the light of the fact that later in some of these cases foreigners initiated appeal proceedings. In one of such cases, during the detention hearing a foreigner reportedly supported the SG request to detain him despite the fact that his child had epilepsy.

The law provides for judicial review of the lawfulness of detention.⁴⁷⁰ Asylum seekers can appeal against a District Court ruling to the Regional Court within 7 calendar days from the day the ruling is pronounced. In prolongation cases it is 7 days from the notification of the ruling to an asylum seeker.⁴⁷¹ In this appeal the detainee can dispute the grounds for their detention. Asylum seekers receive rulings in the language they understand; a literal translation of a ruling rendered in Polish. The Law on Foreigners envisages 7 days for the examination of the appeal.⁴⁷²

Some courts – although they have such a legal obligation – do not provide information about the right to a legal representative, whose services are free of charge if foreigners prove that they do not have any financial means. In 2017 many foreigners complained that they did not have money to hire a lawyer to represent them in the court.⁴⁷³

The court procedure concerning detention orders is not considered effective. Courts often decide on detention of asylum seekers without an in-depth analysis of their personal situation, and reasons for detention mentioned in the judgment are indicated very generally - without direct reference to a personal situation.

Previously the Border Guard had been requested by the District Court of **Biała Podlaska** to submit motions for prolongation of detention in due time. In 2017 the Border Guard complied with this requirement. No data are available for 2018, however.

Every person is entitled to compensation and redress for wrongful detention from the State Treasury.⁴⁷⁴ In 2017 HFHR lawyers represented one family, whose case is now pending before the District Court of **Warsaw**. In 2018 SIP represented two families and a man whose cases are pending before the District Court of Warsaw and Olsztyn.⁴⁷⁵ The HFHR has two such cases pending in the District Court of Warsaw.

In the appeal procedure, foreigner' do not know that they can ask the court to be present during examinations of their appeal against detention, so they cannot present their standpoint. At the same time, foreigners are not informed about the reasons for prolonging their stay in a detention centre by the Border Guard, such as for example in Ketrzyn.⁴⁷⁶ Furthermore, the appeal has to be prepared in Polish, so foreigners are dependent on NGOs which provide limited legal assistance due to limited access to funds. Courts do not conduct evidentiary proceedings on best interests of the child and on torture victims.

⁴⁶⁸ Article 88b(1) Law on Protection.

⁴⁶⁹ CPT Report 2018, 20; available in English at: <https://bit.ly/2HVZlTc>.

⁴⁷⁰ Article 88b(3) Law on Protection; Article 403(8) Law on Foreigners.

⁴⁷¹ Courts interpret differently the law in this matter – some claim that 7 days should be counted from the day of the pronouncement of the court ruling about placing the foreigner in the detention centre, some that it should be counted from the day the translated ruling is delivered to a foreigner in writing – T. Sieniow, *op. cit.*, 54.

⁴⁷² Article 88b(3) Law on Protection; Article 403(8) Law on Foreigners.

⁴⁷³ CPT Report 2018, 5; available in English at: <https://bit.ly/2HVZlTc>.

⁴⁷⁴ Article 407 Law on Foreigners.

⁴⁷⁵ Information provided by the Association for Legal Intervention, 4 February 2019.

⁴⁷⁶ Information provided by the Association for Legal Intervention, 31 January 2019.

2. Legal assistance for review of detention

Indicators: Legal Assistance for Review of Detention

- | | | |
|--|---|--|
| 1. Does the law provide for access to free legal assistance for the review of detention? | <input checked="" type="checkbox"/> Yes | <input type="checkbox"/> No |
| 2. Do asylum seekers have effective access to free legal assistance in practice? | <input type="checkbox"/> Yes | <input checked="" type="checkbox"/> 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.⁴⁷⁷ 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.⁴⁷⁸ The court has a clear obligation to inform asylum seekers in a language understandable to them about the right to ask for legal assistance.⁴⁷⁹ However, this happens rarely in practice and most asylum seekers are not aware of this possibility and in practice they are not represented by a legal advisor in the District Court. As a result they are dependent on legal assistance granted by NGO lawyers, most of whom are not entitled to represent them before courts. Due to limited funds from AMIF, since 2015 all NGOs have limited their activities and do not visit detention centres on a regular basis to provide such assistance whenever needed. This has not improved in 2018.

It can be said that legal assistance in detention centres is generally not effective because of the lack of a centralised or well-managed system for its provision. NGOs pay visits to the detention centres mostly depending on the project they currently implement, which does not happen very often nowadays.

The law foresees a state legal aid system which includes lawyers' visits to the detention centres if necessary and it concerns only preparing the appeal of a negative asylum decision. In practice only some foreigners decide to look for a legal representative, i.e. an advocate or a legal advisor.

E. Differential treatment of specific nationalities in detention

There is no differential treatment of specific nationalities in detention in Poland.

⁴⁷⁷ Articles 78 and 87a Law of 6 June 1997 on the Code of Criminal Procedure, available at: <http://bit.ly/1UcUEO3>.

⁴⁷⁸ Article 78 and 87a Code of Criminal Procedure.

⁴⁷⁹ Article 88b(4) Law on Protection.

Content of International Protection

A. Status and residence

1. Residence permit

Indicators: Residence Permit

1. What is the duration of residence permits granted to beneficiaries of protection?

❖ Refugee status	3 years
❖ Subsidiary protection	2 years
❖ Humanitarian protection	2 years

Refugee status is granted for an unlimited period of time. Recognised refugees obtain a 3-year residence card (*karta pobytu*).⁴⁸⁰ The first card is issued *ex officio*,⁴⁸¹ and is renewed after this period for another 3 years upon request.⁴⁸²

Subsidiary protection is also granted for an unlimited period of time. Subsidiary protection beneficiaries obtain a 2-year residence card (*karta pobytu*).⁴⁸³ The first card is also issued *ex officio*,⁴⁸⁴ and is renewed after this period for another 2 years upon request.⁴⁸⁵

Humanitarian protection (*zgoda na pobyt ze względów humanitarnych*) is granted for an unlimited period of time. The beneficiary of humanitarian protection obtains a 2-year residence card (*karta pobytu*).⁴⁸⁶ The card will be renewed after this period for another 2 years.⁴⁸⁷ The first and subsequent card are issued on the foreigner's demand.⁴⁸⁸

An application for the renewal of the residence card should be submitted 30 days before the expiration date of the current residence card.⁴⁸⁹ Foreigners are often not aware of this rule.

The issuance of the residence card is paid and costs 50 PLN / 12 € for the card.⁴⁹⁰ Only the first residence card is issued free of charge.⁴⁹¹ The fee can be diminished by 50% if a beneficiary is in difficult material situation (only if he or she obtains social assistance benefits) or is a minor up to 16 years old.⁴⁹² There is no possibility of full exoneration from payment. The obligation to pay even only 25 PLN / €6 sometimes prevents foreigners from obtaining a new residence card. Moreover, in case of culpable loss or damage of the card, a new one will be issued subject to a higher fee of no more than 150 PLN / €18.⁴⁹³

The Office for Foreigners, which is responsible for the issuance and renewal of the residence cards for refugees and subsidiary protection beneficiaries,⁴⁹⁴ is situated in **Warsaw**. In the case of humanitarian protection beneficiaries, an authority responsible for residence card renewal is a Border Guard unit having jurisdiction over the foreigner's current place of stay.⁴⁹⁵

⁴⁸⁰ Article 89i(1) Law on Protection.

⁴⁸¹ Article 229(2) Law on Foreigners.

⁴⁸² Article 89i(2a) Law on Protection.

⁴⁸³ Article 89i(2) Law on Protection.

⁴⁸⁴ Article 229(2) Law on Foreigners.

⁴⁸⁵ Article 89i(2a) Law on Protection.

⁴⁸⁶ Article 243(1)(4) Law on Foreigners.

⁴⁸⁷ Article 243(2)(3) Law on Foreigners.

⁴⁸⁸ Article 229(1) and Article 229(4)(3) Law on Foreigners.

⁴⁸⁹ Article 230(2) Law on Foreigners.

⁴⁹⁰ Article 235(1) Law on Foreigners.

⁴⁹¹ Article 236(1)(a)-(c) Law on Foreigners.

⁴⁹² Article 237(1) and (2) Law on Foreigners.

⁴⁹³ Article 238 Law on Foreigners.

⁴⁹⁴ Article 89n(2) Law on Protection.

⁴⁹⁵ Article 245(4)-(5) Law on Foreigners.

The residence card has to be received in person. A card for a child under the age of 13 should be received in person by his or her legal representative.⁴⁹⁶ There is no other possibility to receive a card by a representative or by post. Moreover, foreigners are obliged to give their fingerprints any time they renew a residence card.⁴⁹⁷ If they refuse to give their fingerprints, the residence card will not be issued.⁴⁹⁸ The obligation to give fingerprints and mandatory personal presence to pick up the card means that every time the foreigner has to obtain a new card, he or she has to travel to **Warsaw** in the case of the refugees and subsidiary protection beneficiaries, or another town in the case of humanitarian protection beneficiaries, twice, even if he or she lives far away. This can be time-consuming and costly. The Office for Foreigners informed, however, that in case of serious illness they lift the obligation to collect fingerprints from an applicant, but it happens rarely (1-2 times a year).⁴⁹⁹ The lack of legal possibility to exempt the foreigner fully from the abovementioned payment, the obligation of personal presence twice – upon application and collecting the document, and the possibility to be issued a residence card only in one place may postpone the receipt of new residence cards by foreigners.

Failure to renew a residence card can be punished by fine,⁵⁰⁰ but this rarely happens in practice. There have been no such cases in 2015-2018.⁵⁰¹

Moreover, Polish law requires presenting – as a condition to issue or renew the residence card – recent photographs. Photos presenting face with covered hair are not allowed (hair has to be visible on the picture), which is often problematic for Muslim women.⁵⁰²

All residence cards should have the annotation “access to the labour market”, if the foreigner is entitled to work in Poland.⁵⁰³ Cards issued for refugees as well as humanitarian and subsidiary protection beneficiaries do not have such an annotation in practice, which can impede their access to labour market and to some social benefits, such as the ones in the framework of the “Family 500+” programme.⁵⁰⁴ However, the Supreme Administrative Court as well as the Voivodeship Administrative Court in Warsaw held that such lack of annotation cannot be interpreted as excluding the foreigner from receiving social assistance, if he is in fact entitled to work in Poland.⁵⁰⁵

2. Civil registration

Every child born in Poland, regardless of the nationality of their parents, must be registered in the Civil Registry Office (*Urząd Stanu Cywilnego*). The birth of a child must be reported to the Civil Registry Office territorially competent for the place of birth of the child.⁵⁰⁶ The documents necessary for the preparation of a birth certificate include:

- Written statement of birth issued by a doctor, midwife or health care facility;
- Copy of the marriage certificate if the child's parents are married;
- Birth certificate of the mother, marriage certificate with an entry noting divorce, an abridged copy of the death certificate of the spouse; if the child's mother is single, divorced or widowed, respectively.

⁴⁹⁶ Article 248(1)-(2) Law on Foreigners.

⁴⁹⁷ Article 246(2) Law on Foreigners.

⁴⁹⁸ Article 247 Law on Foreigners.

⁴⁹⁹ Information provided by the Office for Foreigners, 1 February 2017 and 15 January 2019.

⁵⁰⁰ Article 465(4) Law on Foreigners.

⁵⁰¹ Information provided by the Office for Foreigners, 1 February 2018.

⁵⁰² Ordinance of the Minister of Interior of 29 April 2014 on the documents issued for foreigners, available in Polish at: <http://bit.ly/2I7o9n0>.

⁵⁰³ Article 244(1)(11) Law on Foreigners.

⁵⁰⁴ HFHR, Letter to the Head of the Office for Foreigners, 1 April 2016, available in Polish at: <http://bit.ly/2IR4SXA>; European Website on Integration, ‘Poland: social benefit ‘500 PLN per child’ not for refugees?’ 29 February 2016, available at: <http://bit.ly/2ILCBFK>.

⁵⁰⁵ See judgments of Voivodeship Administrative Court in Warsaw No I SAWa 1997/16, 7 October 2016, available at: <http://bit.ly/2I8Mj26> and of the Supreme Administrative Court no. I OSK 1164/16, 14 March 2018.

⁵⁰⁶ Law of 28 November 2014 on civil registration certificates.

The Civil Registry Office which prepared a birth certificate applies for a PESEL number for a child, which is then entered into the registry as well. The PESEL number is crucial in many areas of life including in the provision of health care, hence its registration is initiated by reporting a child's birth.

Marriage is concluded in the Civil Registry Office of the choice of the persons concerned. The documents required to enter into a marriage in Poland are:

- Valid identity document;
- Birth certificate and a marriage certificate together with the annotation of divorce, if the person concerned was married before;
- Certificate issued by the country of origin that the person concerned has the capacity to enter into a marriage under the law of their country.

If the latter document cannot be obtained, the person concerned can apply to the court to be exempt from this obligation.

Generally foreign documents have to be legalised or authenticated by apostille. As a general rule, all documents presented in the Civil Registry Office should be translated by a sworn interpreter and a foreigner who does not speak Polish needs to complete all the formalities (including the marriage ceremony itself) accompanied by a sworn interpreter of a language they speak fluently. Certificates are drawn up immediately.

Problems occur when documents from the country of origin have to be submitted. However, the court procedure to exempt beneficiaries of international protection from this obligation is applied rather efficiently.

3. Long-term residence

Indicators: Long-Term Residence

1. Number of long-term residence permits issued to beneficiaries in 2018:	Not available
---	---------------

The EU long-term residence permit (*zezwole nie na pobyt rezydenta długoterminowego UE*) is issued on a foreigner's demand if he or she:⁵⁰⁷

1. Resides in Poland legally and continuously for at least five years immediately prior to the submission of the application for EU long-term residence permit,
2. Has stable and regular resources which are sufficient to maintain him or herself and the dependent family members;
3. Has appropriate sickness insurance;
4. As of 12 February 2018, knows Polish language at least on level B1 (the documents confirming having this knowledge are required).⁵⁰⁸

Resources are considered sufficient, if for 3 years immediately prior to the submission of the application a foreigner had income higher than the income threshold for social assistance in Poland.⁵⁰⁹

The entire period of a refugee's stay in Poland during the asylum procedure is taken into account in the calculation of the 5-year period, if the asylum procedure lasted more than 18 months. In other cases, half of this period is taken into account.⁵¹⁰ If the previous asylum procedure ended with refusal of the international protection, the period of this procedure is not taken into account at all.⁵¹¹ A procedure for an

⁵⁰⁷ Article 211(1) Law on Foreigners.

⁵⁰⁸ Article 211(1)(3) and (3) Law on Foreigners.

⁵⁰⁹ Article 211(2) Law on Foreigners.

⁵¹⁰ Article 212(1) (2) and (3c) Law on Foreigners.

⁵¹¹ Article 212(2)(8) Law on Foreigners.

EU long-term residence permit is not initiated if a foreigner is a humanitarian protection beneficiary or is currently in an asylum procedure.⁵¹²

The fee for an EU long-term residence permit is 640 PLN / 150 €.

The authority responsible for issuance of the EU long-term residence permit is Voivode having jurisdiction over the current place of stay of the applicant.⁵¹³ The Office for Foreigners is a second instance administrative body competent to handle appeals against first instance decisions. The procedure should last maximum 3 months at the first instance and additionally maximum 2 months if an appeal was lodged⁵¹⁴. In practice though it lasts often much longer. In 2016, 23 beneficiaries were granted long-term resident status. No data were made available for 2017-2018.

4. Naturalisation

Indicators: Naturalisation

- | | |
|---|---------------|
| 1. What is the waiting period for obtaining citizenship? | |
| ❖ Refugee status | 7 years |
| ❖ Subsidiary protection | 7-10 years |
| 2. Number of citizenship grants to beneficiaries in 2018: | Not available |

Polish citizenship can be obtained through two procedures. Firstly, citizenship can be granted by the Polish President.⁵¹⁵ Any foreigner can apply to President to be granted Polish citizenship; there are no specific conditions and criteria for obtaining citizenship in this procedure. A foreigner only has to submit a form with information about him or herself and justification, why he/she applies for Polish citizenship, to a Consul or a Voivode, who hands on the application to the President.⁵¹⁶ Knowledge of Polish language is not required. The citizenship is granted free of charge. The President's refusal is a final decision and cannot be appealed.

Secondly, a foreigner can be declared as a Polish citizen if he or she fulfils criteria specified in law.⁵¹⁷ Both refugees and subsidiary protection beneficiaries have to obtain first a permanent residence permit (*zezwole nie na pobyt stały*) or EU long-term residence permit in Poland. A permanent residence permit is granted to refugees and subsidiary protection beneficiaries on their demand, if they continuously stay in Poland for at least 5 years immediately before the submission of the application. The asylum procedure is taken into account in this calculation.⁵¹⁸

A **refugee** who has been granted permanent residence permit and stays continuously on this basis in Poland for 2 more years can be declared as a Polish citizen.⁵¹⁹ 18 and 57 refugees were declared as Polish citizens respectively in 2017 and 2018 on this basis.⁵²⁰ There is no similar rule concerning **subsidiary protection** beneficiaries. To be declared as Polish citizens, they have to fulfil the same criteria as any other foreigner who obtained permanent residence permit or EU long-term residence permit in Poland (i.e. 2-3 years stay in Poland on this basis or 10 years of legal stay in Poland independently of the basis of the stay, stable and regular resources, legal entitlement to stay in a residential property or marriage with Polish citizen).⁵²¹

⁵¹² Article 213(1)(e)-(f) Law on Foreigners.

⁵¹³ Article 218(1) Law on Foreigners.

⁵¹⁴ Article 223 in conjunction with Article 210 Law on Foreigners.

⁵¹⁵ Article 18 Law of 2 April 2009 on Polish citizenship.

⁵¹⁶ Article 19-21 Law on Polish citizenship.

⁵¹⁷ Article 30 Law on Polish citizenship.

⁵¹⁸ Article 195(1)(6) and Article 195(3) Law on Foreigners.

⁵¹⁹ Article 30(1)(3) Law on Polish citizenship.

⁵²⁰ Information provided by the Ministry of Interior and Administration, 3 January 2018 and 1 February 2019.

⁵²¹ Article 30(1)(1), (2) and (6) Law on Polish citizenship.

Both, refugees and subsidiary protection beneficiaries, to be declared as a Polish citizen, have to prove that they know the Polish language.⁵²² Foreigners should present a document confirming that they have graduated from a Polish school or that they have passed the State exam for Polish language as a foreign language (B1 at least). Those examinations are organised rarely (e.g. only twice in 2016 and 2017, scheduled three times in 2018 and 2019) and they are costly.⁵²³ To take an exam, foreigners often have to travel to another city, so bear the costs not only of the exam itself, but also of transportation and hotel,⁵²⁴ which may constitute an obstacle to naturalisation.

Other obstacles to naturalisation through a declaration as a Polish citizen are particularly the difficulties with providing a legal entitlement to stay in a residential property in writing (e.g. owners often do not want to sign a rental agreement, prefer oral agreements) and the civil registration documents from a country of origin⁵²⁵.

The beneficiary submits the application for declaration as a Polish citizen to Voivode who has jurisdiction over their current place of stay.⁵²⁶ The fee for obtaining citizenship is 219 PLN. The Voivode decision can be appealed to the Minister of Interior.⁵²⁷ The procedure should last one month or two, if it is a complicated case. In practice though it lasts often longer.⁵²⁸

5. Cessation and review of protection status

Indicators: Cessation

1. Is a personal interview of the asylum seeker in most cases conducted in practice in the cessation procedure? ☒ Yes ☐ No
2. Does the law provide for an appeal against the first instance decision in the cessation procedure? ☒ Yes ☐ No
3. Do beneficiaries have access to free legal assistance at first instance in practice? ☒ Yes ☐ With difficulty ☐ No

Poland has a single procedure ("deprivation") for the cessation and/or withdrawal of international protection.

Refugee status is ceased if a foreigner:⁵²⁹

- a. Has voluntarily settled in the country, which he or she had left for fear of persecution;
- b. Has voluntarily accepted protection of a country he or she is a citizen of;
- c. Has voluntarily accepted the citizenship of the country of origin, which he or she had lost before;
- d. Has acquired new citizenship and he or she is under the protection of the state whose citizen he or she has become;
- e. Can no longer refuse to accept the protection of the country of origin, because the reasons why he or she was granted a refugee status no longer exist, and he or she did not present convincing arguments as to why he or she cannot accept this protection. The same applies to countries of habitual residence for stateless persons.

Subsidiary protection is ceased, if the circumstances which were the reason for granting subsidiary protection no longer exist or have changed in such a way that a foreigner no longer requires protection.⁵³⁰

⁵²² Article 30(2) Law on Polish citizenship.

⁵²³ Information from the official exams' website, available at: <http://bit.ly/2l2xVvk>.

⁵²⁴ P. Kaźmierkiewicz, 'Obywatelstwo' in A. Górka, M. Koss-Goryszewska, J. Kucharczyk (eds), *W stronę krajowego mechanizmu ewaluacji integracji: Diagnoza sytuacji beneficjentów ochrony międzynarodowej w Polsce* (Instytut Spraw Publicznych 2019), 25.

⁵²⁵ Ibid., 23-24.

⁵²⁶ Article 36(1) Law on Polish Citizenship.

⁵²⁷ Article 10(4) Law on Polish Citizenship.

⁵²⁸ Information provided by the President's Office, 19 January 2017.

⁵²⁹ Article 21(1) Law on Protection.

The cessation procedure is initiated by the Head of the Office for Foreigners *ex officio* or on other authorities' demand.⁵³¹ The procedure should last no longer than 6 months.⁵³² During the procedure a refugee or a subsidiary protection beneficiary should be interviewed particularly, in order to present reasons as to why he or she should not be deprived of the protection. A foreigner can also present arguments in writing.⁵³³

A decision on deprivation of international protection is issued by the Head of the Office for Foreigners and can be appealed to the Refugee Board with suspensive effect. A foreigner should leave Poland within 30 days from the day of the delivery of the Refugee Board's decision on cessation of international protection. In the same period he or she can make the complaint to the Voivodeship Administrative Court in Warsaw. This onward appeal does not have automatic suspensive effect, but a foreigner can ask the court to suspend final decision on deprivation of the international protection. However, it takes sometimes even a couple of months to suspend the decision by court on the foreigner's demand. During that period a foreigner stays illegally in Poland and faces the start and execution of return proceedings to his or her country of origin.

Only some refugees and subsidiary protection beneficiaries are entitled to free legal assistance in cessation proceedings, namely those whose income is not higher than 100% of the criteria qualifying them to social assistance.⁵³⁴ Free legal assistance is only provided in the appeal procedure; it does not include the first-instance procedure.⁵³⁵ In a court procedure the foreigner can apply for free legal assistance following the general rules.

A foreigner who was deprived of international protection is obliged to return the residence card immediately to the Head of the Office for Foreigners, no later than 14 days from the moment when a decision concerning cessation of the international protection becomes final.⁵³⁶

There is no systematic review of the protection status in Poland. In 2016, 8 persons had their refugee status ceased or revoked and 21 had their subsidiary protection ceased or revoked.⁵³⁷ In 2017, the only cases concerned 80 citizens of Russia deprived of subsidiary protection.⁵³⁸ In 2018, 11 foreigners (incl. 9 citizens of Russia) had their refugee status ceased (10 refugees) or withdrawn (1 person) and 157 (incl. 154 citizens of Russia) had their subsidiary protection ceased (153 beneficiaries) or withdrawn (13).⁵³⁹

These figures reveal that mostly Russian Federation citizens are deprived of international protection in Poland. Cessation is not systematically applied to them, however. 70 Russian citizens obtained international protection in Poland in 2018, 86 in 2017 and 67 in 2016.⁵⁴⁰ In 2018 Russian citizens were deprived of refugee status because of the fact that they have voluntarily accepted protection of the Russian Federation. They were deprived of subsidiary protection predominantly due to the fact that the circumstances which were the reason for granting subsidiary protection no longer existed or have changed in such a way that a foreigner no longer required protection (in 150 cases)⁵⁴¹. HFHR concludes that Russian citizens have mostly been deprived of protection as a result of travel to their country of origin

⁵³⁰ Article 22(1) Law on Protection.

⁵³¹ Article 54b Law on Protection.

⁵³² Article 54a Law on Protection.

⁵³³ Article 54d(1) Law on Protection.

⁵³⁴ Article 69d(2) Law on Protection.

⁵³⁵ Article 69d Law on Protection.

⁵³⁶ Article 89l(1) and (3) Law on Protection.

⁵³⁷ Information provided by the Office for Foreigners, 1 February 2017.

⁵³⁸ Information provided by the Office for Foreigners, 1 February 2018.

⁵³⁹ Information provided by the Office for Foreigners, 15 January 2019.

⁵⁴⁰ Information provided by the Office for Foreigners, 1 February 2018 and 15 January 2019.

⁵⁴¹ Information provided by the Office for Foreigners, 15 January 2019.

after they obtained international protection.⁵⁴² However, in 2018 some Russian citizens were also deprived subsidiary protection because they were considered a security threat or there were serious grounds to believe that they committed a crime (in 13 cases).⁵⁴³

6. Withdrawal of protection status

Indicators: Withdrawal

1. Is a personal interview of the asylum seeker in most cases conducted in practice in the withdrawal procedure? ☐ Yes ☒ No
2. Does the law provide for an appeal against the withdrawal decision? ☐ Yes ☒ No
3. Do beneficiaries have access to free legal assistance at first instance in practice? ☐ Yes ☐ With difficulty ☒ No

Refugee status is withdrawn (“revoked”) where the person:⁵⁴⁴

- a. Has withheld information or documents, or presented false information or documents of significance for the asylum proceedings;
- b. Has committed a crime against peace, a war crime or a crime against humanity, as understood by international law;
- c. Is guilty of the acts contrary to aims and principles of the United Nations, as specified in Preamble and Articles 1 and 2 of the UN Charter.

Subsidiary protection is withdrawn where:⁵⁴⁵

- a. It has been revealed that a foreigner has withheld information or documents or presented false information or documents of significance for the asylum proceedings;
- b. There are serious grounds to believe that a foreigner has committed a crime against peace, a war crime or a crime against humanity, as understood by international law;
- c. There are serious grounds to believe that a foreigner is guilty of the acts contrary to aims and principles of the United Nations, as specified in Preamble and article 1 and 2 of the UN Charter;
- d. There are serious grounds to believe that a foreigner has committed a crime in Poland or an act outside Poland which is a crime according to Polish law;
- e. There are serious reasons to believe that a foreigner poses a threat to state security or to the safety of the society.

Subsidiary protection may also be revoked if, after a foreigner has been granted subsidiary protection, it has been revealed that the beneficiary had committed a crime under Polish law punishable by prison sentence and had left his or her home country for the sole purpose of avoiding punishment.⁵⁴⁶

The “deprivation” procedure and statistics for withdrawal are described in the section on [Cessation](#).

⁵⁴² This reasoning was confirmed by the Supreme Administrative Court in Decision No II OSK 1493/14, 23 February 2016: Lex.pl, ‘NSA: uchodźcy z Czeczenii muszą wrócić do kraju’, 26 February 2016, available in Polish at: <http://bit.ly/2kSVF3s>.

⁵⁴³ Information provided by the Office for Foreigners, 15 January 2019.

⁵⁴⁴ Article 21(1) Law on Protection.

⁵⁴⁵ Article 22(1) Law on Protection.

⁵⁴⁶ Article 22(4) Law on Protection.

B. Family reunification

1. Criteria and conditions

Indicators: Family Reunification

1. Is there a waiting period before a beneficiary can apply for family reunification?
☐ Yes ☒ No
❖ If yes, what is the waiting period?
2. Does the law set a maximum time limit for submitting a family reunification application?
Simplified procedure ☒ Yes ☐ No
❖ If yes, what is the time limit?
6 months
3. Does the law set a minimum income requirement? ☒ Yes ☐ No

The procedure of family reunification is governed by Article 159 of the Law on Foreigners. Family members who are eligible to reunite with the beneficiary are:

- spouse (marriage has to be recognised under the Polish law, but does not have to be concluded before the beneficiary's entry to Poland);
- minor child (biological or adopted) of the family member dependent on them and under their parental authority
- minor child (biological or adopted) of the beneficiary and his/her spouse dependent on them and under their parental authority

In case of a minor beneficiary of international protection, family members who can reunite with them are not only parents but also grandparents or other responsible adult under Polish law (e.g. legal guardians). A beneficiary can also apply for a residence permit for a family member, who already stayed in Poland without permit when the beneficiary had applied for protection. In such a case they have to prove that family has already existed in the country of origin.

There is no waiting period for family reunification in Poland, nor is there a time limit. Foreigners who have obtained refugee status or subsidiary protection are eligible for a simplified family reunification procedure. If they submit a relevant application with a Voivode of proper venue within 6 months from the date of obtaining protection within the territory of Poland, they are not obliged to comply with the conditions of having health insurance, a stable source of income or accommodation in Poland. It must, nonetheless, be remembered that when the residence permit is granted, the beneficiary's family residing outside Poland is obliged to obtain a visa from a Polish consulate. The requirements under which a visa is obtained, in turn, include having adequate financial means and health insurance.⁵⁴⁷

There are no differences between refugees and beneficiaries of subsidiary protection as to the family reunification conditions. The beneficiary is not required to know Polish, is not subject to DNA tests, but has to present original documents certifying the family ties, translated into Polish.

Data on family reunification of beneficiaries of international protection are generally not disaggregated by the authorities.⁵⁴⁸ The main challenges for beneficiaries of international protection to be reunited with their family members are: a narrow definition of family members (e.g. civil partners are excluded), lengthy and costly procedure (submitting and translating official documents, journey to Poland, paying several visits to the consulate).⁵⁴⁹

⁵⁴⁷ HFHR, *Family Reunification of Foreigners in Poland, Law and Practice*, June 2016, available at: <http://bit.ly/2ILG1IB>, 19-20.

⁵⁴⁸ A. Kulesa, 'Łączenie rodzin' in A. Górską, M. Koss-Goryszewska, J. Kucharczyk (eds), *W stronę krajowego mechanizmu ewaluacji integracji: Diagnoza sytuacji beneficjentów ochrony międzynarodowej w Polsce* (Instytut Spraw Publicznych 2019), p.19.

⁵⁴⁹ Ibidem, p. 21.

2. Status and rights of family members

Family members are granted a temporary residence permit, not a residence card issued for beneficiaries of international protection. The temporary residence permit in order to facilitate family reunification of beneficiaries of international protection is granted for 3 years. The foreigner is then issued a residence card upon arrival to Poland with an expiry date conforming to the expiry date of the permit that was granted. The card contains the foreigner's personal data, residence address, annotation confirming the right to be employed in Poland, and the expiry date.

Foreigners who have been granted a residence permit under family reunification procedure may take employment in Poland without the need to apply separately for a work permit, and children under 18 years of age are entitled to free education in Polish schools. Family members of foreigners granted refugee status or of subsidiary protection are also entitled to social benefits. They also are entitled to be covered by the Individual Integration Programme provided that a relevant application is submitted with one of the Poviats Family Support Centres (*powiatowe centra pomocy rodzinie*). Such an application must be submitted within 60 days from the date when the temporary residence permit is granted.

C. Movement and mobility

1. Freedom of movement

Refugees and subsidiary protection beneficiaries have full freedom of movement in Poland. They can freely choose a place where they want to live, authorities do not require from them to live in some particular areas of the country.

There are no specific facilities for refugees and subsidiary protection beneficiaries in Poland. They are entitled to stay in reception centres up until 2 months after the decision on the asylum application becomes final. Afterwards they have to organise all living conditions themselves. Provision of material conditions is not subject to actual residence in a specific place.

Refugees and subsidiary protection beneficiaries are not assigned to a specific residence for reasons of public interest or public order.

2. Travel documents

Refugees obtain travel documents mentioned in the Refugee Convention, which are valid for 2 years from the day of issuance.⁵⁵⁰ Subsequent travel documents are issued on the refugee's demand.⁵⁵¹ The document is issued free of charge, whether a first travel document or a subsequent one. The authority responsible for issuance of refugee travel documents is the Head of the Office for Foreigners.⁵⁵² The procedure concerning refugee travel documents should last one month or two, if it is a complicated case.

A refugee travel document has to be received in person. A travel document for a child under the age of 13 should be received in person by his or her legal representative.⁵⁵³ In case of *force majeure* preventing a foreigner to receive a document in person, the refugee travel document can be received by a proxy.⁵⁵⁴ Foreigners are obliged to give their fingerprints any time they apply for refugee travel document.⁵⁵⁵ The obligation to give fingerprints and mandatory personal presence to receive the travel document means

⁵⁵⁰ Article 89i(1) and (3) Law on Protection.

⁵⁵¹ Article 89m Law on Protection.

⁵⁵² Article 89n(1) Law on Protection.

⁵⁵³ Article 89ib(1) and (2) Law on Protection.

⁵⁵⁴ Article 89ib(4) Law on Protection.

⁵⁵⁵ Articles 89i(4) and 89m Law on Protection.

that most of the time refugees willing to obtain a new travel document have to travel to **Warsaw** twice, even if they live far away. It is time-consuming and costly.

Beneficiaries of **subsidiary protection** are entitled to a Polish travel document for foreigners. The application for the document should be submitted to a Voivode having jurisdiction over the current place of stay of a foreigner and requires a fee of 100 PLN / 23 €. ⁵⁵⁶

A Polish travel document will be issued only if a beneficiary of subsidiary protection: has lost his or her passport or the passport has been damaged or its validity has expired, *and* he or she is unable to obtain a new passport from the authorities of the country of origin. ⁵⁵⁷ Inability to obtain a new passport from the authorities of the country of origin is often understood by the Polish authorities as a requirement for beneficiaries to present written evidence that they have contacted the embassy of their country of origin and that this authority has refused to issue a passport for them. Often foreign authorities are unwilling to issue a document confirming those facts. Moreover, some beneficiaries of subsidiary protection are afraid to contact authorities of their country of origin, because the previous actions of those authorities were the reason they sought protection in Poland.

The procedure concerning the Polish travel document for a foreigner should last one month or two, if it is a complicated case. In practice, however, it often lasts longer.

Refusal to issue the Polish travel document for a foreigner can be appealed to the Head of the Office for Foreigners.

The Polish travel document for a foreigner entitles to multiple border crossings and is valid for 1 year. ⁵⁵⁸ After that period, a beneficiary of subsidiary protection needs to apply for another such document. Even in case of an application for a subsequent Polish travel document, after the previous one expires, beneficiaries of subsidiary protection are expected to take measures in order to obtain the passport from their country of origin. ⁵⁵⁹

The Border Guard has not observed any obstacles in the recognition of travel documents of beneficiaries of international protection issued by another country in 2017 and in 2018. ⁵⁶⁰

In 2017, 658 refugees obtained Convention travel documents and 102 subsidiary protection beneficiaries obtained Polish travel documents for foreigners. ⁵⁶¹ In 2018, 555 Refugee Convention travel documents were issued. The data concerning Polish travel documents for foreigners issued to beneficiaries of subsidiary protection were not made available. ⁵⁶²

D. Housing

Indicators: Housing

- | | |
|--|---------------|
| 1. For how long are beneficiaries entitled to stay in reception centres? | 2 months |
| 2. Number of beneficiaries staying in reception centres as of 31 December 2018 | Not available |

Beneficiaries of international protection are allowed to stay in the centres for 2 months after being served with the positive decision.

⁵⁵⁶ Article 257(1) Law on Foreigners.

⁵⁵⁷ Article 252(3) Law on Foreigners.

⁵⁵⁸ Article 253 Law on Foreigners.

⁵⁵⁹ Article 254 Law on Foreigners.

⁵⁶⁰ Information provided by the Border Guard, 11 January 2018 and 14 January 2019.

⁵⁶¹ Information provided by the Office for Foreigners, 1 February 2018.

⁵⁶² Information provided by the Office for Foreigners, 15 January 2019.

The state does not provide housing. There is a general lack of social housing to nationals as well, so the situation of beneficiaries is difficult in this regard.⁵⁶³ General conditions to obtain housing under the law are hard to fulfill for beneficiaries because of their relatively short stay in Poland and mobility.⁵⁶⁴ Some municipalities provide singular flats annually; 5 in **Warsaw**, maximum 2 in **Gdansk**. Within the 12-month long Individual Integration Programme (IPI) there is a financial benefit to pay for a flat, but according to social assistants in the Centre for Social Assistance in Wolomin, the owners are not willing to rent flats to refugees and often demand higher fees.⁵⁶⁵ Many NGOs are of the opinion that beneficiaries of international protection face homelessness and destitution in Poland.⁵⁶⁶ Some researchers stress that although there is no data on the number of homeless beneficiaries of international protection, there is a high risk that the number is substantial.⁵⁶⁷

E. Employment and education

1. Access to the labour market

Refugees and beneficiaries of subsidiary protection have access to labour market on the same conditions as Polish citizens. There is no difference between refugees and subsidiary protection beneficiaries. Access to employment is not limited to certain sectors.

In practice they have access to employment although they face obstacles, e.g. language skills, qualifications, low awareness of employers about their full access to the labor market. Additionally, labour market institutions are not prepared to help beneficiaries of international protection to enter the labour market in Poland, despite a clear obligation to do so in the law.

Low language skills and low professional qualifications results in unemployment or employment with low salary; instability of employment; small chances for a promotion.⁵⁶⁸ It is easier to find a job in bigger cities, e.g. in **Warsaw** where vocational trainings are provided in foreign languages. Support of the state is only provided during the 12-month Individual Integration Programme (IPI). Although beneficiaries of international protection have access to professional qualifications programs, they are held in Polish which exclude their participation in practice. There are no programs specially dedicated to foreigners improving professional qualification with learning Polish. Additionally, the specific needs of foreigners are not taken into account.⁵⁶⁹

Professional qualifications are recognised, although that procedure is very difficult and time-consuming. Very often recognised refugees and beneficiaries of subsidiary protection do not have any documents confirming their education and skills. Sometimes foreigners have to pass an additional Polish language exam.

⁵⁶³ Maryla Koss-Goryszewska 'Mieszkalnictwo' in A. Górka, M. Koss-Goryszewska, J. Kucharczyk (eds), *W stronę krajowego mechanizmu ewaluacji integracji: Diagnoza sytuacji beneficjentów ochrony międzynarodowej w Polsce* (Instytut Spraw Publicznych 2019), p.27.

⁵⁶⁴ Ibidem, p. 29.

⁵⁶⁵ Rzeczpospolita, 'Bez mieszkań dla uchodźców', 13 October 2015, available in Polish at: <http://bit.ly/2IQYYJS>.

⁵⁶⁶ Wyborcza, 'Uchodźcy w Polsce mieszkają w squatach i ruderach. Fundacja szuka dla nich tanich mieszkań', 10 November 2016, available in Polish at: <http://bit.ly/2kqrrpE>. There was an extended research on this for UNHCR in 2013, available at: <http://bit.ly/2kKwLAI>.

⁵⁶⁷ Maryla Koss-Goryszewska 'Mieszkalnictwo' in A. Górka, M. Koss-Goryszewska, J. Kucharczyk (eds), *W stronę krajowego mechanizmu ewaluacji integracji: Diagnoza sytuacji beneficjentów ochrony międzynarodowej w Polsce* (Instytut Spraw Publicznych 2019), p. 30.

⁵⁶⁸ Mikołaj Pawlak 'Zatrudnienie' in A. Górka, M. Koss-Goryszewska, J. Kucharczyk (eds), *W stronę krajowego mechanizmu ewaluacji integracji: Diagnoza sytuacji beneficjentów ochrony międzynarodowej w Polsce* (Instytut Spraw Publicznych 2019), p.32.

⁵⁶⁹ Mikołaj Pawlak, 'Kwalifikacje zawodowe' in A. Górka, M. Koss-Goryszewska, J. Kucharczyk (eds), *W stronę krajowego mechanizmu ewaluacji integracji: Diagnoza sytuacji beneficjentów ochrony międzynarodowej w Polsce* (Instytut Spraw Publicznych 2019), p.37.

2. Access to education

The situation does not differ from the situation of asylum seekers. The situation of beneficiaries can be actually worse because the schools near the accommodation and reception centres are more familiar with the challenges related to foreign pupils than other schools in the country. According to the data from the System of Educational Information as of 30.09.2016 there were 1958 children in Polish schools, from families still subject to international protection proceedings or already granted protection.⁵⁷⁰

F. Social welfare

Beneficiaries of international protection have access to social welfare on equal terms as nationals. There is no difference drawn between refugees and subsidiary protection beneficiaries.

1. Forms of social assistance

Social assistance can be provided *inter alia* for the following reasons: orphanhood; poverty; homelessness; unemployment; disability; long-term or severe disease, violence in the family; the need to protect the child and family; addiction (alcoholism and drug addiction); difficulties in integration of foreigners who were granted refugee status, subsidiary protection, sudden and unpredictable situations (natural / ecological disaster, crisis situation, random event), difficulties in integration due to leaving the care and educational institution or prison.

Social assistance is granted to beneficiaries of international protection whose income does not exceed PLN 701 (161 €)(for a single person), or PLN 528 (121 €) (for a person in the family). The application for social assistance has to be filed before the Social Welfare Centre (*Ośrodek Pomocy Społecznej*, OPS) which is located in the district where beneficiaries of international protection reside.

Beneficiaries of international protection are also entitled to family benefits and supplements (*świadczenia rodzinne i dodatki*) under two conditions also applicable to Polish nationals: (a) residence in Poland; and (b) the average monthly family income per person in a family, which cannot exceed 674 PLN or 764 PLN if the child in the family is certified as disabled. They have a right to apply for:

- Family allowance
- Childbirth aid and supplement
- Attendance allowance
- Parental benefit
- Supplement for the beginning of the school year, education away from home, education and rehabilitation of a disabled child, rising a child in a numerous family, rising child alone, and caring a child during parental leave.

Furthermore beneficiaries of international protection have a right to apply for special financial support under the government "500+ Programme", which is paid on monthly basis. This benefit is for families with children, and should be spent on the need of a second and subsequent child regardless of income. In the case of families with a net income below 800 PLN per person, the family has a right to apply for that benefit for the first or only child. For families with a disabled child, the net income criterion is 1,200 PLN. The benefits are granted by Municipal Office of Social Welfare, acting on behalf of the President of the city.

In 2017, Polish authorities denied granting that benefit in several cases, concluding that beneficiaries of international protection did not meet the formal legal requirements, as the residence card which they

⁵⁷⁰ Maryla Koss-Goryszewska 'Edukacja' in A. Górská, M. Koss-Goryszewska, J. Kucharczyk (eds), *W stronę krajowego mechanizmu ewaluacji integracji: Diagnoza sytuacji beneficjentów ochrony międzynarodowej w Polsce* (Instytut Spraw Publicznych 2019), p. 49.

presented did not include the annotation “access to the labour market” (see [Residence Permit](#)). However, the Regional Administrative Court of Warsaw ordered the authorities to grant the benefits.⁵⁷¹ Consequently, the Polish authorities changed their practice and no longer refuse the special financial support on the 500+ Programme on that basis.

2. Individual Integration Programme

Beneficiaries of international protection are also entitled to the Individual Integration Programme (IPI) provided by the Powiat Family Support Centres (*Powiatowe Centra Pomocy Rodzinie*, PCPR). The Programme takes 12 months during which integration assistance is provided. This assistance includes:

- Cash benefits for the maintenance and coverage of expenses related to learning Polish language;
- Payment of the health insurance premium specified in the provisions on general insurance in the National Health Fund;
- Special social counseling.

The social worker carries out the so-called environmental interview with a beneficiary of international protection and his or her family, and then together with they draw up an IPI. The programme determines the amount, scope and forms of integration assistance, as well as mutual obligations of the beneficiary and PCPR. The minimum cash benefit amount is PLN 647 (149 €), per person per month. From 1 October 2018 beneficiaries of international protection are entitled to receive:

1) during the first 6 months of the integration program:

- up to PLN 1376,00 (317 €) per month - for a single person;
- up to PLN 963.20 (22 €) per person per month - in a 2-person family;
- up to PLN 825.60 (190 €) per person per month - in a 3-person family;
- up to PLN 688 (158 €) per month per person - for a family of four and more.

2) in the period from 7 to 12 months of the integration program:

- up to PLN 1248.40 (288 €) per month - for a single person;
- up to PLN 866,88 (200 €) per person per month - in a 2-person family;
- up to PLN 743,04 (171 €) per person per month - in a 3-person family;
- up to PLN 647 (149 €) per month per person - for a family of four and more.

PCPR assists the beneficiary to obtain housing in a place of residence his or her choice, where he or she is obliged to reside during the 12-month period of the IPI. A change of residence is allowed in particularly justified cases. In case the beneficiary changes residence in the region without informing PCPR, the programme will be terminated.

In practice, beneficiaries face a range of obstacles in obtaining social assistance, ranging from lack of awareness of their rights and language barrier, to the discretion of authorities in the limits of financial assistance granted, to the requirement of translated forms and official documents which cannot be obtained from their country of origin e.g. alimony judgment to receive the “500+” child benefit. The need for the entire family to reside in Poland may also pose difficulties.⁵⁷²

In 2017, the Polish government spent 1,163,689 PLN (268,753.97 €) (down from 2,131,587.75 PLN / 513,600 € in 2016) on different kinds of social welfare for refugees and 1,789,180 PLN (413,211.12 €) for beneficiaries of subsidiary protection. Social assistance was provided in the form of: social assistance,

⁵⁷¹ Voivodeship Administrative Court in Warsaw, I SA/Wa 1197/16, EDAL, available at: <http://bit.ly/2GPlai8>.

⁵⁷² Commissioner for Human Rights, ‘Prawo do świadczeń rodzinnych cudzoziemki objętej ochroną uzupełniającą w sytuacji, gdy nie wszyscy członkowie rodziny zamieszkują w Polsce, PCPR’, 10 January 2018, available in Polish at: <http://bit.ly/2C8IYey>.

psychological and law support, assistance in local institutions financial support; cash benefits on learning the Polish language as part of the implementation of the individual programme of integration.

Social Welfare Centres assisted 96 families of recognised refugees (which covered 227 people,) and 139 families under subsidiary protection (which covered 422 persons,) throughout 2017.⁵⁷³

G. Health care

The right to healthcare is a constitutional right, applicable to third-country nationals as well. Recognised refugees and beneficiaries of subsidiary protection are considered “insurance holders’ under the Law on Healthcare Services financed from public funds and are thus entitled to exactly the same services as Poles under the condition of having a valid health insurance.⁵⁷⁴ It means that in practice free health care is conditional on the payment of health care insurance with the National Health Fund (NFZ). Refugees and subsidiary protection holders, within their 12-month Individual Integration Programme (IPI), are obliged to register within regional job centre and are granted health insurance. After the IPI has been completed, the obligation to pay insurance lies with: the employer (if a refugee has a work contract), a regional job centre of social assistance centre (if they are registered as unemployed) or the refugees themselves if they wish to cover the costs of insurance.⁵⁷⁵

Importantly, in Poland, all children under 18 years old are entitled to free health care, even if they are not insured and the cost of their treatment is covered by the State Treasury. Children under 19 years old who attend school, regardless of their migration status, are covered by preventive healthcare which includes medical and dental examinations, rehabilitation programmes, health awareness education and health emergency education provided by school or district nurses.⁵⁷⁶

The health insurance with the NFZ covers all guaranteed health care services specified in the lists of the Ministry of Health. They include both basic and specialist medical services, vaccinations, diagnostic testing (laboratory or other), rehabilitation, hospital care and medical rescue services, emergency ambulance services and medical transport. The NFZ, however, does not cover some dentistry procedures, costs of purchasing medicines, auxiliary products or orthopaedic equipment.⁵⁷⁷ The Polish Centre for Rehabilitation of Torture Victims, run by the Foundation International Humanitarian Initiative, provides assistance to torture victims and other traumatised persons within projects.

The main issue with regard to access to healthcare are cultural competence and language skills of the medical personnel. Other challenges are similar to the challenge Polish nationals are facing as well: long waiting time to see a specialist, costly private medical services and expensive medicines. The beneficiaries’ access to health care is jeopardised by difficulties in accessing legal forms of employment, which guarantee free health care.⁵⁷⁸

⁵⁷³ Ministry of Family, Labour and Social Policy, *Report 2017*, available in Polish at: <https://bit.ly/2G3RwVY>.

⁵⁷⁴ Article 3(1)(2) Law of 27 August 2004 on healthcare services financed from public funds.

⁵⁷⁵ M. Szczepanik, *Right to healthcare and access to medical services for asylum seekers and beneficiaries of international protection in Poland*, May 2017, available at: <http://bit.ly/2CxXokd>.

⁵⁷⁶ Article 27(1) and (3) Law on healthcare services financed from public funds.

⁵⁷⁷ M. Szczepanik, *Right to healthcare and access to medical services for asylum seekers and beneficiaries of international protection in Poland*, May 2017, available at: <http://bit.ly/2CxXokd>.

⁵⁷⁸ Maryla Koss-Goryszewska ‘Służba zdrowia’ in A. Górka, M. Koss-Goryszewska, J. Kucharczyk (eds), *W stronę krajowego mechanizmu ewaluacji integracji: Diagnoza sytuacji beneficjentów ochrony międzynarodowej w Polsce* (Instytut Spraw Publicznych 2019), 43.

ANNEX I – Transposition of the CEAS in national legislation

Directives and other CEAS measures transposed into national legislation

Directive	Deadline for transposition	Date of transposition	Official title of corresponding act	Web Link
Directive 2011/95/EU Recast Qualification Directive	21 December 2013	30 August 2014	Ustawa z dnia 26 czerwca 2014 r. o zmianie ustawy o udzielaniu cudzoziemcom ochrony na terytorium Rzeczypospolitej Polskiej oraz niektórych innych ustaw	http://bit.ly/1dBH7hj (PL)
Directive 2013/32/EU Recast Asylum Procedures Directive	20 July 2015 Article 31(3)-(5) to be transposed by 20 July 2018	13 November 2015	Ustawa z dnia 10 września 2015 r. o zmianie ustawy o udzielaniu cudzoziemcom ochrony na terytorium Rzeczypospolitej Polskiej oraz niektórych innych ustaw	http://bit.ly/1SHT11B (PL)
Directive 2013/33/EU Recast Reception Conditions Directive	20 July 2015	13 November 2015	Ustawa z dnia 10 września 2015 r. o zmianie ustawy o udzielaniu cudzoziemcom ochrony na terytorium Rzeczypospolitej Polskiej oraz niektórych innych ustaw	http://bit.ly/1SHT11B (PL)
Regulation (EU) No 604/2013 Dublin III Regulation	Directly applicable 20 July 2013	13 November 2015	Ustawa z dnia 10 września 2015 r. o zmianie ustawy o udzielaniu cudzoziemcom ochrony na terytorium Rzeczypospolitej Polskiej oraz niektórych innych ustaw	http://bit.ly/1SHT11B (PL)