

Country Report: Poland



2020
Update

Acknowledgements & Methodology

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

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

The information in this report is up-to-date as of 31 December 2020, unless otherwise stated.

The Asylum Information Database (AIDA)

The Asylum Information Database (AIDA) is coordinated by the European Council on Refugees and Exiles (ECRE). It aims to provide up-to date information on asylum practice in 23 countries. This includes 19 EU Member States (AT, BE, BG, CY, DE, ES, FR, GR, HR, HU, IE, IT, MT, NL, PL, PT, RO, SE, SI) and 4 non-EU countries (Serbia, Switzerland, Turkey, United Kingdom) which is accessible to researchers, advocates, legal practitioners and the general public through the dedicated website www.asylumineurope.org. 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
BIPs	Beneficiaries of international protection
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
SIP	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: 2020

	Applicants in 2020	Pending at end 2020	Refugee status	Subsidiary protection	Rejection	Refugee rate	Sub. Prot. rate	Rejection rate
Total	2,803	3,557	161	222	2,048	6.6%	9.1%	84%

Breakdown by countries of origin of the total numbers

Russia	1,283	2,386	15	51	1,295	1.1%	3.7%	95%
Belarus	407	304	8	73	21	7.8%	71.5%	20.5%
Ukraine	317	297	3	18	314	0.9%	5.4%	93.7%
Afghanistan	120	52	5	14	0	26%	73%	0
Tajikistan	87	86	1	26	63	1%	28%	70%
Turkey	74	37	85	0	25	77%	0	22.7%
Georgia	61	65	0	0	57	0	0	100%
Iraq	46	31	0	6	9	0	40%	60%
Syria	40	39	12	2	1	80%	13.3%	6.6%
Kyrgyzstan	30	42	3	0	39	7.1%	0%	92.8%
Armenia	30	28	0	1	15	0%	6.2%	93.7%

Source: Office for Foreigners, statistics provided upon request

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

Gender/age breakdown of the total number of applicants: 2020

	Number	Percentage
Total number of applicants	2,803	
Men	1,663	59%
Women	1,140	40%
Children	1,050	37%
Unaccompanied children	113	4%

Source: Office for Foreigners, statistics provided upon request

Comparison between first instance and appeal decision rates: 2020

	First instance		Appeal	
	Number	Percentage	Number	Percentage
Total number of decisions on merits	2,431		1746	
Decisions granting international protection	383	15.75%	9	0.5%
Rejection	2,048	84.25%	1737	99.5%

Source: Office for Foreigners, statistics provided upon request

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/37G7nV9 (PL) amended in 2020 by: https://bit.ly/3pbG1hm amended in 2021 by: https://bit.ly/3tOQNxB
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/2OcvDXg (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/2RFIG5t (PL)
Law of 2 March 2020 on specific solutions related to the prevention and combating COVID and other infectious diseases and crisis they caused	Ustawa dnia 2 marca 2020 r. o szczególnych rozwiązaniach związanych z zapobieganiem, przeciwdziałaniem i zwalczaniem COVID-19, innych chorób zakaźnych oraz wywołanych nimi sytuacji kryzysowych	COVID Law	https://bit.ly/3djmlpK

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/37HtN8o (PL) amended in 2020 by: https://bit.ly/3aaJI2E

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)
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Overview of the main changes since the previous report update

The report was previously updated in **April 2020**.

Asylum procedure

- ❖ **Access to the territory:** Access to the Polish territory remains a matter of concern in practice. Border monitoring activities and recent reports confirm the existence of grave systemic irregularities and illegal practices at borders, hindering the access to the asylum procedure. On 23 July 2020, the European Court of Human Rights concluded in *M.K. and Others v Poland* that the Polish authorities had failed to review the applicants' requests for international protection and were responsible for collective expulsions, thereby exposing the applicants to a serious risk of chain-refoulement, in violation of the European Convention on Human Rights (ECHR). Despite the ECtHR judgment, as well as other pending cases at national and European level, the Polish government still denies the existence of unlawful practices at the border. The COVID-19 pandemic and limitations on cross border movement added further obstacles to accessing international protection in Poland.
- ❖ **First instance procedure:** In 2020, a total of 2,803 applications for international protection were lodged, thus marking a -31% decreased compared to 2019 (4,095 applications). This is the lowest number of applications since 1999. It is also due to the suspension of activities of the Office for Foreigners from 16 March to 25 May 2020 in the context of COVID-19. The average processing time for a decision on the merits further increased from 152 days in 2019 to 207 in 2020, and the recognition rate at first instance remained very low at 16%. A total of 3,557 cases were pending by the end of 2020. Access to legal assistance remains very limited due to the lack of funding to NGOs.
- ❖ **Second instance procedure:** The chances of success of appeals at second instance remain very low. In 2020, out of 1,943 appeals, a total of 1,737 were rejected. The Refugee Board did not grant any refugee status and only granted subsidiary protection to 9 persons throughout the year. Even if the Voivodeship Administrative Court in Warsaw did not grant suspensive effect to the majority of appeals against decisions on international protection in 2020, it should be noted that the Refugee Board recommended its members to grant said suspensive effect in times of COVID. Moreover, on the basis of the COVID Law, the time limit to leave Poland was extended by 30 days after the epidemic state (or the state of epidemic threat) is finished.
- ❖ **Nationalities of applicants:** While Russia remains the main country of origin, the number of applications lodged by Belarussian nationals has largely increased from 37 in 2019 to 407 in 2020. Belarus was thus the second main country of origin in 2020. The Government introduced many policies enabling Belarussians to enter Poland as migrants – such as visa facilitations and facilitations in obtaining residence permits. According to the Office for Foreigners, Belarussians constitute the second-largest group of foreigners in Poland, with around 28,000 of them holding residence permits in 2020.

Reception conditions

- ❖ **Access to reception conditions:** Similarly to the access to the asylum procedure, COVID-19 hampered the access to material reception conditions. The lack of access to material reception conditions is particularly worrying for persons who are waiting to officially apply for asylum as they are not – by law - entitled to any benefits during that waiting time. However, NGOs inform that, in practice, due to the pandemic, some asylum seekers were allowed to access material reception conditions in those circumstances.
- ❖ **Forms and levels of reception conditions:** The year 2020 was marked by an increase of persons living outside of reception centres. While there were only 819 persons accommodated in reception centres at the end of 2020, around 2,225 persons were receiving assistance outside from reception centres (compared to 1,295 and 1,640 respectively in 2019). However, the financial allowance that is

provided to them to meet basic needs remains insufficient. On average, asylum seeker receives 1,5 to 2 times less than what is essential according to the “social minimum”. Thus, one NGO submitted a complaint to the European Commission pointing to the fact that Poland is not complying with its obligations stemming from Article 17(2) of the recast Reception Conditions Directive (2013/33/EU).

- ❖ **Access to education:** The Supreme Audit Office published a report in 2020 demonstrating that, for many years, the Ministry of Education was not showing any interest in the education of foreign children in Poland. The report further shows an incorrect or insufficient implementation of national legislation by schools in this regard. Moreover, during COVID 19 asylum-seeking children faced obstacles in participating to online lessons due to a shortage of computers and other necessary tools.

Detention of asylum seekers

- ❖ **Detention capacity:** Due to COVID-19 pandemic the number of available places in detention centres has been reduced in Białystok, Lesznowola and Biała Podlaska. One section of the detention centre in Białystok was further closed for renovation.
- ❖ **Detention of children:** The best interest of the child is not properly assessed in detention proceedings. The courts rely on motions issued by Border Guard for detention, without a proper assessment of individual circumstances and regardless of the best interest of the child. Experts' opinion are very rarely requested and psychological opinions stating that detention has a negative impact on the child's well-being are disregarded in practice. Children cannot exercise their right to be heard as they are not involved in detention proceedings. Moreover, detention is not ruled for the shortest period of time and there are little efforts to reduce the duration of detention of children.
- ❖ **Alternatives to detention:** The use of alternatives to detention continues to be the exception and has significantly decreased in 2020. During that year, only 1,023 alternatives to detention were ordered, compared to more than 3,000 in 2019 – although it should be noted that these figures do not refer strictly to asylum seekers but to other foreigners as well. The courts often claim that applying alternatives to detention is impossible, as they have no regular place of residency or savings, ignoring the fact that asylum seekers are entitled to stay in reception centres and receive pocket money.
- ❖ **Legal assistance in detention:** Foreigners are not informed about their right to legal assistance to appeal against a detention order by the court. As a result, foreigners are not able to present their views before the court decides on detention.

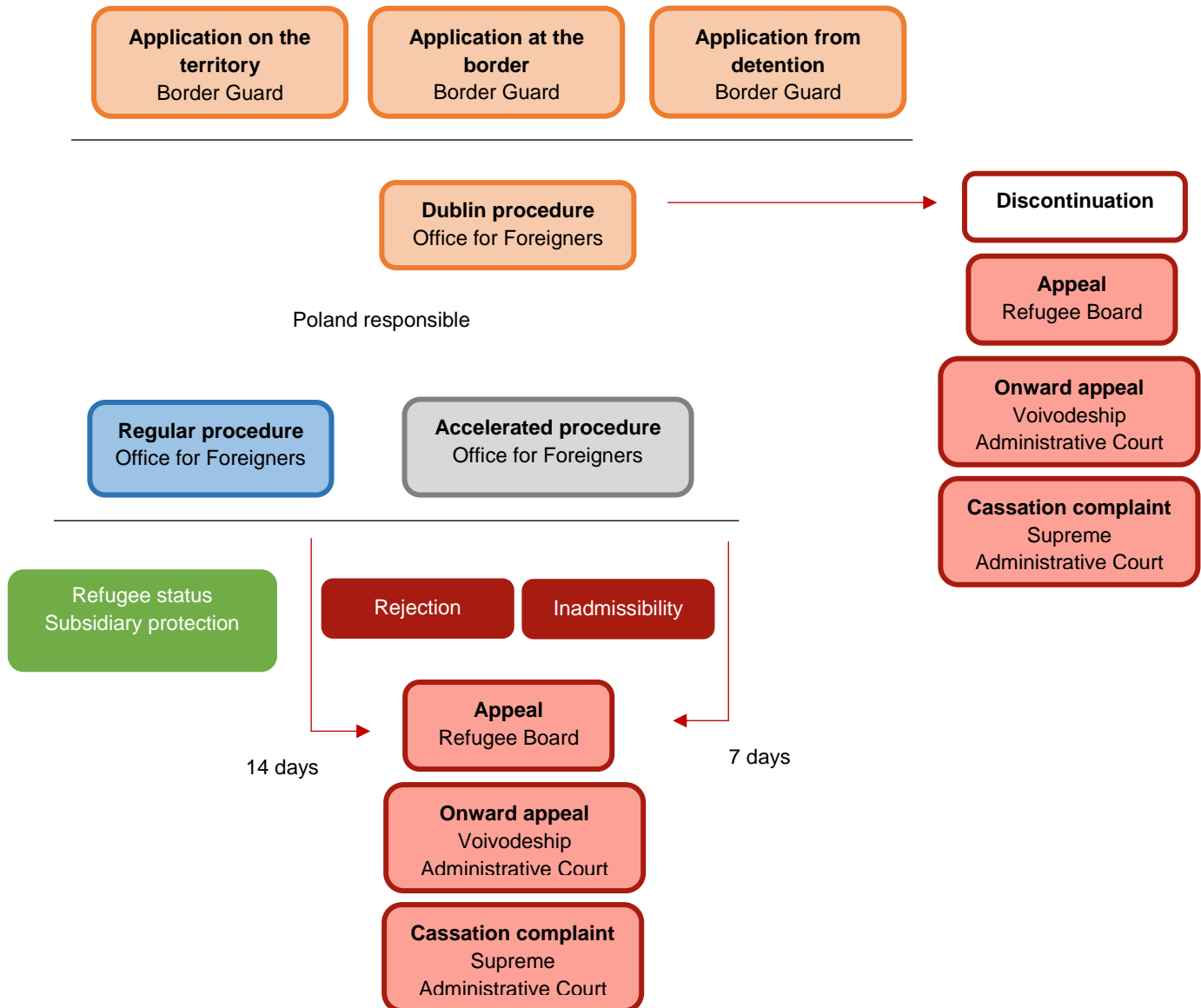
Content of international protection

- ❖ **Residence permits:** During the COVID-19 pandemic, the validity of the residence cards provided to beneficiaries of international protection was prolonged by law until 30 days after the end of the epidemiological state in Poland.
- ❖ **Integration:** Studies show that housing is one of the major issues for both asylum seekers and beneficiaries of international protection in Poland. Inadequate quality of housing results in slowing down the integration process of foreigners to the new socio-cultural conditions of their host country, and may have a negative impact on their physical and mental health. Another important gap identified relates to the lack of specialised medical services for victims of torture or traumatised refugees.

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: ²	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
▪ Fast-track processing: ³	<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: ⁴	<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 determining authority

Name in English	Number of staff	Ministry responsible	Is there any political interference possible by the responsible Minister with the decision making in individual cases by the determining authority?
Office for Foreigners	25 caseworkers	Ministry of Interior and Administration	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No

The Office for Foreigners (OFF) is the authority responsible for examining applications for international protection and competent to take decisions at first instance. According to information provided by the OFF on 16 July 2019, the total number of staff amounted to 413 officials, out of whom the large majority were permanent staff (363 permanent staff and 50 temporary staff). The number of caseworkers was 34. In 2020, 25 caseworkers were responsible for conducting interviews and examining applications for international protection.

Caseworkers are trained on all aspects of the asylum procedure, in particular drafting of decisions and conducting interviews. The training is provided internally as well as through the European Asylum Support Office (EASO). In addition, training for staff members conducted by UNHCR is envisaged, although no

² For applications likely to be well-founded or made by vulnerable applicants. See Article 31(7) recast Asylum Procedures Directive.

³ Accelerating the processing of specific caseloads as part of the regular procedure.

⁴ Labelled as "accelerated procedure" in national law. See Article 31(8) recast Asylum Procedures Directive.

further information is available on which topics. Specific training is also provided by psychologists and EASO to staff members of the Department on Proceedings for International Protection on interviewing vulnerable groups immediately upon recruitment. Although there is no specialised unit for vulnerable groups within the OFF, only qualified staff members are allowed to decide on applications from persons with special needs. In 2020 the number of such staff members was 21.⁵

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

The Head of the Office for Foreigners is appointed by the Prime Minister, upon the request of the Ministry of Interior and Administration, among persons applying via open call.⁶ There is no regular monitoring of the decisions, but in practice caseworkers fill in a special questionnaire which is made available to the Heads of Units and Departments of the OFF to review their activities. There is no quality control mechanism after a decision has been issued by the OFF, however. Monitoring can be conducted at any time by the responsible Ministry or the Supreme Chamber of Control (*Najwyższa Izba Kontroli*). According to the Office for Foreigners, the Ministry cannot be involved in any way in the decision-making process e.g. by issuing binding instructions or by intervening in specific individual cases. In high profile cases, an intervention is probable according to NGO lawyers working on specific cases.

It should be further noted that another activity covered by the OFF are reception facilities for asylum seekers and beneficiaries of international protection. The OFF is thus responsible for the management of all the reception centres. While the OFF has delegated this responsibility to civil-society organisations and private contractors, it monitors the situation in the centres through the Office's employees working in the centre and through inspections that are conducted twice a year (see [Housing](#)). Asylum seekers can complain to the OFF about the situation in the centres.

5. Short overview of the asylum procedure

An asylum application may be lodged either on the territory or at the border or from a detention centre, in all cases through a Border Guard (SG) officer who 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, which falls under the Ministry of Interior and Administration. It is an administrative authority specialised in asylum and is responsible for examining, granting, refusing and withdrawing protection, in Poland, as well as for Dublin procedures (see [Number of staff and nature of the determining authority](#)). A Dublin procedure is applied whenever there is evidence or any sign that another State may be responsible for examining the claim.⁷ 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.

⁵ Information provided by the Office for Foreigners, 26 January 2021.

⁶ Article 17 of the Law on Foreigners.

⁷ The Dublin procedure should be applied in every case: Article 36(1) Law on Protection.

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

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

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

The Refugee Board may then:

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

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

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

There is also a national protection status called 'asylum'. A foreigner can be granted 'asylum' in a separate procedure if it is necessary to provide them with protection, but only if it is in the interest of the state. Political aspects are, therefore, taken into account in this procedure. Throughout the years, the procedure has been very rarely applied (4 positive cases in 2020, one case in 2019 and none in 2018).

B. Access to the procedure and registration

1. Access to the territory and push backs

Indicators: Access to the Territory

1. Are there any reports (NGO reports, media, testimonies, etc.) of people refused entry at the border and returned without examination of their protection needs? ☒ Yes ☐ No
2. Is there a border monitoring in place? ☒ Yes ☐ No
 - ❖ If so, who is responsible for border monitoring? ☐ National authorities ☒ NGOs ☐ Other
 - ❖ If so, how often is border monitoring carried out? ☒ Regularly⁸ ☐ Rarely ☐ Never

Border monitoring is enforced on the basis of an agreement between UNHCR for Central Europe and the Border Guards Headquarters of 21 October 2009. The monitoring visits are conducted by the NGO Halina Niec Legal Aid Center. According to UNHCR, visits take place 12 times a year, i.e. once a month – although in 2020 they were limited to 5 due to the COVID-19. They are carried out at both border crossing

⁸ This refers to once per month.

points in **Terespol** (Belarusian border) and **Medyka** (Ukrainian border). Sometimes the visits cover interviews with foreigners at the border. The visits are mostly announced, but may also sometimes be unannounced.⁹ The reports from these visits are not publicly available.

The previous updates of this report available [here](#) referred to persisting cases of persons denied access to the territory at the border-crossing point in **Terespol** which has been the main entry point in Poland for asylum seekers with a significant deterioration of the situation in 2016.

Throughout the past years, independent monitoring visits to the border crossing point in **Terespol** were held by the Commissioner for Human Rights,¹⁰ Amnesty International,¹¹ and Human Rights Watch¹² as well as other local NGOs such as the Legal Intervention Association (SIP)¹³ and Helsinki Foundation for Human Rights (HFHR).¹⁴ They confirmed the existence of grave systemic irregularities with accepting applications for international protection at the border. There have been numerous reports on this situation¹⁵ and several cases have been brought before the ECtHR (see below). The most recent information on this issue was gathered for the purpose of the submission to UN Special Rapporteur on the human rights of migrants on push back practices, prepared by a Commissioner for Human Rights,¹⁶ and the Consortium of NGOs.¹⁷

Most importantly, on 23 July 2020, the ECtHR published its judgment in *M.K. and Others v Poland*,¹⁸ concerning the repeated refusals of Polish border authorities to enable persons in need for protection to apply for international protection.¹⁹ The facts of the case represent the very substance of the problem at the Polish border. The case concerned various applications submitted by Russian nationals, including children, who attempted to cross the **Terespol** border between **Poland** and **Belarus** on multiple occasions. The applicants, who were attempting to flee from **Chechnya**, stated that they feared for their safety and that they wished to apply for international protection. They were turned away by Polish border authorities on the basis that they had not stated that they would face persecution in Chechnya.

The Court concluded that the Polish authorities had failed to review the applicants' requests for international protection, in compliance with their procedural obligations, contrary to Article 3 ECHR. Moreover, by failing to allow the applicants to remain on Polish territory pending the examination of their applications, the Polish authorities knowingly exposed the applicants to a serious risk of chain-refoulement and treatment prohibited by Article 3 ECHR in Belarus. Having determined that the applicants' removals amounted to expulsion, the Court had to assess whether it was collective in nature. It noted, *inter alia*, that while the applicants had been interviewed by border authorities and individual decisions had been issued for the applicants, these decisions did not adequately reflect the applicants' fear of persecution and had, instead, emphasized

⁹ Information provided by email on 19 February 2021.

¹⁰ Commissioner for Human Rights paid three unannounced visits to Terespol border crossing on 11.08.2016, 15.05.2018 and 23.09.2019, the report of the last visit available (in Polish) at: <https://bit.ly/31nzrtK>.

¹¹ Amnesty International Poland, *Tam i z powrotem: Brześć–Terespol*, 7 December 2016, available at: <https://bit.ly/2GMcEOW>.

¹² Human Rights Watch, Poland: *Asylum Seekers Blocked at the Border*, 1 March 2017, available at: <https://bit.ly/2GMcGq2>.

¹³ Legal Intervention Association, *At the Border. Report on monitoring of access to the procedure for granting international protection at the border crossings in Terespol, Medyka and Warszawa-Okecie airport*, Warsaw 2016, available at: <https://bit.ly/2tuJCK0>.

¹⁴ Helsinki Foundation for Human Rights, *A Road to Nowhere: The account of the monitoring visit at the Brest-Terespol border crossing between Poland and Belarus*, Warsaw 2016, available at: <https://bit.ly/2ShztIG>, see also the report from 2019 on the situation.

¹⁵ Helsinki Foundation for Human Rights, *Access to asylum procedure at Poland's external borders, Current situation and challenges for the future*, Warsaw April 2019, available at: <https://bit.ly/3955t0w>.

¹⁶ The Commissioner for Human Rights, Input of the Commissioner for Human Rights of the Republic of Poland for the Special Rapporteur's on the Human Rights of Migrants report on pushback practices and their impact on the human rights of migrants from 28 January 2021, available at: <https://bit.ly/3u2J3bx>

¹⁷ Consortium of NGOs, Submission to the UN Special Rapporteur on the human rights of migrants on push back practices from 01 February 2021, available at: <https://bit.ly/2ZdTMbJ>

¹⁸ 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.

¹⁹ See the summary of the judgement: European Database of Asylum Law, *M.K. and Others v Poland: Repeated refusal to accept asylum applications amounted to collective expulsion*, available at: <http://bit.ly/3tOUpzD>

arguments supporting the identification of the applicants as economic migrants. Moreover, the Court identified that this was a common practice of misrepresenting statements of individuals attempting to cross the border. It therefore concluded that the decisions to turn away the applicants were taken without proper regard to individual situations amounted to a collective expulsion contrary to Article 4 Protocol No. 4. The Court added that the applicants did not have access to effective remedies to challenge the refusal of entry amounted to a violation of Article 13 ECHR in conjunction with Article 3 and Article 4 Protocol No. 4.

It is also worth noting that the Polish authorities refused to implement interim measures granted by the Court in this case, which required the authorities to refrain from returning the applicants to **Belarus**. The Court found that it was contrary to Article 34 ECHR. The judgement is final.

The ECtHR communicated also other cases against Poland, all concerning the same issue: *D.A. and others v. Poland* (application no 51246/17), *Sherov and others v. Poland* (application no 54029/17), to be examined together with three other applications (no 54117/17 *Saygoziev v. Poland*; no 54128/17 *Salimov v. Poland* and no 54255/17 *Mazhitov v. Poland*).²⁰

Despite the ECtHR judgement, repeated reports and interventions, the Polish government still denies unlawful practices at the border.²¹ Contrary to the ECtHR findings, the government states that the applicants in the *M.K. and others*' case were economic migrants and they did not ask for international protection. They were not within the Polish territory when the interim measure was granted by the ECtHR, so it could not have been applied, because interim measure cannot constitute a basis for entry or for an application for international protection.²²

With pro bono assistance of lawyers, the cases of push backs were also brought before the domestic courts. There have been 25 judgements delivered between 2015 and 2018 by the Supreme Administrative Court and all of these cases resulted in revoking administrative decisions on refusal of entry issued by Border Guards.²³ The Court indicated in numerous cases that interviews conducted at the border must be recorded in the form of protocols signed by both Border Guard officers and foreigners.²⁴ Although the administrative courts annulled the unlawful decisions on the refusal of entry, in most of the cases administrative proceedings were discontinued by the decisions of the courts (due to absence of the applicant). According to the instructions in the judgements, the proceedings on refusal of entry cannot be reopened and re-examined, because there is no case as such for the time being (as the proceedings were discontinued). Once the applicant arrives again at the border, new proceedings are initiated. If there is a new proceeding concerning the refusal of entry, the judgement of the court is not applicable in this case, even if it concerns the same person. This means that applicants do not gain the right to enter Poland if they arrive at the border again, even after a judgement in their favour. At the same time, the Ministry of the Interior and the Administration refused to introduce amendments to national law to ensure its compliance with the established case-law of administrative courts.²⁵

The COVID-19 pandemic and limitations on cross border movement added further obstacles to accessing international protection in Poland.²⁶ As the Commissioner for Human Rights pointed out, persons intending

²⁰ See HFHR news section, *Access to international protection. Information on the submission to UN Special Rapporteur*, available (PL) at: <http://bit.ly/3b3ceT5>.

²¹ See the response of the Ministry of the Interior and Administration to the MP's interpellation concerning the ECtHR judgement in *M.K. and others*, available (in Polish) at: <https://bit.ly/2MPUyCt>.

²² Ibidem.

²³ HFHR, Submission to the UN Special Rapporteur on the human rights of migrants on push back practices from 1 February 2021, available (EN) at: <https://bit.ly/2ZdTMbJ>.

²⁴ Supreme Administrative Court, cases nos. II OSK 2511/18, II OSK 2599/18, and II OSK 3100/18.

²⁵ Helsinki Foundation for Human Rights, *Access to asylum procedure at Poland's external borders, Current situation and challenges for the future*, Warsaw April 2019, available at: <https://bit.ly/2OmcMc0>.

²⁶ Commissioner for Human Rights, Letter to the Ministry of the Interior and Administration from 12 May 2020, available (in Polish) at: <https://bit.ly/3jUyPFA>. See also Sytuacja migrantów i migrantek w czasie pandemii. Stanowisko RPO i Komisji Ekspertów ds. Migrantów [Situation of migrants during the pandemic. Statement of the Commissioner for Human Rights and the Committee of Experts on Migrants], 13 May 2020, available (in Polish) at: <https://bit.ly/2N77rld>.

to apply for international protection were not included in the regulation of the Ministry of Interior and Administration of 13 March 2020 on the temporary suspension or limitation on border traffic at specific border crossing points as persons allowed to enter Poland during the pandemic, which did not guarantee access to procedure. Also, rail connections were suspended, including the rail border crossing in **Terespol**. According to the Border Guard Headquarter however, applying for international protection was made possible for those in need.²⁷

The overall number of applicants in 2020 was 2,803, thus marking a -31% decreased in comparison to 4,095 applicants in 2019. It is the lowest number of applicants since 1999.²⁸ In April-July 2020 there was no application for international protection submitted at the border crossing point in **Terespol** nor in **Medyka** (main entry border crossing point to Poland from Ukraine).²⁹

According to the statistics provided by the Border Guard for 2020, only 448 persons applied for international protection at the border crossing point in **Terespol**,³⁰ while in 2019 there were a total of 1,610 persons. In 2020, 1,989 persons were refused entry in Terespol and the appeals against these decisions were submitted by 162 of them (while in 2019, 4,378 persons were refused entry and 81 persons appealed against these decisions).³¹

2. Registration of the asylum application

Indicators: Registration

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

Applications for international protection should be submitted to the Border Guard (SG) which will then transfer them to the Head of the Office for Foreigners. The Head of Office for Foreigners is competent to examine the claim, so the SG cannot refuse to receive the application.

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 declare an intention to apply for international protection by post for i.e. elderly persons, persons with disabilities, pregnant women, persons in hospitals or imprisoned.³²

Due to COVID-19 pandemic, direct customer service in the Office for Foreigners was suspended on 16 March 2020. Personal visits in the office were possible only in matters 'absolutely necessary' and only after a prior telephone appointment. Foreigners were asked to contact the Office for Foreigners in writing (by

²⁷ Commissioner for Human Rights, Letter to the Ministry of the Interior and Administration from 12 May 2020, available (in Polish) at: <https://bit.ly/3jUyPFA>.

²⁸ See the compilation of statistics in the: HFHR, Submission to the UN, available at: <https://bit.ly/2ZdTMbJ>

²⁹ Information provided by the Border Guard, 5 February 2021.

³⁰ Information provided by the Border Guard, 5 February 2021.

³¹ Letter from the Border Guard Headquarter to HFHR from 17 January 2020. No information on the outcomes was available.

³² Article 28(2) Law on Protection.

post and e-mail) or by phone. In the building of the Office for Foreigners in **Warsaw**, there is also a Border Guard unit, where applications for international protection can be submitted. The direct customer service was resumed by the Office on 25 May 2020 and since then service is provided in accordance with the sanitary rules resulting from the pandemic in Poland.³³

When applying for international protection, one has to submit their travel document (e.g. passport) to the SG. Travel documents are kept by the Head of the Office for Foreigners. Asylum seekers are issued a temporary ID document entitling them to stay on the territory of Poland, the Foreigner's Identity Temporary Certificate (*Tymczasowe Zaświadczenie Tożsamości Cudzoziemca*). The document is initially valid for 90 days – 10 days in case of Dublin returnees – then for 6 months and can be prolonged every 6 months by the Head of the Office for Foreigners until the end of the asylum procedure.³⁴ Due to COVID-19 pandemic, the validity of temporary ID was prolonged automatically until 30 days after the epidemic state in Poland was terminated.³⁵

The SG is entitled to inform an asylum seeker that it is impossible to lodge an application for international protection on a day when said individual comes to the SG unit. However, the SG must then set a date and place when it will be possible.³⁶ In such a situation (e.g. when there is a need to ensure an interpreter is available), the intention to apply for protection is laid down in a protocol and registered and the Border Guard has 3 working days to ensure the application is lodged and registered (in case of massive influx it is 10 working days). During this time decision on return cannot be executed.³⁷

According to the Office for Foreigners (OFF) in 2019, 165 persons declared their intention to apply for international protection, which was eventually registered subsequently.³⁸ NGOs report that the waiting period to lodge an application at the OFF in **Warsaw** was usually a couple of days in 2019.³⁹

In 2020, when the applications for international protection could not be lodged, mostly the 'declarations of intention to submit the asylum application' were accepted and registered by the Border Guards. However by law, the persons who 'declared the intention to submit the asylum application' are not covered by the medical and social assistance since they are not considered yet as applicants under national law.⁴⁰ In a letter to the Ministry of the Interior and Administration, the Consortium of NGOs raised the need to include these persons in the social system for asylum seekers.⁴¹ According to the Office for Foreigners, there were 298 persons who declared the intention to apply for international protection in 2020,⁴² compared to 165 in 2019.

³³ Letter from the Office for Foreigners to HFHR no BSZ.074.3.2021/RW received on 26 January 2020.

³⁴ Article 55(1) and (2) and Article 55a(2) Law on Protection.

³⁵ Article 15z3 COVID Law.

³⁶ Article 28(1) Law on Protection.

³⁷ Article 330(1)8 Law on Foreigners.

³⁸ Letter from the Office for Foreigners to HFHR no BSZ.074.2.2020/RW received on 22 January 2020.

³⁹ A. Pulchny, M. Sadowska, *Dostęp do procedury* [in] Legal Intervention Association, *SIP w działaniu. Prawa cudzoziemców w Polsce w 2018 r.*, May 2019, 9, available (in Polish) at: <http://bit.ly/2S507LV>.

⁴⁰ Article 70 (1) Law on Protection.

⁴¹ Letter of the Consortium of NGOs to the Ministry of the Interior and Administration from 26 March 2020, available (in Polish) at: <https://bit.ly/37hxHXm>.

⁴² Information provided by the Office for Foreigners, 26 January 2021.

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 2020: 3,557

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. The Head of the Office for Foreigners is also a 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.⁴³ This period can be prolonged to 15 months if the case is considered complicated (319 cases in 2018),⁴⁴ 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).⁴⁵ The Office for Foreigners did not provide detailed figures for the years 2019 and 2020, but reported that 2,094 decisions were issued within the 6 months-time limit in 2020. The Office stressed that there are no formal guidelines on what is considered a complicated case and the decision in this regard is taken individually.⁴⁶

In 2020 the average processing time for a decision on the merits was 207 days (in comparison to 152 days in 2019). The longest processing time took 2,345 days and the shortest 1 day.⁴⁷ The COVID-19 pandemic had an impact on the processing time of applications. As the Office for Foreigners informs, from 16 March to 25 May 2020 direct service was suspended and face to face interviews were not carried out. From 31 March to 23 May 2020 all the time limits in the administrative proceedings were also suspended.

According to the law, if the decision is not issued within 6 months, the general provisions on inaction of the administrative authority apply,⁴⁸ therefore the Head of the Office for Foreigners should inform the applicant in writing about the reasons of delay and the applicant can submit a complaint to the second-instance authority. In practice, information about the reasons for delay is provided in a very general way and complaints to the second-instance authority hardly ever happen. The most significant consequence for the applicant of not receiving a decision on an asylum application within 6 months is a possibility to apply for a work permit on this basis (see [Access to the Labour Market](#)).⁴⁹ 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. The certificate is also valid for appeal proceedings and onward appeal court proceedings if the suspensive effect is granted.

As of 31 December 2020, there were 3,557 persons whose cases were pending before the Office for Foreigners.⁵⁰

⁴³ Article 34(1) Law on Protection.

⁴⁴ Information provided by the Office for Foreigners, 15 January 2019. No data for 2019 was made available.

⁴⁵ Article 34 Law on Protection.

⁴⁶ Letter from the Office for Foreigners to HFHR no BSZ.074.3.2021/RW received on 26 January 2021.

⁴⁷ Letter from the Office for Foreigners to HFHR no BSZ.074.3.2021/RW received on 26 January 2021.

⁴⁸ Articles 36-38 Code of Administrative Proceedings.

⁴⁹ Article 35 Law on Protection.

⁵⁰ Letter from the Office for Foreigners to HFHR no BSZ.074.3.2021/RW received on 26 January 2021.

1.2. Prioritised examination and fast-track processing

There is no legal basis for prioritising certain types of cases. The Office for Foreigners has confirmed that in practice cases of vulnerable applicants and detainees are prioritised if this is possible. In 2020 mainly the cases of the Belarussian nationals were prioritised.⁵¹

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
4. Can the asylum seeker request the interviewer and the interpreter to be of a specific gender?
☒ Yes ☐ No
❖ If so, is this applied in practice, for interviews? ☒ Yes ☐ No

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).⁵²

The Office for Foreigners does not collect data on the numbers of interviews.⁵³

Interpretation

Interpretation is ensured respectively by the Head of the Office for Foreigners (for the first instance proceedings) and the Refugee Board (for the appeal proceedings); i.e. they are responsible for securing interpretation and appointing interpreters. The interview should be conducted in a language understandable for the applicant. In the asylum application, the asylum seeker has to declare their mother tongue as well as any fluent knowledge of other languages. Applicants can further request the interviewer and/or interpreter to be of a specific gender.⁵⁴

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.⁵⁵ In 2019, NGOs reported cases where applicants were held responsible for inconsistencies in testimonies, which appeared because of improper interpretation.⁵⁶ In 2020 there was a temporary problem with Tamil language and 1 person was heard in English with his consent. The Office for Foreigners also reports that in 2020 there was a problem with

⁵¹ Letter from the Office for Foreigners to HFHR no BSZ.074.3.2021/RW received on 26 January 2021.

⁵² Article 44(1) and (2) Law on Protection.

⁵³ Information provided by the Office for Foreigners, 15 January 2019.

⁵⁴ Article 44(4)2 of the Law on Protection.

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

⁵⁶ M. Sadowska, K. Słubik *Osoby LGBT* [in] Stowarzyszenie Interwencji Prawnej (SIP), *SIP w działaniu. Prawa cudzoziemców w Polsce w 2018 r.* (2019), available (in Polish) at: <http://bit.ly/2S507LV>, 14.

approaching a female interpreter for some of rare languages and with the limited number of interpreters, which in 2020 meant that if someone was in quarantine, the interview had to be postponed.⁵⁷

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,⁵⁸ but this is not implemented in practice because there are no technical means for it (no cases in 2020).

The law provides that a copy of the report of the interview should be handed in to the applicant after a personal interview. In some cases the applicants do not take or keep them, but they can ask for a copy at any stage of the proceedings. The report is prepared in Polish and contains all the questions asked and responses received, but it is not a verbatim transcript. Although at the end of the interview the report is read to the applicant in an understandable language and before signing it, interviewees can make corrections (and are informed about such possibility), NGOs stress, that there is a recurring problem with this way of registering the interviews. Very often it happens that only after the interview the applicant goes through the copy of the interview report with a person who knows Polish and their national language and the inconsistencies in testimonies come to light. However, any comments and clarifications made in the appeal or in subsequent proceedings are generally not taken into account. Some NGOs suggest that recording the interview would allow to establish what was said during the interview and whether it was translated properly.⁵⁹

In 2019 videoconferencing was used for interviews in the detention centres. NGOs found this practice problematic in terms of interpretation and with regard to vulnerable applicants, when presence of psychologist is required. In 2020 videoconferencing was applied on a larger scale because of the pandemic, but the applicants still had to come to the Office for Foreigners. Interviewee and interviewer were sitting in separates room and upon the termination of the interview, the interviewee still had to sign the protocol of the interview. According to the Office for Foreigners, protocols are mainly prepared on the computer, not handwritten.⁶⁰

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 in 2020: 108 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.

⁵⁷ Information provided by the Office for Foreigners, 26 January 2021.

⁵⁸ Article 44(5) of the Law on Protection.

⁵⁹ M.Jaźwińska, *Postępowanie w przedmiocie udzielenia ochrony międzynarodowej*, [in] Stowarzyszenie Interwencji Prawnej (SIP), *SIP w działaniu. Prawa cudzoziemców w Polsce w 2018 r.* (2019), available (in Polish) at: <http://bit.ly/2S507LV>, 19.

⁶⁰ Letter from the Office for Foreigners to HFHR no BSZ.074.3.2021/RW received on 26 January 2021.

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.⁶¹ 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.⁶² The appeal has suspensive effect.⁶³ Neither hearings nor decisions of the Refugee Board are made public.

In 2020, the average processing time for the Refugee Board to issue a decision in appeal proceedings was 108 days for the cases which started and finished in 2020. The longest processing time in 2020 took 1,355 days (in 2019 it was 327 days) and the shortest - 1 day. In 5 cases (down from 21 in 2019) the Refugee Board decided to hear the applicant (but the Refugee Board stresses that applicants were also asked for written statements), and there were no cases of hearing a witness in 2020 (just like in 2019).⁶⁴

In 2020, according to the Refugee Board, there were no prolonged pauses in the decision making process, although the offices were closed during lockdowns and hearings were impossible in practice.⁶⁵ According to NGOs there were cases where access to files was impossible because the office was closed.

The Refugee Board may annul the first instance decision, overturn it, or confirm it. In 2020, appeals were submitted in case of 1,943 applicants. In case of 1,737 applicants the negative decision was upheld, meaning that the chances of success of appeals are very low in practice. In 2020, refugee status was not granted at all by the appeal body and subsidiary protection was granted in case of 9 persons.⁶⁶

When the negative decision or a decision on discontinuing the procedure for international protection is served, the person concerned has 30 days to leave Poland (unless they are in detention).⁶⁷ During these 30 days their stay in Poland is considered legal.⁶⁸ Nevertheless the Refugee Board also informs the Border Guard that the final negative decision on international protection has been served and the Border Guards is obliged to establish if there are legal grounds to launch return proceedings.⁶⁹

In 2020, on the basis of the COVID Law, the time limit to leave Poland has been prolonged until 30 days after the epidemic state (or the state of epidemic threat) is finished.⁷⁰

1.4.2. Onward appeal before the Administrative Court

After the administrative appeal procedure before the Refugee Board, the decision of the latter can be further appealed to the Voivodeship Administrative Court in **Warsaw** within 30 days, but only points of law can be litigated at this stage.⁷¹ 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 (so together with the complaint a motion to grant suspensive effect has to be submitted).⁷² Also, the authority issuing the decision (in this case the Refugee Board) can grant suspensive effect on their own decision *ex officio* or upon request.⁷³

⁶¹ Information provided by the Refugee Board, 27 August 2015.

⁶² Article 35(3) Code of Administrative Proceedings.

⁶³ Article 130(1) and (2) Code of Administrative Proceedings.

⁶⁴ Information provided by the Refugee Board, 24 February 2021.

⁶⁵ Ibidem.

⁶⁶ Information provided by the Office for Foreigners, 26 January 2021. However, according to the Refugee Board the number of persons granted subsidiary protection in 2021 was 12.

⁶⁷ Article 299(6)1b Law on Foreigners.

⁶⁸ Article 299(7) Law on Foreigners.

⁶⁹ Article 299(10) and (11) Law on Foreigners

⁷⁰ Article 15zzza COVID Law.

⁷¹ 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).

⁷² Article 61(3) of the Law on proceedings before administrative courts.

⁷³ Article 61(2)1 of the Law on the proceedings before administrative courts.

The court procedure is adversarial; both the Refugee Board and the asylum seeker are parties before the court. However, the court cannot decide on the merits (i.e. grant protection), but only annul the administrative decision or uphold it. 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.

The Law on Foreigners separates asylum proceedings and return proceedings, which means that a return decision is not issued within the asylum procedure. Return proceedings are started after the final administrative decision refusing international protection is served to the person concerned (in case of detainees – while in case of applicants who are not detained, they have 30 days to leave the territory). However, under the current legal framework it may happen that the return proceedings lead to a return decision before the Voivodeship Administrative Court in Warsaw examines the appeal against the final administrative decision refusing protection to the applicant.

In numerous cases in 2018, the Supreme Administrative Court decided not to grant suspensive effect to an appeal against a final negative decision on international protection, on the basis that it does not impose an obligation to leave the territory (only a return decision does so), and therefore the condition of a risk of irreparable harm is not fulfilled.⁷⁴ However, in a ruling of 20 December 2018, 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.⁷⁵ According to the information provided by the Voivodeship Administrative Court, in 2018 in 86 cases the Court refused to grant suspensive effect and only in one case decided to grant suspensive effect to the onward appeal against a negative asylum decision.⁷⁶

In 2019 the trend has changed and the court started to grant a suspension in those cases (the Voivodeship Administrative Court decided to suspend the enforcement of the negative asylum decision in 34 cases and refused it in 21 cases).⁷⁷ In these cases article 46(5) of EU Asylum Procedures Directive is brought up in favour of suspension. More importantly, the Supreme Administrative Court issued judgements in 2019 in which the suspensive effect was upheld.⁷⁸

However, in 2020 the issue has become problematic again. In 2020 the Voivodeship Administrative Court granted suspensive effect in 80 cases and in 91 cases refused to grant suspensive effect to any complaint regarding international protection (that means that these statistics cover also cases of deprivation of international protection) as a response to 210 motions for granting suspensive effect.⁷⁹ However, on 28 April 2020 the Refugee Board made a resolution recommending its members to grant suspensive effect to the decisions on international protection, if there was a complaint to the court submitted against this decision in the time of COVID-19 pandemic (or pandemic threat) and some NGOs confirm that there were such cases in practice.⁸⁰ Moreover, on the basis of the COVID Law, the time limit to leave Poland has been extended by an additional 30 days after the epidemic state (or the state of epidemic threat) is finished.⁸¹ Therefore access to appeal before a court may not have been an issue in 2020, but still there is a procedural gap in this regard.

⁷⁴ See e.g. Supreme Administrative Court, II OZ 872/18, 14 September 2018, available at: <http://bit.ly/2Haucpl>.

⁷⁵ Supreme Administrative Court, II 1239/18, 20 December 2018, available at: <http://bit.ly/2T6Zq8d>.

⁷⁶ Information provided by the Voivodeship Administrative Court, 11 January 2019.

⁷⁷ Information provided by the Voivodeship Administrative Court, 15 January 2020.

⁷⁸ Supreme Administrative Court judgement from 6 February 2019 II OZ 46/19 and from 16 May 2019, II OSK 1257/19. See comments (in Polish) made by Legal Intervention Association at: <http://bit.ly/2Ofs0ja>.

⁷⁹ Information provided by the Voivodeship Administrative Court on 21 January 2021.

⁸⁰ Information from SIP, obtained on 12 April 2021.

⁸¹ Article 15zzza COVID Law.

Overall, the administrative court proceedings in Poland raises questions of compliance with the EU law, in particular in light of the judgment of the CJEU of 29 July 2019, C-556/17, *Alekszj Torubarov v. Bevándorlási és Menekültügyi Hivatal*, which foresees that the administrative court should be given powers enabling enforcement of final court judgments. These powers must include the possibility of issuing a judgment on the merits if a final judgment is not complied with in subsequent administrative proceedings. Yet, in Poland the law does not provide such a possibility – i.e. the administrative courts do not decide on the merits and can not grant international protection.⁸²

According to the statistics of the Refugee Board, in 2020 there were 336 (up from 293 in 2019) complaints submitted to the Voivodeship Administrative Court against the decisions of the Refugee Board. The Voivodeship Administrative Court in **Warsaw** annulled the decision of the administrative authorities (either of the Refugee Board or both decision of the first and second instance) in 31 cases, and in 212 cases it dismissed the complaint. In 34 cases cassation complaints to the Supreme Administrative Court were lodged. The Supreme Administrative Court annulled the judgment of the Voivodeship Administrative Court as well as the decision of the Refugee Board in 1 case. In 24 cases the cassation complaint was dismissed.⁸³

1.5. Legal assistance

Indicators: Regular Procedure: Legal Assistance

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

☐ Yes
 ☒ With difficulty
 ☐ No

❖ Does free legal assistance cover:

☐ Representation in interview
 ☒ Legal advice
2. Do asylum seekers have access to free legal assistance on appeal against a negative decision in practice?

☐ Yes
 ☒ With difficulty
 ☐ No

❖ Does free legal assistance cover

☒ Representation in courts
 ☒ Legal advice

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

- Legal information, provided by the employees of the Office for Foreigners in cases concerning revocation of protection in the first instance; and
- Legal aid in the second instance provided by advocates, legal counsellors and NGOs. It involves preparing appeal and providing legal representation in second instance in cases concerning:
 - 1) refusal of refugee status or subsidiary protection
 - 2) discontinuance of the procedure
 - 3) refusal of reopening the procedure,
 - 4) Dublin procedure,
 - 5) inadmissibility of the application
 - 6) revocation of protection status.⁸⁴

In any type of decision mentioned above, issued by the first instance authority, the instruction on the right to free legal aid is included and is translated into the language understood by the applicant.⁸⁵

⁸² P. Iżycki, *O merytorycznym orzekaniu sądów administracyjnych w świetle standardu europejskiego – refleksje na gruncie wyroku Trybunału Sprawiedliwości z 29.07.2019 r., C-556/17, Alekszj Torubarov przeciwko Bevándorlási és Menekültügyi Hivatal* [On Administrative Courts' Adjudication on the Merits of Cases in the Light of the European Standard: Reflections Concerning the Judgment of the Court of Justice of 29 July 2019, C-556/17, Alekszj Torubarov v Bevándorlási és Menekültügyi Hivatal], *Europejski Przegląd Sądowy* 4/2020, abstract available at: <http://bit.ly/2ZmUqwQ>

⁸³ Information provided by the Refugee Board, 24 February 2021. This data may be not fully coherent because of delays in transferring information on judgements.

⁸⁴ Article 69c-69m Law on Protection.

⁸⁵ Article 53(1) and 54e(1) Law on Protection.

The system is managed by the Head of the Office for Foreigners who contracts lawyers, legal counsellors and NGO lawyers. Legal aid is provided by approximately 140 legal counsellors, 200 advocates and 3 NGOs: the Association for Legal Intervention (SIP), The Rule of Law Institute and Halina Niec Legal Aid Centre.⁸⁶

In 2020, 311 applicants appealing the decision of the Head of the Office for Foreigners benefited from the free legal aid system. Taking into account the overall number of appeals (1,943) in 2020,⁸⁷ the capacity for providing legal aid within the system funded by the State is definitely not sufficient.

The Association for Legal Intervention (SIP) as one of the few NGOs providing legal aid within the system is also of the opinion that providing assistance only in the second instance is not enough. Main evidence is gathered in the first instance proceedings – that is when the applicants are interviewed, country of origin information is collected and witnesses can be heard. And this is the phase of the proceedings, where cost-free legal assistance is not provided (i.e. private lawyer can be arranged, but it means the applicant bears the costs). SIP gives examples of cases, where some evidence from the country of origin were presented in the appeal were not taken into account by the second instance authority, because the applicants should have presented them in the first instance. The argument, that the applicant had not been advised by the lawyer on what evidence can be relevant for the procedure was not considered.⁸⁸

There is also a separate free legal aid system for the administrative court proceedings (onward appeal). Representation before administrative courts can be provided only by professional legal representatives (lawyers, legal counsellors). There is a general possibility to apply for a cost-free professional legal representation before these courts on the same rules that apply to Polish citizens (i.e. insufficient financial resources). There is a form, in Polish, available in the court or on the court's website (not in the offices of administrative authorities examining the claim) In 2020 the Voivodship Administrative Court in Warsaw (examining all the complaints against decisions regarding international protection) granted free legal assistance in 87 cases and refused to grant it in 30 cases.⁸⁹

For the legal assistance provided in detention see [Judicial review of the detention order](#).

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-2015.⁹⁰ Many NGOs, with qualified lawyers, continued to provide free legal assistance in the proceedings (including first instance), but this assistance is not provided on a large scale nor is it stable, since it often depends on short-term funding within projects. Due to the lack of funding NGOs generally lack resources and cannot provide assistance to applicants on a wider scale covering e.g. the presence of a lawyer during any interview.

⁸⁶ The list of legal counsellors, advocates and NGOs is available on the OFF website at: <https://bit.ly/2TYEAUW>.

⁸⁷ Information provided by the Office for Foreigners, 26 January 2021.

⁸⁸ SIP, *Raport SIP w działaniu, Prawa cudzoziemców w Polsce w 2019 r.*, [Report SIP in action. The Rights of the foreigners in 2019.], available (in Polish) at: <https://bit.ly/2NhMJ8K>.

⁸⁹ Information provided by the Voivodship Administrative Court on 21 January 2021.

⁹⁰ See the details of problems with funding of the Polish NGOs in the letter of 11 Polish NGOs to the European Commission from 21 January 2020, available at: <https://bit.ly/2RI51ii>.

2. Dublin

2.1. General

Dublin statistics: 2020

Outgoing procedure			Incoming procedure		
	Requests	Transfers		Requests	Transfers
Total	228	29	Total	2,282	258
Take charge	28	5	Take charge	834	97
Germany	10	1	Germany	284	40
Finland	4	2	France	191	5
Greece	4	0	Sweden	139	27
Take back	200	24	Take back	1,448	161
Germany	45	11	Germany	863	118
Romania	42	1	France	374	24
Greece	32	0	Belgium	92	1

Source: Office for Foreigners

Outgoing Dublin requests by criterion: 2020		
Dublin III Regulation criterion	Requests sent	Requests accepted
"Take charge": Articles 8-15:	28	10
Article 8 (minors)	0	0
Article 9 (family members granted protection)	3	1
Article 10 (family members pending determination)	3	0
Article 11 (family procedure)	0	0
Article 12 (visas and residence permits)	9	7
Article 13 (entry and/or remain)	5	1
Article 14 (visa free entry)	0	0
"Take charge": Article 16	0	0
"Take charge" humanitarian clause: Article 17(2)	8	1
"Take back": Article 18	200	74
Article 18 (1) (b)	126	19
Article 18 (1) (c)	1	7
Article 18 (1) (d)	73	48
Article 20(5)	0	0

Source: Office for Foreigners

Incoming Dublin requests by criterion: 2020		
Dublin III Regulation criterion	Requests received	Requests accepted
"Take charge": Articles 8-15	834	524
Article 8 (minors)	0	0
Article 9 (family members granted protection)	0	0

Article 10 (family members pending determination)	5	0
Article 11 (family procedure)	14	1
Article 12 (visas and residence permits)	749	521
Article 13 (entry and/or remain)	41	2
Article 14 (visa free entry)	17	0
"Take charge": Article 16	0	0
"Take charge" humanitarian clause: Article 17(2)	8	0
"Take back": Articles 18 and 20(5)	1,448	1,181
Article 18 (1) (b)	1370	432
Article 18 (1) (c)	19	574
Article 18 (1) (d)	53	174
Article 20(5)	6	1

Source: Office for Foreigners, SI Pobyt

Application of the Dublin criteria

As the statistics show, Poland is mainly a country receiving Dublin requests from other countries. The most frequent case is when an applicant has his application under examination in Poland and made another application in another Member State (or stays there without a residence document).

The dependent persons and discretionary clauses

The humanitarian clause was applied in 8 cases in 2020, while the sovereignty clause was not used at all.⁹¹ No information on the circumstances was provided.

2.2. Procedure

Indicators: Dublin: Procedure

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

The Head of the Office for Foreigners is responsible for Dublin procedures and the Border Guard for transfers.⁹² 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.⁹³ The ruling of the CJEU in *Mengesteab*,⁹⁴ allowing Member States to apply the Dublin procedure as of the moment of registration before the lodging of the application, has not changed the practice of the Office for Foreigners, which starts the Dublin procedure as of the moment of lodging of the application.

According to the Office for Foreigners, if the authorities decide to apply the Dublin procedure, asylum seekers are informed about it. They are informed about the following steps of the procedure e.g. decision received from another Member State, or the need to submit additional documents.

Individualised guarantees

⁹¹ Information provided by the Office for Foreigners, 26 January 2021.

⁹² Article 36(2) Law on Protection.

⁹³ Article 36(1) Law on Protection.

⁹⁴ CJEU, Case C-670/16, *Tsegezab Mengesteab v. Bundesrepublik Deutschland* (GC), Judgment of 26 July 2017.

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.⁹⁵ Also in 2018 there were no cases where the *Tarakhel* judgment would have been relevant.⁹⁶ In 2020 the Office informed that every case is examined individually. In 2020 Dublin requests were submitted to any country and depending on the reply, every case is considered individually. Guarantees regarding the compliance with EU directives on international protection are automatically required from **Greece** and **Bulgaria**.⁹⁷

Transfers

According to the Border Guard, the transfer is organised within days from the moment the decision on transfer becomes final, bearing in mind the time in which other states expect to be informed about the transfer in advance and depending on the availability of plane tickets, etc.⁹⁸

However, in 2020, due to the COVID-19 pandemic, the waiting period was longer. Dublin transfers were suspended between 16 March and 8 July 2020. Subsequently, the transfers were carried out, but the procedure of testing for COVID on 72 hours before the plane was to land in the territory of another Member State as well as waiting for results ended up delaying the purchase of plane tickets. Apart from that some Member States expected additional documents regarding health (e.g. **Spain**).⁹⁹

Asylum seekers are transferred under escort only when there is a risk of absconding or if they have already absconded before. According to the Office for Foreigners, it concerns applicants staying in detention, but there are also cases where applicants staying outside the centres were transferred under escort. The Border Guards reported that in 2020, 1 person was transferred from Poland under escort.¹⁰⁰

There is also a legal basis for detention in Dublin outgoing procedures, based on the risk of absconding (see section on [Grounds for Detention](#)).¹⁰¹ The Border Guard reported that in 2020, 33 (down from 63 in 2019) persons were transferred under Dublin from detention centres.¹⁰² No information about the legal grounds of the detention in practice was provided.¹⁰³

According to the Office for Foreigners, transfers to **Greece** were the most problematic in 2020. Greece did not accept the requests and if it did, transfers were not possible.¹⁰⁴

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.¹⁰⁵

⁹⁵ Information provided by the Office for Foreigners, 1 February 2018.

⁹⁶ Information provided by the Office for Foreigners, 14 January 2019.

⁹⁷ Information provided by the Office for Foreigners, 26 January 2021.

⁹⁸ Information provided by the Border Guard, 5 February 2021.

⁹⁹ Ibidem.

¹⁰⁰ Information provided by the Office for Foreigners, 26 January 2021.

¹⁰¹ Article 398(1)(3a) Law on Foreigners.

¹⁰² However, according to the official statistics of the Office for Foreigners reported to the Eurostat, there were only 58 transfers in 2019 as a whole.

¹⁰³ Information provided by the Border Guard, 5 February 2021.

¹⁰⁴ Information provided by the Office for Foreigners, 26 January 2021.

¹⁰⁵ 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?

❖ If yes, is it

❖ If yes, is it suspensive

☒ Yes

☐ No

☐ Judicial

☒ Administrative

☒ Yes

☐ 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 2020 was 59 days (down from 110 days in 2019). In 2020 the Refugee Board issued 16 decisions (down from 33 in 2019) in Dublin proceedings, none of which overturned the decision of the first instance authority.¹⁰⁶

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?

☐ 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 Dublin decision in practice?

☐ Yes

☒ With difficulty

☐ No

❖ Does free legal assistance cover

☒ Representation in courts

☒ 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.¹⁰⁷

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?

☐ Yes

☒ No

❖ If yes, to which country or countries?

In 2020 requests were submitted to any country. **Greece** and **Bulgaria** are automatically asked to present individual guarantees for the applicants concerned.¹⁰⁸

2.7. The situation of Dublin returnees

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

¹⁰⁶ Information provided by the Refugee Board, 16 January 2020.

¹⁰⁷ Article 69e Law on Protection.

¹⁰⁸ Information provided by the Office for Foreigners, 26 January 2021.

for examination of his or her asylum claim in Poland but went to another Member State and did not come back to Poland within 9 months, the case will not be evaluated under the regular “in-merit” procedure. Their application lodged after this deadline will instead be considered as a subsequent application and subject to an admissibility procedure.¹⁰⁹

In 2020 the number of decisions on discontinuance of the proceedings for international protection was 1,044.¹¹⁰ These decisions concerned 1,556 persons. The vast majority of these decisions were issued because the applicant did not reach the reception centre after applying for protection or left the reception centre and did not come back within 7 days (1,285 persons).¹¹¹ In 2020, 124 persons requested a reopening of 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.¹¹² According to the report, the problems occurred due to numerous procedural shortcomings during the transfer of a family to Poland by the German police, as well as the lack of appropriate operational algorithms that should have been implemented in order to promptly identify victims of torture and violence as well as persons whose mental and physical condition rule out their placement in detention. After visits in detention centers in 2018 and 2019, the Commissioner for Human Rights confirmed that the problem persists.¹¹³ Although the Border Guard implemented guidelines on how to deal with persons requiring special treatment, they address treatment in detention, rather than providing that the person identified as a victim of violence should be released from detention (as required by the law).¹¹⁴ In the report from monitoring in 2020 however other concerns were stressed, such as limited access to psychological assistance.¹¹⁵ NGOs add that the system in place is not effective because a person who is a victim of violence should not be put in detention at all, i.e. identification should be conducted before placing in detention and not in detention.¹¹⁶ This problem does not concern merely Dublin returnees, as described in detail below (see [Guarantees for vulnerable groups](#) and [Detention of vulnerable applicants](#)).

3. Admissibility procedure

3.1. General (scope, criteria, time limits)

An admissibility procedure is provided in national legislation.¹¹⁷ 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.¹¹⁸

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

¹⁰⁹ Article 40(6) Law on Protection.

¹¹⁰ Article 40 Law on Protection.

¹¹¹ Information provided by the Office for Foreigners, 26 January 2021.

¹¹² 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.

¹¹³ 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>.

¹¹⁴ Commissioner for Human Rights, *Raport Krajowego Mechanizmu Prewencji Tortur z wizytacji Strzeżonego Ośrodka dla Cudzoziemców w Lesznowoli (wyciąg)*, 18 December 2018, available (in Polish) at: <http://bit.ly/2SO3DgP>, *Report from Biała Podlaska*, 7 January 2019, available (in Polish) at: <http://bit.ly/2BU7ej5>, 7.

¹¹⁵ Commissioner for Human Rights, *Raport Krajowego Mechanizmu Prewencji Tortur z wizytacji Strzeżonego Ośrodka dla Cudzoziemców w Lesznowoli (wyciąg)*, 29 December 2020, available (in Polish) at: <https://bit.ly/3posiE4>.

¹¹⁶ Association for Legal Intervention (Stowarzyszenie Interwencji Prawnej, SIP), *Komentarz SIP: sprawozdanie Polski przed Komitetem przeciwko Torturom ONZ* (Association for Legal Intervention comments on Poland's reporting before UN Committee against Torture), 30 July 2019, available at: <https://bit.ly/2UncJR7>.

¹¹⁷ Article 38 Law on Protection.

¹¹⁸ Article 38(4) Law on Protection.

- 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.¹¹⁹

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.¹²⁰

The Office for Foreigners delivered the following inadmissibility decisions in 2020:

Inadmissibility decisions: 2020	
Ground for inadmissibility	Number of decisions
Subsequent application	1,166
Application by dependent (spouse)	57
Refugee status in another Member State	13
First country of asylum	0
Total	1,236 (concerning 1,883 persons)

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. In 2020, 2,094 decisions were issued within 6-month time limit – but this includes all the proceedings, not only admissibility.¹²¹

3.2. Personal interview

Indicators: Admissibility Procedure: Personal Interview

☒ Same as regular procedure

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

The rules concerning personal interviews are the same as in the **Regular Procedure: Personal Interview**. There is no data on how many interviews were conducted in admissibility procedures in 2020. For the admissibility procedures a lot depends on whether the case requires a detailed interview, as in the regular procedure, or whether it focuses only on specific issues (e.g. new circumstances). The scope of the interview is not limited to identity, nationality, and travel route.¹²²

¹¹⁹ Article 38 Law on Protection.

¹²⁰ Article 38 Law on Protection.

¹²¹ Information provided by the Office for Foreigners, 26 January 2021.

¹²² Information provided by the Office for Foreigners, 1 February 2017.

3.3. Appeal

Indicators: Admissibility Procedure: Appeal

☒ Same as regular procedure

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

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

3.4. Legal assistance

Indicators: Admissibility Procedure: Legal Assistance

☒ Same as regular procedure

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

Free legal assistance is offered in under the same conditions as described in the section on [Regular Procedure: Legal Assistance](#). State legal aid covers preparing an appeal and representation in the second instance.¹²³

4. Border procedure (border and transit zones)

There is no border procedure in Poland. However, in January 2017, the Minister of the Interior and Administration presented a draft amendment to the Law on Protection, which introduces a border procedure for granting international protection. The Commissioner for Human Rights, as well as the main NGOs in Poland, have criticised the draft law for failing to provide sufficient safeguards including limited access to effective remedies and for introducing detention for the duration of the border procedure. The proposal was updated in February 2019.¹²⁴ According to the proposal, if a negative decision is issued during the border procedure, the Office for Foreigners will also decide on return in the same decision. There would be 7 days to appeal this decision to the Voivodeship Administrative Court (not to Refugee Board, as in the regular procedure) and the appeal will not have an automatic suspensive effect. The draft law also provides for the adoption of a list of safe countries of origin and safe third countries. The Commissioner for Human Rights¹²⁵ and NGOs¹²⁶ sent their statements about the draft law, criticizing the concept of safe third country and safe country of origin, as well as legal conditions to apply border procedure and access to effective remedy. Last amendment in the process of adopting the act of law was made in August 2019 and concerned the postponement of adopting this act from the second to the third quarter of the 2019. No further information is available.

¹²³ Article 69e Law on Protection.

¹²⁴ Draft law available at: <http://bit.ly/2lqboVu>.

¹²⁵ The Commissioner for Human Rights, letter commenting on the draft law from 1 April 2019, available (in Polish) at: <https://bit.ly/31pTAQf>.

¹²⁶ Legal Intervention Association, letter commenting on the draft law from 15 February 2019, available (in Polish) at: <https://bit.ly/2v6aiaV> and HFHR, letter from 15 February 2019, available (in Polish) at: <https://bit.ly/2LTPEnk>.

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:¹²⁷

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

The statistics obtained from the Office for Foreigners show that in 2020, 106 applications (covering 115 persons) were channeled in the accelerated procedure. These concerned the following grounds:

Applicants whose applications were channeled in the accelerated procedure: 2018-2020			
Grounds	2018	2019	2020
Reasons unrelated to grounds for international protection	143	134	82
Misleading authorities by withholding or presenting false information or documents	0	0	0
Inconsistent, contradictory, improbable or insufficient statements	25	14	22
Application solely to delay or frustrate return	9	14	10
Threat to national security or public order	1	0	1

Source: Office for Foreigners

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.¹²⁸ There are no consequences if this time limit is not respected. In 2020 the average time of processing applications in the accelerated procedure was 93 days.¹²⁹

¹²⁷ Article 39 Law on Protection.

¹²⁹ Information provided by the Office for Foreigners, 26 January 2021.

5.2. Personal interview

Indicators: Accelerated Procedure: Personal Interview

☒ Same as regular procedure

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

The interview in the accelerated procedure is conducted according to the same rules as in the regular procedure (see [Regular Procedure: Personal Interview](#)).¹³⁰ 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.¹³¹

5.3. Appeal

Indicators: Accelerated Procedure: Appeal

☐ Same as regular procedure

1. Does the law provide for an appeal against the decision in the accelerated procedure?
☒ Yes ☐ No
❖ If yes, is it ☐ Judicial ☒ Administrative
❖ If yes, is it suspensive ☒ 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;¹³²
- (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.¹³³

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

¹³⁰ Article 44 Law on Protection.

¹³¹ Information provided by the Office for Foreigners, 1 February 2017.

¹³² Article 39(2)(3) Law on Protection.

¹³³ Article 39(2) Law on Protection.

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.¹³⁴

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:¹³⁵

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

1.1. Screening of vulnerability

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

The Head of the Office for Foreigners is obliged to assess whether these persons need special treatment in the proceedings regarding granting international protection or regarding social assistance. In order to make this assessment, the authority can arrange for a medical or psychological examination of the applicant, funded by the state. In case the Head of the Office for Foreigners does not arrange for the medical or psychological examination, it is obliged to inform the person that might require special treatment that they can arrange for such an examination themselves and bear the costs. If a person does not agree to be subjected to medical or psychological examination, they should be considered a person that does not require special treatment. The Head of the Office for Foreigners should make the assessment immediately after the submission of the application for international protection and at any other time until the procedure is finished, in case any new circumstances arise.¹³⁶

In 2019, the UN Committee against Torture pointed out the problem with the appointment of experts to determine whether foreigner is a victim of torture.¹³⁷ Responding to the Committee, the Polish delegation stressed that qualification as a victim of torture does not require an opinion from a specialist and is a part of specialised medical assistance provided during the refugee procedure.

¹³⁴ Article 69e Law on Protection.

¹³⁵ Article 68(1) Law on Protection.

¹³⁶ Article 68(3)-(6) Law on Protection.

¹³⁷ Poland, UN Web TV, *Consideration of Poland (Cont'd)* - 1762nd Meeting, 67th Session of Committee Against Torture, 24 July 2019, available at: <https://bit.ly/2RXiHqd>, and reply of Poland, UN Committee against Torture, *Concluding observations on the seventh periodic report of Poland*, 22-24 July 2019, available at: <https://bit.ly/2twn02w>.

According to the study from 2020, the Office for Foreigners representative admitted that typically a conversation with a psychologist is scheduled if the relevant fields in the application for international protection are ticked. Then the psychologist issues an opinion in which they recommend whether to treat an applicant as requiring special treatment.¹³⁸

Since 2017 in Biala Podlaska, near the reception centre, there has been a separate medical unit where initial verification of asylum seeker's health is conducted. Both the procedure and medical unit are called "epidemiological filter".¹³⁹ The Office for Foreigners informed, that since 16 June 2019 every asylum seeker in the reception centre, subject to the obligatory procedure of epidemiological filter, is also subject to vulnerability screening. This is envisaged in the new contract for health services for asylum seekers from 4 June 2019.¹⁴⁰

NGOs generally confirm that the system of identification envisaged in the law does not work in practice. According to SIP, the Office for Foreigners does not, in principle, require opinions from experts in order to determine, for example, basing on of scars and wounds if an applicant has been a torture victim. Such a practice makes it difficult for foreigners to prove that they have been victims of torture in the country of origin. Foreigners arrive in Poland frequently with visible signs of torture. In such cases ordering of an examination by an expert could help acquire reliable evidence of experienced torture.¹⁴¹ According to HFHR even in case of applicants with PTSD the inconsistencies in testimonies may lead to refusal of international protection. Also, at the later stages of the procedure, the courts still do not appoint independent experts to determine applicants' state of mental health.

NGOs documented important judgements in 2019 on the matter. The Supreme Administrative Court,¹⁴² and the Voivodeship Administrative Court in Warsaw,¹⁴³ ruled on cases where the applicants were diagnosed with PTSD due to violence/torture experienced in their countries of origin, however examination has not been performed by experts appointed by the authorities deciding on international protection. The courts upheld refusal decisions on international protection stating that the testimonies of applicants were inconsistent, the courts also stated that the authorities had no obligation to appoint experts to assess mental state of health of the applicants. In the oral justification of the judgment from 16 May 2019 the Supreme Administrative Court stated that psychological opinions prepared by the Border Guards, doctors from psychiatric hospital and experts appointed by the detention court are not credible because they are based on the applicants' testimonies (all of these opinions stated that the applicant experienced violence).¹⁴⁴

Identification of vulnerable applicants is also conducted by the Border Guard while registering the application for international protection (the Border Guard assesses whether an applicant may belong to one of these two groups: victims of trafficking in human beings or persons subject to torture).¹⁴⁵ When applying to the court to place an applicant in detention, the Border Guard is also obliged to identify victims of violence and other persons for whom detention will cause a threat to life or health. For this purpose, the Border Guard implemented an algorithm, criticized by the Commissioner for Human Rights and NGOs (see [Detention of vulnerable applicants](#)).

¹³⁸ Pachocka, M. and Sobczak-Szelc K., 'Refugee Protection Poland – Country Report', Multilevel Governance of Mass Migration in Europe and Beyond Project (Horizon2020), January 2020, available at: <https://bit.ly/2U1A9uL>; 69.

¹³⁹ Epidemiological filter was realised under the Swiss Polish Cooperation Programme, see: <https://bit.ly/3mMGtDd>.
¹⁴⁰ Information provided by the Office for Foreigners on 9 April 2020.

¹⁴¹ Association for Legal Intervention (Stowarzyszenie Interwencji Prawnej, SIP), *Komentarz SIP: sprawozdanie Polski przed Komitetem przeciwko Torturom ONZ* (Association for Legal Intervention comments on Poland's reporting before UN Committee against Torture), 30 July 2019, available at: <https://bit.ly/397QNOg>.

¹⁴² The Supreme Administrative Court, judgments from 16.05.2019, II OSK 3536/18 and from 13.06.2019, II OSK 3769/18 (not published).

¹⁴³ The Voivodeship Administrative Court in Warsaw judgment from 4.04.2019, IV SA/Wa 353/19 (not published).

¹⁴⁴ Information from HFHR obtained on 30 October 2019 and 10 January 2020.

¹⁴⁵ 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>.

The Office for Foreigners does not collect statistics on the number of asylum seekers identified as vulnerable, which was confirmed during UN CAT report on Poland in 2019.¹⁴⁶ According a study for 2019, published in 2020, in which the Office for Foreigners representatives were interviewed, the largest group are individuals who were subject to physical or psychological violence.¹⁴⁷ However, for the purpose of this report, the Office for Foreigners reported that in the fourth quarter of 2019, there were 274 asylum seekers identified as requiring special treatment, only 1 person identified as a victim of violence.¹⁴⁸ In 2020 the Office responded that there were no statistics in this regard.

According to the Office for Foreigners, identification of vulnerable applicants takes place also during regular psychological counselling, available in every reception centre and at the Office for Foreigners (see [Health Care](#)).¹⁴⁹

1.2. Age assessment of unaccompanied children

Polish law provides for an identification mechanism for unaccompanied children.¹⁵⁰ 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.¹⁵¹ The responsibility for undertaking a medical examination is triggered by the authorities and shall be ensured by the SG.¹⁵² The law states that examination should be done in a manner respecting dignity and using the least invasive technique.¹⁵³

In December 2016 guidelines on age assessment were drafted and were still applicable as of 2020.¹⁵⁴

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;

¹⁴⁶ UN Human Rights Office of the High Commissioner, Committee against Torture concludes its consideration of the report of Poland, 24 July 2019, available at: <https://bit.ly/2Sgy10j>.

¹⁴⁷ Pachocka, M. and Sobczak-Szelc K., 'Refugee Protection Poland – Country Report', Multilevel Governance of Mass Migration in Europe and Beyond Project (Horizon2020), January 2020, available at: <https://bit.ly/2U1A9uL>, p. 69.

¹⁴⁸ Information provided by the Office for Foreigners on 9 April 2020.

¹⁴⁹ Information provided by the Office for Foreigners, 1 February 2018.

¹⁵⁰ Article 32 Law on Protection.

¹⁵¹ Article 32(5) Law on Protection.

¹⁵² Article 32 Law on Protection.

¹⁵³ Article 32(4) Law on Protection.

¹⁵⁴ Information provided by the Border Guard, 5 February 2021. No further information on age assessment was provided for the years 2016-2020.

- 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.¹⁵⁵

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.¹⁵⁶ The Office for Foreigners does not have a specialised unit dealing with vulnerable groups, however caseworkers are trained by psychologists and EASO experts and only trained staff work on these cases.¹⁵⁷ In 2020 there were 21 such caseworkers.

In 2020 the interviews were mainly conducted through videoconferencing, but the interviewee and interviewer stayed in the Office for Foreigners, using separate rooms. According to the Office for Foreigners there were no requests for conducting interviews in another manner, by direct conversation.¹⁵⁸

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.¹⁵⁹ In 2019 and 2020 the Office responded that there were no statistics in that regard.

3. Use of medical reports

Indicators: Use of Medical Reports

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

The law provides that a medical or psychological examination can be conducted in order to assess whether a person needs special treatment with regard to procedural safeguards and reception.¹⁶⁰ There is no medical examination for the purpose of confirming past persecution or serious harm.

NGOs report that the Office for Foreigners does not, in principle, require opinions from experts in order to determine, for example, basing on of scars and wounds if an applicant has been a torture victim. Such a practice makes it difficult for foreigners to prove that they have been victims of torture in the country of origin. Foreigners arrive in Poland frequently with visible signs of torture. In such cases ordering of an examination by an expert could help acquire reliable evidence of experienced violence.¹⁶¹

¹⁵⁵ Article 69 Law on Protection.

¹⁵⁶ Article 44(4)(1) Law on Protection.

¹⁵⁷ Information provided by the Office for Foreigners, as of 16 July 2019.

¹⁵⁸ Information provided by the Office for Foreigners, 26 January 2021.

¹⁵⁹ Information provided by the Office for Foreigners, 15 January 2019.

¹⁶⁰ Article 68 Law on Protection.

¹⁶¹ M.Jaźwińska, Postępowanie w przedmiocie udzielenia ochrony międzynarodowej, [in] Stowarzyszenie Interwencji Prawnej (SIP), SIP w działaniu. Prawa cudzoziemców w Polsce w 2018 r. (2019), available (in Polish) at: <http://bit.ly/2S507LV>, 20.

According to the Commissioner for Human Rights, there is a poor knowledge of the Istanbul Protocol among medical staff and psychologists in the detention centres.¹⁶²

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*).¹⁶³ 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.¹⁶⁴ 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.¹⁶⁵

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.¹⁶⁶ However, as the Border Guard confirms, due to the lack of funding, some NGOs withdrew their representatives from the list. As of the end of 2020, there were a total of 11 legal representatives on the list, for a total number of 113 unaccompanied children. Their presence on that list is not binding, which means they are not obliged to become a representative.¹⁶⁷

In 2018 the Commissioner for the Rights of the Child called on the Ministry of Justice to introduce a special type of legal representation of unaccompanied foreign children in Poland. In the opinion of the Commissioner that would allow a comprehensive and stable representation of a foreign child on the Polish territory, bearing in mind their best interest. The Commissioner criticised the fact that guardians were appointed for concrete proceedings or group of proceedings and they did not have a closer relation with a child, which impeded decision-making and assessing the children's best interest in other fields (such as education, medical care, etc.).¹⁶⁸

In the shadow report to UNICEF from 2020, NGOs stress that some guardians do not have any personal contact with the unaccompanied minor they represent and because of such a practice, the child does not have much information on their legal situation. Children do not have access to any information that would

¹⁶² The Commissioner's conference presentation from 26.04.2019 r., information available (in Polish) at: <http://bit.ly/3u9z588> and of 3 December 2018, information available (in Polish) at: <http://bit.ly/2T5YvE7>.

¹⁶³ Article 61 Law on Protection.

¹⁶⁴ Article 66 Law on Protection.

¹⁶⁵ Article 65(3) and (4) Law on Protection.

¹⁶⁶ Information provided by the Border Guard, 11 January 2018.

¹⁶⁷ Information provided by the Border Guard, 17 January 2020.

¹⁶⁸ The Commissioner for the Rights of the Child, letter to the Ministry of Justice, 2 July 2018, available (in Polish) at: <http://bit.ly/2SemiZK>. These letters are no longer available online once the Commissioner for the Rights of the Child changed and the website is being rebuild.

be adjusted to their age (leaflets, websites). Also, guardians are not supported by interpreters, which makes the communication ever more difficult.¹⁶⁹

Currently unaccompanied children are placed in various intervention facilities in Poland, instead of in a central institution. After the court ruling appointing the representative, they can be placed in foster care facilities or foster families. In 2018, as in the past years, unaccompanied minors were mostly placed in foster care facilities in **Ketrzyn** (12 persons) – due the proximity to the detention centre in **Ketrzyn**, from which they are released because of age - or in **Warsaw** (4 persons). In other places, only one unaccompanied child was placed per location.¹⁷⁰ There is no information on whether the personnel speak foreign languages there, this is not one of the criteria.¹⁷¹ In 2020, unaccompanied minors were accommodated mainly in **Kętrzyn, Warsaw, Siemiatycze, Janów Podlaski, and Białystok**.¹⁷²

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

In 2020 there were 113 unaccompanied children (up from 105 in 2019) applying for international protection in Poland.¹⁷³ 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%.¹⁷⁴

E. Subsequent applications

Indicators: Subsequent Applications		
1. Does the law provide for a specific procedure for subsequent applications?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
2. Is a removal order suspended during the examination of a first subsequent application?		
❖ At first instance	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No
❖ At the appeal stage	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No
3. Is a removal order suspended during the examination of a second, third, subsequent application?		
❖ At first instance	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
❖ At the appeal stage	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> 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 2020, there were 1,267 subsequent applications, submitted mainly by Russian and Ukrainian nationals.¹⁷⁵

The first subsequent application has suspensive effect on a return decision and return order cannot be executed.¹⁷⁶ If the application is considered inadmissible because the applicant did not present any new circumstances of the case¹⁷⁷ it can be appealed within 14 days and until the Refugee Board makes a decision, suspensive effect is upheld. If the application is considered admissible, i.e. containing new circumstances relevant for the case, the Head of the Office for Foreigners issues a decision considering the application admissible.¹⁷⁸ In this case, suspensive effect is in force until the final administrative decision

¹⁶⁹ NGOs alternative report to the government report on implementation of the Convention of the Rights of the Child, submitted to UNICEF, August 2020, available (PL) at: <https://bit.ly/3s3hZXX>.

¹⁷⁰ Information provided by the Office for Foreigners, 15 January 2019.

¹⁷¹ Information provided by the Office for Foreigners, 27 August 2015.

¹⁷² Information provided by the Office for Foreigners, 26 January 2021.

¹⁷³ Information provided by the Office for Foreigners, 26 January 2021.

¹⁷⁴ Information provided by the Office for Foreigners, 15 January 2019.

¹⁷⁵ Information provided by the Office for Foreigners, 15 January 2019.

¹⁷⁶ Article 330(2) and (3) Law on Foreigners.

¹⁷⁷ Article 38(4) Law on Protection.

¹⁷⁸ Article 38(5) Law on Protection.

on international protection is served. In case of further subsequent applications, there is no suspensive effect on a return order.¹⁷⁹

In 2020 the Office for Foreigners issued 73 decisions deeming the subsequent application admissible, while the applications of 1,166 persons were dismissed as inadmissible.¹⁸⁰

In 2019 the Voivodeship Administrative Court in **Warsaw** issued a judgement in which the Court stated that the subsequent application cannot be deemed inadmissible even if only one single element of facts of the case has changed.¹⁸¹

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

F. The safe country concepts

Indicators: Safe Country Concepts

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

Since the 2015 reform of the law, the safe country of origin concept is not applicable in Poland. The draft law submitted in 2017 (and updated in February 2019, yet not adopted as of February 2021) introduces the safe country of origin concept and foresees the adoption of national lists of safe countries of origin and safe third countries.¹⁸²

The concept of first country of asylum is included in the law and reflects the wording of Article 35 of the recast Asylum Procedures Directive. This provision was not relied on in 2020¹⁸³ and applied in 4 cases in 2019.¹⁸⁴

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

1. Provision of information on the procedure

Indicators: Information on the Procedure

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

The same level of information on the asylum procedure is provided to applicants during all types of

¹⁷⁹ Article 330(2)2 Law on Foreigners.

¹⁸⁰ Information provided by the Office for Foreigners, 26 January 2021.

¹⁸¹ The Voivodeship Administrative Court judgement from 18 April 2019 IV SA/Wa 3394/18, summary available (in Polish) at: <https://bit.ly/2UkEbiB>.

¹⁸² Draft law available (in Polish) at: <http://bit.ly/2lqboVu>.

¹⁸³ Information provided by the Office for Foreigners, 26 January 2021.

¹⁸⁴ Information provided by the Office for Foreigners, 22 January 2020.

procedures. The Border Guard officer who receives an asylum application has to inform in writing the applicant in a language that they understand on:¹⁸⁵

- ❖ 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.¹⁸⁶

The Office for Foreigners also offers information in the form of a booklet entitled “First steps in Poland – Guidebook for foreigners applying for international protection,” available in 6 languages (Russian, English, Georgian, Arabic, French and Polish) and contains basic information on Poland, Polish law regarding asylum seekers and social assistance.¹⁸⁷ 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.

Asylum seekers are informed about the Dublin procedure when they apply for international protection in accordance with the Dublin III Regulation and the Commission’s Implementing Regulation no 118/2014, including the specific leaflet for unaccompanied children.¹⁸⁸

Information about the possibility to contact UNHCR is available at the Office for Foreigners (in English, Russian, French, Arabic and Vietnamese) and in reception and detention centres. The instructions for asylum applicants provided by the Border Guard contain information about the possibility to contact UNHCR and NGOs. According to the Border Guards the instructions are provided in every unit, also at the border and are available in 22 languages.¹⁸⁹

In 2020, UNHCR supported the Office for Foreigners in managing practical aspects of proceedings during the pandemic.¹⁹⁰

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

¹⁸⁵ Article 30(1)(5) Law on Protection.

¹⁸⁶ Information provided by the Border Guard, 11 January 2018.

¹⁸⁷ Office for Foreigners, *First steps in Poland handbook*, available at: <http://bit.ly/2BEraXC>.

¹⁸⁸ Information provided by the Border Guard, 17 January 2020.

¹⁸⁹ Information provided by the Border Guard, 17 January 2020.

¹⁹⁰ Information provided by the Office for Foreigners, 26 January 2021.

are forced to limit their personnel and fields of assistance provided so far (legal, psychological or integration assistance).

NGOs organise fundraising events to be able to continue their activities¹⁹¹ or rely on voluntary work. Although in 2019 there were some new calls open for NGOs, only 6 projects obtained funding concerning asylum seekers. Nevertheless, NGOs have been playing a crucial role in supporting asylum seekers in many fields – including legal assistance, psychological assistance and integration assistance. Their activities, although in many cases short-term - due to the lack of stable funding - have managed to fill in the gaps of the system in many dimensions.¹⁹²

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.

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 generally no official policy implemented with regard to the nationals of particular countries of origin because every application is examined individually. However, in 2020 the most dynamic trend was that of **Belarussian** nationals, due to political situation in the country. The number of Belarussian applicants increased from 37 applicants in 2019 to 407 applicants in 2020. The Government introduced many policies enabling the Belarussians entering Poland as migrants – such as visa facilitations and facilitations in obtaining residence permit. According to the Office for Foreigners, Belarussians constitute the second-largest group of foreigners in Poland, with around 28,000 of them currently holding residence permits as of 2020.

As of 31 December 2020, no returns are carried out to the following countries: **Syria**, **Eritrea**, and **Venezuela**.¹⁹³ According to the Border Guard, this list is updated every quarter based on the Eurostat information on international protection and humanitarian protection rate. When the protection rate is higher than 75%, returns are withheld to those countries.¹⁹⁴

¹⁹¹ 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>.

¹⁹² See e.g. psychological assistance in: Pachocka, M. and Sobczak-Szelc K., ‘Refugee Protection Poland – Country Report’, Multilevel Governance of Mass Migration in Europe and Beyond Project (Horizon2020), January 2020, available at: <https://bit.ly/2WpN0sh>, p.71.

¹⁹³ Information provided by the Border Guard, 5 February 2021.

¹⁹⁴ Information provided by the Border Guard to Nomada NGO, 14 September 2020.

Reception Conditions

Short overview of the reception system

The Office for Foreigners, supervised by the Ministry of Interior and Administration, is the main body responsible for the reception of asylum seekers in Poland.

Asylum seekers are entitled to material reception conditions during all asylum procedures in Poland. The provision of reception conditions does not depend on the financial situation of asylum seekers.

Material reception conditions are granted from the moment the asylum seeker registers in the reception centre, thus not straightaway after claiming asylum. Only medical assistance can be granted from the moment of claiming asylum, in special situations, i.e. in case of threat to life and health. Asylum seekers who cannot apply for asylum at the day they contact the Border Guard, should be given a specific date and time when submitting of the application will be possible. In this 'waiting period' they are not entitled to any material reception conditions.

Reception conditions are provided A) up until 2 months after a final positive decision on asylum; B) up until 14 days after a final decision discontinuing the asylum procedure (e.g. in admissibility procedures); C) up until 30 days after a final negative decision on asylum given on the merits by the Office for Foreigners or the Refugee Board. During the onward appeal proceedings, the material reception conditions are re-granted only if the court suspends the execution of the decision on asylum that has been appealed. It does not happen in all cases.

There are two forms of material reception conditions. The asylum seekers can live in the reception centre (managed by the Office for Foreigners or one of its contractors) or receive the financial allowance that should cover the expenses of living privately. Despite that under the law the accommodation in the reception centre is a rule, usually more asylum seekers receive the financial allowance than stay in the centre.

Currently, 10 reception centres operate in Poland, offering almost 2,000 places for asylum seekers. Two centres serve as the first-reception centres (located in **Biała Podlaska** and **Debak**) and eight function as accommodation centres (located in **Warsaw, Białystok, Kolonia-Horbów, Czerwony Bór, Bezwola, Łuków, Grupa** and **Linin**). 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, private owners, companies etc. Currently 6 reception centres are managed by private contractors. Overcrowding is not an issue reported in practice. The conditions in the centres have improved in recent years, although certain issues are still being reported such as the remote location of certain centers which impedes the integration process of asylum seekers.

The amount of financial allowance that is granted to asylum seekers living outside the reception centres is not sufficient to cover all expenses of their stay in Poland or even to satisfy basic needs of asylum seekers. It is difficult to rent an apartment with this allowance.

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 final decision has not been taken within this time and if the delay is not attributed to any fault of the asylum seeker.

Asylum-seeking children have access to education in public schools, however multiple problems are reported in this regard in practice.

Health care is provided to asylum seekers throughout asylum proceedings by the Petra Medica company. Asylum seekers can see a doctor or a psychologist in all reception centres. Psychological treatment available to asylum seekers is generally considered insufficient. Asylum seekers can also see other

specialists, but with some difficulty. Accessing costly specialized treatment is hampered. In general, the provision of medical assistance by the Petra Medica is criticised.

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	

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

In the proposal of the 'Polish migration policy – diagnosis of the initial status' published by the Ministry of Interior and Administration in January 2021, the obligation to provide material reception conditions to asylum seekers seems to be considered as a burden. The document mentions two challenges and risks in regard to reception conditions:

- 1) Costs of material reception conditions remain high despite smaller number of asylum applications;
- 2) The possible reduction of material reception conditions may result in negative reactions of asylum seekers and be instrumentally used in campaigns against the Polish migration policy.

The problems with reception conditions that asylum seekers face in Poland – that are described in this report – were not included to the diagnosis of the Ministry of Interior (except for the lack of a sufficient training for teachers working with foreign pupils).¹⁹⁵

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.¹⁹⁶

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 is discontinued, as was the case in 36 cases in 2020.¹⁹⁷ Only medical assistance can be granted from the moment of claiming asylum (i.e. before registration in a first reception centre) in special situations, i.e. in case of threat to life and health.¹⁹⁸

¹⁹⁵ Ministry of Interior and Administration, 'Polityka migracyjna Polski – diagnoza stanu wyjściowego', available (in Polish) at: <http://bit.ly/377T5Ov>, 37. See also EMN, 'Polish migration policy – diagnosis of the initial status', 20 January 2021, available at: <http://bit.ly/3piyaOY>.

¹⁹⁶ Article 70 Law on Protection.

¹⁹⁷ Article 40(1)(2) in conjunction with Article 40 (2)(1) Law on Protection. Information provided by the Office for Foreigners, 26 January 2021. This number includes all situations where asylum seekers did not register in the reception centre in 2 days, so both when they did not manage to get there in time and when they did it intentionally (e.g. they left Poland to seek asylum elsewhere).

¹⁹⁸ Article 74(1)(1) Law on Protection.

Exceptionally, the SG is entitled to inform an asylum seeker that it is impossible to apply for asylum the day he/she presents him/herself at the SG unit. In such a situation, the SG registers a declaration of intention to submit the asylum application and determines a later date (no longer than 3 working days, in case of massive influx - 10 working days) and place to officially apply for asylum.¹⁹⁹ In 2020 such later date was given in total in regard to 298 foreigners.²⁰⁰ By law, asylum seekers waiting to officially apply for asylum are not entitled to any form of material reception conditions in Poland. The problem concerns both first-time asylum seekers and rejected asylum seekers who intend to apply for asylum again, but the latter try to avoid a gap in obtaining the assistance by submitting a subsequent application before the entitlement to material reception conditions resulting from a previous asylum procedure elapses.²⁰¹ In 2020, the NGOs advocated for a change in this regard so that persons who declared the intention to seek asylum have access to material reception conditions,²⁰² but so far nothing has changed.

Reception conditions are provided²⁰³:

- (a) until 2 months after a final positive decision on asylum;
- (b) up until 14 days after a final decision discontinuing the asylum procedure (e.g. in admissibility procedures);
- (c) up until 30 days after a final negative decision on asylum given on the merits by the Office for Foreigners or the Refugee Board.²⁰⁴

In principle, during the onward appeal procedure before the Voivodeship Administrative Court in Warsaw, asylum seekers are not entitled to material reception conditions.²⁰⁵ In practice, when the court suspends enforcement of the contested decision of the Refugee Board for the duration 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.²⁰⁶ In 2019, the court decided to suspend the enforcement of the negative asylum decision in 34 cases and refused it in 21 cases. In 2020, the suspension was granted in 80 cases and refused in 91 cases.²⁰⁷ In practice, asylum seekers deal with the problem of the lack of material reception conditions during the court proceedings by submitting subsequent asylum applications.²⁰⁸

Asylum seekers who are subject to a Dublin transfer from Poland are entitled to material reception conditions until the day they should leave Poland.²⁰⁹ Thus, this assistance may be granted for a longer period of time than in other cases when a decision discontinuing the proceedings is issued (it is an exception from the 14 days rule mentioned above). Moreover, Dublin returnees may request an additional assistance.

¹⁹⁹ Article 28(1) Law on Protection.

²⁰⁰ Information provided by the Office for Foreigners, 26 January 2021. In 2019, a later date was given in 165 cases (Information from the Office for Foreigners, 22 January 2020).

²⁰¹ Information provided by SIP, 8 January 2020.

²⁰² HFHR, *Opinia Helsińskiej Fundacji Praw Człowieka do Ustawy z dnia 28 marca 2020 r. o zmianie ustawy o szczególnych rozwiązaniach związanych z zapobieganiem, przeciwdziałaniem i zwalczaniem COVID-19, innych chorób zakaźnych oraz wywołanych nimi sytuacji kryzysowych oraz niektórych innych ustaw* (druk nr 96), 30 March 2020, available in Polish at: <https://bit.ly/3jMBReN>, 14-15; Letter of the Consortium of NGOs to the Ministry of the Interior and Administration from 26 March 2020, available (in Polish) at: <https://bit.ly/37hxHXm>.

²⁰³ Article 74(1) Law on Protection; Article 299(6)(1)(b) Law on Foreigners.

²⁰⁴ It is connected with the obligation to depart from Poland in 30-days after receiving final negative decision on asylum. During the COVID-19 pandemic, the 30-day time-limit was prolonged by law, thus also the provision of material reception conditions for a longer period than 30 days was possible. See also Article 15z⁸ COVID Law.

²⁰⁵ 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.

²⁰⁶ This is the interpretation by the Legal Department of the Office for Foreigners. Information confirmed by the Office for Foreigners, 26 January 2021.

²⁰⁷ Information provided by the Voivodeship Administrative Court in Warsaw, 15 January 2020 and 21 January 2021. Data for 2020 may include the proceedings concerning the deprivation of international protection. For the change in the jurisprudence in this regard since 2019, see Magdalena Sadowska, 'Wstrzymanie wykonania decyzji o odmowie udzielenia ochrony międzynarodowej na czas rozpatrzenia skargi przez sąd administracyjny' in SIP, *Prawa cudzoziemców w Polsce w 2019 roku. Raport*, 2020, available in Polish at: <https://bit.ly/3jT7weM>, 28-29.

²⁰⁸ Information provided by SIP, 8 January 2020.

²⁰⁹ Article 74(3)(3) Law on Protection.

The request has to be made in a specific term (30 days from the moment when the decision on transfer became final). After this time, the demand of the asylum seeker is left without consideration.²¹⁰ The additional assistance covers travel costs, administrative payments for travel documents or visas and permits, cost of food and medical assistance during the travel.²¹¹

Some foreigners are not entitled to material reception conditions during the asylum procedure e.g. beneficiaries of subsidiary protection (applying for asylum again),²¹² foreigners benefiting from humanitarian stay or tolerated stay, foreigners staying in Poland on the basis of temporary stay permit, permanent stay permit or long-term residence permit, foreigners staying in youth care facilities or detention centres or a pre-trial custody or detention for criminal purposes.²¹³ Beneficiaries of subsidiary protection, foreigners staying in Poland on the basis of a permanent stay permit, long-term residence permit or – in some cases – temporary stay permit are entitled to state benefits (general social assistance system) to the same extent as Polish citizens. Foreigners who were granted humanitarian stay or tolerated stay are entitled to state benefits only in the form of shelter, food, necessary clothing and an allowance for specified purpose.²¹⁴

During the COVID-19 pandemic, the abovementioned rules regarding the duration of material reception conditions were changed so as to guarantee that the provision of social and medical assistance do not end during the epidemic state. It was prolonged by 30 days counted from a day when the epidemic state has been revoked.²¹⁵ Moreover, NGOs inform that, due to the pandemic, some asylum seekers who declared the intention to apply for asylum, but have not officially submitted the asylum application yet, were allowed to access material reception conditions.²¹⁶

1.2. Obstacles to accessing reception

There are some practical obstacles reported in accessing material reception conditions.

Asylum seekers should register in the first reception centre within two days after applying for asylum, otherwise their procedure will be discontinued.²¹⁷ In practice some asylum seekers have problem to get there in time.²¹⁸ They are given only the address of the centre and should get there by themselves. A transport is organised by the SG, pursuant to law, only for pregnant women, single parents, elderly and disabled people. In justified cases, food for them should be also provided.²¹⁹ The Border Guard does not keep comprehensive data on the application of this provision in practice.²²⁰ Other vulnerable asylum seekers cannot benefit from the organised transport, which is considered 'a gap in asylum system'.²²¹

This problem concerns also formerly detained asylum seekers. Those who have been detained are not entitled to support immediately after being released from the detention centre. They are granted material reception conditions only from the moment of registration in a reception centre, which is very often located far away from the detention centre. As a result, asylum seekers have difficulties to cover the cost of transport to the reception centre. Again, it should be organised by the SG in regard to released pregnant

²¹⁰ Article 75a(2) in conjunction with Article 75(3) and (3a) Law on Protection.

²¹¹ Article 75a(2) in conjunction with Article 75(2) Law on Protection.

²¹² In practice, some foreigners after the end of the asylum procedure, in which they were granted subsidiary protection, apply for asylum again in order to be granted refugee status.

²¹³ Article 70(2) Law on Protection.

²¹⁴ Article 5(2) Law of 12 March 2004 on social assistance.

²¹⁵ Article 15z⁸ COVID Law.

²¹⁶ Information provided by SIP, 12 April 2021,

²¹⁷ Article 40(1)(2) in conjunction with Article 40 (2)(1) Law on Protection.

²¹⁸ See also Pachocka, M. and Sobczak-Szelc K., 'Refugee Protection Poland – Country Report', Multilevel Governance of Mass Migration in Europe and Beyond Project (Horizon2020), January 2020, available at: <https://bit.ly/2WpN0sh>, 57.

²¹⁹ Article 30(1)(8) Law on Protection. See also Article 40a of this act, where such transport is guaranteed for Dublin transferees.

²²⁰ Information provided by the Border Guard, 11 January 2018, 14 January 2019 and 5 February 2021.

²²¹ Pachocka, M. and Sobczak-Szelc K., 'Refugee Protection Poland – Country Report', Multilevel Governance of Mass Migration in Europe and Beyond Project (Horizon2020), January 2020, available at: <https://bit.ly/2WpN0sh>, 73.

women, single parents, elderly and disabled people.²²² However, partial data that were made available show that the respective provision of the Law on Protection was not applied in 2019 and applied in case of 7 asylum seekers in 2020,²²³ which may suggest that in practice it is interpreted too restrictively or overlooked. However, some good practices were also reported. For instance, in the detention centre in **Krosno Odrzańskie**, according to the information provided by the SG, asylum seekers who could not afford bearing the costs of travel to the reception centre were given in 2019 a financial support from AMIF and – if needed – offered the accommodation and food from Caritas.

Asylum seekers face also some difficulties as regards receiving financial allowance.²²⁴ It is paid through post services (very exceptionally, on bank account²²⁵). The date for receiving money is unpredictable,²²⁶ as it depends on how swiftly the Office for Foreigners sends the allowance and on the efficiency of the postal services. Furthermore, when a foreigner does not pick up the financial allowance from the post office (where it is held for 14 days), it is sent back to the Office for Foreigners. The concerned asylum seeker can apply for the allowance to be resend but it takes time,²²⁷ leaving him without financial resources in the meantime.²²⁸

Moreover, asylum seekers who change the form of material reception conditions from being accommodated in one of the reception centres to being granted the financial allowance and living in a private accommodation, must leave the reception centre at the end of one month, but should receive their first financial allowance up until 15th day of the next month. They are not entitled to any payments in advance, despite the fact that owners often require paying a first rent or a deposit before they rent an apartment. No support is offered in finding a suitable and affordable private accommodation, even though the asylum seekers most often do not know Polish enough to communicate with owners.²²⁹

Lastly, it was reported that asylum seekers in the process of appealing a decision were sometimes not granted social assistance, for the simple reason that the Office for Foreigners' system had no record of their appeal.²³⁰ The Supreme Audit Office's report from 2019 confirms that some problems with the timely data input to prescribed registries still exceptionally occur.²³¹

In 2020, due to the COVID-19 pandemic, asylum seekers had problems with accessing asylum proceedings, thus also with obtaining material reception conditions.²³² The 'declarations of intention to submit the asylum application' were mostly accepted and registered by the Border Guards at that time. By law, the persons who 'declared the intention to submit the asylum application' are not covered by the medical and social assistance.²³³ However, NGOs inform that, in practice, due to the pandemic, some

²²² Article 89cb Law on Protection.

²²³ Information from different branches of the SG. However, it must be noted that the detention centre in Biała Podlaska is located next to the reception centre, so there is no need to organize transport for released asylum seekers.

²²⁴ However, the Office for Foreigners declared that no problems in this regard were reported in 2020 (Information from 26 January 2021).

²²⁵ In one case in 2020 (Information provided by the Office for Foreigners, 26 January 2021).

²²⁶ Office for Foreigners, *Harmonogram wypłat*, available (in Polish) at: <http://bit.ly/2ttgDt5>.

²²⁷ Information provided by the Office for Foreigners, 26 January 2021.

²²⁸ Information from SIP, 8 January 2020.

²²⁹ Lukasiewicz, K., 'Exile to Poverty: Policies and Poverty Among Refugees in Poland', *International Migration Vol.* 55 (6) 2017, 64, 66.

²³⁰ M. Łysienia, 'Prawidłowe funkcjonowanie systemu POBYT jako gwarancja przestrzegania praw cudzoziemców' in HFHR, *W poszukiwaniu ochrony. Wybrane problemy dotyczące realizacji praw cudzoziemców ubiegających się o nadanie statusu uchodźcy i objętych ochroną międzynarodową w latach 2012-2014. Obserwacje Programu Pomocy Prawnej dla Uchodźców i Migrantów Helsińskiej Fundacji Praw Człowieka*, 2014, available (in Polish) at: <http://bit.ly/1eiVxDF>, 49.

²³¹ Supreme Audit Office, *Przygotowanie administracji publicznej do obsługi cudzoziemców. Informacja o wynikach kontroli* (2019), available (in Polish) at: <https://bit.ly/2OrVTwA>, 64.

²³² M.K. Nowak, 'Poprosiła o postojowe, zerwano umowę. Uchodźcy dziś nie mają na chleb, jutro stracą mieszkanie', 30 May 2020, available (in Polish) at: <http://bit.ly/3b1D79R>.

²³³ Article 70 (1) Law on Protection.

asylum seekers who declared the intention to apply for asylum, but have not officially submitted the asylum application yet, were allowed to access material reception conditions.²³⁴

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 2020 (in original currency and in €):
 - ❖ Accommodated, incl. food 50 PLN / 12 €
 - ❖ Private accommodation 775 PLN / 185 €

Asylum seekers are either accommodated in a reception centre or receive monthly financial allowance to cover all costs of their stay in Poland.

Under the law, the material reception conditions offered in the centre are granted as a rule to all asylum seekers. An asylum seeker can obtain assistance granted outside the centre upon request, examined by the Head of the Office for Foreigners. It can be granted for organisational, safety or family reasons or to prepare asylum seekers for an independent life after they have received any form of protection.²³⁵ Most of the requests are accepted.²³⁶ In 2020, due to pandemic COVID-19, the Office for Foreigners encouraged asylum seekers to live outside the reception centres.²³⁷

All of the abovementioned reception conditions are applied in practice. As of 31 December 2020, 819 (compared to 1,295 in 2019) asylum seekers benefited from material reception conditions in the centres and 2,225 (compared to 1,640 in 2019) asylum seekers were granted assistance outside the centres. In 2020, on average 1,085 (down from 1,276 in 2019) asylum seekers benefited from material reception conditions in the centres and 1,883 (up from 1,595 in 2019) asylum seekers were granted assistance outside the centres.²³⁸

All asylum seekers can:

- attend Polish language course and receive basic material supplies necessary for the course;
- receive school supplies for children, including, as far as possible, the expenses for extra-curricular classes, sports and recreational activities;
- have the costs of public transport covered to (a) attend interviews as part of the asylum procedure; (b) medical examinations or vaccinations; or (c) in other particularly justified cases;
- receive 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.

70 PLN that asylum seekers receive every month (allowances for personal expenses and for hygienic articles or hygienic utilities) is not enough to satisfy their basic needs.²³⁹

²³⁴ Information provided by SIP, 12 April 2021.

²³⁵ Article 72(1) Law on Protection.

²³⁶ In 2020, 1,053 requests for the social assistance granted outside a centre were registered of which 937 were accepted (89%). Information from the Office for Foreigners, 26 January 2021.

²³⁷ Information provided by the Office for Foreigners, 26 January 2021.

²³⁸ Information provided by the Office for Foreigners, 22 January 2020 and 26 January 2021.

²³⁹ M. Pachocka, K. Pędziwiatr, K. Sobczak-Szelc, J. Szałańska (2020) 'Reception Policies, Practices and Responses: Poland Country Report', RESPOND Working Papers 2020/45, available at: <http://bit.ly/3jLCvsV>, 64, 84.

According to the law, in case an asylum seeker helps in a reception centre (i.e. 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 2020 this raise was applied 499 times.²⁴⁰

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 €

The amount of financial allowance that asylum seekers receive is generally not sufficient to ensure an adequate standard of living in Poland.²⁴¹ With only PLN 750-775 (around 163-169 Euros) per month, it is very difficult or even impossible to rent an apartment or even a room in **Warsaw**, where most asylum seekers stay during the procedure,²⁴² particularly taking into account that owners are often unwilling to rent an apartment to foreigners, especially asylum seekers, and tend to increase a rent or deposit in such situations.²⁴³ As the amount of financial allowance is insufficient for renting separate accommodation, asylum seekers are often forced to live in overcrowded and insecure places. Many of them sleep in overcrowded apartments, where they have to share beds with other people or where living conditions do not provide privacy and personal safety.²⁴⁴ Financial allowance for families of four amounts to PLN 1,500 (around 327 Euros) per month and in practice it may be enough only to rent an apartment, however with a great difficulty. Insufficient social assistance forces asylum seekers to work in Poland illegally in order to maintain and pay the rent.²⁴⁵ Situation worsened during the COVID-19 pandemic, as many asylum seekers lost their jobs.²⁴⁶

²⁴⁰ Information provided by the Office for Foreigners, 26 January 2021.

²⁴¹ FRA, 'Migration: Key Fundamental Rights Concerns: 1.7.2019-30.9.2019. Quarterly Bulletin', 20, relying on the information from the HFHR and SIP. See also Lukaszewicz, K., 'Exile to Poverty: Policies and Poverty Among Refugees in Poland', *International Migration* Vol. 55 (6) 2017, 63-64.

²⁴² Information confirmed by SIP, 8 January 2020. See also N. Kłerek, 'Ochrona zdrowia nieudokumentowanych migrantów i osób ubiegających się o ochronę międzynarodową w opinii cudzoziemców' in A. Chrzanowska, W. Klaus, ed., *Poza systemem. Dostęp do ochrony zdrowia nieudokumentowanych migrantów i cudzoziemców ubiegających się o ochronę międzynarodową w Polsce*, SIP, 2011, available (in Polish) at: <https://bit.ly/2GSP970>, 56.

²⁴³ W. Goszczyński, R. Baczyński-Sielaczek, J. Suchomska, J. Stankowska and M. Wróblewski. 'Lokalne systemy integracji uchodźców – badania' in Fundacja EMIC and Pracownia Zrównoważonego Rozwoju, *Wielogłos. Integracja uchodźców w polskich gminach* (2016), available (in Polish) at: <https://bit.ly/31srALw>, 81; Lukaszewicz, K., 'Exile to Poverty: Policies and Poverty Among Refugees in Poland', *International Migration* Vol. 55 (6) 2017, 63-64.

²⁴⁴ M. Pachocka, K. Pędziwiatr, K. Sobczak-Szelc, J. Szałańska (2020) 'Reception Policies, Practices and Responses: Poland Country Report', RESPOND Working Papers 2020/45, available at: <http://bit.ly/3jLCvsV>, 56-58; 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; Lukaszewicz, K., 'Exile to Poverty: Policies and Poverty Among Refugees in Poland', *International Migration* Vol. 55 (6) 2017, 63. Information provided also by SIP, 8 January 2020..

²⁴⁵ Stowarzyszenie Interwencji Prawnej, A. Chrzanowska, I. Czerniejewska, 'Mieszkamy tutaj, bo nie mamy innego wyjścia... Raport z monitoringu warunków mieszkaniowych uchodźców w Polsce. Analizy, raporty, ekspertyzy Nr 2/2015', available (in Polish) at: <http://bit.ly/1Lq2Hie>, 55. Information provided also by SIP, 8 January 2020.

²⁴⁶ M.K. Nowak, 'Poprosiła o postojowe, zerwano umowę. Uchodźcy dziś nie mają na chleb, jutro stracą mieszkanie', 30 May 2020, available in Polish at: <http://bit.ly/3b1D79R>.

The amount of financial allowance is below the so called “social minimum” (indicator which evaluates the cost of living in Poland). The asylum seeker receives 1,5-2 times less than what is essential according to the “social minimum”. The amount of social assistance for asylum seekers has not been raised since 2003,²⁴⁷ even though the costs of living in Poland have increased significantly since then. As a result, material reception conditions are insufficient to ensure a decent standard of living as highlighted in the CJEU judgment in *Saciri*.²⁴⁸

The financial allowance that asylum seekers receive is not adjusted to their state of health, age or disability, which is incompatible with *Saciri*.²⁴⁹ The system of granting material reception conditions for asylum seekers is separate from the general social assistance rules applicable to nationals. While social assistance for nationals is provided based on individual assessment of particular needs, the level of allowances offered to asylum seekers is generally standardized.

Any interventions concerning the needed increase of the financial allowance hitherto were unsuccessful. In 2020, SIP submitted a complaint to the European Commission that Poland is not abiding by its obligations stemming from Article 17(2) of the Reception Conditions Directive (2013/33/EU). SIP stressed that the amount of the financial allowance that is granted in Poland does not ‘provide an adequate standard of living for applicants, which guarantees their subsistence and protects their physical and mental health’. In consequence, asylum seekers may be forced to live in the extreme poverty or even their life can be in danger.²⁵⁰ Meanwhile, in the proposal of the ‘Migration policy’ published by the authorities in January 2021, it is stated that “possible reduction of material reception conditions may result in negative reactions of asylum seekers and be instrumentally used in campaigns against Polish migration policy”,²⁵¹ which suggests that the reduction rather than the increase in this regard is considered by Polish authorities.

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 reception centre or acts violently towards employees of the centre or other foreigners staying there.²⁵² The decision on withdrawing 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.²⁵³

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>, 22.

²⁴⁸ CJEU, Case C-79/13 *Saciri*, Judgment of 27 February 2014; J. Białas, ‘Niezgoda zasad pomocy socjalnej zapewnianej osobom ubiegającym się o nadanie statusu uchodźcy z wyrokiem Trybunału Sprawiedliwości UE’, in HFHR, *W poszukiwaniu ochrony. Wybrane problemy dotyczące realizacji praw cudzoziemców ubiegających się o nadanie statusu uchodźcy i objętych ochroną międzynarodową w latach 2012-2014. Obserwacje Programu Pomocy Prawnej dla Uchodźców i Migrantów Helsińskiej Fundacji Praw Człowieka*, 2014, available (in Polish) at: <http://bit.ly/1eiVxDF>, 52.

²⁴⁹ Ibid.

²⁵⁰ SIP, ‘Skarga do KE: rażąco niskie środki finansowe dla osób ubiegających się o udzielenie ochrony międzynarodowej’, 7 July 2020, available in Polish at: <http://bit.ly/3rlfYjE>.

²⁵¹ Ministry of Interior and Administration, *Polityka migracyjna Polski – diagnoza stanu wyjściowego*, available (in Polish) at: <http://bit.ly/377T5Ov>, 37.

²⁵² Article 76(1) Law on Protection.

²⁵³ Articles 76 and 78 Law on Protection.

Although the abovementioned rules are contradictory to the CJEU's preliminary ruling in the case of *Haqbin*,²⁵⁴ they remain in force. However, since the judgment was rendered none of the asylum seekers has been deprived reception conditions on this basis.²⁵⁵ Beforehand, the provision was applied rarely (1-3 cases per year).

Financial allowance can be reduced to a half also in case of a refusal to undergo medical examinations or necessary sanitary treatment of asylum seekers themselves and their clothes.²⁵⁶ This possibility was used once in 2020 in regard to an asylum seeker who refused to undergo medical examination after applying for asylum (epidemiological filter).²⁵⁷

Moreover, in case an asylum seeker stays outside the reception centre for a period exceeding two days, material reception conditions should be withheld by law until the moment of his return.²⁵⁸

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

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

4. Freedom of movement

Indicators: Freedom of Movement

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

Officially there is no restriction to the freedom of movement of asylum seekers: they can travel around Poland wherever they want. However, when an asylum seeker accommodated in a centre stays outside this centre for more than 2 days, the assistance will be withheld by law until the moment of his/hers return.²⁵⁹ Moreover, 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.²⁶⁰

The Office for Foreigners decides in which reception centre asylum seekers will be allocated. This decision cannot be formally challenged. Reasons of public interest and public order do not have any impact on the decision on an asylum seeker's place of stay. In practice, nuclear families generally stay in the same centre. The decisions are made taking into consideration family ties (asylum seekers should be allocated in the same centre as their families), vulnerability (e.g. asylum seekers with special needs can be allocated only to the centres which are adapted to their needs), continuation of medical treatment (when it cannot be continued in other premises), safety of the asylum seeker and capacity of the centres.²⁶¹

Under the law an asylum seeker staying in one centre can be required to move to another facility if this is justified for organisational reasons.²⁶² Polish authorities interpret such rule as applying only to transfers

²⁵⁴ CJEU (Grand Chamber), case C-233/18 *Haqbin*, Judgment of 12 November 2019.

²⁵⁵ Information provided by the Office for Foreigners, 22 January 2020 and 26 January 2021.

²⁵⁶ Article 81(3) Law on Protection.

²⁵⁷ Information provided by the Office for Foreigners, 26 January and 4 March 2021.

²⁵⁸ Article 77 Law on Protection.

²⁵⁹ Article 77 Law on Protection.

²⁶⁰ Para 12(3) of the Annex to the Regulation on rules of stay in the centre for asylum seekers.

²⁶¹ Information provided by Office for Foreigners, 26 January 2021.

²⁶² Article 82(1)(6) Law on Protection.

from first-reception centres to an accommodation centre. As a result, asylum seekers are expected 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).²⁶³ Afterwards if they are allocated to one centre they are very rarely moved to another. If so, it happens mostly upon request of the asylum seeker. In the period of 2016-2018 there were no cases of moving an asylum seeker to another facility without their request. In 2019, one family was moved to another centre on the initiative of the Office for Foreigners in order to stop the conflicts with other foreigners and ensure the security in the centre.²⁶⁴ In 2020, in three cases asylum seekers were moved to another centre on the Office for Foreigners' initiative due to the conflicts with other inhabitants.²⁶⁵

If an asylum seeker submits a request to live in another centre, it is mostly because of the location of the centre he stays in (e.g. it is far from their family and friends or medical facilities).²⁶⁶ Until 2020, most of the requests for a move to another centre were accepted. In 2020, only 39 requests (out of 155) were accepted. Due to the COVID-19 pandemic, all requests to be moved to another centre were denied in the period of March-June 2020.²⁶⁷

B. Housing

1. Types of accommodation

Indicators: Types of Accommodation

1. Number of reception centres:²⁶⁸ 10
2. Total number of places in the reception centres: 1,962
3. Total number of places in private accommodation: Not applicable
4. Type of accommodation most frequently used in a regular procedure:
☒ Reception centre ☐ Hotel or hostel ☐ Emergency shelter ☒ Private housing ☐ Other
5. Type of accommodation most frequently used in an accelerated procedure:
☒ Reception centre ☐ Hotel or hostel ☐ Emergency shelter ☒ Private housing ☐ Other

Poland has ten reception centres which altogether provide 1,962 places. At the end of 2020, 819 (compared to 1,295 in 2019) asylum seekers were residing in the centres. Another 2,225 (compared to 1,640 in 2019) asylum seekers were receiving assistance outside the centres.²⁶⁹

Two centres (**Dębak**, **Biała Podlaska**) serve as first reception, where asylum seekers are directed after applying for asylum in order to register and carry out medical examinations. The remaining eight centres are accommodation centres (**Warsaw**, **Białystok**, **Kolonia-Horbów**, **Czerwony Bór**, **Bezwola**, **Łuków**, **Grupa** and **Linin**).²⁷⁰ The same rules regarding the freedom of movement apply in both kinds of centres.

There is no problem of overcrowding in these centres. As of 31 December 2020, the occupancy rate was 15% in the first reception centre in **Biała Podlaska**, 30.28% in **Dębak** and between 28.74% and 87.86% in the accommodation centres.²⁷¹ The numbers are lower than in 2019 due to the Office for Foreigners' policy of encouraging asylum seekers to live outside the reception centres to stop the spread of the COVID-19 pandemic.

²⁶³ Information provided by the Office for Foreigners, 27 August 2015.

²⁶⁴ Information from the Office for Foreigners, 22 and 27 January 2020.

²⁶⁵ Information from the Office for Foreigners, 4 March 2021.

²⁶⁶ Information provided by the Office for Foreigners, 26 January 2021.

²⁶⁷ Ibid.

²⁶⁸ Both accommodation and for first arrivals.

²⁶⁹ Information provided by the Office for Foreigners, 26 January 2021.

²⁷⁰ Office for Foreigners, Guidebook Department of Social Assistance (2019), available at: <https://bit.ly/31xfDnV>, 4.

²⁷¹ Information provided by the Office for Foreigners, 26 January 2021.

Centres are located in different parts of Poland. Some of them are located in cities (**Warsaw, Biała Podlaska, Białystok**) but most of them are situated in the countryside. Some are located far away from any towns: **Bezwola, Dębak, Grupa** and **Linin** are in the woods.²⁷² 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 tree-lined road which is not sufficiently lit.²⁷³ It is also pointed out that the reception centres are located in areas where a high level of poverty is reported, which hampers the asylum seeker's access to a labour market.²⁷⁴

Spatial exclusion as a result of the present location of the centres is considered the main problem by some NGOs.²⁷⁵ Isolation of the centres limits the contact with Polish citizens and Polish institutions, including NGOs. It affects the effectiveness of the integration process.²⁷⁶

Other types of accommodation are not used in practice.

2. Conditions in reception facilities

Indicators: Conditions in Reception Facilities

1. Are there instances of asylum seekers not having access to reception accommodation because of a shortage of places? ☐ Yes ☒ No
2. What is the average length of stay of asylum seekers in the reception centres? Not available²⁷⁷
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, private owners, companies, etc.²⁷⁸ Currently 6 reception centres are managed by the private contractors, others are directly managed by the Office for Foreigners.

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.²⁷⁹ Moreover, in 2020, the centre in **Kolonia-Horbów** was controlled in response to the complaint of an asylum seeker living there. Additionally, three centres were monitored by the epidemiological and sanitary authorities.²⁸⁰

²⁷² List and map of reception centres available at: <http://bit.ly/1JzdU5c>. Regarding the centre in Linin, see the account of a Tajik asylum seeker living there, in Y. Matusевич, 'Tajik Asylum Seekers Struggle for a Sense of Security', 12 April 2019, available at: <https://bit.ly/2SIIspK>: 'Although Linin is informally referred to as an "open camp," there is nowhere to go within walking distance and Warsaw is extremely difficult to reach by public transportation. The center is surrounded by a wall and the reception center enforces a nightly curfew. Visitors are only allowed upon prior approval from the Polish Ministry of Interior and there is a police van parked outside the main gate around the clock'.

²⁷³ For the opinions about the centres' distant locations see M. Pachocka, K. Pędziwiatr, K. Sobczak-Szelc, J. Szałańska (2020) 'Reception Policies, Practices and Responses: Poland Country Report', RESPOND Working Papers 2020/45, available at: <http://bit.ly/3jLCvsV>, 61-63.

²⁷⁴ Lukaszewicz, K., 'Exile to Poverty: Policies and Poverty Among Refugees in Poland', International Migration Vol. 55 (6) 2017, 61.

²⁷⁵ See W. Goszczyński, R. Baczyński-Sielaczek, J. Suchomska, J. Stankowska and M. Wróblewski. 'Lokalne systemy integracji uchodźców – badania' in Fundacja EMIC and Pracownia Zrównoważonego Rozwoju, *Wielogłos. Integracja uchodźców w polskich gminach* (2016), available (in Polish) at: <https://bit.ly/31uBLiE>, 58.

²⁷⁶ Institute of Public Affairs, *Analiza przygotowania lokalnych instytucji do przyjęcia uchodźców z programu relokacji i przesiedleń. Raport końcowy z badań fokusowych*, 2016, available (in Polish) at: <http://bit.ly/2GBfKr4>, 12-14; Lukaszewicz, K., 'Exile to Poverty: Policies and Poverty Among Refugees in Poland', International Migration Vol. 55 (6) 2017, 65.

²⁷⁷ The Office for Foreigners does not collect this data.

²⁷⁸ Article 79(2) Law on Protection.

²⁷⁹ Information provided by the Office for Foreigners, 15 January 2019 and 22 January 2020.

²⁸⁰ Information provided by the Office for Foreigners, 26 January 2021.

Asylum seekers can complain to the Office for Foreigners on the situation in the centres²⁸¹, but in practice they rarely lodge such complaints. In 2019 and 2020, the Office for Foreigners registered 13 and 5 complaints respectively, however all of them concerned medical assistance, not conditions in reception centres.²⁸² In 2020, one foreigner complained to the sanitary authorities on the conditions in the **Kolonia-Horbów** centre.²⁸³

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.²⁸⁴ Other conditions are dependent on the willingness and financial capacities of the contractor. Most often, one family stays in one room, without separated bedrooms or kitchen. Moreover, usually the centres do not offer separated bathrooms and kitchens, only the common ones.²⁸⁵

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.²⁸⁶

In general, conditions in the reception centres are considered to be better now than in the past years. It results from the greater attention given to the living conditions when a contractor for running a centre is being chosen and the renovations conducted in the recent years in the centres that are managed by the Office for Foreigners.²⁸⁷ Despite that, some asylum seekers complain about those conditions, mentioning for instance bed bugs in the rooms.²⁸⁸ According to the NGOs, asylum seekers generally assess the conditions in the centres rather low.²⁸⁹ For instance, in the research conducted in the centre in **Grupa** foreigners predominantly complained about the food served in the centre. They assessed the centre's cleanliness, appearance and furnishings mostly as 'average' or 'bad'.²⁹⁰ Meanwhile, the Office for Foreigners' anonymous survey conducted in January 2020 in 10 reception centres has shown that asylum seekers living there are overall satisfied with the material reception conditions they receive. The survey concerned accommodation (equipment, cleanness, etc.), food, medical assistance and centres' employees. In most of the centres, the level of satisfaction ranged from 70 to 95%. The centres in **Linin** and **Grupa** have been rated the worst, with 42.75% and 58% levels of satisfactions respectively. Overall, asylum seekers most often complained about the food and medical assistance provided in the centres.²⁹¹ While the results of the survey seem encouraging, it must be noted that the number of the respondents was not provided by the Office for Foreigners.

²⁸¹ Para 17 of the Annex to the Regulation on rules of stay in the centre for asylum seekers.

²⁸² Information provided by the Office for Foreigners, 22 January 2020 and 26 January 2021.

²⁸³ Information from the Office for Foreigners, 4 March 2021.

²⁸⁴ Office for Foreigners, *Guidebook Department of Social Assistance (2019)*, available at: <https://bit.ly/31xfDnV>, 4.

²⁸⁵ W. Goszczyński, R. Baczyński-Sielaczek, J. Suchomska, J. Stankowska and M. Wróblewski. 'Lokalne systemy integracji uchodźców – badania' in Fundacja EMIC and Pracownia Zrównoważonego Rozwoju, *Wielogłos. Integracja uchodźców w polskich gminach* (2016), available (in Polish) at: <https://bit.ly/31uBLiE>, 63, 67.

²⁸⁶ See Łukasiewicz, K., 'Exile to Poverty: Policies and Poverty Among Refugees in Poland', *International Migration Vol. 55* (6) 2017, 61.

²⁸⁷ M. Pachocka, K. Pędziwiatr, K. Sobczak-Szelc, J. Szałańska (2020) 'Reception Policies, Practices and Responses: Poland Country Report', RESPOND Working Papers 2020/45, available at: <http://bit.ly/3jLCvsV>, 43-44, 60.

²⁸⁸ With regard to the centres in Targówek and Dębak, see *ibid.*, 44-45, 61.

²⁸⁹ See i.a. W. Goszczyński, R. Baczyński-Sielaczek, J. Suchomska, J. Stankowska and M. Wróblewski. 'Lokalne systemy integracji uchodźców – badania' in Fundacja EMIC and Pracownia Zrównoważonego Rozwoju, *Wielogłos. Integracja uchodźców w polskich gminach* (2016), available (in Polish) at: <https://bit.ly/31uBLiE>, 64.

²⁹⁰ *Ibid.*, 65-67.

²⁹¹ Information provided by the Office for Foreigners, 4 March 2021.

No protests or hunger strikes in centres have been reported in years 2014-2017 and in 2019.²⁹² 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.²⁹³ In 2020, one protest occurred in the centre in Warsaw that is dedicated to women and single mothers. Asylum seekers opposed the limitations that resulted from the COVID-19 quarantine. According to the Office for Foreigners, thanks to immediate reaction of the Office, medical operator and NGOs, the situation was quickly under control.²⁹⁴

In every centre, there are two kinds of staff: employees of the Office for Foreigners and other employees (as kitchen aids, cleaners etc.). As regards the staff rate, in 2020, one employee of the Office for Foreigners was maximally in charge of 123 asylum seekers (staying outside and inside centres) and 62 asylum seekers (living in the centres).²⁹⁵

As of December 2020, there were 29 employees of Office for Foreigners working in all the centres and a variable number of other workers.²⁹⁶ Staff in the centre is working from Monday to Friday from 7:00 to 18:00. They are mainly responsible for the administration of the centre, not for a social work with asylum seekers. The number of employees of the Office for Foreigners and the scope of their responsibilities are considered insufficient.²⁹⁷ At night and on weekends only guards are present in the centre. Security staff is available in all centres around the clock.²⁹⁸

2.2. Activities in the centres

Polish language courses are organised in all reception centres, for children and adults. Those courses are considered the only integration activity provided by the Office for Foreigners.²⁹⁹ See more in [Access to Education](#).

In 2020 NGOs carried out some projects in the centres which aimed at providing:

- Education (learning Polish, assistance with homework, integration activities);
- Psychological assistance;
- Legal assistance.

Due to the COVID-19 pandemic, the access to the reception centres for persons whose presence there was not indispensable was limited. Psychological, legal and educational assistance was provided online or by phone (since March 2020). NGOs were able to access the reception centres again in June-September 2020, but the limitations in this regard were re-introduced in November 2020.³⁰⁰

All centres have libraries, although they were accessed with some difficulty in March-June 2020 due to the COVID-19 limitations. In all centres access to internet is provided.³⁰¹

In all centres there is a special room designed for religious practices.³⁰² If asylum seekers want to participate in religious services outside of the centre, they have such a right, although in practice the remoteness from the closest place of worship can prevent them from participating in such services.

²⁹² Information provided by the Office for Foreigners, 1 February 2018 and 22 January 2020.

²⁹³ Information provided by the Office for Foreigners, 15 January 2019.

²⁹⁴ Information provided by the Office for Foreigners, 26 January 2021.

²⁹⁵ Information provided by the Office for Foreigners, 26 January 2021.

²⁹⁶ *Ibid.*

²⁹⁷ Concerns expressed by SIP, 8 January 2020. See also M. Pachocka, K. Pędziwiatr, K. Sobczak-Szelc, J. Szałańska (2020) 'Reception Policies, Practices and Responses: Poland Country Report', RESPOND Working Papers 2020/45, available at: <http://bit.ly/3jLCvsV>, 64-65.

²⁹⁸ Office for Foreigners, *Guidebook Department of Social Assistance (2019)*, available at: <https://bit.ly/31xfDnV>, 8.

²⁹⁹ W. Goszczyński, R. Baczyński-Sielaczek, J. Suchomska, J. Stankowska and M. Wróblewski. 'Lokalne systemy integracji uchodźców – badania' in Fundacja EMIC and Pracownia Zrównoważonego Rozwoju, *Wielogłos. Integracja uchodźców w polskich gminach* (2016), available (in Polish) at: <https://bit.ly/31uBLiE>, 69.

³⁰⁰ Information provided by the Office for Foreigners, 26 January 2021.

³⁰¹ *Ibid.*

³⁰² Office for Foreigners, *Guidebook Department of Social Assistance (2019)*, available at: <https://bit.ly/31xfDnV>, 4. See also Supreme Audit Office, *Pomoc społeczna dla uchodźców. Informacja o wynikach kontroli*, November 2015, available (in Polish) at: <http://bit.ly/2lP90Z4>, 9.

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 final decision has not been taken within this time and if the delay is not attributed to any fault of the asylum seeker. 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.³⁰³ The temporary ID document is valid for 90 days and can be subsequently prolonged for renewable periods of 6 months (during the COVID-19 pandemic, the validity of temporary IDs was prolonged by law, as the Office for Foreigners limited temporarily its direct customer service). The certificate is valid until the day the decision concerning international protection becomes final.³⁰⁴ However, if the asylum seeker avails himself/herself of a judicial remedy and the court suspends the enforcement of the negative asylum decision, the certificate regains its validity.³⁰⁵

In practice, the issuance of the above-mentioned certificate is not often requested. Most probably it results from the fact that the asylum proceedings often last shorter than 6 months, the asylum seekers leave Poland before they can access labour market or they have no knowledge that they can work in Poland after 6 months. Moreover, there is a relatively high percentage of refusals in this regard. According to the Office for Foreigners, asylum seekers tend to apply for a certificate too early (before 6 months has passed) or too late (the final asylum decision is delivered before the decision on the certificate is reached).³⁰⁶

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.³⁰⁷ Moreover, the certificate is valid until the decision on asylum becomes final but employers are not informed that such decision was issued by the Polish authorities, they must trust that the asylum seekers will inform them about it on time.³⁰⁸ Furthermore,

³⁰³ Article 35 Law on Protection.

³⁰⁴ 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.

³⁰⁵ Information provided by the Office for Foreigners, 4 March 2021.

³⁰⁶ M. Pachocka, K. Pędziwiatr, K. Sobczak-Szelc, J. Szałańska (2020) 'Reception Policies, Practices and Responses: Poland Country Report', RESPOND Working Papers 2020/45, available at: <http://bit.ly/3jLCvsV>, 55.

³⁰⁷ 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.

³⁰⁸ M. Pachocka, K. Pędziwiatr, K. Sobczak-Szelc, J. Szałańska (2020) 'Reception Policies, Practices and Responses: Poland Country Report', RESPOND Working Papers 2020/45, available at: <http://bit.ly/3jLCvsV>, 82-83.

asylum seekers often live in centres which are located far away from big cities and in the areas with a high level of poverty and unemployment in general, which makes it difficult to find a job in practice. Moreover, most asylum seekers do not know Polish well enough to get a job in Poland.³⁰⁹ Asylum seekers also face a problem of a limited recognition of education and skills acquired outside Poland, so they are often underemployed. Moreover, foreigners endure a discrimination in an employment, e.g. they are offered lower salary than Poles.³¹⁰

Furthermore, even receiving the above-mentioned certificate may be in some circumstances problematic. Asylum seekers who reached majority during the asylum proceedings that had been initiated by and continued with their parents and who declared that they did not want to apply for asylum separately, are refused a right to work. In order to receive such certificate, they have to initiate asylum proceedings separate from their parents, which is criticised by the NGOs.³¹¹

Experts point out that the fact that asylum seekers cannot work for the first 6 months of the asylum procedure is one of the factors which leads to their lack of independence and reliance on social assistance.³¹²

2. Access to education

Indicators: Access to Education

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

All children staying in Poland have a constitutional right to education. Education is mandatory until the age of 18. It is provided to asylum-seeking children in regular schools and it is not limited by law. Asylum seekers benefit from education in public schools under the same conditions as Polish citizens until the age of 18 or the completion of higher school.³¹³ In September 2020, 841 asylum-seeking children attended around 126 public schools in Poland. 361 of them lived in the reception centres.³¹⁴

There are different obstacles to accessing education in practice³¹⁵. The biggest problem is a language and cultural barrier. However, asylum-seeking children are supported by:

- Polish language courses that are organised in all reception centres – 446 children benefited from this assistance in 2020. However, courses have been temporarily suspended due to the pandemic COVID-19.³¹⁶
- additional free Polish language classes, that should be organised by the authority managing the school that asylum seekers are attending.³¹⁷ Those classes are organised as long as it is needed, not less than 2 hours a week but max. five hours per week for one child.
- basic supplies necessary for learning Polish.³¹⁸

³⁰⁹ Lukasiwicz, K., 'Exile to Poverty: Policies and Poverty Among Refugees in Poland', *International Migration* Vol. 55 (6) 2017, 61, 66. See also M. Pawlak, 'Zatrudnienie' in A. Górski, M. Koss-Goryszewska, J. Kucharczyk (eds), *W stronę krajowego mechanizmu ewaluacji integracji: Diagnoza sytuacji beneficjentów ochrony międzynarodowej w Polsce* (Instytut Spraw Publicznych 2019), 35.

³¹⁰ Lukasiwicz, K., 'Exile to Poverty: Policies and Poverty Among Refugees in Poland', *International Migration* Vol. 55 (6) 2017, 64, 66.

³¹¹ O. Dobrowolska, 'Zaświadczenie uprawniające do wykonywania pracy dla pełnoletnich dzieci wnioskodawcy' in Stowarzyszenie Interwencji Prawnej (SIP), *SIP w działaniu. Prawa cudzoziemców w Polsce w 2018 r.* (2019), available (in Polish) at: <https://bit.ly/39b6qUZ>, 21-22.

³¹² 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.

³¹³ Article 165 (1) and (2) of Law of 14 December 2016 on education.

³¹⁴ EMN, 'New school year for children in the asylum procedure', September 2020, available at: <http://bit.ly/3qkik7Q>.

³¹⁵ Some problems with late enrollment to schools were reported, see M. Pachocka, K. Pędziwiatr, K. Sobczak-Szelc, J. Szałańska (2020) 'Reception Policies, Practices and Responses: Poland Country Report', RESPOND Working Papers 2020/45, available at: <http://bit.ly/3jLCvsV>, 73-74.

³¹⁶ Information provided by the Office for Foreigners, 26 January 2021.

³¹⁷ Article 165 (7) of Law of 14 December 2016 on education.

³¹⁸ Article 71(1)(1f) Law on Protection.

Asylum-seeking children can also participate in compensatory classes:

- in reception centres – 139 children benefited from this support in 2020. However, classes have been temporarily suspended due to the pandemic COVID-19.³¹⁹
- in schools – assistance granted for a maximum of twelve months, max. five hours per week for one child.³²⁰

Overall, Polish language and compensatory classes in schools are considered insufficient. They are either not organized at all or organised for an insufficient amount of time (both the limitation to 12 months and to 5 hours a week are being criticised).³²¹

Children have also a right to assistance of a person who knows the language of their country of origin, who can be employed as a teacher's assistant by the director of the school.³²² This help is limited to a maximum of twelve months, which is considered not enough.³²³ Moreover, the remuneration of such assistants is too low.³²⁴ Despite that, finding financing in order to employ the assistant is difficult for some schools.³²⁵ Thus, NGOs occasionally cover the assistant's remuneration in the framework of their projects.³²⁶ Such support is dependent on the NGOs' funding, however. Overall, there is not enough teacher's assistants hired in schools. In some municipalities, there is only one assistant. Moreover, during the pandemic COVID-19, some assistants were laid off as schools considered their job not needed in the online-schooling reality. In November 2020, 112 organisations, schools and persons signed the letter to Ministry of Education to strengthen and increase the role of the teacher's assistants, pointing on the advantages of this solution and problems that assistants face every day.³²⁷

Furthermore, asylum-seeking children should receive the allowance 'Good start' (300 PLN or around 66 Euros) that according to the law should be granted once a year for every child that begins a school year in Poland. However, the SIP informs that asylum seekers have problems with receiving this support.³²⁸ In 2020, the Supreme Administrative Court confirmed that asylum-seeking children should have access to the 'Good start' allowance. However, in each single case the court proceedings must be initiated for an asylum-seeking child to have a chance to receive such allowance.³²⁹

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. It happens that a school refuses to admit a foreigner

³¹⁹ Office for Foreigners, 'Wsparcie dla cudzoziemców w procedurze uchodźczej', 13 November 2019, available (in Polish) at: <https://bit.ly/38ecl61>, Information provided by the Office for Foreigners, 26 January 2021.

³²⁰ Article 165 (10) of Law of 14 December 2016 on education.

³²¹ Cf. K. Sobczak-Szelc, M. Pachocka, K. Pędziwiatr, J. Szałańska, 'Integration Policies, Practices and Responses. Poland – Country Report', *Multilevel Governance of Mass Migration in Europe and Beyond Project* (#770564, Horizon2020), available at: <http://bit.ly/3pjlXtq>, 79.

³²² Article 165 (8) of the Law of 14 December 2016 on education.

³²³ 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>.

³²⁴ Ibid.

³²⁵ K. Sobczak-Szelc, M. Pachocka, K. Pędziwiatr, J. Szałańska, 'Integration Policies, Practices and Responses. Poland – Country Report', *Multilevel Governance of Mass Migration in Europe and Beyond Project* (#770564, Horizon2020), available at: <http://bit.ly/3pjlXtq>, 70.

³²⁶ 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.

³²⁷ Initiated by Fundacja na rzecz Różnorodności Społecznej: Apel o aktywne włączenie się Ministerstwa Edukacji Narodowej, Wojewódzkich Kuratoriów Oświaty oraz organów prowadzących szkoły w upowszechnianie zatrudniania osób pełniących funkcję pomocy nauczyciela (asystentek i asystentów międzykulturowych) oraz asystentek i asystentów edukacji romskiej, November 2020.

³²⁸ M. Sadowska, 'Świadczenia "Dobry start" in SIP, *Prawa cudzoziemców w Polsce w 2019 roku. Raport*, 2020, available (in Polish) at: <https://bit.ly/3jT7weM>, 68.

³²⁹ SIP, 'Wyrok NSA: świadczenie Dobry Start („300+”) przysługuje osobom ubiegającym się o ochronę międzynarodową', 11 sierpnia 2020, available (in Polish) at: <https://bit.ly/37bWxb8>.

because it is unable to cope with the challenge.³³⁰ Moreover, teachers working with foreign children are not receiving sufficient support, like courses and materials.³³¹ However, some training initiatives are taken up by local and governmental authorities.³³²

If a child cannot enter the regular education system e.g. due to illness, their special needs are supposed to be addressed in special school. At the end of 2020, 6 asylum-seeking children were attending a special school.³³³

NGOs inform that the asylum seekers most often complain about the hate speech that their children encounter in the school, both from their peers and the staff. The Supreme Audit Office informed in 2020 that 23% parents that they interviewed declared that their children have met with intolerance in school once or twice a year, according to 4% of respondents it was occurring often.³³⁴

The Supreme Audit Office published in 2020 a report on education of all foreign children staying in Poland (and Polish children who returned to Poland after living abroad). The report confirmed that the Ministry of Education did not have any interest in this topic for many years, despite the significant increase in the number of foreign pupils in Polish schools. No monitoring was conducted of the situation of foreigners in schools. Despite having public funds for a training for teachers who work with foreign pupils, they were not spent. The Supreme Audit Office monitored also 24 schools that foreigners attended in years 2017-2020. It found many violations of Polish law and concluded that the schools' responses to foreigners needs and problems were insufficient. In 23 schools, additional Polish language lessons were conducted; in 13 schools, compensatory classes were also organised. However, the specific needs of foreign pupils were not recognised before commencing Polish language and compensatory classes, Polish language classes were organised only for one hour a week and too many pupils attended one class. In 21 schools no adjustment was made in the curriculum to respond to the foreign pupils' needs. No integration activities or only incidental ones were organised. Moreover, teachers' training on working with foreign pupils was not sufficiently (or at all) supported by the schools' directors.³³⁵

To sum up, the current education system is not taking into account the special needs of foreign children.³³⁶ 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'

³³⁰ Iglicka, Krystyna, 'Chechen's Lesson. Challenges of Integrating Refugee Children in a Transit Country: A Polish Case Study', Central and Eastern European Migration Review, Vol. 6, No. 2, 2017, available at: <http://bit.ly/2GPIKiV>, 132-133. Schools are entitled to refuse admission on a basis of Article 166 of the Law of 14 December 2016 on education, when due to the demographic reasons such admission would require changes in the organisation of a school. See also Paras 13-15 Ordinance of the Ministry of National Education of 23 August 2017 on education of persons without Polish citizenship and Polish citizens who learned in schools in other countries (*w sprawie kształcenia osób niebędących obywatelami polskimi oraz osób będących obywatelami polskimi, które pobierały naukę w szkołach funkcjonujących w systemach oświaty innych państw*).

³³¹ 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, available at: <http://bit.ly/2GPIKiV>, 132; Ministry of Interior and Administration, *Polityka migracyjna Polski – diagnoza stanu wyjściowego*, available in Polish at: <http://bit.ly/377T5Ov>, 40.

³³² Ministry of Education, 'Nauka dzieci przybywających z zagranicy w polskim systemie edukacji', available (in Polish) at: <https://bit.ly/31KtY0C>.

³³³ Information from the Office for Foreigners, 26 January 2021.

³³⁴ Supreme Audit Office, 'Kształcenie dzieci rodziców powracających do kraju i dzieci cudzoziemców', September 2020, available (in Polish) at: <http://bit.ly/3piaNVR>.

³³⁵ Ibid.

³³⁶ See e.g. Iglicka, Krystyna, 'Chechen's Lesson. Challenges of Integrating Refugee Children in a Transit Country: A Polish Case Study', Central and Eastern European Migration Review, Vol. 6, No. 2, 2017, available at: <http://bit.ly/2GPIKiV>, 132.

migration to Western Europe.³³⁷ As a consequence, asylum-seeking and refugee children are disappearing from Polish education system.³³⁸

The COVID-19 pandemic further hampered the access to education. Schools were closed and children have started education online. Not all asylum-seeking children had laptops or computers they could use, thus they could not attend school for some time. Moreover, they often could not be assisted by their parents who lacked essential digital and linguistic competences.³³⁹ According to the Office for Foreigners, staff in the reception centres assisted asylum-seeking children and their parents with adjusting to this new situation and motivated them to participate in the school online. In all centres access to wifi was ensured. In 5 centres special places for online schooling were created. Children from 5 centres were also given a possibility to participate in online or traditional learning at the school premises. Some laptops and mobile equipment were also gathered by the Office for Foreigners, UNHCR, schools, private persons and the contractors who manage two reception centres. NGOs have conducted some public collects in this regard as well.³⁴⁰ Moreover, NGOs stepped in to provide asylum-seeking children with online Polish language classes and to organize support in online compulsory education.³⁴¹

According to the Office for Foreigners, online learning of asylum-seeking children was not different from online school for other children.

2.1. Preparatory classes

Since 2016, schools have a possibility to organise preparatory classes for foreign children who do not have sufficient knowledge of the Polish language. A foreign minor can join preparatory classes anytime during the school year. After the end of the school year, his participation in those classes can be prolonged, when needed, for maximum one more year. The preparatory classes last for 20-26 hours a week. Learning Polish as a foreign language can be limited only to 3 hours per week,³⁴² which raise serious doubts concerning the effectiveness of such solution.³⁴³ If a school decides to organise such classes, foreign children are not obliged to participate in regular classes.

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.³⁴⁴ Furthermore, the preparatory classes were not designed as 'welcome classes' which have their own program, separate

³³⁷ Institute of Public Affairs, *Analiza przygotowania lokalnych instytucji do przyjęcia uchodźców z programu relokacji i przesiedleń. Raport końcowy z badań fokusowych*, 2016, available (in Polish) at: <http://bit.ly/2GBfKr4>, 57-62.

³³⁸ Iglicka, Krystyna, 'Chechen's Lesson. Challenges of Integrating Refugee Children in a Transit Country: A Polish Case Study', *Central and Eastern European Migration Review*, Vol. 6, No. 2, 2017, available at: <http://bit.ly/2GPiKiV>, 123, 130.

³³⁹ Commissioner for Human Rights, 'Sytuacja migrantów i migrantek w czasie pandemii. Stanowisko RPO i Komisji Ekspertów ds. Migrantów', 13 May 2020, available (in Polish) at: <http://bit.ly/2ZeqWkQ>; Commissioner for Human Rights, 'Koronawirus. RPO pyta MEN o ocenę zdalnej edukacji', 24 April 2020, available (in Polish) at: <http://bit.ly/3qkmQ6m>; Polskie Forum Migracyjne, 'Komentarz PFM do spec-ustawy - sytuacja cudzoziemców', available (in Polish) at: <http://bit.ly/3qjlby5>.

³⁴⁰ Information provided by the Office for Foreigners, 26 January 2021 and 4 March 2021.

³⁴¹ Fundacja Ocalenie, 'Działania dla dzieci: podsumowanie roku szkolnego 2019/20', 2 July 2020, available (in Polish) at: <https://bit.ly/37bwlla>.

³⁴² 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*).

³⁴³ 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>.

³⁴⁴ Commissioner for Human Rights, *Posiedzenie Komisji Ekspertów ds. Migrantów*, 12 December 2016, available (in Polish) at: <http://bit.ly/2odhX16>.

from the regular classes and adapted to foreign minors' needs.³⁴⁵ 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.³⁴⁶ Meanwhile, the program of such classes should concentrate on learning Polish.³⁴⁷ 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.³⁴⁸ Furthermore, experts point out that there is no system which would prepare teachers to work in preparatory classes with foreigners.³⁴⁹

In the 2020 report of the Supreme Audit Office, it was established that in 5 schools (out of 24 schools controlled) in total 14 preparatory classes were organised in years 2017-2020. In 4 schools, violations of Polish law were found in this regard, i.e. there were too many pupils per class and the curriculum was not adjusted to foreigners' needs and possibilities.³⁵⁰

According to data from the Office for Foreigners, in 2017/2018, the preparatory classes for foreign children were organized in schools in **Grupa, Michał, Grotniki** and **Łuków** and in 2018/2019 in a school in **Warsaw**.³⁵¹ According to the Ministry of Education, in the school year 2018/2019 approximately 300 foreign minors (number of asylum-seeking pupils is not available) were participating in the preparatory classes.³⁵² The preparatory classes seem to become increasingly popular³⁵³, however no data for 2020 were made available.

2.2. Kindergarten

In all of the reception centres, some form of kindergarten is organised, which is sometimes supported by NGOs.³⁵⁴ This day care is provided minimum 5 times a week for 5 hours a day. In 2020, due to the COVID-19 pandemic, all kindergartens were temporarily closed.³⁵⁵

³⁴⁵ 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>.

³⁴⁶ Para 16(3) Ordinance of the Ministry of National Education of 23 August 2017 on education of persons without Polish citizenship and Polish citizens who learned in schools in other countries (*w sprawie kształcenia osób niebędących obywatelami polskimi oraz osób będących obywatelami polskimi, które pobierały naukę w szkołach funkcjonujących w systemach oświaty innych państw*). See also K. Wójcik, 'Więcej cudzoziemców w szkołach', 11 September 2019, available (in Polish) at: <https://bit.ly/2vgizth>.

³⁴⁷ M. Koss-Goryszewska, 'Edukacja' in A. Górską, M. Koss-Goryszewska, J. Kucharczyk (eds), *W stronę krajowego mechanizmu ewaluacji integracji: Diagnoza sytuacji beneficjentów ochrony międzynarodowej w Polsce* (Instytut Spraw Publicznych 2019), 50-51.

³⁴⁸ Commissioner for Human Rights, *Posiedzenie Komisji Ekspertów ds. Migrantów*, 12 December 2016, available (in Polish) at: <http://bit.ly/2odhX16>.

³⁴⁹ M. Koss-Goryszewska, 'Edukacja' in A. Górską, M. Koss-Goryszewska, J. Kucharczyk (eds), *W stronę krajowego mechanizmu ewaluacji integracji: Diagnoza sytuacji beneficjentów ochrony międzynarodowej w Polsce* (Instytut Spraw Publicznych 2019), 51.

³⁵⁰ Supreme Audit Office, 'Kształcenie dzieci rodziców powracających do kraju i dzieci cudzoziemców', September 2020, available (in Polish) at: <http://bit.ly/3piaNVR>, 47-48.

³⁵¹ 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.

³⁵² Ministry of Education, 'Nauka dzieci przybywających z zagranicy w polskim systemie edukacji', available (in Polish) at: <https://bit.ly/2vZF5Xr>.

³⁵³ 'In September 2018, out of nearly 44 thousand of foreign children in Polish schools, only 371 attended preparatory classes. In 2017 and 2016 the numbers were even smaller: 170 and 194 children, respectively. Since the introduction of such a possibility in 2016 until 2018, the preparatory classes were opened in 133 schools in 90 locations' [K. Sobczak-Szelc, M. Pachocka, K. Pędziwiatr, J. Szalańska, 'Integration Policies, Practices and Responses. Poland – Country Report', *Multilevel Governance of Mass Migration in Europe and Beyond Project* (#770564, Horizon2020), available at: <http://bit.ly/3pjIXtq>, 72.

³⁵⁴ In 2020, Dialog Foundation organized a day care in the centre in Czerwony Bór (information from the Office for Foreigners, 26 January 2021).

³⁵⁵ Information provided by the Office for Foreigners, 26 January 2021.

2.3. Educational activities for adults

There is no access to vocational training for asylum seekers provided under the law. It is considered 'one of the biggest shortcomings of the reception system in the area of education'.³⁵⁶

The only educational activities that adults have constant access to are courses of Polish language organised in all centres. They are open both for asylum seekers living in the centre and outside. Additionally, in August 2020, Polish language classes for adults started in Warsaw for those asylum seekers who receive financial allowance and do not live in a reception centre. However, due to the COVID-19 pandemic, Polish language lessons both in and outside reception centres were temporarily suspended.³⁵⁷

The Polish language course's level is considered insufficient by some NGOs. Foreigners evaluate those classes in general positively.³⁵⁸

The Office for Foreigners indicated that in 2020 asylum seekers participated in Polish language lessons actively. In total, 336 adults attended such course. However, the number seems meager when the overall number of asylum seekers is taken into account. The earlier research showed that the low participation rate results, among others, from the fact that asylum seekers are not willing to stay in Poland or are aware that the chances for obtaining international protection in Poland are small 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.³⁵⁹ Another research shown that asylum seekers were unwilling to attend classes also due to traumatic experiences from the country of origin or the lack of the childcare.³⁶⁰

In 2017 the Office for Foreigners together with the Linguae Mundi Foundation created a comprehensive programme and materials for teaching Polish language in the centres.³⁶¹ According to the governmental data, the programme takes into account specific needs of asylum seekers and its aim is to enable the communication in everyday situations. Asylum seekers are provided with books and notebooks needed to learn Polish. They can receive a certificate confirming the attendance in the course and material prizes for good results.³⁶²

Usually, other courses in the centres, including vocational training and integration activities, are organized by NGOs, but in 2020 these initiatives have been impacted by the pandemic. Since March 2020, access to the centres of any persons whose presence there was not indispensable was excluded. Any assistance was granted only online or by phone. In June-September 2020 NGOs could again access the reception centres, but limitations were reintroduced in November and continued until the end of the year.

³⁵⁶ M. Pachocka, K. Pędziwiatr, K. Sobczak-Szelc, J. Szałańska (2020) 'Reception Policies, Practices and Responses: Poland Country Report', RESPOND Working Papers 2020/45, available at: <http://bit.ly/3jLCvsV>, 82.

³⁵⁷ Information from the Office for Foreigners, 26 January 2021. See also Office for Foreigners, 'Kursy języka polskiego dla cudzoziemców', 15 August 2020, available (in Polish) at: <http://bit.ly/2Zcjt5N>.

³⁵⁸ R. Baczyński-Sielaczek, *Język polski w ośrodkach. Wyniki badania ewaluacyjnego*, Instytut Spraw Publicznych 2016, 19-22.

³⁵⁹ *Ibid*, 34.

³⁶⁰ M. Pachocka, K. Pędziwiatr, K. Sobczak-Szelc, J. Szałańska (2020) 'Reception Policies, Practices and Responses: Poland Country Report', RESPOND Working Papers 2020/45, available at: <http://bit.ly/3jLCvsV>, 78-80.

³⁶¹ Information provided by the Office for Foreigners, 1 February 2018.

³⁶² Ministerstwo Pracy, Rodziny i Polityki Społecznej, *Informacja o sytuacji osób starszych w Polsce za 2018 r.* (2019), 146. See also Office for Foreigners, *Guidebook Department of Social Assistance* (2019), available at: <https://bit.ly/2HmFvdb>.

D. Health care

Indicators: Health Care

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

Access to health care for asylum seekers is guaranteed in the law under the same conditions as for Polish nationals who have health insurance.³⁶³ Health care for asylum seekers is publicly funded. If an asylum seeker is deprived of material reception conditions or they are limited, they are still entitled to health care.³⁶⁴

Basic health care is organised in medical offices within each of the reception centres. The Office for Foreigners informed that in 2020 the GP in the centres had 6 duty hours per 120 asylum seekers, while the nurse had 20 hours for the same number of possible patients. Both had 3 hours a week extra for every additional 50 asylum seekers. They were present in the centres at least three times a week. Additionally, in every centre the duty hours of a pediatrician were organised at least for 4 hours a week per 50 children, with extra 2 hours of duty for every additional 20 children. Pediatrician was present in the centres at least 2 days a week.³⁶⁵

Health care for asylum seekers includes treatment for persons suffering from mental health problems. In 2020, psychologists worked in all centres for at least 4 hours a week for every 120 asylum seekers. This was extended to 1 hour for every additional 50 asylum seekers.³⁶⁶ Asylum seekers can also be directed to a psychiatrist or a psychiatric hospital. Reportedly, the Office for Foreigners tries to provide the assistance of only one psychologist to a specified asylum seeker, 'so that the person has a sense of security and does not have to discuss his/her situation several times'.³⁶⁷

The psychological assistance in the reception centres is limited to basic consultations, however.³⁶⁸ Moreover, due to pandemic COVID-19, it was not provided in person by psychologists, but by phone³⁶⁹. Some asylum seekers consider psychologists working in the centre as not neutral enough as they are employed (indirectly) by the Office for Foreigners.³⁷⁰ Furthermore, according to some experts and many NGOs, specialised treatment for victims of torture or traumatised asylum seekers is not available in practice.³⁷¹ NGOs still point at the lack of proper treatment of persons with PTSD. The available

³⁶³ Article 73(1) Law on Protection.

³⁶⁴ Articles 76(1) and 70(1) Law on Protection.

³⁶⁵ Information provided by the Office for Foreigners, 26 January 2021.

³⁶⁶ Information provided by the Office for Foreigners, 22 January 2020.

³⁶⁷ Pachocka, M. and Sobczak-Szelc K., 'Refugee Protection Poland – Country Report', Multilevel Governance of Mass Migration in Europe and Beyond Project (Horizon2020), January 2020, available at: <https://bit.ly/2U1A9uL>, 80.

³⁶⁸ See Pachocka, M. and Sobczak-Szelc K., 'Refugee Protection Poland – Country Report', Multilevel Governance of Mass Migration in Europe and Beyond Project (Horizon2020), January 2020, available at: <https://bit.ly/2U1A9uL>, 70. The Office for Foreigners claims that those psychologists' assistance concentrates on psychological support and counselling and also on diagnosis of mental disorders, including PTSD.

³⁶⁹ Information provided by the Office for Foreigners, 26 January 2021.

³⁷⁰ M. Pachocka, K. Pędziwiatr, K. Sobczak-Szelc, J. Szałańska (2020) 'Reception Policies, Practices and Responses: Poland Country Report', RESPOND Working Papers 2020/45, available at: <http://bit.ly/3jLCvsV>, 71.

³⁷¹ 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>. See also Małgorzata Jaźwińska and Magdalena Sadowska, 'Osoby, które doświadczyły przemocy', in SIP, *Prawa cudzoziemców w Polsce w 2019 roku. Raport*, 2020, available in Polish at: <https://bit.ly/3jT7weM>, 13-14, pointing out that persons who were subject to violence are not properly identified.

psychological assistance is considered an intervention, not a regular therapy.³⁷² There is a shortage of psychologists prepared to work with vulnerable and traumatized asylum seekers.³⁷³ Moreover, there are only three specialised NGOs that provide psychological consultations and treatment to asylum seekers.³⁷⁴ In 2020, some form of psychological support was provided by NGOs, but it was affected by the pandemic (assistance by phone instead of in person).³⁷⁵

The medical assistance is provided since July 2015 by the private contractor Petra Medica,³⁷⁶ with whom the Office for Foreigners has signed an agreement to coordinate medical care for asylum seekers. The Office for Foreigners monitors the application of this agreement. The quality of medical assistance provided under this agreement has triggered wide criticism. In particular, access to a specialised medical care worsened³⁷⁷ and some asylum seekers are refused access to more costly treatments. It happens that only after NGOs' interventions and months of fighting for the access to a proper medical treatment, asylum seekers were able to receive it. The access to a treatment is particularly difficult for asylum seekers with HIV and HCV. In 2019, the SIP described its battle to provide the continuation of the treatment for the asylum-seeking women that was HIV-positive and had a Hodgkin lymphoma. The women started the treatment in Germany and afterwards was sent back to Poland under the Dublin III Regulation. In Poland, she faced multiple refusals of the treatment and administrative obstacles to receiving medical assistance from proper doctors and medical facilities. She was not referred to infectious diseases, cardiological nor psychiatric clinics even though the medical documentation from Germany found it was necessary. She was repeatedly misinformed that she is not entitled to the HIV-treatment in Poland. Even though she was in bad health condition, the staff of the centre in Dębak refused calling for the ambulance explaining (falsely) that she was not entitled to it. Moreover, one of the Polish doctors said to her that Poland does not need sick people. Finally, the foreigner received proper treatment in Poland. Thanks to the German doctor who sent her additional medication, she was left without it 'only' for two weeks³⁷⁸ In 2020, SIP described another battle for access to medical assistance for the asylum seeker diagnosed in 2016 with HCV. In March 2018, he contacted SIP due to recurring difficulties in accessing specialized treatment. He was first sent to improper medical facilities; next the Petra Medica denied financing the treatment. The Office for Foreigners was unable to enforce the Petra Medica to cover the expenses of the medical treatment that the asylum seeker needed. Finally, only in September 2019, the asylum seeker started the necessary treatment, but it required multiple interventions on the SIP's part to enable it.³⁷⁹

One of the biggest obstacles in accessing health care that asylum seekers face is the lack of intercultural competence and knowledge of foreign languages amongst doctors and nurses.³⁸⁰ Petra Medica that is responsible for the provision of medical assistance to asylum seekers is also obliged to ensure interpretation during the medical and psychological consultations, if it is needed.³⁸¹ According to the governmental information, such interpretation is available in Russian, Ukrainian, English, Georgian,

³⁷² Information provided by the Association for Legal Intervention, October 2016.

³⁷³ Pachocka, M. and Sobczak-Szelc K., 'Refugee Protection Poland – Country Report', Multilevel Governance of Mass Migration in Europe and Beyond Project (Horizon2020), January 2020, available at: <https://bit.ly/2U1A9uL>, 71.

³⁷⁴ 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>.

³⁷⁵ Information provided by the Office for Foreigners, 26 January 2021.

³⁷⁶ Information from the Office for Foreigners website: <http://bit.ly/1XqYMIQ>; Office for Foreigners, *Guidebook Department of Social Assistance* (2019), available at: <https://bit.ly/39ljreM>, 6.

³⁷⁷ M. Pachocka, K. Pędziwiatr, K. Sobczak-Szelc, J. Szałańska (2020) 'Reception Policies, Practices and Responses: Poland Country Report', RESPOND Working Papers 2020/45, available at: <http://bit.ly/3jLCvsV>, 70.

³⁷⁸ O. Hilik, 'Leczenie osób zarażonym wirusem HIV w postępowaniu w przedmiocie udzielenia ochrony międzynarodowej' in Stowarzyszenie Interwencji Prawnej (SIP), *SIP w działaniu. Prawa cudzoziemców w Polsce w 2018 r.* (2019), available (in Polish) at: <https://bit.ly/2viZkz5>, 46-48.

³⁷⁹ A. Chrzanowska, 'Dostęp do leczenia wirusowego zapalenia wątroby (WZW)' in SIP, *Prawa cudzoziemców w Polsce w 2019 roku. Raport*, 2020, available (in Polish) at: <https://bit.ly/3jT7weM>, 60-62.

³⁸⁰ M. Koss-Goryszewska, 'Służba zdrowia' in A. Górka, M. Koss-Goryszewska, J. Kucharczyk (eds), *W stronę krajowego mechanizmu ewaluacji integracji: Diagnoza sytuacji beneficjentów ochrony międzynarodowej w Polsce* (Instytut Spraw Publicznych 2019), 43.

³⁸¹ Information provided by the Office for Foreigners, 1 February 2017.

Persian, Arabic, Chechen, Uzbek. Doctors working in the centres are expected to know Russian.³⁸² However, since 2016 NGOs have been expressing concerns in regard to availability and quality of the interpretation provided to asylum seekers in connection with medical consultations.³⁸³ In particular, it is reported that asylum seekers who are not speaking Polish, English or Russian face great difficulties with being provided with medical assistance (they cannot make the needed appointments as the helpline is available only in English and Russian, they cannot understand a doctor during the appointment, etc.)

Another challenge is the fact that some clinics and hospitals providing medical assistance to asylum seekers are located far away from the reception centres, so an asylum seeker cannot be assisted by the closest medical facility, except for emergency situations. The Office for Foreigners noticed that for those asylum seekers living outside the reception centres health care is provided in voivodeship cities in Poland and that coordination of visits is conducted by the helpline of the contractor, where the asylum seeker can learn about the time of the visit and ways to get the prescription.³⁸⁴

In 2019-2020, the Office for Foreigners registered 13 and 5 complaints respectively, all of them concerned medical assistance. In 2020, the Office for Foreigners claimed that the complaints resulted from the lack of understanding of the Polish health system and of the limitations stemming from the pandemic. Some complaints concerned specific doctors and nurses.³⁸⁵

Due to the COVID-19 pandemic, medical consultations by phone were introduced. Information about that and necessary telephone numbers has been provided in English and Russian online (website of the Office for Foreigners and Petra Medica) and in the reception centres. According to the Office for Foreigners, in every reception centre, isolation rooms with bathrooms were separated. The state of health of ill asylum seekers was monitored daily by medical staff of the centre, they had also direct telephone number to doctors and nurses in case of feeling worse. Food was served to them in isolation rooms. The measures to limit the spread of the COVID-19 in the reception centres were taken up as well: asylum seekers were advised to stay in their rooms and leave them only to use a bathroom and kitchen, disinfectants and masks were provided, common rooms were regularly disinfected, ill asylum seekers were separated, the temperature of every person accessing the centre was checked, the access to the reception centres for persons not living there was significantly limited. Moreover, asylum seekers were encouraged to live privately instead of in the reception centres.³⁸⁶

The SIP informs that due to the limitations resulting from the pandemic (only 5 persons allowed in the Office for Foreigners building where the medical point is situated), everyday a long queue formed in front of the Office, along the fence surrounding the building. Some asylum seekers needing medical assistance were allowed to come in, but others (less grave cases) were given medical assistance outside, over the fence, with other foreigners being able to hear about their health problems.

Overall, 87 asylum seekers were reported positive to COVID-19 in 2020. According to the Office for Foreigners, all asylum seekers who were ill or had symptoms of COVID-19 had access to medical assistance. Only a minority of them was hospitalised. One person died, although it is not clear whether COVID-19 was the reason of death.³⁸⁷

One reception centre (in **Warsaw** – for single women and mothers with children, 111 inhabitants at the time) was quarantined. 70 asylum seekers living there were tested positive for COVID-19. First infections

³⁸² Ministerstwo Pracy, Rodziny i Polityki Społecznej, *Informacja o sytuacji osób starszych w Polsce za 2018 r.* (2019), 146.

³⁸³ Centrum Pomocy Prawnej im. H. Nieć, *Situation of Dublin Returnees in Poland. HNLAC Information Note – July 2016*, available at: <http://bit.ly/2lkV08v>, 8; HFHR, Letter to the Head of the Office for Foreigners, 1765/2016/BD, 13 September 2016. Information confirmed by SIP, 8 January 2020.

³⁸⁴ Information provided by the Office for Foreigners, 1 February 2017.

³⁸⁵ Information provided by the Office for Foreigners, 22 January 2020 and 26 January 2021.

³⁸⁶ Information provided by the Office for Foreigners, 26 January 2021.

³⁸⁷ Information provided by the Office for Foreigners, 26 January and 4 March 2021.

were confirmed on 22 May 2020, the quarantine of the centre lasted from 7 June to 2 July.³⁸⁸ The Office for Foreigners notes that for the duration of the quarantine asylum seekers had access to medical and psychological assistance, food was delivered, contact with staff working in the centre was provided. Healthy asylum seekers from the Warsaw reception centre could move to another centre in Dębak.³⁸⁹ According to some media, asylum seekers staying in the quarantined centre were terrified and felt left alone. NGOs stepped in to satisfy some of their needs (providing laptops, food and cosmetics, online classes for children, psychological support by phone or online).³⁹⁰ The Office for Foreigners informed that one protest occurred in that centre as asylum seekers opposed the limitations that resulted from the COVID-19 quarantine. According to the Office for Foreigners, thanks to immediate reaction of the Office, medical operator and NGOs, the situation was quickly under control.³⁹¹

As regards access of asylum seekers to COVID-19 vaccines, the situation is still unclear. The Commissioner for Human Rights asked the government for guidance on this matter, but there has been no response yet.³⁹²

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:³⁹³

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 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.³⁹⁴

³⁸⁸ Information provided by the Office for Foreigners, 4 March 2021.

³⁸⁹ See information from the Office for Foreigners available (in Polish) at: <http://bit.ly/3tVoP3m> and <http://bit.ly/37doFun>.

³⁹⁰ A. Sowa, 'Wirus w ośrodku dla uchodźców. Zdrowi i chorzy są tu razem', Polityka, 5 June 2020, available in Polish at: <http://bit.ly/3rOFL9H>. However, some NGOs claimed that the situation was not as dramatic as media tried to present it, see A. Ambroziak, 'Organizacje walczące o prawa uchodźców krytykują OKO.press. Odpowiadamy, przepraszamy', 10 June 2020, available in Polish at: <http://bit.ly/3tUz2Nw>.

³⁹¹ Information provided by the Office for Foreigners, 26 January 2021.

³⁹² The Commissioner for Human Rights, Letter from 23 January 2021, available at: <https://bit.ly/2OHd68J>.

³⁹³ Article 68(1) Law on Protection.

³⁹⁴ Article 68(2) Law on Protection.

If an asylum seeker is a person who needs special treatment, his/her needs concerning accommodation and alimentation are taken into account when providing material reception conditions.³⁹⁵ An asylum seeker who needs special treatment should be accommodated in the reception centre by taking into account his special needs.³⁹⁶

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.).

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.³⁹⁷ The same groups can benefit from this transport after the Dublin transfer and release from a detention centre.³⁹⁸ Other vulnerable asylum seekers cannot benefit from the organised transport, they must get to the reception centre by themselves, which is considered ‘a gap in asylum system’.³⁹⁹ In practice, the transport for disabled or elderly people, single parents and pregnant women is provided very rarely. However, in the detention centre in **Krosno Odrzańskie** in 2019, according to the information provided by the SG, those asylum seekers who could not afford bearing the costs of travel to the reception centre were given a financial support from AMIF and – if needed – offered the accommodation and food from Caritas. Other detention centres did not inform about such good practices.

Some of the reception centres are adapted to the needs of disabled asylum seekers. All of the centres managed by the Office for Foreigners (4) have special entry for disabled foreigners and bathrooms adapted to the needs of the asylum seekers on wheelchairs. Other centres (3) have some adaptations for such asylum seekers. There is also a provision of rehabilitation services to this group of persons. The Office for Foreigners declares that it provides the transport for the medical examinations and rehabilitation services as well as specialist equipment, when needed.⁴⁰⁰

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.

1. Reception of women and children

Only one centre is designed to host single women or single women with children. It is located in **Warsaw** and it is managed by the private contractor. From its very beginnings it is fully occupied.⁴⁰¹ 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.⁴⁰²

Since 2008, the Office for Foreigners has a special agreement with the Police, UNHCR, “La Strada” Foundation and Halina Niec Legal Aid Centre aiming to better identify, prevent and respond to gender-based violence in reception centres.⁴⁰³ In regard to all reception centres, special teams have been created,

³⁹⁵ Article 69a Law on Protection.

³⁹⁶ Para 5(3) Annex to the Regulation on rules of stay in the centre for asylum seekers.

³⁹⁷ Article 30(1)(8) Law on Protection.

³⁹⁸ Article 40a and Article 89cb Law on Protection.

³⁹⁹ Pachocka, M. and Sobczak-Szelc K., ‘Refugee Protection Poland – Country Report’, Multilevel Governance of Mass Migration in Europe and Beyond Project (Horizon2020), January 2020, available at: <https://bit.ly/2U1A9uL>, 73.

⁴⁰⁰ Information from the Office for Foreigners, 26 January 2021.

⁴⁰¹ Office for Foreigners, *Guidebook Department of Social Assistance (2019)*, available at: <https://bit.ly/3btqAeG>, 9. However, the occupancy rate was lower in 2020 in this centre as in all other centres. Due to pandemic, living outside of the centres was encouraged.

⁴⁰² Article 72(1)(1) Law on Protection.

⁴⁰³ *Porozumienie w sprawie standardowych procedur postępowania w zakresie rozpoznawania, przeciwdziałania oraz reagowania na przypadki przemocy seksualnej lub przemocy związanej z płcią wobec cudzoziemców przebywających w ośrodkach dla osób ubiegających się o nadanie statusu uchodźcy*, 25 March 2008. To learn

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 28 cases of violence in 2017, 13 in 2018, 14 in 2019 and 10 in 2020.⁴⁰⁴

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.⁴⁰⁵

In 2020, the suspicion of violence being used against asylum-seeking children staying in the centre in **Warsaw** was reported. The Polish language teacher was dismissed and the case is currently pending before the court.⁴⁰⁶

2. Reception of unaccompanied children

The only safeguards related to special reception needs of unaccompanied children are those referring to their place of stay. Unaccompanied children are not accommodated in the centres. The custody court places them in a youth care facility, so unaccompanied children are not accommodated with adults in practice. Until the court makes a decision on placing a child in a regular youth care facility, an unaccompanied child stays with a professional foster family functioning as emergency shelter or in a youth care facility for crisis situations.⁴⁰⁷

As noticed in the EASO report, amendments introduced to Article 61 of the Law on Protection, ‘now make it possible to submit an application for placement in foster custody immediately after an unaccompanied minor expresses the intention to submit an application for international protection. Per previous practice, this would take place only after an application was submitted.’⁴⁰⁸

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).⁴⁰⁹

When providing material reception conditions to children, the need to safeguard their interests should be taken into account, especially taking into consideration family unity, best interests of the child and their social development, security and protection (particularly if they are a victim of human trafficking) and their opinion according to their age and maturity.⁴¹⁰

Whereas previously they were mainly placed in a youth care facility in **Warsaw**, currently unaccompanied asylum-seeking children can be placed in facilities throughout the country. However, in 2020 they were accommodated mainly in **Kętrzyn**, Warsaw, Siemiatycze, Janów Podlaski, and Białystok.⁴¹¹

more about it, see Office for Foreigners, *Guidebook Department of Social Assistance (2019)*, available at: <https://bit.ly/38qPIRm>, 8.

⁴⁰⁴ Information provided by the Office for Foreigners, 1 February 2017, 1 February 2018, 15 January 2019 and 22 January 2020.

⁴⁰⁵ Office for Foreigners, *Guidebook Department of Social Assistance (2019)*, available at: <https://bit.ly/2H9jiPk>, 9.
⁴⁰⁶ Information provided by the Office for Foreigners, 4 March 2021.

⁴⁰⁷ Article 62 (2) Law on Protection.

⁴⁰⁸ EASO, Annual Report on the Situation of Asylum in the European Union 2018 (2019), available at: <https://bit.ly/31GgGID>, 172.

⁴⁰⁹ Article 66 Law on Protection.

⁴¹⁰ Article 69b Law on Protection.

⁴¹¹ Information provided by the Office for Foreigners, 26 January 2021.

F. Information for asylum seekers and access to reception centres

1. Provision of information on reception

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.⁴¹² According to the Border Guard it is provided in 22 languages.⁴¹³

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 material reception conditions and about procedures used in case of the person has been subjected to violence, especially against minors.⁴¹⁴ 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.⁴¹⁵ In the reception centres in **Biała Podlaska** and **Dębak** new-coming asylum seekers may also participate in a course on basic information about Poland and the asylum procedure, with presentations and information package provided on USB.⁴¹⁶ Since March 2020 though, due to the COVID-19 pandemic, such courses were terminated.⁴¹⁷

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 material reception conditions should be translated into. It states that information has to be accessible "in an understandable language". The rules of stay in the centre and above-mentioned information issued on the basis of the current law were translated in practice into English, Russian, Arabic, French, Georgian and Ukrainian.⁴¹⁸

The Supreme Audit Office concluded in 2019 that the Office for Foreigners had provided access to necessary information for asylum seekers at its headquarters, in the centres and through its website. The information concerned asylum procedure, material reception conditions, healthcare, rights and obligations of asylum seekers, appeal proceedings and NGOs' assistance. In the centres, information meetings were organised on a regular basis and asylum seekers could receive leaflets published by NGOs. The Office for Foreigners published its own guides for asylum seekers as well.⁴¹⁹

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

⁴¹² Article 30(1)(5) Law on Protection.

⁴¹³ Information provided by the Border Guard, 11 January 2018.

⁴¹⁴ 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>.

⁴¹⁵ Para 18 of the Annex to the Regulation on rules of stay in the centre for asylum seekers.

⁴¹⁶ 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>.

⁴¹⁷ Information provided by the Office for Foreigners, 26 January 2021.

⁴¹⁸ Information provided by the Office for Foreigners, 22 January 2020.

⁴¹⁹ Supreme Audit Office, *Przygotowanie administracji publicznej do obsługi cudzoziemców. Informacja o wynikach kontroli* (2019), available (in Polish) at: <https://bit.ly/2Sej7IT>, 43.

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.⁴²⁰

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, but not later than 22:00.⁴²¹

Each entry of a non-resident into the premises of the centre requires the permission of:⁴²²

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

The Head of the Office for Foreigners or an employee of the centre can refuse to give permission to enter the centre or withdraw it, if this is justified regarding the interest of the third country national or necessary to ensure the safety or for epidemiological and sanitary reasons.⁴²³

The above-mentioned rules do not apply to the representatives of the UNHCR, who may enter the centre anytime provided that the staff of the centre was notified in advance.⁴²⁴ As regards NGOs, whose tasks include the provision of assistance to asylum seekers, and entities which provide legal assistance to asylum seekers, the Head of the Office for Foreigners may issue a permit to enter the centre for the period of their activities performed for asylum seekers residing in the centre.⁴²⁵

Asylum seekers have access to the information about entities providing free legal assistance. During their stay in the centre, asylum seekers communicate with legal advisers, UNHCR or NGOs mainly by phone, fax, e-mail, etc. (even before the pandemic). Seven out of the ten centres are located in small villages, far away from big cities, where most of the legal advisers, UNHCR and NGOs in Poland have their premises, and accessing them can be an obstacle. As a result, asylum seekers are often contacted only remotely, especially when NGOs do not have the funds for travelling to these centres. Due to the financial problems of NGOs occurring since 2015 (see [Regular Procedure: Legal Assistance](#)),⁴²⁶ their presence in the centres continues to be limited.

The COVID-19 pandemic has affected the access to the reception centres. In the periods of March-May and November-December 2020, no permissions to access the reception centres were given and the permissions already given were withdrawn if the presence of persons or organisations in the centre was not indispensable. Legal, psychological and educational assistance and activities were continued online or by phone. Visits of the family members were excluded. NGOs could access reception centres only in January-February and June-September 2020.

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.

⁴²⁰ Paras 7-9 of the Annex to the Regulation on rules of stay in the centre for asylum seekers.

⁴²¹ Para 9 of the Annex to the Regulation on rules of stay in the centre for asylum seekers.

⁴²² Para 7.2 of the Annex to the Regulation on rules of stay in the centre for asylum seekers.

⁴²³ Para 7.5 of the Annex to the Regulation on rules of stay in the centre for asylum seekers.

⁴²⁴ Para 7.6 and 7.7 of the Annex to the Regulation on rules of stay in the centre for asylum seekers.

⁴²⁵ Para 7.4 of the Annex to the Regulation on rules of stay in the centre for asylum seekers.

⁴²⁶ See also Pachocka, M. and Sobczak-Szelc K., 'Refugee Protection Poland – Country Report', Multilevel Governance of Mass Migration in Europe and Beyond Project (Horizon2020), January 2020, available at: <https://bit.ly/2U1A9uL>, 35-38, 54; ECRE/UNHCR, 'Follow the money II. Assessing the use of EU Asylum, Migration and Integration Fund (AMIF) funding at the national level 2014-2018', January 2019, available at: <https://bit.ly/38h6lin>, 43; Witold Klaus, Ewa Ostaszewska-Żuk and Marta Szczepanik, The role of European funds in supporting the integration of migrants in Poland, November 2017, available at: <http://bit.ly/2EVdxxq>, 9; Legal Intervention Association, 'Fundusz Azylu, Migracji i Integracji – opóźnienia i ich konsekwencje', 4 September 2014, available (in Polish) at: <http://bit.ly/1Cd5nSW>.

Detention of Asylum Seekers

A. General

Indicators: General Information on Detention

1. Total number of asylum seekers detained in 2020:	Not available
2. Number of asylum seekers in detention at the end of 2020:	125
3. Number of detention centres:	6
4. Total capacity of detention centres:	628

There are six detention centres in Poland, which are generally profiled according to demographics: **Lesznowola**, **Białystok**, **Przemyśl** (since 13 October 2020) and **Krosno Odrzańskie** are for men. Women, married couples, and families with children are placed in **Kętrzyn** and **Biała Podlaska** (closed for renovation). Unaccompanied children are placed in the detention centre in **Kętrzyn**. The detention centres in **Krosno Odrzańskie**, **Białystok**, **Przemyśl** and **Biała Podlaska** have rooms with barred windows.⁴²⁷

Due to the COVID-19 pandemic and the lower occupancy, the number of places in detention centres in **Lesznowola** and **Białystok** was reduced. Furthermore, detention centres in **Biała Podlaska** and **Białystok** (only one part of the centre) was closed due to its renovation.

As of 31 December 2020, out of the 248 persons detained, 125 were asylum seekers. Given that 2,803 persons applied for asylum in Poland in 2020, 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.⁴²⁸ Foreigners are obliged to pay for their stay in a detention centre calculated on the basis of algorithm, set in the Polish law.

Contrary to 2017 (when 246 asylum seekers were detained in total), Border Guard did not collect the data on the number of asylum seekers detained in guarded centres in 2020. In general, 739 foreigners were placed in detention centres in 2020 and 33 foreigners were released on the basis of health considerations.⁴²⁹

According to the Office for Foreigners, the asylum cases of asylum applicants placed in detention are prioritised but it does not mean that they are examined more quickly when the cases are complex.⁴³⁰ In practice it means that asylum seekers have only 3-7 days to present additional evidence in their case, before an asylum decision is made. In addition, NGOs claim that in the case of detained asylum seekers, the Refugee Board does not conduct evidentiary proceedings, meaning that they do not assess the grounds for applying for international protection.⁴³¹ Additionally during the proceedings in second instance asylum seekers have only 3-7 days to present the final evidence in their case. The interview is conducted through videoconference in the presence of a psychologist (e.g. in the detention centre in **Kętrzyn**). According to NGOs, sometimes psychologists are only available in the premises of the Head of the Office for Foreigners and not in the centre where the individual is detained. Additionally, asylum seekers complain about poor quality of the videoconference, claiming that they cannot hear what was being said.⁴³²

⁴²⁷ Information provided by the Border Guards, 5 February 2021, Commissioner for Human Rights, *Wyciąg, Strzeżony Ośrodek dla Cudzoziemców w Białej Podlaskiej*, 18-19 July 2018, available (in Polish) at: <https://bit.ly/2TBZ3OY>.

⁴²⁸ Information provided by the Border Guard, 5 February 2021.

⁴²⁹ Information provided by Legal Intervention Association (February- 2021).

⁴³⁰ Information provided by the Office for Foreigners, 2021.

⁴³¹ Information provided by Rule of Law Institute, 20 January 2020.

⁴³² Information provided by Halina Niec Association, 16 February 2021.

B. Legal framework of detention

1. Grounds for detention

Indicators: Grounds for Detention

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

Asylum seekers are placed in a detention centre if alternatives to detention cannot be used and for the following reasons:⁴³³

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:⁴³⁴

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

Detention is possible in law and in practice in all asylum procedures, especially in the case of illegal crossing of the border and transfer under the Dublin Regulation. There are concerns that detention is not used as a measure of last resort and is often prolonged automatically, but the ratio between the number of asylum applicants and the number of detainees show that there is no systematic detention of asylum seekers as such.⁴³⁵

⁴³³ Articles 87(1) and 88a(1) Law on Protection.

⁴³⁴ Articles 87(2) and 88a(1) Law on Protection.

⁴³⁵ Information provided by Legal Intervention Association Rule of Law Institute and Nomada Foundation, February 2021.

2. Alternatives to detention

Indicators: Alternatives to Detention

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

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

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

SG can use more than one alternative in the case of any foreigner.⁴³⁶ 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).⁴³⁷ An asylum seeker can be detained only if the alternatives to detention cannot be applied.⁴³⁸ In practice asylum seekers are placed in detention, and alternatives to detention are not considered, properly justified and explained.⁴³⁹ In 2020, 524 foreigners were subject to alternatives to detention.

Over the period 2016- 2020 alternatives to detention were used as follows for foreigners, including asylum seekers and returnees:⁴⁴⁰

Alternatives to detention in Poland: 2016-2020					
Type of alternative	2016	2017	2018	2019	2020
Reporting obligations	1,208	2,094	1,327	1,603	507
Residence in a designated place	1,333	1,818	1,058	1,522	476
Bail	3	4	1	3	1
Surrendering travel documents	54	49	29	36	39
Total	2,598	3,965	2,415	3,164	1,023

Source: Border Guard, 14 January 2018; Border Guard, 14 and 25 January 2019, 17 January 2020, 5 February 2021.

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

⁴³⁶ Article 88(3) of the Law on Protection.

⁴³⁷ Articles 88(2) and 88b(2)-(3) Law on Protection.

⁴³⁸ Article 88a(1) Law on Protection.

⁴³⁹ Information provided by Legal Intervention Association Rule of Law Institute and Nomada Foundation, February 2021,

⁴⁴⁰ In practice, a person may be subject to more than one alternative measure.

If a decision to release a foreigner from the detention centre is issued and the asylum seeker is a disabled, elderly, pregnant or single parent, the SG is obliged to organise the transport to the reception centre, and – in justified cases – provide food during the transport.⁴⁴¹

In 2020, more than 7 asylum seekers benefited from this transport.⁴⁴²

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,⁴⁴³ as under the law, an asylum seeker should be released if further detention constitutes a threat to their life or health.⁴⁴⁴ This means that, for example, children, if they stay in Poland with parents or other legal guardians, can still be detained, as can pregnant women if they are healthy.

Notwithstanding legal provisions, still in practice it happens that vulnerable asylum seekers are detained, even when they were diagnosed with mental health problems as a result of past events.⁴⁴⁵

In 2020, only 33 foreigners (2 were detained in **Przemyśl** and 7 detained in **Biała Podlaska**) were released on the basis of health considerations.⁴⁴⁶

In the opinion of NGOs, the problem with identification of victims of torture and violence persists. Identification should be conducted before placing in detention and not in detention. Indeed, a poor mental condition is hardly ever accepted by courts as sufficient ground for not placing in or releasing an asylum seeker from detention. 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 2019 the court appointed only in 4 cases the psychologist or psychiatrist as an external consultant, which means that expert was appointed in 0.5% of detention cases.⁴⁴⁷

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.⁴⁴⁸ Additionally, courts do not accept psychological opinions submitted by independent psychologists (e.g. from NGOs),⁴⁴⁹ and they rely on short opinions (very often it is one sentence stating there are no obstacles to prolonging the stay in guarded centre) of the physician who works in detention centre. In practice, only courts of higher instance call on experts to determine applicants' mental health state⁴⁵⁰ but this happens very rarely. Additionally, courts do not conduct their own evidentiary proceedings.⁴⁵¹

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

⁴⁴¹ Article 89cb Law on Protection.

⁴⁴² Information from different branches of the SG in Krosno Odrzańskie and Kętrzyn 2021.

⁴⁴³ Article 88a(3) Law on Protection.

⁴⁴⁴ Article 406(1)(2) Law on Foreigners.

⁴⁴⁵ T Dęboczyk and J Oleszkowicz, 'Praktyka sądowa stosowania detencji cudzoziemców w Polsce', 38.

⁴⁴⁶ Information from different branches of the SG (January-February 2021), information provided by Border Guard Headquarters, 12 February 2021.

⁴⁴⁷ SIP, Annual Report 2019, April 2020, available in Polish at: <https://bit.ly/3sloolp>.

⁴⁴⁸ Information provided by Legal Intervention Association, January-February 2021.

⁴⁴⁹ Information provided by Legal Intervention Association, January 2021.

⁴⁵⁰ UN Committee against Torture, Concluding observations on the seventh periodic report of Poland, 22-24 July 2019, available at: <https://bit.ly/36kr8Qv>

⁴⁵¹ SIP, interview, January 2021.

centres deepens the trauma.⁴⁵² Torture survivors stay in detention centres and even if they are identified at a later stage, they are not released from detention. Medical staff and psychologists in the detention centers lack expertise and proper knowledge of Istanbul Protocol.⁴⁵³

After the visit in the detention centre in Biała Podlaska in 2018, the Commissioner for Human Rights again confirmed that the Border Guard's guidelines on how to deal with persons requiring special treatment should clearly state that the person identified as a victim of violence should be released from detention (as required by the law) and not only offered treatment in detention.⁴⁵⁴

In its 2019 concluding observations, the UN Committee against Torture stated that in Poland there is insufficient capacity to identify asylum seekers who are victims of torture and lack of adequate protection and care for survivors of sexual and gender-based violence. In the opinion of CAT, Poland should introduce a principle to law that detention of asylum-seekers, and in particular children and vulnerable persons, should be a measure of last resort, for as short a period as possible and in facilities appropriate for their status. Furthermore, CAT recommended that Polish authorities refrain from placing asylum seekers and in particular children in guarded centres and ensure the fast and appropriate identification of vulnerable persons including survivors of torture and ill-treatment, as well as sexual and gender-based violence, and provide them with adequate access to health care and psychological services.⁴⁵⁵

Moreover, the Committee was concerned that training on the provisions of the Convention and the Istanbul Protocol is not part of the training of border guards, judges, forensic doctors and medical personnel engaged in the treatment of foreigners in detention. Therefore, in the opinion of CAT, Poland should remedy it.

In July 2017, the Regional Court of Przemyśl released a family from the detention centre in Przemyśl who had been detained for 10 months. The family was placed in the detention centre in October 2016, after multiple attempts to apply for asylum at the border crossing point in Medyka on the Ukrainian border. During their stay, the mother was diagnosed with adaptation and depressive disorders related to violence and torture at a police station in her country of origin and detention in Poland which had a negative impact on her and her children. In June 2017 she tried to commit suicide. Although her and her children's poor mental state was confirmed in successive psychological and psychiatric assessment reports, Border Guards refused to release her and her family. HFHR filed a complaint to the ECtHR on her behalf.⁴⁵⁶ On 8 January 2018 the European Court of Human Rights communicated the case of *M.Z and Others against Poland*.⁴⁵⁷ As of March 2021, the case was pending.

On 25 June 2019 District Court in **Przemyśl** released from the detention centre a rejected asylum seeker who was a victim of torture. The court appointed an independent expert- a psychologist who examined the applicant. The opinion confirmed that he was a victim of violence and suffered from PTSD. The court stated that the Border Guards should properly assess state of health of the foreigner if he claimed that

⁴⁵² Commissioner for Human Rights, *Raport Krajowego Mechanizmu Prewencji Tortur z wizytacji Strzeżonego Ośrodka dla Cudzoziemców w Białej Podlaskiej*, 7 January 2019, available (in Polish) at: <http://bit.ly/2BU7ej5>, 7

⁴⁵³ Conference presentation of the representative of the National Mechanism for the Prevention of Torture, 3 December 2018, Milano, information available (in Polish) at: <http://bit.ly/2T5YvE7>.

⁴⁵⁴ Commissioner for Human Rights, *Raport Krajowego Mechanizmu Prewencji Tortur z wizytacji Strzeżonego Ośrodka dla Cudzoziemców w Białej Podlaskiej*, 7 January 2019, available (in Polish) at: <http://bit.ly/2BU7ej5>, 7.

⁴⁵⁵ Commissioner for Human Rights, 'Uwagi końcowe Komitetu Przeciwko Torturom wobec Polski' available at: <https://bit.ly/36jgfhN>.

⁴⁵⁶ HFHR, 'Torture victim released after 10 months in immigration custody', 12 July 2017, available at: <http://bit.ly/2ocUY6q>.

⁴⁵⁷ ECtHR, *M.Z. and Others against Poland*, Application No 79752/16, lodged on 25 April 2017, available at: <https://bit.ly/3aAYhL9>.

experienced torture in his country of origin. In addition, court noted that the opinion of the Border Guards' physicians may be questioned as it cannot be treated as independent expert opinion.⁴⁵⁸

On 2 November 2020, the District Court in **Olsztyn** released an asylum seeker who was a victim of violence. The court stated that a foreigner had to be released regardless of the reason of placing him in the detention centre; type of the experienced violence; and the place and circumstances foreigner suffered from violence. The court indicated that foreigners cannot be placed in detention centre if there are merely grounds for reasonably suspecting that he/she is a victim of violence. Furthermore, the court shared the concerns raised by SIP regarding the internal algorithm on the basis of which the identification of violence victims is carried out and stated that releasing the foreigners who suffered from violence and whose treatment is not possible in detention centre is against the Polish law.⁴⁵⁹ In this case, Border Guard knew that an asylum seeker had a number of gunshot wounds and was in a situation posing a real threat of serious injury or death. However, they denied to release him from detention centre because in their opinion there was no evidence that he was subject to violence. The foreigner's mental health had deteriorated during 8-month detention,

In two other cases in 2020 and in 2021 the national courts granted compensation for unlawful detention of foreigners. In one of the cases the Regional Court in **Olsztyn** stated that a person who experienced violence cannot be detained regardless of a form of violence and identity of the perpetrator.⁴⁶⁰ In 2021 – in the first case which concerned unlawful detention of the family, the court granted 90,000 PLN (around 19,600 Euros) and in the other which concerned the detention of victim of torture – 39,000 PLN (around 8,500 Euros).

On 18 January 2020, the European Court of Human Rights communicated the case of *A.A. against Poland*.⁴⁶¹ The case concerned an asylum seeker from Burundi, who came to Poland in January 2019 with a fake Swiss ID. The applicant was detained and placed in a detention centre in **Kętrzyn** despite of the fact that she was a victim of rape, suffered from that traumatic experience and had permanent scars. During her stay in the guarded centre, she was examined by two psychologists. The first expert, the employee of the detention centre, issued an opinion according to which she did not suffer from PTSD, but she needed psychological treatment. The second psychologist found out that she was a victim of violence and that her emotional state had worsened. In addition, expert recommended psychiatric consultation and treatment. However, the courts prolonged her detention and stated that she represented a risk of absconding and was not diagnosed with PTSD syndrome and that the guarded center provide her with adequate living conditions and medical care. Additionally, she was not allowed to participate in court hearings concerning her appeals against the placement and prolongation of her detention. Moreover, her appeal against the extension of detention was examined only after 50 days. On 29 September 2020 the Court decided to strike the application out of the list of cases due to unilateral declaration that the applicant was deprived of her liberty in breach of Article 5 § 1 (f) of the Convention and that she did not have at her disposal an effective procedure by which she could challenge the lawfulness of her detention, as required by Article 5 § 4 of the Convention. Poland undertook to pay the applicant the amount of EUR 9,000.

3.2. Detention of children

According to the law, unaccompanied asylum-seeking children should not be detained,⁴⁶² 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

⁴⁵⁸ SIP, 'Victims of violence in guarded centres -judgment of Regional Court in Przemyśl', judgment of 25.06.2019, II Kz 91/19, available at: <https://bit.ly/2RiD29a>.

⁴⁵⁹ SIP, "District court in Olsztyn: a victim of violence may not be put in a detention center", judgment of 2 November 2020, VII KZ 420/20.

⁴⁶⁰ SIP, 'Victim of violence cannot be deprived of liberty for migration reasons', judgment of 29.07.2019 II Ko 280/18, available at: <https://bit.ly/2Ro8OBT>.

⁴⁶¹ ECtHR, "A.A. against Poland" Application, no. 47888/19, lodged on 29 August 2019, available at: <https://bit.ly/2TPp6Fp>.

⁴⁶² Article 88a(3) Law on Protection.

are placed only in a detention centre in **Ketrzyn**, where adequate rooms (with 15 beds) are separated from the remaining part of the centre.

Asylum-seeking children who are with members of their family can be placed in detention centres together with accompanying adults.⁴⁶³ At the end of 2020, 9 children were held in detention centre in **Ketrzyn**, and 101,⁴⁶⁴ (including 23 unaccompanied children) in total were detained in 2020 (children in families, in asylum and return procedure).⁴⁶⁵ In 2020, children (in asylum and return procedure) stayed in detention centres in average for 70 days. Children in asylum procedure stayed (in the guarded centre of **Biała Podlaska**) in average for even 137 days (as for 30 June 2020) and for 134 days in **Ketrzyn** as for 1 January 2020. The shortest stay of families with children in detention centre was for 69 days in Ketrzyn at the end of 2020 and in **Biała Podlaska** at the beginning of 2020.⁴⁶⁶

In 2018, the policy of protection of children in detention was put in place. The new algorithm was introduced- "Intervention procedures in case of hurting children in guarded centres for aliens". Within the framework of that policy, the employees of guarded centres were trained in the new rules and identification of a behaviour which should be considered an abuse.⁴⁶⁷

In March 2018 the Commissioner for Child Rights sent a list of recent international recommendations concerning decisions on placing children in detention centers for foreigners to the presidents of courts of appeal (*prezesi sądów apelacyjnych*). Moreover, the Commissioner underlined that placing children in detention is never in the best interest of a child,⁴⁶⁸ 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.⁴⁶⁹

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

In August 2019, the UN Committee against Torture (CAT) expressed its concern regarding the detention of families with children and unaccompanied minors over 15 years old. According to CAT conditions in detention centres require improvements and Poland should refrain from placing asylum seekers and in particular children in guarded centres for foreigners.⁴⁷⁰ In addition, Poland should introduce a principle to the law that detention of asylum-seekers, and in particular children and vulnerable persons, should be a measure of last resort, for as short a period as possible and in facilities appropriate for their status. Furthermore, CAT recommended that Polish authorities refrain from placing asylum seekers and in particular children in guarded centres, and ensure the fast and appropriate identification of vulnerable persons including survivors of torture and ill-treatment, as well as sexual and gender-based violence, and provide them with adequate access to health care and psychological services.⁴⁷¹

⁴⁶³ 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.

⁴⁶⁴ Information provided by Border Guard Headquarters, 12 February 2021.

⁴⁶⁵ Information provided by Border Guard, 5 February 2021.

⁴⁶⁶ Information provided by Border Guard, 26 January 2020 and 2 February 2021.

⁴⁶⁷ Communication from Poland concerning the case *Bistieva and others v. Poland* (application No. 75157/14), 14 June 2019, available at: <https://bit.ly/2RzjAVU>.

⁴⁶⁸ Commissioner for Child's Rights, *Wystąpienie do Prezesa Rady Ministrów*, 3 December 2018, available (in Polish) at: <https://bit.ly/2TCZ45d>.

⁴⁶⁹ Commissioner for Child's Rights, 6 March 2018, available in Polish at: <https://bit.ly/2GgwX8T>.

⁴⁷⁰ UN Committee against Torture, Concluding observations on the seventh periodic report of Poland, 22-24 July 2019, available at: <https://bit.ly/36qh3BL>.

⁴⁷¹ Commissioner for Human Rights, "Uwagi końcowe Komitetu Przeciwko Torturom wobec Polski" available at: <https://bit.ly/2GmKzNP>.

In the opinion of Commissioner for Human Rights, Commissioner for Children Rights,⁴⁷² HFHR and other NGOs in Poland, child detention should be forbidden by law in all cases because detention, regardless of children's migration status and their parents' decisions, can never be in the best interest of a child, violates the children rights and may have a negative effect on children and their further development.⁴⁷³

As of 2020, detention decisions still did not consider the best interest of the child or did not consider the individual situation of the child.⁴⁷⁴ When placing a child in a guarded center together with parents, the courts either do not mention children in a justification of the detention decision or justify detention relying on the best interest of the child principle, or limit their assessment to statement that children will be with their parents or detention centres ensure medical and psychological support to foreigners.⁴⁷⁵ In addition, the courts place families in guarded centres for a maximum period of time, rather than for the shortest period.⁴⁷⁶ Further, courts did not order any further medical or psychological examination and did not interview children but instead relied on the documents presented by the Border Guards. Furthermore, justifications of the courts' decisions were adapted from the BG application for prolonging the detention. Moreover, some courts treated detention as a form of punishment for crossing the border illegally.⁴⁷⁷

In the NGOs' assessment, courts examine 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 had 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.⁴⁷⁸

In October 2020 the District Court in **Olsztyn** released an unaccompanied child who applied for asylum in Poland. In this case, Border Guard assumed that his friend (not related) with whom he was travelling was his legal guardian. During his 8 months stay in detention centre in **Kętrzyn**, Border Guards did examine the relations between these two boys.⁴⁷⁹

On 8 January 2018 the European Court of Human Rights communicated the case of *M.Z and Others against Poland*.⁴⁸⁰ The application was lodged on 25 April 2017 and concerned a family with two children from Tajikistan, placed in the detention centre in **Przemyśl** for more than 8 months. During their detention, the mental state of the applicant was worsening and she suffered from depression and showed symptoms of adjustment disorder. She tried to commit suicide and she was in psychiatric hospital a few times. The applicants complained that their detention resulted in inhuman and degrading treatment; was arbitrary and contrary to the domestic law. Moreover, the situation of children was not taken into account and the length of detention had an impact on their family life. An application for a compensation for unlawful detention of the family was submitted and will be considered by the District Court in Warsaw. The motion was based, among others, on the fact that the family was deprived of liberty, despite of the fact that the applicant's psychophysical condition indicated that she was a victim of violence and that her health deteriorated because of detention. The application also emphasized that impact on minor children was not investigated properly when deciding on detention.⁴⁸¹ As of March 2021, the case was still pending.

⁴⁷² Commissioner for Child's Rights, "Wystąpienie do Prezesa Rady Ministrów, 3 December 2018, available (in Polish) at: <https://bit.ly/2TCZ45d>.

⁴⁷³ HFHR, "Rights of persons deprived of liberty-fundamental legal and practical issues. HFHR perspective", July 2018, available at: <https://bit.ly/2SktNaF>.

⁴⁷⁴ Information provided by HFHR and SIP, February 2021.

⁴⁷⁵ HFHR, Poland submissions on ending immigration detention of children to the UN Special Rapporteur on the human Rights of Migrants, May 2020, available at: <https://bit.ly/30luthr>

⁴⁷⁶ HFHR, "Prawa osób pozbawionych wolności", May 2017, available (in Polish) at: <http://bit.ly/2GTFPAX>.

⁴⁷⁷ HFHR, "Research on the applicability of the best interests of the child principle as the primary consideration in detention decisions as well as the alternatives to detention, Marta Górczyńska, Daniel Witko, 2017.

⁴⁷⁸ Commissioner for Child's Rights, 6 March 2018, available (in Polish) at: <https://bit.ly/2GgwX8T>.

⁴⁷⁹ District Court in Olsztyn, VII KZz 420/20, 30 October 2020.

⁴⁸⁰ ECtHR, *M.Z. and Others against Poland*, Application No 79752/16, lodged on 25 April 2017, available at: <https://bit.ly/3aAVOAj>.

⁴⁸¹ HFHR, *Warsaw court to rule on moral damages for family's wrongful immigration detention*, 6 February 2019, available at: <https://bit.ly/3aEq50Y>.

On 10 April 2018, the European Court of Human Rights issued a judgment in the case of *Bistieva and others against Poland*. The case concerned a family of five, placed in the detention centre in Kętrzyn for almost 6 months. The court ruled that their right to family life was violated and Polish authorities did not assess the impact of the detention on the family, did not consider alternatives to detention and did not view detention as a measure of a last resort. Furthermore, the court held that no sufficient reason was provided to justify the detention and the best interest of the child was not taken into account. The court held that the family was in the detention centre for too long and the preceding asylum procedure concerning a family with children should be conducted faster and with greater diligence. Proceedings of execution of that judgment take place before the CoE Committee of Ministers. In June 2019 the government presented an Action Report on the implementation of the judgment in this case. According to the government, alternatives to detention are taken into account in cases of families with children, detention procedures are standardized, identification system of vulnerable groups is developed and implemented, and asylum cases persons in detention are treated with priority by the asylum authorities. Moreover, the guarded centres are adjusted to the needs of minors, children have access to education and medical care. Additionally, the *Bistieva* judgment has been translated into Polish, published on the Ministry of Justice website and disseminated among asylum authorities and Border Guard. Hence, Polish government stated that general measures adopted are sufficient and Poland fulfilled its obligations. In the opinion of Border Guard, that judgment does not impact prolongation of a foreigners' stay in detention centres.⁴⁸² On the other hand, according to HFHR, the general measures taken by Poland are not sufficient because the amendments in Polish law are not always applied in practice and Polish courts, placing children in detention centre, do not refer to the child's best interest and do not treat children as a part of the proceedings, ignoring their presence. Furthermore, the courts rely on the information provided by the Border Guard and disregard independent psychological opinion on the negative impact of detention on children. Detention is not applied as a measure of last resort but rather it is maintained for the maximum period.⁴⁸³

On 29 January 2019 the European Court of Human Rights communicated the case *R.M. and Others against Poland*. The application was lodged on 26 February 2018 and concerned family with three minor children, placed in the detention centre in Kętrzyn for almost eight months. Family was transferred to Poland under Dublin III regulation. Detention was prolonged despite the psychological problems of one of the children. The applicants presented an expert opinion but the courts extended their detention. The applicant complains that the detention of her children, then aged eleven and three years, constituted treatment contrary to Article 3 of the ECHR and her detention was also arbitrary, unjustified and unnecessary. The applicant also stated that placing and continuation of their detention had violated Article 5(4) of the ECHR as she had not received Border Guard motions on prolongation of their detention. Additionally, she complained that detention was a disproportionate interference with their right to respect for their family life.⁴⁸⁴ The case is pending as for March 2021.

On 6 September 2019, the Polish government submitted a unilateral declaration in the case of *Bilalova against Poland* and acknowledged a violation of Article 8 of the ECHR. The case was communicated in 2014 and concerned administrative detention of a mother with five minor children aged between 4 and 10 for three months. The applicant complained that Polish authorities never assesses the child's best interest and the alternatives to detention were not considered. On 25 March 2020, the European Court of Human Rights published its judgment and found that the detention of the children amounted to a violation of Article 5 (1) (f).⁴⁸⁵ In the opinion of the Court, the conditions at the detention centre were similar to penitentiary institution, and therefore the court found the detention unlawful. Additionally, the Court noted that Polish authorities had not treated detention as a measure of last resort and did not assess the possibility of applying alternatives to detention. The Court also found that their stay in the guarded center was too long.⁴⁸⁶

⁴⁸² Information provided by Border Guard, 5 February 2021.

⁴⁸³ Information provided by the Helsinki Foundation for Human Rights, 7 January 2021.

⁴⁸⁴ ECtHR, *M.R and others against Poland*, Application No 11247/18, lodged on 26 February 2018, available at: <https://bit.ly/30TcvCz>.

⁴⁸⁵ ECtHR, *Dagmara BILALOVA against Poland*, Application No 23685/14, lodged on 25 March 2014, available at: <https://bit.ly/37kQJu3>.

⁴⁸⁶ HFHR, *Kolejny wyrok ETPCz w sprawie detencji*, available at: <http://bit.ly/2MMmpDk>.

In June 2020, the court issued a third judgment on children detention in Poland.⁴⁸⁷ The ECtHR found a violation of the right to family life of the child because the Polish authorities did not examine the child's best interest when deciding on detention of a family, did not treat detention as a measure of last resort and did not examine the possibility of applying alternatives to detention. The Court stated that this violation had occurred even if there were grounds to believe that the family would leave Poland after applying for asylum in Poland.⁴⁸⁸

In November 2019, a complaint to the UN Human Rights Committee was submitted to challenge another case of child detention. It addressed detention of an asylum-seeking family (single father with two children) in the detention centre in **Biała Podlaska** for 10 months, following their Dublin-transfer to Poland in November 2018. In this case, courts did not properly assess children's situation and their best interests. The District Court, prolonging the detention of the family, considered only the opinion of Border Guard stating that there were no contradictions for the further children's stay in detention centre. Likewise, Border Guard refused to release the family despite the fact that mental condition of children was deteriorating. On 10 of February 2021 the case was communicated to the Polish government.⁴⁸⁹

4. Duration of detention

Indicators: Duration of Detention

- | | |
|--|------------------|
| 1. What is the maximum detention period set in the law (incl. extensions): | 6 months |
| 2. In practice, how long in average are asylum seekers detained? | No data for 2020 |

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.⁴⁹⁰ 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.⁴⁹¹ 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.⁴⁹² 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.⁴⁹³

In 2020, the average length of stay of asylum seekers in detention centre was in:

- **Białystok**: 77 days,
- **Przemyśl**: 65 days as of 30 June 2020 (38 days at the beginning of January, at the end of 2020 -34 days),
- **Krosno Odrzańskie**: 74 days (49 days at the beginning 2020, 75 as of 30 June 2020, 88 days at the end of 2020),
- **Lesznowola**: 130 days,
- **Ketrzyn**: 134 days at the beginning of 2020, 86 days as of 30 June 2020, 69 at the end of 2020.
- **Biała Podlaska**: 41 days at the beginning of 2020, 137 days as of 30 June 2020, 59 at the end of 2020.⁴⁹⁴

⁴⁸⁷ ECtHR, cases of A.B. AND OTHERS against Poland, Applications No 15845/15 and 56300/15, lodged on 4 November 2015, available at: <http://bit.ly/3kJFTFm>

⁴⁸⁸ HFHR, ETPC po raz trzeci stwierdził bezprawność detencji dzieci uchodźców w Polsce, available at: <http://bit.ly/3kLijl8/>.

⁴⁸⁹ HFHR, Pierwsza sprawa z Polski dotycząca detencji cudzoziemców przed Komitetem Praw Człowieka ONZ, available at: <http://bit.ly/2MOh8v3>.

⁴⁹⁰ Article 89(1) Law on Protection.

⁴⁹¹ Article 89(2)-(3) Law on Protection.

⁴⁹² Article 89(4)-(5) Law on Protection; Article 404(5) Law on Foreigners.

⁴⁹³ Article 89(4a) Law on Protection.

⁴⁹⁴ Information provided by different branches of Border Guard, January -February 2021.

Generally, most asylum seekers are unlikely to spend the whole status determination procedure in detention. However, if they apply for asylum from detention, their stay in detention can be prolonged for 90 days and if their application is rejected, their stay in detention can be prolonged even if they lodge an appeal against the negative asylum decision. If the asylum proceedings will end with a final decision within 6 months from applying for refugee status, asylum seekers will spend their whole asylum proceedings in detention, but it is hard to say that this is the case for most of them. There was a couple of cases in detention centre in **Białystok** in 2021 when asylum seekers were detained for the maximum time.

C. Detention conditions

1. Place of detention

Indicators: Place of Detention

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

There are two types of detention centres in Poland, both used for detaining asylum seekers and foreigners subject to return procedures, namely guarded centres and so-called rigorous detention centres.

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.

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.

1.1. Guarded centres

These are 6 guarded centres with a total capacity of 595 (compared to 494 in 2019, 590 in 2018 and 608 in 2017) places for foreigners, located in:

Capacity and occupancy of guarded centres: 2018 - 2020				
Centre	Maximum capacity	Occupancy end 2018	Occupancy end 2019	Occupancy end 2020
Biała Podlaska	130	32	19	0
Białystok	122	20	69	40
Lesznowola	73	46	33	38
Kętrzyn	120	25	11	69
Krosno Odrzańskie	64	55	32	39
Przemyśl	86	38	14	62
Total	595	216	178	248

Source: Border Guard, 5 February 2021.

Currently in four detention centres (**Białystok**, **Krosno Odrzańskie**, **Lesznowola**, **Przemyśl**) only men are held and in another two- (**Kętrzyn**, **Biała Podlaska** -closed at the end of 2020) only families with school-

age children are held. Additionally, Border Guard plan to build a new building for families with children in guarded centre in **Lesznowola** in 2021.

In one of the centres (**Kętrzyn**), there is a separate part for unaccompanied irregular migrant children.⁴⁹⁵ Families are placed together in one room as far as possible both under the law⁴⁹⁶ and in practice.⁴⁹⁷ The single men are placed in rooms according to their nationality or preferences. In addition, there is a possibility to change a room on a foreigner's justified demand.⁴⁹⁸ There are 2 places (1 room) for individuals with a certificate of disability in Kętrzyn.

The Polish authorities decided to remove bars in the windows in the detention centres and installed special secure windows in **Lesznowola**, **Kętrzyn** which cannot be opened without assistance of the Border Guard officers.⁴⁹⁹ In 2021 that windows will be installed in **Biała Podlaska**.

1.2. "Rigorous detention centres" (*areszt dla cudzoziemców*)

The term, literally translated as "arrests for foreigners", replaced that of "pre-removal centres" as of 1 May 2014. These facilities impose more rigorous conditions of detention than guarded centres.⁵⁰⁰ Until December 2012 there were 5 such centres. Currently, there is one centre with a capacity of 33 places in **Przemysł** for men and women, which is a single unit with a separate entrance.⁵⁰¹ In 2020, a total of 29 foreigners were placed in the **Przemysł** rigorous detention centre. At the end of 2020 there were 6 foreigners detained.⁵⁰²

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.⁵⁰³ 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.⁵⁰⁴

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.⁵⁰⁵ 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**, **Przemysł**, **Lesznowola**, and **Krosno Odrzańskie**) are relatively new and in good condition (they were built after 2008), **Krosno Odrzańskie**, **Białystok** and

⁴⁹⁵ Information provided by the Border Guard, 14 and 25 January 2019; Article 414(4) Law on Foreigners.

⁴⁹⁶ Article 414(3) and (5) Law on Foreigners.

⁴⁹⁷ HFHR and Association for Legal Intervention, *Wciąż za kratami*, 2014, available (in Polish) at: <http://bit.ly/1JBxxXm>, 17. Information provided by the Border Guard, 14 and 25 January 2019.

⁴⁹⁸ Information provided by the Border Guard, 18 January 2020.

⁴⁹⁹ Information provided by Border Guard, 5 February 2021

⁵⁰⁰ 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.

⁵⁰¹ Information provided by the Border Guard, 14 and 25 January 2019.

⁵⁰² Information provided by Association for Legal Intervention, February 2021.

⁵⁰³ Article 88a(2) Law on Protection.

⁵⁰⁴ Centrum Pomocy Prawnej im. Haliny Nieć, K. Przybysławska (Ed.), *Monitoring of Forced Returns from Poland July 2014-June 2015*, 35-36.

⁵⁰⁵ Articles 410-427 Law on Foreigners.

Lesznowola, Przemyśl, Biała Podlaska have been renovated in recent years. The guarded centre in Białystok was renovated until the end of 2018 and the renovation will resume in 2021. In addition, the guarded centre in **Przemyśl** and **Biała Podlaska** are renovated and the new premises for families with children are to be built in guarded centre in **Lesznowola** in 2021.

In **Krosno Odrzańskie** where only men are placed, foreigners stay in eight, six or four-bed rooms.⁵⁰⁶ In Lesznowola rooms have adequate access to natural light and double rooms measure 14 m2 each. In Białystok rooms are well -lit and ventilated.⁵⁰⁷

The main equipment in a room consists of beds, small wardrobes and a small table. In **Lesznowola** there is a television in each room (also in **Krosno Odrzańskie**), a room for preparing meals on their own, laundry, drying room, gym and outdoor pitch. 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).⁵⁰⁸

Before the admission to the guarded centre and in situations justified on grounds of safety and order, foreigners are subject to detail two-stage checks. i.e. from the waist up and after dressing up from the waist down.⁵⁰⁹

Foreigners are subject to constant monitoring, which is disproportionate to their situation and applied in the penitentiary system only to particularly dangerous prisoners.

In some detention centres, the food is provided by external providers, while in others it is prepared in the centres (e.g. in **Białystok**). Additionally, detainees have access to the microwave (e.g. in **Białystok**) or a separate place where they can prepare food by themselves (Lesznowola). There are several specific diets e.g., vegetarian, vegan, adapted to Muslims, adapted to pregnant or breastfeeding women or diabetics. Other diets can be respected on prescription of the physician.⁵¹⁰

2.2. Activities and education

In all guarded centres there is a sport and recreation space.⁵¹¹ 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. 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.⁵¹² Detainees can watch television without any limitations, even until late at night.⁵¹³ 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. 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.⁵¹⁴ Furthermore, the Border Guard Chief Commander ordered on 27 January 2017 the blocking of sites with terrorist-related and

⁵⁰⁶ Commissioner for Human Rights, *Wyciąg Strzeżony Ośrodek dla Cudzoziemców w Krośnie Odrzańskim*, 30 January 2018, available (in Polish) at: <http://bit.ly/2F2ptCr>.

⁵⁰⁷ CPT Report 2018, available at: <https://bit.ly/2HVZltc>, 24.

⁵⁰⁸ CPT Report 2018, available at: <https://bit.ly/2HVZltc>, 24.

⁵⁰⁹ Information provided by Border Guard, 5 February 2021.

⁵¹⁰ Commissioner for Human Rights, *Wyciąg Strzeżony Ośrodek dla Cudzoziemców w Przemyślu*, 7 February 2018, available (in Polish) at: <http://bit.ly/2EXIR4y>.

⁵¹¹ Paras 2 and 9 Regulation on detention centres.

⁵¹² CPT Report 2018, available at: <https://bit.ly/2HVZltc>, 24.

⁵¹³ Information provided by the Border Guard, 18 August 2015.

⁵¹⁴ Commissioner for Human Rights, *Wyciąg Strzeżony Ośrodek dla Cudzoziemców w Krośnie Odrzańskim*, 30 January 2018, available (in Polish) at: <http://bit.ly/2F2ptCr>.

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.⁵¹⁵ Clearance of the internet usage was also introduced⁵¹⁶ but on the other hand, foreigners placed in detention centres in **Białystok, Krosno Odrzańskie, Przemyśl** and **Lesznowola** have a possibility to use Skype a day after signing up for the list.

The detainees have access to reading and leisure materials. There are libraries – with a number of books and newspapers in several languages – Russian, English, and French. New books or newspapers, dictionaries, handbooks, maps and other materials were provided to all libraries in 2019. They also have popular games to play (e.g. chess, cards). Concerts and sport competitions are organised for adults and children in **Kętrzyn**. On the other hand, according to UNHCR, foreigners complained that additional activities are rarely organised and that they feel bored.

Detention centres provide rooms for religious practices.

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

In all centres each asylum applicant and irregular migrant has an officer appointed to their case with a scheduled meeting to discuss their case. The rules of stay in the detention centres are available in 17 languages: Arabic, English, Ukrainian, Russian, French, Armenian, Chinese, Georgian, Hindi, Spanish, Mongolian, Persian, Turkish, Farsi, Urdu, Bengali and Vietnamese.⁵¹⁷ 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.⁵¹⁸ None of the children staying there regularly attends school. Schools near the detention centres in **Kętrzyn** and **Biała Podlaska** delegate teachers to work in detention facilities. Special classrooms are prepared in these centres. This is the result of agreements between the Border Guard, educational institutions and local authorities.⁵¹⁹

Due to COVID-19, children implement schooling obligation on-line on the same terms as Polish pupils.

Moreover, educational departments in guarded centres organise additional classes for children, e.g., compensatory classes and activities for adults on e.g. Mother's Day, Father's Day, Refugee day.⁵²⁰

⁵¹⁵ CPT Report 2018, 28; available at: <https://bit.ly/2HVZlTc>. See also Commissioner for Human Rights, *Wyciąg Strzeżony Ośrodek dla Cudzoziemców w Białej Podlaskiej*, 7 January 2019, available (in Polish) at: <https://bit.ly/2TBZ3OY>.

⁵¹⁶ Information provided by the Border Guard, 14 and 25 January 2019.

⁵¹⁷ Information provided by the Border Guard, 18 August 2015.

⁵¹⁸ HFHR and Association for Legal Intervention, *Wciąż za kratami*, 2014, available (in Polish) at: <http://bit.ly/1JBxxXm>, 46.

⁵¹⁹ Regulation on education foreigners and Polish citizens who were learning abroad, 23 August 2017, available (in Polish) at: <https://bit.ly/2XkPupP>.

⁵²⁰ Commissioner for Child Rights, *INFORMACJA O WYNIKACH WIZYTACJI Strzeżonego Ośrodka dla Cudzoziemców w Kętrzynie, przeprowadzonej w dniu 26 lipca 2018 r.*; available (in Polish) at: <http://bit.ly/2EmgyOi>.

2.3. Special needs and health care in detention

According to the law, all detainees have access to regular health care.⁵²¹ In all centres, medical staff are present and working, there is at least one physician and one nurse, but there are often more. Nurses are present on a daily basis from 7.30 a.m. till 9.30 p.m. In case of an emergency or the need for a specialist (e.g. gynaecologist), detainees are transferred to hospitals or clinics. As of March 2018, SG officers trained in first aid should be present during night shifts in all guarded centers. The management of all detention centres was also obliged to make sure that there will be a physician in the center every day of the week.

In September 2015, the Border Guard prepared a document entitled “Rules of SG proceedings with foreigners who need special treatment (algorithm)” because there is no definition of persons who need special treatment and there are no methods for their identification set out in law. The algorithm consists of: (i) a definition of foreigners who are in need of special treatment, (ii) a list of persons involved in identification, (iii) a set of solutions which simplify identification, (iv) a procedure which should be implemented before a foreigner is placed in detention centre and (v) a procedure when a foreigner is already in detention. However, early identification of victims of torture and violence is not carried out during the preliminary examination of a foreigner on admission in practice. This document was modified in June 2019, based on merely internal consultation at Border Guards. In the opinion of SIP, still this document needs to be improved.⁵²²

In the opinion of the Commissioner for Human Rights,⁵²³ and the Commissioner for Child Rights,⁵²⁴ 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. According to the Commissioner for Child Rights, the available treatment and therapy in the detention centre for identified victims of torture only exacerbate their mental trauma. The Commissioner called on the Minister of Interior and Administration to oblige the SG to develop new set of rules regarding foreigners whose mental state demonstrates that they were violence victims.⁵²⁵

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.⁵²⁶

There is also access to psychological care. In all detention centres, information on the availability of medical and psychological care is displayed on boards in the corridors and on the psychologist's office door. Foreigners are also informed about psychological assistance during the first meeting with their assistant in detention centre.⁵²⁷

⁵²¹ Articles 415(1)(5) and 417 Law on Foreigners.

⁵²² SIP, Annual Report 2019, April 2020, available in Polish at: <https://bit.ly/3sIoolp>.

⁵²³ Commissioner for Human Rights, *Wystąpienie do Komendanta Głównego Straży Granicznej w sprawie identyfikacji ofiar tortur*, 4 July 2017, available (in Polish) at: <https://bit.ly/2SvtzZJ>.

⁵²⁴ Commissioner for Child Rights, *Wystąpienie do Ministra spraw Wewnętrznych*, 5 September 2018, available (in Polish) at: <https://bit.ly/2GAvObC>.

⁵²⁵ *Ibid.*

⁵²⁶ HFHR, Rights of persons deprived of liberty-fundamental legal and practical issues. HFHR perspective, July 2018, available at: <https://bit.ly/2SktNaF>.

⁵²⁷ Commissioner for Human Rights, *Wyciąg Strzeżony Ośrodek dla Cudzoziemców w Kętrzynie*, available (in Polish) at: <https://bit.ly/2sUwCns>.

In **Krosno** external psychologist is present only for 4 hours per week, still is not trained in the Istanbul Protocol and he does not run a therapy for foreigners.⁵²⁸

In **Przemyśl**, an external psychologist for foreigners is available 20 hours a week. The psychologists are not trained in the Istanbul Protocol and do not run a therapy for foreigners.

Consultant psychologist visit the guarded centre in **Lesznowola** only one day.⁵²⁹ Consultations are provided only in English and Russian. On the other hand, in the past the Commissioner for Human Rights reported lots of irregularities in psychological assistance and underlined that the number, the frequency and the description of the consultations showed that these consultations only consisted of preliminary interviews and diagnosis. Long-term psychological support was not provided. Additionally, the Commissioner pointed out that the fact there was only one psychologist limits the availability of psychological support. There is a high risk that this psychologist will not be available when her support during a foreigner's mental crisis is needed and there will be no one who could substitute her and provide psychological assistance. Moreover, foreigners should have the possibility to choose a psychologist. Otherwise a detainee who is unable to trust an available psychologist, will not have access to effective psychological support.

In 2020 in guarded centre in **Kętrzyn**, the psychologist, Border Guard officer was available 5 days a week from 8 a.m. to 3 p.m., additional in 2020 external psychologist was hired.

In **Białystok** one psychologist was Border Guard officer and hired full time – and external consultant available part time (8 hours, three times a week). In 2020 foreigners could make an appointment by themselves, and visit psychologist whenever they needed. The duty hours were placed on the door of the consultation room and on each floor.

Three psychologists are hired in **Biała Podlaska**, two (man and woman) as staff members of Border Guards (available from Monday till Saturday from 8.00 a.m. to 8 p.m.) and one as an external expert (available 4 hours a week).

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.⁵³⁰ 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.⁵³¹ The Head of the Office for Foreigners and UNHCR should be informed about it.⁵³² This provision is not used in practice. NGOs provide legal assistance, but unfortunately not on a regular basis. NGOs had to narrow their assistance, including legal assistance, in the detention centres, due to lack of financial means as a result of delay in the implementation of AMIF;

⁵²⁸ Border Guard Commander, Krosno Odrzańskie, information, 3 February 2021.

⁵²⁹ Information provided by Border Guards in Lesznowola, 27 February 2020.

⁵³⁰ Article 415(1)(2), (3) and (19) Law on Foreigners and Article 89a(1)(2) Law on Protection.

⁵³¹ According to the Law on Protection, it will be a possibility only to limit such contact.

⁵³² Article 89a(1) and (2) Law on Protection.

delay in the announcement of the call for proposals and delay in publishing the results co-financed by AMIF.⁵³³

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, visits are generally not limited to visiting hours. NGOs generally do not face problems in accessing the centres. In 2020 NGOs were also permitted to contact detainees remotely by videoconferencing due to coronavirus situation.⁵³⁴

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.⁵³⁵ 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).⁵³⁶ Due to the coronavirus situation, all visits were suspended but foreigners could meet with members of their family and friends via Skype.

Detainees are able to maintain regular contact with people outside the centre. There is no limitation in using cell phones (without audio- and video recording system). The SG's have several hundreds of substitute cell phones without a camera which they provide to foreigners in case they only have smartphones. The cell phones are handed over for the whole day for free. Detainees themselves pay for the calls. There are some problems to order a phone card and foreigners use phone card which were bought in other EU countries. The Border Guard officers go and do shopping for detainees usually twice a week. If the asylum applicant does not have money to buy a telephone card, there is a possibility of using the SG's equipment in justifiable cases. The detainees have also access to the internet and Skype in all detention centres.

The Law on Foreigners foresees a legal possibility to impose sanction on a detainee who does not obey the rules in the detention centre. There are two possibilities: banning participation in sport and leisure activities (except for using the library); or banning the purchase of food and cigarettes from outside the centre.⁵³⁷

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 2020, such punishment was used 2 times in **Przemyśl** for 7 days.⁵³⁸

⁵³³ 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/2EVdxxq>.

⁵³⁴ M.Jaźwińska, *Dostęp do pomocy prawnej w strzeżonych ośrodkach dla cudzoziemców* [in] Legal Intervention Association *SIP w działaniu. Prawa cudzoziemców w Polsce w 2018 r.*, May 2019, available (in Polish) at: <https://bit.ly/36CSA2X>, 44.

⁵³⁵ Para 21 of the Rules of foreigners' stay in guarded centre and arrest for foreigners (Annex to the Regulation on detention centres).

⁵³⁶ Para 23 of the Rules of foreigners' stay in guarded centre and arrest for foreigners (Annex to the Regulation on detention centres).

⁵³⁷ Article 421(2) Law on Foreigners.

⁵³⁸ Information provided by the Border Guard in Przemyśl, 27 January 2021.

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? | <input checked="" type="checkbox"/> Yes | <input type="checkbox"/> No |
| 2. If yes, at what interval is the detention order reviewed? | No data | |

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.⁵³⁹

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.⁵⁴⁰ 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.⁵⁴¹ 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.⁵⁴² 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.⁵⁴³ 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.⁵⁴⁴

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.

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. Courts do not conduct evidentiary proceedings on best interests of the child and on torture victims.

In the appeal procedure, foreigners do not know that they can ask the court to be present during examinations of their appeal against detention, so they cannot present their standpoint. At the same time, foreigners are not informed about the reasons for prolonging their stay in a detention centre by the Border Guard, such as for example in Ketrzyn and Białystok.⁵⁴⁵ Furthermore, the appeal has to be prepared in Polish, so foreigners are dependent on NGOs which provide limited legal assistance due to limited access

⁵³⁹ Article 89(4) Law on Protection.

⁵⁴⁰ Article 88b(1) Law on Protection.

⁵⁴¹ CPT Report 2018, available at: <https://bit.ly/2HVZlTc>, 20.

⁵⁴² Article 88b(3) Law on Protection; Article 403(8) Law on Foreigners.

⁵⁴³ 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.

⁵⁴⁴ Article 88b(3) Law on Protection; Article 403(8) Law on Foreigners.

⁵⁴⁵ Information provided by the Association for Legal Intervention, February 2021.

to funds. 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 2020 the Border Guard complied with this requirement and motions were submitted at least two weeks before the end day of detention.⁵⁴⁶

Every person is entitled to compensation and redress for wrongful detention from the State Treasury.⁵⁴⁷ In 2020, SIP represented two families and a man whose cases are pending before the District Court of Warsaw and Olsztyn.⁵⁴⁸ In one of these cases, Court granted a compensation to the victim of violence in the amount of 90,000 PLN (around 19,600 Euros). The HFHR had two such cases in the District Court of Warsaw (pending as of February 2021) and in Radom. In the latter case, the foreigner, citizen of **Congo** was detained despite the fact that Border Guards identified him as a victim of violence from the very beginning. He was released from detention centre on the base of the court decision 3 months later. The court granted a compensation of 39,000 PLN (8,500 Euros) based on the documents presented with the compensation motion.⁵⁴⁹ The judgment was upheld in February 2021.

2. Legal assistance for review of detention

Indicators: Legal Assistance for Review of Detention

1. Does the law provide for access to free legal assistance for the review of detention?
☒ Yes ☐ No
2. Do asylum seekers have effective access to free legal assistance in practice?
☐ Yes ☒ No

The law provides for access to free legal assistance for the review of detention before the courts, but it is hardly ever exercised in practice.⁵⁵⁰ 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.⁵⁵¹ The court has a clear obligation to inform asylum seekers in a language understandable to them about the right to ask for legal assistance.⁵⁵² However, this happens rarely in practice. Most asylum seekers are not aware of this possibility and in practice they are not represented by a legal advisor in the District Court. In addition, their right to defence is not observed when the court decides on the extension of their detention. Foreigners are either not informed about the day of the court proceedings or they are informed (in Polish) on the short notice - on the same day. As a result, they are unable to submit a request for the lawyer on time.⁵⁵³

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 2020.

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.

⁵⁴⁶ Information provided by different branches of Border Guard, letter, January -February 2021.

⁵⁴⁷ Article 407 Law on Foreigners.

⁵⁴⁸ Information provided by the Association for Legal Intervention, February 2021.

⁵⁴⁹ Regional Court in Radom, II Ko 23/16

⁵⁵⁰ Articles 78 and 87a Law of 6 June 1997 on the Code of Criminal Procedure, available at: <http://bit.ly/1UcUEO3>.

⁵⁵¹ Article 78 and 87a Code of Criminal Procedure.

⁵⁵² Article 88b(4) Law on Protection.

⁵⁵³ SIP, Annual Report 2019, April 2020, available in Polish at: <https://bit.ly/3sloolp>.

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*).⁵⁵⁴ The first card is issued *ex officio*⁵⁵⁵ and is renewed after this period for another 3 years upon request.⁵⁵⁶

Subsidiary protection is also granted for an unlimited period of time. Subsidiary protection beneficiaries obtain a 2-year residence card (*karta pobytu*).⁵⁵⁷ The first card is also issued *ex officio*,⁵⁵⁸ and is renewed after this period for another 2 years upon request.⁵⁵⁹

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*).⁵⁶⁰ The card will be renewed after this period for another 2 years.⁵⁶¹ The first and subsequent card are issued on the foreigner's demand.⁵⁶²

As of 1 January 2021, there were 1,319 persons holding a valid residence card for refugees, 1,467 persons holding a valid residence card granted to subsidiary protection beneficiaries and 1,743 persons under the humanitarian protection scheme.⁵⁶³

During the COVID-19 pandemic, the validity of those residence cards was prolonged by law until 30 days after the end of the epidemiological state in Poland.

An application for the renewal of the residence card should be submitted 30 days before the expiration date of the current residence card.⁵⁶⁴ Foreigners are often not aware of this rule.

The issuance of the residence card is paid and costs 50 PLN / 12 € for the card.⁵⁶⁵ Only the first residence card is issued free of charge.⁵⁶⁶ 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.⁵⁶⁷ There is no possibility of full exoneration from the 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 / €18.⁵⁶⁸

⁵⁵⁴ Article 89i(1) Law on Protection.

⁵⁵⁵ Article 229(2) Law on Foreigners.

⁵⁵⁶ Article 89i(2a) Law on Protection.

⁵⁵⁷ Article 89i(2) Law on Protection.

⁵⁵⁸ Article 229(2) Law on Foreigners.

⁵⁵⁹ Article 89i(2a) Law on Protection.

⁵⁶⁰ Article 243(1)(4) Law on Foreigners.

⁵⁶¹ Article 243(2)(3) Law on Foreigners.

⁵⁶² Article 229(1) and Article 229(4)(3) Law on Foreigners.

⁵⁶³ Statistical information provided by the Office for Foreigners, 'Dane liczbowe dotyczące postępowań prowadzonych wobec cudzoziemców w 2020 roku', available in Polish at: <https://bit.ly/39yMoGN>.

⁵⁶⁴ Article 230(2) Law on Foreigners.

⁵⁶⁵ Article 235(1) Law on Foreigners.

⁵⁶⁶ Article 236(1)(a)-(c) Law on Foreigners.

⁵⁶⁷ Article 237(1) and (2) Law on Foreigners.

⁵⁶⁸ Article 238 Law on Foreigners.

The Office for Foreigners, which is responsible for the issuance and renewal of the residence cards for refugees and subsidiary protection beneficiaries,⁵⁶⁹ is situated in **Warsaw**. In the case of humanitarian protection beneficiaries, an authority responsible for a residence card renewal is a Border Guard unit having jurisdiction over the foreigner's current place of stay.⁵⁷⁰

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.⁵⁷¹ There is no possibility to receive a card by other representative or by post. Moreover, foreigners are obliged to give their fingerprints any time they renew a residence card.⁵⁷² If they refuse to give their fingerprints, the residence card will not be issued.⁵⁷³ 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 case of refugees and subsidiary protection beneficiaries, or another town in 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 a serious illness the obligation to collect fingerprints from an applicant is lifted, but it happens rarely (1-2 times a year).⁵⁷⁴ The lack of a 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.

During the pandemic COVID-19, refugees and beneficiaries of subsidiary protection had to make appointment in advance (by phone or e-mail) in order to give fingerprints and pick up the residence card.⁵⁷⁵

Failure to renew a residence card can be punished by fine,⁵⁷⁶ but this does not happen in practice. There have been no such cases in 2015-2020.⁵⁷⁷

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.⁵⁷⁸

By law, all residence cards should have the annotation “access to the labour market”, if the foreigner is entitled to work in Poland.⁵⁷⁹ In practice, cards issued for refugees as well as humanitarian and subsidiary protection beneficiaries do not have such an annotation, 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.⁵⁸⁰ 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.⁵⁸¹ Consequently, the Polish authorities changed their practice and no longer refuse the special financial support under the 500+ Programme on that basis.

⁵⁶⁹ Article 89n(2) Law on Protection.

⁵⁷⁰ Article 245(4)-(5) Law on Foreigners.

⁵⁷¹ Article 248(1)-(2) Law on Foreigners.

⁵⁷² Article 246(2) Law on Foreigners.

⁵⁷³ Article 247 Law on Foreigners.

⁵⁷⁴ Information provided by the Office for Foreigners, 1 February 2017, 15 January 2019 and 22 January 2020.

⁵⁷⁵ Information provided by the Office for Foreigners, 26 January 2021.

⁵⁷⁶ Article 465(4) Law on Foreigners.

⁵⁷⁷ Information provided by the Office for Foreigners, i.a. 22 January 2020.

⁵⁷⁸ Ordinance of the Minister of Interior of 29 April 2014 on the documents issued for foreigners, available (in Polish) at: <http://bit.ly/2l7o9n0>.

⁵⁷⁹ Article 244(1)(11) Law on Foreigners.

⁵⁸⁰ European Website on Integration, ‘Poland: social benefit ‘500 PLN per child’ not for refugees?’ 29 February 2016, available at: <http://bit.ly/2ILCBFK>. M. Sadowska, “Świadczenia ‘Dobry start’” in Stowarzyszenie Interwencji Prawnej (SIP), *SIP w działaniu. Prawa cudzoziemców w Polsce w 2018 r.*, 2019, available (in Polish) at: <https://bit.ly/31HyL2O>, 52.

⁵⁸¹ See judgments of Voivodeship Administrative Court in Warsaw No I SA/Wa 1997/16, 7 October 2016, available (in Polish) at: <http://bit.ly/2l8Mj26> and of the Supreme Administrative Court no. I OSK 1164/16, 14 March 2018.

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.⁵⁸² The documents necessary for the preparation of a birth certificate include:

- Written statement of birth issued by a doctor, midwife or health care facility;
- Copy of the marriage certificate if the child's parents are married;
- Birth certificate of the mother, marriage certificate with an entry noting divorce, an abridged copy of the death certificate of the spouse; if the child's mother is single, divorced or widowed, respectively.

The Civil Registry Office which prepared a birth certificate applies for a PESEL (Universal Electronic System for Registration of the Population) 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 2020:	No data
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The EU long-term residence permit (*zezwolenie na pobyt rezydenta długoterminowego UE*) is issued on a foreigner's demand if he or she:⁵⁸³

1. Resides in Poland legally and continuously for at least five years immediately prior to the submission of the application for the 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 medical insurance;
4. Knows Polish language at least on level B1 (the documents confirming having this knowledge are required).⁵⁸⁴

⁵⁸² Law of 28 November 2014 on civil registration certificates.

⁵⁸³ Article 211(1) Law on Foreigners.

⁵⁸⁴ Article 211(1)(3) and (3) Law on Foreigners.

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 obtaining social assistance in Poland.⁵⁸⁵

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.⁵⁸⁶ If the previous asylum procedure ended with refusal of the international protection, the period of this procedure is not taken into account at all.⁵⁸⁷ A procedure for an EU long-term residence permit cannot be initiated if a foreigner is a humanitarian protection beneficiary or is seeking asylum.⁵⁸⁸

Refugees and beneficiaries of subsidiary protection may also apply for a permanent residence permit (*zezwoleńie na pobyt stały*), if they continuously stay in Poland for at least 5 years immediately before the submission of the application. The asylum procedure is taken into account in this calculation.⁵⁸⁹ The same rules apply to beneficiaries of humanitarian protection but the asylum procedure is not counted to the 5 years period.

The fee for an EU long-term residence permit and a permanent residence permit is 640 PLN / 150 €. The 2019 report published by the Institute of Public Affairs emphasized that 'Poland represents the country with the least favourable conditions, applying high fees and costs which constitute burdensome obstacles for BIPs given the very low level of social assistance benefits. BIPs are subject to costs of issuing a residence permit and initiating a procedure for permanent/ long-term residence that are higher than 50% of the minimum amount of the monthly social assistance benefit'.⁵⁹⁰

The authority responsible for issuance of the EU long-term residence permit and a permanent residence permit is Voivode having jurisdiction over the current place of stay of the applicant.⁵⁹¹ The Office for Foreigners is a second instance administrative body competent to handle appeals against first instance decisions. The procedure should last maximum 3 months at the first instance and additionally maximum 2 months if an appeal was lodged.⁵⁹² In practice though it lasts often much longer. In 2020, the Polish Commissioner for Human Rights send the letter to the Prime Minister expressing his concerns that in general foreigners must wait months or years for a decision on a legalisation of their stay.⁵⁹³

In 2016, 23 beneficiaries were granted EU long-term resident status. No data were made available for 2017-2020. Also, the specific data concerning only beneficiaries of international protection who were granted permanent residence permits are not available.

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 2020: | No data |

⁵⁸⁵ Article 211(2) Law on Foreigners.

⁵⁸⁶ Article 212(1) (2) and (3c) Law on Foreigners.

⁵⁸⁷ Article 212(2)(8) Law on Foreigners.

⁵⁸⁸ Article 213(1)(e)-(f) Law on Foreigners.

⁵⁸⁹ Article 195(1)(6) and Article 195(3) Law on Foreigners.

⁵⁹⁰ A. Wolffhardt, C. Conte, T. Huddleston, *The European Benchmark for Refugee Integration: A Comparative Analysis of the National Integration Evaluation Mechanism in 14 EU Countries* (Institute of Public Affairs, Warsaw, 2019), available at: <https://bit.ly/39rQCNS>, 62.

⁵⁹¹ Articles 201 and 218(1) Law on Foreigners.

⁵⁹² Articles 210 and 223 Law on Foreigners.

⁵⁹³ Commissioner for Human Rights, 'Cudzoziemcy coraz dłużej czekają na legalizację pobytu w Polsce. Adam Bodnar interweniuje u premiera', 30 December 2020, available (in Polish) at: <http://bit.ly/3pfx3zB>.

Polish citizenship can be obtained through two procedures. Firstly, citizenship can be granted by the Polish President.⁵⁹⁴ 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.⁵⁹⁵ 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.⁵⁹⁶ Both refugees and subsidiary protection beneficiaries have to obtain first a permanent residence permit (*zezwolenie na pobyt stały*) or EU long-term residence permit in Poland.

A **refugee** who has been granted permanent residence permit and stays continuously on this basis in Poland for 2 more years can be declared as a Polish citizen.⁵⁹⁷ 18 and 57 refugees were declared as Polish citizens respectively in 2017 and 2018 on this basis.⁵⁹⁸ In 2019 at least 20 and in 2020 at least 9 refugees were declared as Polish citizens.⁵⁹⁹ 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).⁶⁰⁰

Both, refugees and subsidiary protection beneficiaries, to be declared as a Polish citizen, have to prove that they know Polish language.⁶⁰¹ Foreigners should present a document confirming that they have graduated from a Polish school or that they have passed the State exam for Polish language as a foreign language (B1 at least). Those examinations are organised rarely (e.g. only twice in 2016 and 2017, three times in 2018 and 2019) and they are costly.⁶⁰² 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,⁶⁰³ which may constitute an obstacle to naturalisation. In 2020, the Polish Commissioner for Human Rights intervened before the Ministry of Education, pointing on the foreigners' problems with the access to the exams (exams organised too rarely, not enough places for all interested persons). The Ministry answered that they are working on the improvements in this regard, however it concluded that the present system was generally sufficient.⁶⁰⁴ During the COVID-19 pandemic, access to the exams was hampered even more as many exam sessions were cancelled.

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 civil registration documents from a country of origin.⁶⁰⁵

⁵⁹⁴ Article 18 Law of 2 April 2009 on Polish citizenship.

⁵⁹⁵ Article 19-21 Law on Polish citizenship.

⁵⁹⁶ Article 30 Law on Polish citizenship.

⁵⁹⁷ Article 30(1)(3) Law on Polish citizenship.

⁵⁹⁸ Information provided by the Ministry of Interior and Administration, 3 January 2018 and 1 February 2019.

⁵⁹⁹ Information provided by the Ministry of Interior and Administration, 10 January 2020 and 20 January 2021. The Ministry informed that those data may be incomplete as the decisions on declaration as Polish citizen are sometimes registered by the Voivode Offices with a delay.

⁶⁰⁰ Article 30(1)(1), (2) and (6) Law on Polish citizenship.

⁶⁰¹ Article 30(2) Law on Polish citizenship.

⁶⁰² Information from the official exams' website, available (in Polish) at: <https://bit.ly/2uBSEMw>.

⁶⁰³ 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.

⁶⁰⁴ Commissioner for Human Rights, 'Utrudniony dostęp cudzoziemców do egzaminów z jęz. polskiego', 9 July 2020, available in Polish at: <http://bit.ly/3b09h5L>.

⁶⁰⁵ 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), 23-24.

The beneficiary of international protection submits the application for declaration as a Polish citizen to Voivode who has jurisdiction over their current place of stay.⁶⁰⁶ The fee for obtaining citizenship is 219 PLN/49 EUR. The Voivode decision can be appealed to the Minister of Interior.⁶⁰⁷ The procedure should last one month or two, if it is a complicated case. In practice though it lasts often longer.⁶⁰⁸

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:⁶⁰⁹

- 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.⁶¹⁰

The cessation procedure is initiated by the Head of the Office for Foreigners *ex officio* or on other authorities' demand.⁶¹¹ Asylum seeker should be informed about the initiation of the respective proceedings as soon as they started. The procedure should last no longer than 6 months.⁶¹² 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.⁶¹³

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 entail automatic suspensive effect but a foreigner can request the court to suspend final decision on deprivation of international protection. However, it takes sometimes even a couple of months to suspend the decision by court on the foreigner's demand. During that period a foreigner

⁶⁰⁶ Article 36(1) Law on Polish Citizenship.

⁶⁰⁷ Article 10(4) Law on Polish Citizenship.

⁶⁰⁸ Information provided by the President's Office, 19 January 2017.

⁶⁰⁹ Article 21(1) Law on Protection.

⁶¹⁰ Article 22(1) Law on Protection.

⁶¹¹ Article 54b Law on Protection.

⁶¹² Article 54a Law on Protection.

⁶¹³ Article 54d(1) Law on Protection.

stays illegally in Poland, so return proceedings may be initiated against him/her and a removal may be enforced.

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.⁶¹⁴ Free legal assistance is only provided in the appeal proceedings; it does not include the first-instance procedure.⁶¹⁵ Before the court, the foreigner can apply for free legal assistance by lawyer following the general rules (see [Legal assistance](#)).

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.⁶¹⁶

There is no systematic review of the protection status in Poland.

There is a single procedure in Poland that includes the cessation and withdrawal of international protection. In consequence, the beneficiary may receive a decision on a deprivation of international protection, as it is called in Poland, which can be issued on the grounds justifying only a cessation or only a withdrawal or both. The Office for Foreigners shares the data on a general number of 'deprivations' and how often the exact legal basis was used in the respective decisions. From 2016 to 2020, the total number of persons deprived international protection as a result of a cessation or withdrawal procedure was as follows:

Number of persons deprived of international protection (ceased and/or withdrawn)					
	2016	2017	2018	2019	2020
Deprivation of refugee status	8	0	11	6	12
Deprivation of subsidiary protection	21	80	157	100	95

Source: Office for Foreigners.

The above figures do not distinguish between cessation and withdrawal procedures as both fall under the category "deprivation of international protection" in the statistics shared by the OFF. Nevertheless, based on an analysis of the grounds used to deprive international protection, cessation and withdrawal procedures seem to have been applied in recent years as follows: 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) and/or withdrawn (13).⁶¹⁷ In 2019, 6 decisions on a cessation of a refugee status were issued (incl. 5 citizens of Russia) and 100 (all concerning citizens of Russia) – on deprivation of subsidiary protection (97 ceased and 11 withdrawn).⁶¹⁸ In 2020, 95 Russian citizens had their subsidiary protection ceased (94) and/or withdrawn (4). In 12 cases the refugee status was ceased (11 Russian citizens, 1 Sri Lankan national).⁶¹⁹

As regards the grounds for depriving international protection, the following cessation grounds were applied in 2020:

Grounds for cessation of international protection in 2020	
Cessation of refugee status	
The beneficiary voluntarily settled in the country, which he or she had left for fear of persecution.	1 (Russia)

⁶¹⁴ Article 69d(2) Law on Protection.

⁶¹⁵ Article 69d Law on Protection.

⁶¹⁶ Article 89l(1) and (3) Law on Protection.

⁶¹⁷ Information provided by the Office for Foreigners, 15 January 2019.

⁶¹⁸ Information provided by the Office for Foreigners, 22 January 2020.

⁶¹⁹ Information provided by the Office for Foreigners, 26 January 2021.

The beneficiary voluntarily accepted protection of a country he or she is a citizen of	11 (Russia)
The beneficiary 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.	1 (Sri Lanka)
Cessation of subsidiary protection	
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	94 (Russia)

Source: Authors of this report based on an analysis of the statistics shared by the Office for Foreigners.

As mentioned above, the OFF does not distinguish between cessation and withdrawal procedures. The table above was thus created by the authors of this report based on an analysis of the grounds used by the OFF to deprive international protection with the aim to provide an overview of the most applied grounds in practice.

These figures reveal that mostly **Russian Federation** citizens are deprived of international protection in Poland. Cessation is not systematically applied to them, however. 66 Russian citizens obtained international protection in Poland in 2020, 76 in 2019, 70 in 2018, 86 in 2017 and 67 in 2016.⁶²⁰ In 2018-2020 Russian citizens were deprived of refugee status predominantly because of the fact that they have voluntarily accepted protection of the Russian Federation. They were deprived of subsidiary protection predominantly due to the fact that the circumstances which were the reason for granting subsidiary protection no longer existed or have changed in such a way that a foreigner no longer required protection (in 150 cases in 2018, 97 in 2019 and 94 in 2020).⁶²¹ HFHR concludes that Russian citizens have mostly been deprived of protection as a result of travel to their country of origin after they obtained international protection.⁶²² The finding is confirmed by the SIP. According to this NGO, returning to the country of origin – even only in order to obtain needed documents or to take care of ill family members – is a reason to deprive refugees and beneficiaries of subsidiary protection of their status. The same effect may be entailed by obtaining a passport in the embassy of the country of origin. SIP also points out that beneficiaries of international protection are deprived protection due to a changed situation in Chechnya. However, in its opinion, both individual and general circumstances of those cases are not scrutinized sufficiently by Polish authorities.⁶²³

In 2018-2020 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 (see [Withdrawal of protection status](#)).⁶²⁴

In 2019, only one foreigner submitted a complaint to the Voivodeship Administrative Court in Warsaw against a decision depriving him refugee status. His complaint was rejected.⁶²⁵ Eleven foreigners

⁶²⁰ Information provided by the Office for Foreigners, 1 February 2018, 15 January 2019, 22 January 2020 and 26 January 2021.

⁶²¹ Information provided by the Office for Foreigners, 15 January 2019, 22 January 2020 and 26 January 2021.

⁶²² This reasoning was confirmed by the Supreme Administrative Court in Decision No II OSK 1493/14, 23 February 2016: Lex.pl, 'NSA: uchodźcy z Czeczenii muszą wrócić do kraju', 26 February 2016, available (in Polish) at: <https://bit.ly/2w3JQiM>.

⁶²³ M. Sadowska, 'Pozbawienie cudzoziemca ochrony międzynarodowej w Polsce' in SIP, *Prawa cudzoziemców w Polsce w 2019 roku. Raport*, 2020, available (in Polish) at: <https://bit.ly/3jT7weM>, 24-25; A. Pulchny, 'Pozbawienie cudzoziemca ochrony międzynarodowej w Polsce' in Stowarzyszenie Interwencji Prawnej (SIP), *SIP w działaniu. Prawa cudzoziemców w Polsce w 2018 r.* (2019), available (in Polish) at: <https://bit.ly/2w3KcpC>, 24-25.

⁶²⁴ Information provided by the Office for Foreigners, 15 January 2019, 22 January 2020 and 26 January 2021.

⁶²⁵ Information provided by the Voivodeship Administrative Court in Warsaw, 15 January 2020.

complained to the court in 2019 against deprivation of subsidiary protection. The court dismissed 5 such complaints. None of the complaints in this regard was considered justified in 2019.⁶²⁶ No data were made available for 2020.

In the judgment of 9 June 2017 (II OSK 904/17), the Supreme Administrative Court held that the administrative authorities entitled to cease or withdraw the refugee status cannot in those proceedings assess whether a foreigner should be granted subsidiary protection instead. In consequence, even when the authorities are aware of the reasons to grant subsidiary protection, they cannot do it *ex officio*, they can only deprive a foreigner of a refugee status, indirectly accepting that he may be sent back to danger.⁶²⁷

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:⁶²⁸

- 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:⁶²⁹

- 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.⁶³⁰

There is a single procedure in Poland that includes the cessation and withdrawal of international protection. In consequence, the beneficiary may receive a decision on a deprivation of international protection, as it is called in Poland, which can be issued on the grounds justifying only a cessation or only a withdrawal or

⁶²⁶ *Ibid.*

⁶²⁷ A. Pulchny, 'Pozbawienie cudzoziemca ochrony międzynarodowej w Polsce' in Stowarzyszenie Interwencji Prawnej (SIP), *SIP w działaniu. Prawa cudzoziemców w Polsce w 2018 r.* (2019), available (in Polish) at: <https://bit.ly/2w3KcpC>, 25.

⁶²⁸ Article 21(1) Law on Protection.

⁶²⁹ Article 22(1) Law on Protection.

⁶³⁰ Article 22(4) Law on Protection.

both. The Office for Foreigners shares the data on a general number of ‘deprivations’ and how often the exact legal basis was used in the respective decisions.

In general, the international protection is rather ceased than withdrawn. 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) and/or withdrawn (13).⁶³¹ In 2019, 6 decisions on cessation of a refugee status were issued (incl. 5 citizens of Russia) and 100 (all concerning citizens of Russia) – on deprivation of subsidiary protection (97 ceased and 11 withdrawn).⁶³² In 2020, 95 Russian citizens had their subsidiary protection ceased (94) and/or withdrawn (4). In 12 cases the refugee status was ceased (11 Russian citizens, 1 Sri Lankan national), none was withdrawn.⁶³³

Grounds for withdrawal of international protection in 2020	
Withdrawal of refugee status	0
Withdrawal of subsidiary protection	
There are serious reasons to believe that a foreigner poses a threat to state security or to the safety of the society.	4

Source: Authors of this report based on an analysis of the statistics shared by the Office for Foreigners.

The “deprivation” procedure in case of withdrawal is the same as in case of cessation and it is described in the section on [Cessation](#).

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 or 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

⁶³¹ Information provided by the Office for Foreigners, 15 January 2019.

⁶³² Information provided by the Office for Foreigners, 22 January 2020.

⁶³³ Information provided by the Office for Foreigners, 26 January 2021.

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, but still it is very complicated and expensive 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.⁶³⁴

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 by a sworn translator.

Data on family reunification of beneficiaries of international protection are generally not disaggregated by the authorities.⁶³⁵ 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 complicated and costly procedure (submitting and translating official documents, journey to Poland, to Polish consulate, paying several visits to the consulate).⁶³⁶

2. Status and rights of family members

Family members may be granted a temporary residence permit, if they are not in Poland or if they do not apply for an asylum after the arrival. The temporary residence permit in order to facilitate family reunification of beneficiaries of international protection is granted up to 3 years. It happens that temporary stay is issued for only one year. 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 Powiat 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, which is not sufficient time for submitting the IPI application

⁶³⁴ HFHR, *Family Reunification of Foreigners in Poland, Law and Practice*, June 2016, available at: <http://bit.ly/2ILG1IB>, 19-20.

⁶³⁵ A. Kulesa, 'Łączenie rodzin' in A. Górską, M. Koss-Goryszewska, J. Kucharczyk (eds), *W stronę krajowego mechanizmu ewaluacji integracji: Diagnoza sytuacji beneficjentów ochrony międzynarodowej w Polsce* (Instytut Spraw Publicznych 2019), 9.

⁶³⁶ Ibidem, 21.

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 organize all living conditions themselves.

Beneficiaries are obliged to reside in a place (within the specified voivodeship) agreed with the authorities during the 12-month period of the Individual Integration Programme (IPI) (see [Social welfare](#)).⁶³⁷ In general, change of a place of residence is equated with the termination of the programme. However, a change of residence is allowed in particularly justified cases, e.g. in case of:

- 1) finding a job in another region with a possibility of accommodation;
- 2) obtaining an accommodation in another region;
- 3) family reunification, when the possibility to live together exists;
- 4) medical reasons justifying a move.

In those cases, the beneficiary has to inform authorities about the move and its reasoning. Then, the programme can continue in a new place of living.

Refugees and subsidiary protection beneficiaries are not assigned to a specific residence for reasons of public interest or public order.

2. Travel documents

Refugees obtain travel documents mentioned in the Refugee Convention, which are valid for 2 years from the day of issuance.⁶³⁸ Subsequent travel documents are issued on the refugee's demand.⁶³⁹ 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.⁶⁴⁰ 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.⁶⁴¹ In case of *force majeure* preventing a foreigner to receive a document in person, the refugee travel document can be received by a proxy.⁶⁴² Foreigners are obliged to give their fingerprints any time they apply for a refugee travel document.⁶⁴³ The obligation to give fingerprints and mandatory personal presence to receive the travel document means that most of the time refugees willing to obtain a new travel document have to travel to **Warsaw** twice, even if they live far away. It is time-consuming and costly.

Beneficiaries of **subsidiary protection** are entitled to a Polish travel document for foreigners. The application for the document should be submitted to a Voivode having jurisdiction over the current place of stay of a foreigner and requires a fee of 100 PLN / 23 €. ⁶⁴⁴

⁶³⁷ Article 94 of Law of 12 March 2004 on social assistance.

⁶³⁸ Article 89i(1) and (3) Law on Protection.

⁶³⁹ Article 89m Law on Protection.

⁶⁴⁰ Article 89n(1) Law on Protection.

⁶⁴¹ Article 89ib(1) and (2) Law on Protection.

⁶⁴² Article 89ib(4) Law on Protection.

⁶⁴³ Articles 89i(4) and 89m Law on Protection.

⁶⁴⁴ Article 257(1) Law on Foreigners.

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.⁶⁴⁵ 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 they sought protection in Poland due to the persecution or harm they experienced from the authorities of their country of origin.

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 may last 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.⁶⁴⁶ 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 again take measures in order to obtain the passport from their country of origin.⁶⁴⁷

In 2017, 658 refugees obtained Convention travel documents and 102 subsidiary protection beneficiaries obtained Polish travel documents for foreigners.⁶⁴⁸ 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.⁶⁴⁹ In 2019, 681 refugees obtained Convention travel documents and 38 subsidiary protection beneficiaries obtained Polish travel documents for foreigners.⁶⁵⁰ In 2020, 538 refugees obtained Convention travel documents and 129 subsidiary protection beneficiaries obtained Polish travel documents for foreigners.⁶⁵¹

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 2020: | No data |

Beneficiaries of international protection are allowed to stay in the centres for 2 months after being served with the positive decision.⁶⁵²

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.⁶⁵³ General conditions to obtain housing under the law are hard to fulfill for beneficiaries because of their relatively short stay in Poland and mobility.⁶⁵⁴ Some

⁶⁴⁵ Article 252(3) Law on Foreigners.

⁶⁴⁶ Article 253 Law on Foreigners.

⁶⁴⁷ Article 254 Law on Foreigners.

⁶⁴⁸ Information provided by the Office for Foreigners, 1 February 2018.

⁶⁴⁹ Information provided by the Office for Foreigners, 15 January 2019.

⁶⁵⁰ Information provided by the Office for Foreigners, 22 January 2020.

⁶⁵¹ Information provided by the Office for Foreigners, 26 January 2021.

⁶⁵² Article 74(1)2 Law on Protection.

⁶⁵³ Maryla Koss-Goryszewska 'Mieszkalnictwo' in A. Górka, M. Koss-Goryszewska, J. Kucharczyk (eds), *W stronę krajowego mechanizmu ewaluacji integracji: Diagnoza sytuacji beneficjentów ochrony międzynarodowej w Polsce* (Instytut Spraw Publicznych 2019), available (in Polish) at: <https://bit.ly/2w3NkBS>, 27.

⁶⁵⁴ Ibidem, 29.

municipalities provide singular flats annually, dedicated for beneficiaries e.g.: 5 in **Warsaw**, 4 in **Lublin**, 4 in **Gdansk**. Within the 12-month period of Individual Integration Programme (IPI), individuals may receive a financial benefit to pay for a flat. Yet, according to social assistants in the Centre for Social Assistance in Wolomin, (suburbs of Warsaw) the owners are not willing to rent flats to refugees and often demand higher fees.⁶⁵⁵

Many NGOs are of the opinion that beneficiaries of international protection face homelessness and destitution in Poland.⁶⁵⁶ 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.⁶⁵⁷ There is a study in which episodes of homelessness or severe housing conditions were reported in the period between living in the reception centre and benefitting from integration programme or after the integration assistance ended.⁶⁵⁸ The Foundation Ocalenie, running a project called “Welcome home”, promoting private sponsoring for beneficiaries, within which it helped 53 beneficiaries (as of August 2019) in i.a. renting a flat in **Warsaw**, informs that more than 25% beneficiaries in Poland can face homelessness. The main obstacles to find a flat are high prices and discrimination.⁶⁵⁹ As another study shows, generally a negative narrative about refugees is prevalent in the public discourse, which leads to a systematic growth of the negative attitudes towards refugees in Poland. The lack of knowledge about the assistance offered to refugees in Poland reinforces stereotypical ideas about welfare support accompanied with the complete passivity and demanding nature of the refugees.⁶⁶⁰

According to the report from 2020, many beneficiaries still experience homelessness. Stereotypes and negative attitude towards foreigners prevail. Finding accommodation for large families is even more challenging. IPI is not tailored to tackle these problems.⁶⁶¹

Another extensive study on integration from 2020 shows that housing is one of the major issues for both asylum seekers and beneficiaries of international protection in Poland. Applicants who had lived outside the facilities run by the Office for Foreigners during the procedure, seem to be better prepared for the numerous challenges, such as finding adequate housing for a reasonable price. The shortage of affordable housing makes the situation of persons with international protection particularly difficult. Consequently, inadequate quality of housing results in slowing down the process of adaptation of foreigners to the new socio-cultural conditions of the host country, and may have a negative impact on their physical and mental health.⁶⁶² The difficulty of finding adequate and affordable housing is one of the important reasons why some beneficiaries of international protection decide to leave Poland and search for better living conditions in the countries of Western Europe where there might be denser diaspora and other support networks.⁶⁶³

⁶⁵⁵ Rzeczpospolita, ‘Bez mieszkań dla uchodźców’, 13 October 2015, available (in Polish) at: <http://bit.ly/2lQYYJS>.

⁶⁵⁶ 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>.

⁶⁵⁷ Maryla Koss-Goryszewska ‘Mieszkalnictwo’ in A. Górka, M. Koss-Goryszewska, J. Kucharczyk (eds), *W stronę krajowego mechanizmu ewaluacji integracji: Diagnoza sytuacji beneficjentów ochrony międzynarodowej w Polsce* (Instytut Spraw Publicznych 2019), available (in Polish) at: <https://bit.ly/2w3NkBS>, 30.

⁶⁵⁸ Lukaszewicz, K., ‘Exile to Poverty: Policies and Poverty Among Refugees in Poland’, *International Migration* Vol. 55 (6) 2017, 63.

⁶⁵⁹ Information available at: <https://bit.ly/3d9U426>.

⁶⁶⁰ B. Łaciak, J. Seges Frelak ‘The wages of fear. Attitudes towards refugees and migrants in Poland’, Foundation Institute of Public Affairs, Warsaw 2018, available at: <http://bit.ly/32oTsAQ>.

⁶⁶¹ NGOs alternative report to the government report on implementation of the Convention of the Rights of the Child, submitted to UNICEF, August 2020, available (in Polish) at: <https://bit.ly/3s3hZXX>.

⁶⁶² K. Sobczak-Szelc, M. Pachocka, K. Pędziwiatr, J. Szałańska, ‘Integration Policies, Practices and Responses. Poland – Country Report’, *Multilevel Governance of Mass Migration in Europe and Beyond Project* (#770564, Horizon2020), available at: <http://bit.ly/3bfjTxL>, p. 11.

⁶⁶³ Ibidem, p. 134.

E. Employment and education

1. Access to the labour market

Refugees and beneficiaries of subsidiary protection have access to labour market on the same conditions as Polish citizens. There is no difference between refugees and subsidiary protection beneficiaries. Access to employment is not limited to certain sectors.

In practice they have access to employment although they face obstacles, e.g. language skills, qualifications, low awareness of employers about their full access to the labor market. Additionally, labour market institutions are not prepared to help beneficiaries of international protection to enter the labour market in Poland, despite a clear obligation to do so in the law. NGOs report that foreign employees face discrimination, often on multiple basis.⁶⁶⁴

Low language skills and low professional qualifications results in unemployment or employment with low salary; instability of employment; small chances for a promotion.⁶⁶⁵ 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.⁶⁶⁶

In the report from 2020, the key problems were identified as: insufficient knowledge of Polish by beneficiaries of international protection, modest linguistic skills of the labour market services and limited ties and social networks, which often act as barriers for them to find a job. Assistance provided by social workers within IPI in most cases consist of support in completing documentation necessary to register at labour office, searching for job offers and contacting a potential employer as well as informing about the possibility of participating in vocational training in Polish. Vocational trainings on the other hand do not respond to market needs.

An important finding of the study is that despite early and effective inclusion in the labour market which gives a greater chance for integration of beneficiaries of international protection with Polish society, there is a lack of mechanism to mainstream integration of beneficiaries of international protection in labour market. There is also a lack of monitoring system for acquisition of work skills, and recognition of qualifications as well as for labour market inclusion of beneficiaries of international protection. Moreover, data related to trainings and effectiveness of IPI in relation to labour market inclusion are not collected in a systematic way.⁶⁶⁷

Polish NGOs play an invaluable role in helping migrants and refugees and it is not different in the area of integration on the labour market. The report lists all the projects and activities NGO have ran in 2020 in order to facilitate access to labour market for beneficiaries.⁶⁶⁸ The COVID-pandemic made it even harder to

⁶⁶⁴ P. Mickiewicz, *Dyskryminacja cudzoziemców na rynku pracy* [in] Stowarzyszenie Interwencji Prawnej (SIP), *SIP w działaniu. Prawa cudzoziemców w Polsce w 2018 r.* (2019), available (in Polish) at: <http://bit.ly/2S507LV>, 53.

⁶⁶⁵ 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), 32.

⁶⁶⁶ 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), 37.

⁶⁶⁷ K. Sobczak-Szelc, M. Pachocka, K. Pędziwiatr, J. Szałańska, 'Integration Policies, Practices and Responses. Poland – Country Report', *Multilevel Governance of Mass Migration in Europe and Beyond Project* (#770564, Horizon2020), available at: <http://bit.ly/3bfjTxL>, p. 134.

⁶⁶⁸ K. Sobczak-Szelc, M. Pachocka, K. Pędziwiatr, J. Szałańska, 'Integration Policies, Practices and Responses. Poland – Country Report', *Multilevel Governance of Mass Migration in Europe and Beyond Project* (#770564, Horizon2020), available at: <http://bit.ly/3bfjTxL>, p. 46-47.

obtain and maintain workplace.⁶⁶⁹ Some NGOs raised money for alimentation for beneficiaries who lost their jobs during pandemic.⁶⁷⁰

2. Access to education

The situation does not differ from the situation of asylum seekers (see above [Access to education](#)). The situation of beneficiaries can be actually worse because the schools near the 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 September 2016 there were 1,958 children in Polish schools, from families still subject to international protection proceedings or already granted protection.⁶⁷¹

The main finding of the report from 2020 dealing with education of beneficiaries is that even though there are instruments stipulated by the law and designed for foreign children, such as additional Polish language classes, compensatory classes, preparatory classes and teachers' assistants, due to insufficient funding their implementation is often inadequate. It turned out that the biggest shortcoming of the inclusion of refugee children in the education system is lack of trainings and methodological support for teachers who work with them.⁶⁷²

With regard to education of adults, the most important issues appeared to be learning of Polish language and recognition of education obtained in the countries of origin. It turned out that the attendance of beneficiaries of international protection in the courses is very low (approx. 35 percent) which results from either lack of the courses in some localities, inability to reconcile work with participation in a course due to the latter's hours, or low attractiveness of the courses (i.e. their failure to meet the needs of refugees). The procedures of recognition of qualifications from the country of origin, are expensive and complicated. However, in order to enable continuation of education for refugees, many universities in Poland offered facilitation in the mentioned procedures together with providing scholarships that would ease refugees' admission for studies.⁶⁷³

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

⁶⁶⁹ M.K. Nowak, 'Poprosiła o postojowe, zerwano umowę. Uchodźcy dziś nie mają na chleb, jutro stracą mieszkanie', 30 May 2020, available (in Polish) at: <http://bit.ly/3b1D79R>.

⁶⁷⁰ See Ocalenie Foundation news, Potrzebna pomoc żywnościowa, available (in Polish) at: <http://bit.ly/2ORh924>.

⁶⁷¹ Maryla Koss-Goryszewska 'Edukacja' in A. Górską, M. Koss-Goryszewska, J. Kucharczyk (eds), *W stronę krajowego mechanizmu ewaluacji integracji: Diagnoza sytuacji beneficjentów ochrony międzynarodowej w Polsce* (Instytut Spraw Publicznych 2019), 49.

⁶⁷² K. Sobczak-Szelc, M. Pachocka, K. Pędziwiatr, J. Szałańska, 'Integration Policies, Practices and Responses. Poland – Country Report', *Multilevel Governance of Mass Migration in Europe and Beyond Project* (#770564, Horizon2020), available at: <http://bit.ly/3bfjTxL>, p. 135.

⁶⁷³ Ibidem.

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(149 €) or 764 PLN(169,5 €)⁶⁷⁴ if the child in the family is certified as disabled. They have a right to apply for:

- Family allowance
- Childbirth aid and supplement
- Attendance allowance
- Parental benefit
- Supplement for the beginning of the school year, education away from home, education and rehabilitation of a disabled child, rising a child in a numerous family, rising child alone, and caring a child during parental leave.

Furthermore, beneficiaries of international protection have a right to apply for special financial support under the government “500+ Programme”, which is paid on monthly basis. This benefit is for families with children, and should be spent on the need of child regardless of income. For families with a disabled child, the net income criterion is 1,200 PLN (266 €). The benefits are granted by Municipal Office of Social Welfare, acting on behalf of the President of the city.

On the other hand, single mothers who are recognised beneficiaries of international protection, still face obstacles to receiving the above-mentioned benefits. According to the law, they have to provide a court with a writ of execution (*tytuł wykonawczy*) confirming maintenance benefit from the other parent. As a result of these regulations, they are deprived of that benefits because they are not able to present that required document due to their exceptional personal and family situation.⁶⁷⁵

2. Individual Integration Programme (IPI)

Beneficiaries of international protection are also entitled to the Individual Integration Programme (IPI) provided by the Poviats Family Support Centres (*Powiatowe Centra Pomocy Rodzinie*, PCPR). They have to submit an application for IPI with additional documentation to the head of the poviats (starosta) through the PCPR within 60 days from the date beneficiaries of international protection had received a decision on refugee status or subsidiary protection. The application covers also the spouse and the minor children of the applicant if they were covered by the applicant's asylum application. On the other hand, children born in Poland after the completion of the parents' integration program are not granted such assistance. Likewise, spouse of a Polish citizen has been excluded by law from the right to apply for the IPI.

The Programme takes 12 months during which integration assistance is provided. This assistance includes:

- Cash benefits for the maintenance and coverage of expenses related to learning Polish language;
- Payment of the health insurance premium specified in the provisions on general insurance in the National Health Fund;
- Special social counseling.

The social worker carries out the so-called environmental interview with a beneficiary of international protection and his or her family, and then together with them draw up an IPI. The programme determines the amount, scope and forms of integration assistance, as well as mutual obligations of the beneficiary and PCPR. The minimum cash benefit amount is PLN 647 (149 €), per person per month. Financial assistance is paid from the month beneficiaries of international protection applied for IPI or from the moment they left the open centre for foreigners.

⁶⁷⁴ Ministry of Family, Work and Social Policy, Information, available (in Polish) at: <https://bit.ly/38lyKOM>.

⁶⁷⁵ Legal Intervention Association, “*SIP w działaniu. Prawa Cudzoziemców w Polsce 2019*”, 2020, available (in Polish) at: <https://bit.ly/3sloolp>.

Since the 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 1238.40 (288 €) per month - for a single person;
- up to PLN 866,88 (200 €) per person per month - in a 2-person family;
- up to PLN 743,04 (171 €) per person per month - in a 3-person family;
- up to PLN 619 (149 €) per month per person - for a family of four and more.⁶⁷⁶

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.⁶⁷⁷

As one study finds, social policy provides few or no resources needed to function independently in Poland.⁶⁷⁸ By delivering mostly financial assistance, integration programmes helps families to get by on a daily basis but fails to build the resources needed to become independent. For some participants, the programmes strengthened their feelings of lack of control over their lives and the helplessness already developed during the asylum procedure. There is a lack of adequate social work with beneficiaries. The financial means are not sufficient for renting a flat and only few of them can count on receiving social or communal housing.⁶⁷⁹ According to SIP, IPI should last longer than 12 months and be practically adapted to individual needs of applicants. Additionally, integration assistance should also be granted to children born after the completion of parents' integration programs.⁶⁸⁰

The case workers interviewed in the study explained that, because they have too many integration programmes to manage monthly, it was practically impossible for them to offer any social work counselling, and they instead focused on managing monetary transfers.⁶⁸¹ Most of the IPIs are implemented by WCPR

⁶⁷⁶ Ministry of Family, Work and Social policy, *ROZPORZĄDZENIE MINISTRA PRACY I POLITYKI SPOŁECZNEJ z dnia 7 kwietnia 2015 r. w sprawie udzielania pomocy cudzoziemcom*, available (in Polish) at: <https://bit.ly/38PPAuB>.

⁶⁷⁷ Commissioner for Human Rights, ‘Prawo do świadczeń rodzinnych cudzoziemki objętej ochroną uzupełniającą w sytuacji, gdy nie wszyscy członkowie rodziny zamieszkują w Polsce, PCPR’, 10 January 2018, available (in Polish) at: <http://bit.ly/2C8lYey>.

⁶⁷⁸ Lukasiwicz, K., ‘Exile to Poverty: Policies and Poverty Among Refugees in Poland’, *International Migration* Vol. 55 (6) 2017, 65, see also *Prawa dziecka-Raport Alternatywny*, August 2020, available (in Polish) at: <https://bit.ly/30eskUX>

⁶⁷⁹ Ibidem.

⁶⁸⁰ SIP, *Komentujemy propozycje zmian w ustawie o pomocy społecznej*, available (in Polish) at: <http://bit.ly/3uVH2yi>.

⁶⁸¹ Lukasiwicz, K., ‘Exile to Poverty: Policies and Poverty Among Refugees in Poland’, *International Migration* Vol. 55 (6) 2017, 65.

(Warszawskie Centrum Pomocy Rodziny), which department of Social Integration and Crisis Intervention has four social workers who provide integration assistance to beneficiaries of international protection.⁶⁸²

In 2019 the Polish government spent 1,307,313 PLN (down from 1,440,867 PLN (343,063 €) in 2018) on different kinds of social welfare for refugees and 1,248,671 (down from 2,318,295 PLN (579,573 €) in 2018) for beneficiaries of subsidiary protection.⁶⁸³ Social assistance was provided in the form of social assistance, psychological and legal support, assistance in local institutions, financial support, and cash benefits for learning the Polish language as part of the implementation of the individual programme of integration.

Social Welfare Centres assisted 150 families of recognised refugees (which covered 265 people) and 108 families under subsidiary protection (which covered 265 persons) throughout 2019.⁶⁸⁴

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.⁶⁸⁵ 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 IPI, are obliged to register within regional job centre and are granted health insurance. After the IPI is 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.⁶⁸⁶ The required documentation is very hard to obtain and there are long administrative delays and waiting periods in obtaining entitlement to health care in Poland, according to the report from 2019.⁶⁸⁷

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.⁶⁸⁸

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

⁶⁸² K. Sobczak-Szelc, M. Pachocka, K. Pędziwiatr, J. Szałańska, 'Integration Policies, Practices and Responses. Poland – Country Report', Multilevel Governance of Mass Migration in Europe and Beyond Project (#770564, Horizon2020), available at: <http://bit.ly/3bfjTxL>.

⁶⁸³ Ministry of Family, Labour and Social Policy, *Report 2019*, available (in Polish) at: <https://bit.ly/2SFg2AE>.

⁶⁸⁴ Ministry of Family, Labour and Social Policy, *Report 2019*, available (in Polish) at: <https://bit.ly/2G3RwVY>.

⁶⁸⁵ Article 3(1)(2) Law of 27 August 2004 on healthcare services financed from public funds.

⁶⁸⁶ 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>.

⁶⁸⁷ Alexander Wolffhardt, Carmine Conte, Thomas Huddleston, *The European benchmark for refugee integration: A comparative analysis of the National Integration Evaluation Mechanism in 14 EU countries*, 2019, available at: <https://bit.ly/2SlshUh>, 123.

⁶⁸⁸ Article 27(1) and (3) Law on healthcare services financed from public funds.

purchasing medicines, auxiliary products or orthopedic equipment.⁶⁸⁹ Notably, nursing care for elderly persons is not provided in Poland.⁶⁹⁰

The main issue with regard to access to healthcare are linguistic and cultural barriers. Access to interpretation in the health care system is not available at all.⁶⁹¹ 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.⁶⁹² That is why in 2020, when due to pandemic beneficiaries were left without work, in many cases the situation was critical – NGOs organized online fundraising for food or medical treatments.⁶⁹³

According to a report from 2020, the barriers in accessing healthcare were linguistic ones and linked with the stereotypical perception of persons coming from a specific part of the globe or belonging to a given ethnic or religious group. Similar to citizens of Poland, persons with international protection who cannot wait to see a specialist and have an adequate funding use the services of the private medical sector. One of the clear gaps in the medical services is the specialized treatment for victims of torture or traumatized refugees. There is a clear lack of the qualified psychologists and therapists specializing in treating trauma, in particular in an intercultural context.⁶⁹⁴

As regards the access of beneficiaries of international protection to vaccines, the situation was still unclear at the time of writing of this report. The Commissioner for Human Rights asked the government for guidance on this matter, but there has been no response yet.⁶⁹⁵

⁶⁸⁹ 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>.

⁶⁹⁰ Alexander Wolffhardt, Carmine Conte, Thomas Huddleston, *The European benchmark for refugee integration: A comparative analysis of the National Integration Evaluation Mechanism in 14 EU countries*, 2019, available at: <https://bit.ly/2SlshUh>, 122.

⁶⁹¹ Alexander Wolffhardt, Carmine Conte, Thomas Huddleston, *The European benchmark for refugee integration: A comparative analysis of the National Integration Evaluation Mechanism in 14 EU countries*, 2019, available at: <https://bit.ly/2SlshUh>, 124.

⁶⁹² Maryla Koss-Goryszewska 'Służba zdrowia' in A. Górską, M. Koss-Goryszewska, J. Kucharczyk (eds), *W stronę krajowego mechanizmu ewaluacji integracji: Diagnoza sytuacji beneficjentów ochrony międzynarodowej w Polsce* (Instytut Spraw Publicznych 2019), 43.

⁶⁹³ See e.g. information available on the website of Ocalenie NGO, about online fundraising for some particular medical treatments for beneficiaries: <http://bit.ly/3s2qtP0>.

⁶⁹⁴ K. Sobczak-Szelc, M. Pachocka, K. Pędziwiatr, J. Szalańska, 'Integration Policies, Practices and Responses. Poland – Country Report', *Multilevel Governance of Mass Migration in Europe and Beyond Project* (#770564, Horizon2020), available at: <http://bit.ly/3bfjTxL>, p. 136.

⁶⁹⁵ The Commissioner for Human Rights, Letter from 23 January 2021, <https://bit.ly/2OHd68J>.

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)