

Asylum Information Database

# National Country Report

## *Poland*

**HR** HELSINKI FOUNDATION  
for HUMAN RIGHTS

 **ecre**  
European Council  
on Refugees and Exiles

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

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## The AIDA project

The AIDA project is jointly coordinated by the European Council on Refugees and Exiles (ECRE), Forum Réfugiés-Cosi, Irish Refugee Council and the Hungarian Helsinki Committee. It aims to provide up-to date information on asylum practice in 14 EU Member States (AT, BE, BG, DE, FR, GR, HU, IE, IT, MT, NL, PL, SE, UK) which is easily accessible to the media, researchers, advocates, legal practitioners and the general public and includes the development of a dedicated website which will be launched in the second half of 2013. Furthermore the project seeks to promote the implementation and transposition of EU asylum legislation reflecting the highest possible standards of protection in line with international refugee and human rights law and based on best practice.



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# TABLE OF CONTENTS

<b>Statistics</b> .....	<b>5</b>
<b>Overview of the legal framework and practice</b> .....	<b>7</b>
<b>Asylum Procedure</b> .....	<b>8</b>
<b>A. General</b> .....	<b>8</b>
1. Organigram.....	8
2. Types of procedures .....	9
3. List the authorities that intervene in each stage of the procedure .....	9
4. Number of staff and nature of the first instance authority (responsible for taking the decision on the asylum application at the first instance) .....	9
5. Short overview of the asylum procedure .....	10
<b>B. Procedures</b> .....	<b>11</b>
1. Registration of the Asylum Application .....	11
2. Regular procedure .....	12
<i>General (scope, time limits)</i> .....	12
<i>Appeal</i> .....	13
<i>Personal Interview</i> .....	15
<i>Legal assistance</i> .....	16
3. Dublin .....	18
<i>Procedure</i> .....	18
<i>Appeal</i> .....	19
<i>Personal Interview</i> .....	20
<i>Legal assistance</i> .....	20
<i>Suspension of transfers</i> .....	20
4. Admissibility procedures .....	21
<i>General (scope, criteria, time limits)</i> .....	21
<i>Appeal</i> .....	21
<i>Personal Interview</i> .....	22
<i>Legal assistance</i> .....	22
5. Border procedure (border and transit zones).....	22
6. Accelerated procedures .....	22
<i>General (scope, grounds for accelerated procedures, time limits)</i> .....	22
<i>Appeal</i> .....	23
<i>Personal Interview</i> .....	23

<i>Legal assistance</i> .....	24
<b>C. Information for asylum seekers and access to NGOs and UNHCR</b> .....	<b>24</b>
<b>D. Subsequent applications</b> .....	<b>26</b>
<b>E. Guarantees for vulnerable groups of asylum seekers (children, traumatised persons, survivors of torture)</b> .....	<b>27</b>
1. Special Procedural guarantees .....	27
2. Use of medical reports .....	29
3. Age assessment and legal representation of unaccompanied children .....	29
<b>F. The safe country concepts (if applicable)</b> .....	<b>30</b>
<b>G. Treatment of specific nationalities</b> .....	<b>31</b>
<b>Reception Conditions</b> .....	<b>32</b>
<b>A. Access and forms of reception conditions</b> .....	<b>32</b>
1. Criteria and restrictions to access reception conditions .....	32
2. Forms and levels of material reception conditions .....	33
3. Types of accommodation .....	35
4. Reduction or withdrawal of reception conditions.....	36
5. Access to reception centres by third parties .....	36
6. Addressing special reception needs of vulnerable persons .....	37
7. Provision of information.....	38
8. Freedom of movement .....	39
<b>B. Employment and education</b> .....	<b>39</b>
1. Access to the labour market.....	39
2. Access to education .....	40
<b>C. Health care</b> .....	<b>41</b>
<b>Detention of Asylum Seekers</b> .....	<b>43</b>
<b>A. General</b> .....	<b>43</b>
<b>B. Grounds for detention</b> .....	<b>43</b>
<b>C. Detention conditions</b> .....	<b>46</b>
<b>D. Judicial Review of the detention order</b> .....	<b>49</b>
<b>E. Legal assistance</b> .....	<b>50</b>

## Statistics

**Table 1: Applications and granting of protection status at first and second instance in 2012**

	Total applicants in 2012	Refugee status	Subsidiary protection	Humanitarian Protection	Rejections <sup>1</sup> (in-merit <i>and</i> admissibility)	Otherwise closed / discontinued	Refugee rate	Subs.Pr. rate	Hum. Pr. rate	Rejection rate
	A	B	C	D	E	F	B/(B+C+D+E) %	C/(B+C+D+E) %	D/(B+C+D+E) %	E/(B+C+D+E) %
<b>Total numbers</b>	10753	106	164	319	1960	8753	4%	6%	13%	77%
<b>Breakdown by countries of origin of the total numbers</b>										
<b>Top 10</b>										
Russia	6084	65	142	242	1098	5050	4%	9%	16%	71%
Georgia	3234	0	0	23	468	2933	0%	0%	5%	95%
Amenia	413	0	0	21	111	320	0%	0%	16%	84%
Kazakhstan	121	0	0	2	9	43	0%	0%	18%	82%
Syria	107	0	6	0	24	24	0%	20%	0%	80%
Afghanistan	103	1	4	0	26	17	3%	13%	0%	84%
Egypt	102	0	0	0	13	68	0%	0%	0%	100%
Ukraine	72	0	0	3	48	32	0%	0%	6%	94%
Belarus	69	25	4	5	18	26	48%	8%	10%	35%
Vietnam	57	0	0	1	40	10	0%	0%	2%	98%
<b>Others<sup>2</sup></b>										
Iran	17	1	1	0	9	12	9%	9%	0%	82%
Somalia	7	0	0	0	0	0	-	-	-	-

Source: Office for Foreigners

1 Rejection is only issued in in-merit procedure at first instance, in admissibility - it is discontinued. At the second instance the decision can only be confirmed

2 Other main countries of origin of asylum seekers in the EU (not appearing in the national top 10 breakdown).

**Table 2: Gender/age breakdown of the total numbers of applicants in 2012**

	Number	Percentage
<b>Total number of applicants</b>	<b>10753</b>	
<b>Men</b>	5904	54,91%
<b>Women</b>	4849	45,09%
<b>Unaccompanied children</b>	244	2,27%

Source: Office for Foreigners

**Table 3: Comparison between first instance and appeal decision rates in 2012**

	First instance		Appeal	
	Number	Percentage	Number	Percentage
<b>Total number of decisions</b>	<b>11.120<sup>3</sup></b>		<b>1080</b>	
<b>Positive decisions</b>				
<i>Total</i>	<b>519</b>		<b>70</b>	
<i>Refugee Status</i>	<b>87</b>		<b>19</b>	
<i>Subsidiary protection</i>	<b>140</b>		<b>24</b>	
<i>Hum/comp protection</i>	<b>292</b>		<b>27</b>	
<b>Negative decisions</b>	<b>1.960</b>		<b>899</b>	

Source: Office for Foreigners

**Table 4: Applications processed under an accelerated procedure in 2012**

	Number	Percentage
<b>Total number of applicants</b>	<b>10.753</b>	
<b>Number of applications treated under an accelerated procedure at first instance</b>	376	3.5%

Source: Office for Foreigners

**Table 5: Subsequent applications submitted in 2012<sup>4</sup>**

	Number of subsequent applications submitted
<b>Total number</b>	<b>1579 (applicants)</b>
<b>Top 5 countries of origin</b>	
<b>Russia</b>	1150
<b>Georgia</b>	278
<b>Armenia</b>	33
<b>Afghanistan</b>	15
<b>Ukraine</b>	14

Source: Office for Foreigners

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

4 This refers only to those which have been accepted as constituting a fresh claim. This is an estimated 10% of the total number of those who make further submissions

## Overview of the legal framework and practice

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

Title in English	Original title	Abbreviation	Weblink
Law of 13 June 2003 on granting protection to foreigners within the territory of the Republic of Poland (Journal of Laws 2012 position 680)	Ustawa z dnia 13 czerwca 2003 r. o udzielaniu cudzoziemcom ochrony na terytorium Rzeczypospolitej Polskiej (Dz.U. 2012 poz. 680)	Law on Protection	<a href="http://bip.udsc.gov.pl/?cid=61&amp;bip_id=245">http://bip.udsc.gov.pl/?cid=61&amp;bip_id=245</a>
Law of 13 June 2003 on foreigners (Journal of Laws 2011 No 264 position 1573)	Ustawa z dnia 13 czerwca 2003 r. o cudzoziemcach (Dz.U. 2011 Nr 264 poz. 1573)	Law on Foreigners	<a href="http://bip.udsc.gov.pl/?cid=61&amp;bip_id=244">http://bip.udsc.gov.pl/?cid=61&amp;bip_id=244</a>
Law of 14 June 1960 Code of administrative proceedings (Journal of Laws 2013 position 267)	Ustawa z dnia 14 czerwca 1960 r. Kodeks Postępowania Administracyjnego (Dz.U. 2013 poz. 267)	Code of administrative proceedings	<a href="http://isap.sejm.gov.pl/DetailsServlet?id=W DU19600300168">http://isap.sejm.gov.pl/DetailsServlet?id=W DU19600300168</a>

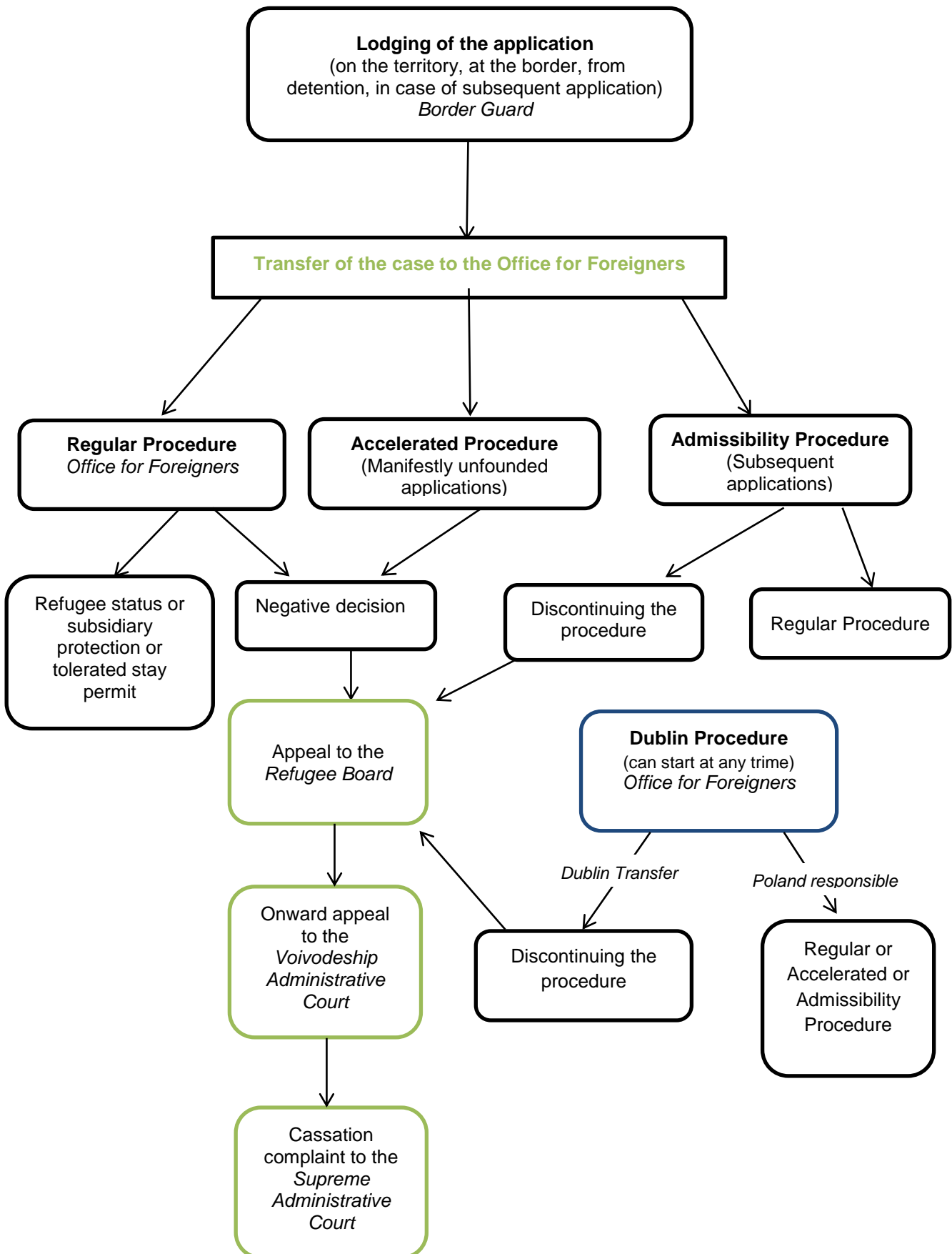
### **Main implementing decrees and administrative guidelines and regulations relevant to asylum procedures, reception conditions and detention.**

Title in English	Original title	Abbreviation	Weblink
Ordinance of the Minister of Interior and Administration of 10 November 2011 on the amount of assistance for foreigners seeking refugee status (Journal of Laws 2011 no 261 position 1564)	Rozporządzenie Ministra Spraw Wewnętrznych i Administracji z dnia 10 listopada 2011 r.w sprawie wysokości pomocy dla cudzoziemców ubiegających się o nadanie statusu uchodźcy (Dz.U. 2011nr 261 poz. 1564)	Regulation on amount of assistance for asylum seekers	<a href="http://bip.udsc.gov.pl/?cid=62&amp;bip_id=236">http://bip.udsc.gov.pl/?cid=62&amp;bip_id=236</a>
Ordinance of the Ministry of Interior of 6 December 2011 on the rules of stay in the centre for foreigners seeking refugee status (Journal of Laws 2011 no 282 position 1654)	Rozporządzenie Ministra Spraw Wewnętrznych z dnia 6 grudnia 2011 r. w sprawie regulaminu pobytu w ośrodku dla cudzoziemców ubiegających się o nadanie statusu uchodźcy (Dz. U. 2011 nr 282 poz. 1654)	Regulation on rules of stay in the centrefor asylum seekers	<a href="http://www.dziennikus taw.gov.pl/DU/2011/s /282/1654/1">http://www.dziennikus taw.gov.pl/DU/2011/s /282/1654/1</a>
Ordinance of the Ministry of Interior and Administration of 26 August 2004 on the conditionsinguarded centresand detention centres for the purpose of expulsion andrulesof foreigners' stay in guarded centresand detention centres for the purpose of expulsion (Journal of Laws 2004 no 190 position 1953)	Rozporządzenie Ministra Spraw Wewnętrznych i Administracji z dnia 26 sierpnia 2004 r. w sprawie warunków, jakim powinny odpowiadać strzeżone ośrodki i areszty w celu wydalenia oraz regulaminu organizacyjno-porządkowego pobytu cudzoziemców w strzeżonym ośrodku i areszcie w celu wydalenia (Dz.U. 2004 nr 190 poz. 1953)	Regulation on conditions and rules of stay in detention centres	<a href="http://www.dziennikus taw.gov.pl/DU/2004/s /190/1953/1">http://www.dziennikus taw.gov.pl/DU/2004/s /190/1953/1</a>

# Asylum Procedure

## A. General

### 1. Organigram







## 5. Short overview of the asylum procedure

An asylum application may be lodged either on the territory or at the border or from a detention centre, in all cases through a Border Guard officer that will transfer the request to the Head of the Office for Foreigners. The examination of an asylum application lodged in Poland involves two main stages:

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

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

The main asylum authority is the Head of the Office for Foreigners, for which the Ministry of Interior is responsible. It is an administrative authority specialised in asylum and responsible for examining and granting, refusing, and withdrawing protection granted in Poland and also for Dublin procedures.

In Poland a single procedure applies and includes the examination of conditions to grant refugee status, subsidiary protection or tolerated stay permit. Tolerated stay is granted if in case of an expulsion to their country of origin, an applicant's life, freedom and personal safety would be threatened; they could be subjected to torture, inhumane or degrading treatment or punishment; could be forced to work; would not have the right to fair trial; could be punished without any legal grounds within the meaning of the European Convention on Human Rights and Fundamental Freedoms; their right to family life would be infringed or the rights of the child as defined in the Convention on the Rights of a Child would be significantly threatened.

A regular asylum procedure therefore has 5 possible outcomes:

- the applicant is granted refugee status
- the applicant is granted subsidiary protection
- the applicant is granted tolerated stay permit
- the application is rejected and there is a return order issued (unless there was a decision on return issued before lodging an asylum application);
- the proceedings are discontinued (e.g. when applicant is no longer on the territory of Poland).

There is also a national protection status called ‘asylum’. A foreigner can be granted ‘asylum’ in a separate procedure if it is necessary to provide them with protection, but only if it is in the interest of the state, so there are political aspects taken into account in this procedure (the procedure is hardly ever applied in practice).

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

The Refugee Board is a second instance administrative body competent to handle appeals against first instance negative decisions in all types of procedures (including Dublin). Appeals before the Refugee Board have automatic suspensive effect and must be lodged within 14 calendar days after the decision has been notified to the applicant (the only exemption – appeal in accelerated procedures must be submitted in 5 days). The Refugee Board may annul the first instance decision (in case it considers that essential information is lacking in order to decide on the appeal and further investigation by the first instance authority is needed); overturn it (i.e. grant refugee status, subsidiary protection or tolerated stay permit) or confirm the decision of the Head of the Office for Foreigners (which is most often the case).

After the administrative appeal procedure before the Refugee Board, there is a possibility of an onward appeal before the Voivodeship Administrative Court in Warsaw, but only points of law can be litigated at this stage and there is a fee applicable to the procedure. The onward appeal does not have a suspensive effect on a final administrative decision. Upon request of the applicant, the court may suspend a decision

(and a return order) for the time of the court proceedings, which happens in most cases, but usually takes some months. The court procedure is adversarial. The ruling of the Voivodeship Administrative Court in Warsaw can be appealed against to the Supreme Administrative Court by lodging a cassation complaint, based exclusively on the legal conditions foreseen in the law.

## B. Procedures

### 1. Registration of the Asylum Application

#### Indicators :

- Are specific time limits laid down in law for asylum seekers to lodge their application?  
 Yes                       No
  
- Are there any reports (NGO reports, media, testimonies, etc) of people refused entry at the border and returned without examination of their protection needs?  Yes       No

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

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

In 2012 and 2013, cases were reported where persons were denied access to the territory at the border crossing checkpoint in Terespol (at the border with Belarus), which is the main entry point in Poland for asylum seekers. The Helsinki Foundation for Human Rights (HFHR) made numerous inquiries in individual cases asking for clarification of these situations and brought up this issue at ministerial level.<sup>7</sup> In some cases asylum seekers were refused entry, in others they were detained on the basis of abusing the asylum procedure (also in the case of first-time applicants). The asylum seekers, mostly of Georgian nationality, interviewed in the detention centre in Białystok in October 2012 by the HFHR representatives claimed they had asked for asylum on the first instance, but managed to enter the territory only after some days (and several attempts) and were subsequently detained. The Border Guard states that third country nationals do not ask for asylum while trying to cross the border without visa or other permit and give other reasons which do not entitle them to enter Poland (financial problems in the country of origin, family members in other Member States).<sup>8</sup> They also claim that Poland is a transit country. The issue was discussed at several meetings with the Border Guard representatives in 2013. Still, HFHR and other NGO

5 Article 28 of the Law on Protection.

6 Foreigner's Identity Temporary Certificate, *Tymczasowe Zaświadczenie Tożsamości Cudzoziemca*

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

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

(Legal Intervention Association) receive phone calls from asylum seekers trying to cross the border in Terespol.

HFHR received a few complaints that the existence of a centralised system for submitting asylum applications on the territory is problematic for asylum seekers from places of residence which are far from Warsaw. It should be also noted that asylum seekers who want to benefit from social assistance have to register within 2 days after submitting the asylum application at one of the reception centre and therefore need to come either to Warsaw or to Biala Podlaska.

## 2. Regular procedure

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

#### *Indicators:*

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

The Head of the Office for Foreigners is a state authority which is responsible, among others, for making first instance decisions in granting and withdrawing protection status, deciding on the state's responsibility under the Dublin Regulation<sup>9</sup> and on social assistance provided in the asylum procedure. It is also responsible for the legalisation of the stay of foreigners in Poland (central visa authority, second instance authority in residence permits procedures).

The time limit set in law for the Head of the Office for Foreigners to make a decision on the asylum application is 6 months<sup>10</sup>. This limit is usually not observed in practice, even in the case of vulnerable applicants (such as torture survivors or traumatised women) and sometimes in cases considered well-founded (e.g. Belarusian).

No caseloads are subject to official prioritisation. The average delay to issue a decision on the merits in practice is 6 months 17 days<sup>11</sup>. However, it has to be noted, that this data includes accelerated procedures (i.e. in case of manifestly unfounded claims), in which the time limit for the first instance authority to make a decision is 30 days<sup>12</sup>. There is a backlog in both first and second instance proceedings. Although no statistics are available on the number of cases, for which a final decision was taken one year after the asylum application was registered, the Helsinki Foundation for Human Rights (HFHR) lawyers work on cases, where the decision has not been issued within two years.

According to the law, if the decision is not issued within 6 months, the general provisions on inaction of the administrative authority apply<sup>13</sup>, i.e. the Head of the Office for Foreigners should inform the applicant in writing about the reasons of delay (which in practice is done in a very general way) and the applicant can submit a complaint to the second instance authority (the latter hardly ever happens in practice). The most significant consequence for the applicant of not issuing a decision on asylum application within 6

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

10 Article 35 section 1 of the Law on Protection

11 Information obtained from the Head of the Office for Foreigners

12 Article 34 section 2 point 2 of the Law on Protection

13 Article 36-38 of the Code of administrative proceedings

months is a possibility to apply for a work permit on this basis<sup>14</sup>. The Head of the Office for Foreigners then issues a certificate, which – together with a temporary ID – gives a right to work in Poland until the end of the procedure.<sup>15</sup>

Since 2008 there is an ongoing cooperation between UNHCR and the Polish authorities aiming at enhancing the quality of asylum procedures.<sup>16</sup> In 2009 an internal quality audit mechanism was set up by the Office for Foreigners to ensure the internal sustainability of the quality RSD assessment mechanisms. In 2011 UNHCR and the Office for Foreigners also signed “The Cooperation Agreement regarding the implementation of parallel quality audit of refugee status determination proceedings conducted by the Head of the Office for Foreigners”. Based on the agreement, the parallel audit of the refugee status determination interviews, files and decisions, is conducted on a monthly basis and reports between both parties are exchanged.

However, in recent years concerns were expressed with regard to the standards of reasoning in the decisions concerning Russian citizens of Chechen nationality (See reports of ECRE<sup>17</sup>, Belgian Refugee Council<sup>18</sup>, Transnational Dublin Project Final Report<sup>19</sup>). HFHR practice in granting legal assistance to asylum seekers in Poland served as one of the sources of information.

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

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

## Appeal

### Indicators:

- Does the law provide for an appeal against the first instance decision in the regular procedure:  Yes  No
  - o if yes, is the appeal  judicial  administrative
  - o If yes, is it suspensive  Yes  No
- Average delay for the appeal body to make a decision: 35 days

14 Article 36 of the Law on Protection

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

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

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

18 Belgian Refugee Council, *Polish asylum procedure and refugee status determination*, Report following the mission to Poland, revised December 2011, available [here](#)

19 Transnational Dublin Project Final Report from May 2011, available [here](#)

Decisions of the Head of the Office for Foreigners in the regular procedure can be appealed to the Refugee Board within 14 calendar days. The conclusion of the decision as well as the instruction on appeal are translated into the language that the asylum seeker concerned declared as understandable. Asylum seeker can submit the appeal in their own language.

The Refugee Board is an administrative body, consisting of 12 members, supported in their work by 6 employees<sup>20</sup>. In the regular procedure, decisions are made by 3 members. The procedure includes an assessment of the facts, and there is a possibility of hearing applicants, but interviews are not conducted often in practice.<sup>21</sup> The time limit set in law for the appeal procedure is 1 month.<sup>22</sup> In practice, according to the Refugee Board, the appeal procedure takes 35 days in average. However, according to the Office for Foreigners, which analysed 10 % of the cases (170) before the Refugee Board in 2012, the average length of the appeal procedure was 3 months. The appeal has suspensive effect.

The Refugee Board may annul the first instance decision (in case it considers that essential information is lacking in order to decide on the appeal and further investigation by the first instance authority is needed); overturn it (i.e. grant refugee status, subsidiary protection or tolerated stay permit) or confirm the decision of the Head of the Office for Foreigners. In the majority of cases decisions of the Head of the Office for Foreigners are confirmed (in 656 decisions out of 795 in 2012<sup>23</sup>). Neither hearings nor decisions of the Refugee Board are made public.

After the administrative appeal procedure before the Refugee Board, the latter's decision can be further appealed to the Voivodeship Administrative Court in Warsaw, but only points of law can be litigated at this stage.<sup>24</sup> There is a fee for the procedure, but in practice, upon application, asylum seekers are exempt from the payment. This onward appeal does not have a suspensive effect on a final administrative decision (and thus on a return decision). However, asylum seekers can ask the court to suspend a decision (and a return order) for the time of the court proceedings, which happens in most cases, but usually takes some months. The court procedure is adversarial (both the Refugee Board and the asylum seeker are parties before the Court). The ruling of the Voivodeship Administrative Court in Warsaw can itself be appealed to the Supreme Administrative Court by lodging a cassation complaint, based exclusively on the legal conditions foreseen in the law.<sup>25</sup>

In 2012 there were cases in which asylum seekers were returned to their country of origin without having the possibility to access the court. This problem mostly concerns asylum seekers placed in detention, who received their final negative administrative decision on asylum claim, containing expulsion order - as this decision is already enforceable. The issue was widely criticised by NGOs in Poland. On 9 January 2012, three NGOs dealing with asylum issues (Halina Niec Legal Aid Centre– *Centrum Pomocy Prawnej im. Haliny Nieć*, Legal Intervention Association – *Stowarzyszenie Interwencji Prawnej* and the Helsinki Foundation for Human Rights - HFHR) intervened before the Ombudsman Office in the case of a traumatised asylum seeking woman from the Democratic Republic of Congo, who was deported on the same day she received a negative decision from the Refugee Board on her asylum claim. On 22 February 2012, HFHR sent a letter to the Ministry of Interior and the Ombudsman Office about the deportation of an Afghan family a couple of days after they received a final negative decision, giving them no time to lodge an appeal to the Voivodeship Administrative Court<sup>26</sup>. Although the Ministry confirmed<sup>27</sup>

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20 Letter from the Refugee Board no DWSRU-0315-5(2)13 from 30 January 2013.

21 No data made available upon request on the number of cases in which the applicant was interviewed by the second instance authority.

22 Article 35 section 3 of the Code of administrative proceedings.

23 Letter from the Refugee Board no DWSRU-0315-5(2)13 from 30 January 2013.

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

25 *Ibid.*

26 Information on both letters available (in Polish) [here](#)

that the applicants' right to an effective remedy was indeed limited in practice by their immediate deportation, there were no changes in law or practice on this issue. On 30 November 2012, HFHR and Legal Intervention Association submitted a letter to the Border Guard Commander in Chief (*Komendant Główny Straży Granicznej*)<sup>28</sup> pointing at the risk of further infringements of asylum seekers' right to judicial control if the practice of immediate deportations is maintained. The Border Guard Commander in Chief position is that the Refugee Board's decisions are final and return orders can be enforced<sup>29</sup>.

The above mentioned loophole constituted a reason for the Dutch court in the Hague to withhold a transfer of an asylum seeker to Poland under the Dublin Regulation by applying an interim measure (ruling no AWB 13/11314 from 18 June 2013<sup>30</sup>). The Court stated that the practice of deporting asylum seekers before the court examines their case is inconsistent with the article 47 of the Charter of Fundamental Rights of the European Union and can lead to violation of the principle of *non-refoulement*. Therefore the court found that the principle of trust can no longer be applied towards Poland.

In the new draft law on foreigners asylum proceedings and return proceedings were separated. During the legislative process, HFHR and the Legal Intervention Association suggested a suspensive effect on all return decisions — since it is the return decision which has irreversible effect. The solution proposed states that in case of filing the complaint to the court together with the application to withhold the execution of the final administrative decision, a foreigner cannot be deported until the court examines this application (article 332 sec. 1 of the draft law). This has been accepted, but at the same time the maximum detention period was prolonged from 12 to 18 months. Submitting a complaint to the court has been made one of the legal basis for prolonging the detention for another 6 months (article 404 sec. 5 of the draft law). On 8 November 2013 the text has been approved by Sejm (the Parliament's lower chamber) and will be subject to further legislative process in the Senate.<sup>31</sup>

### Personal Interview

#### Indicators:

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

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

- a decision on granting refugee status can be issued on the basis of evidence already gathered or
- an applicant is not fit to be interviewed (e.g. due to health or psychological problems).<sup>32</sup>

In practice<sup>33</sup> it has happen, that the interview was conducted although the applicant is not fit for interview due to serious psychological and psychiatric problems<sup>34</sup>. The procedures are generally gender sensitive.

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

28 Letter available [here](#)

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

30 Available at [here](#) (in Polish):

31 Draft law approved by Sejm on 8 November 2013 available [here](#)

32 Article 43 of the Law on Protection.

33 No data made available upon request on the number of cases in which the applicant was interviewed by the first instance authority.

34 Case of a Cameroonian woman, a torture survivor, handled by HFHR in 2012. Other anecdotal evidence was collected by HFHR.

Interpretation is ensured respectively by the Head of the Office for Foreigners and the Refugee Board. The interview should be conducted in a language understandable for the applicant. In the asylum application, the asylum seeker has to declare their mother tongue as well as any fluent knowledge of other languages (section B, point 4 of the application).

The contract established between the Office for Foreigners and interpretation services regulates the quality, liability, and specifies the field (asylum). Interpretation is available in most of the languages spoken by the asylum applicants in Poland. Only some rare African languages are not available<sup>35</sup>. In practice, there are problems with the quality of interpretation: the dialect of a particular language is not duly taken into account, as well as the knowledge of the country of origin and intercultural competence of the interpreters.<sup>36</sup> Audio or video recording is possible under national legislation if an applicant was informed about this fact and technical means allow for that. However, it was not used in 2012<sup>37</sup>. There is no legal basis to conduct an interview through video-conferencing.

The law provides that a copy of the report of the interview should be handed in to the applicant after a personal interview. It happens that the applicants do not take or keep them, but they can ask for a copy at any stage of the proceedings. The report is prepared in Polish and contains all the questions asked and responses received, but it is not a verbatim transcript. The report is handwritten, which sometimes makes it unreadable. At the end of the interview the report is read to the applicant in an understandable language and before signing it, interviewees can make corrections (and are informed about such possibility).

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

### Legal assistance

#### Indicators:

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

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

35 Letter from the Head of the Office for Foreigners, DPU-07-1410/2013 from 22 February 2013.

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

37 Information obtained from the Office for Foreigners.



NGOs providing legal assistance differ between each other: there are some specialised organisations, with extensive experience in the field, engaged also in strategic litigation and advocacy. For some others, providing legal assistance to asylum seekers is another component of their general assistance activities.<sup>38</sup> In most cases, NGOs assist asylum seekers not only in the asylum process, but also in other legal proceedings and in solving every-day problems. Assistance related to the asylum procedure includes providing information and preparing relevant documents (appeals, applications, complaints) basically at every stage of the procedure<sup>39</sup>. Legal representation is provided only in some cases, as the organisations providing legal assistance generally lack resources. For instance, presence during the interview of every asylum seeker assisted cannot be ensured and the assistance can cover only the administrative procedure (first and second instance) and submitting an onward appeal to the Voivodeship Administrative Court in Warsaw. Representation before this court and proceedings before the Supreme Administrative Court can be provided only by professional legal representatives (lawyers, legal counsellors). There is a general possibility to apply for a cost-free professional legal representation before these courts on the same rules that apply to Polish citizens (i.e. insufficient financial resources). There is a form, in Polish, available in the court or on the court's website (not in the offices of administrative authorities examining the claim). So although in practice legal representation is granted by the court, it is very doubtful that asylum seekers would benefit from it if they are not assisted by NGOs to apply for it. Lack of legal representation means that the applicant will receive the correspondence themselves. Since the appearance at the trial is mostly not obligatory, the applicant can be just served with the ruling after it is made.

Legal assistance provided by NGOs consists mainly on individual consultations during office hours.<sup>40</sup> There are some projects that involve the provision of legal assistance during visits to accommodation and detention centres, but generally asylum seekers in reception centres face practical obstacles in accessing legal assistance, as most of the reception centres are located in remote areas, while NGOs have their offices in the main cities of the four *voivodeships* (Mazowieckie, Małopolskie, Podlaskie and Lubelskie).<sup>41</sup> However it should be noted that in September and October 2013, during the visits in the reception centres, HFHR lawyers noted almost no interest among the asylum seekers in benefitting from legal assistance.

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

One of the main problems for the provision of legal assistance in Poland are the limited funding opportunities. For European Refugee Fund (ERF) and state funded projects, NGOs need to provide a contribution of 15% of the total project budget from their own finances, which they often lack. Issues related to the delay in launching calls for proposals, and thus gaps between the different projects has been an issue in the previous years.<sup>42</sup> In addition, delays in the payments of projects which are already being implemented are particularly hard for smaller organisations<sup>43</sup>. Recently, the ERF funds already granted for an ongoing 3 year long project, focusing on legal assistance and being implemented by a few NGOs, were reduced for 2013. As a result the number of lawyers working in some organisations decreased.

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

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

40 A. Bergiel, K. Kubin, *op. cit.*, p.34.

41 A. Gutkowska, *op.cit.*, p. 136 and 146.

42 *Ibid.*, p. 146.

43 A. Bergiel, K. Kubin, *op.cit.*, p.21 and 22.

### 3. Dublin

#### *Indicators:*

- Number of outgoing requests in the previous year: 167
- Number of incoming requests in the previous year: 4 724
- Number of outgoing transfers carried out effectively in the previous year: 91
- Number of incoming transfers carried out effectively in the previous year: 1 246

#### *Procedure*

#### *Indicator:*

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

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

It takes on average 6 weeks before an applicant is transferred to the Member State which accepted the responsibility under the Dublin Regulation. The length depends on whether the Dublin procedure was initiated by the asylum authorities or by the applicant themselves (e.g. requests to join their family member or relative, which is the majority of outgoing requests from Poland.<sup>44</sup> The procedure to determine the state responsible takes about 1 to 2 months in “take back” requests, and 3 to 4 months for “take charge” requests.<sup>45</sup>

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

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

There is no legal basis to detain asylum seekers pending their transfer under the Dublin procedure. Asylum seekers are transferred under escort only when there is a risk of absconding or if the asylum seeker has already absconded beforehand. It happens rarely, as in most cases asylum seekers are willing to be transferred (e.g. in family reunification cases). However, an asylum seeker can be detained after being transferred back from another state, as crossing the border illegally when leaving Poland

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44 Information obtained from the Dublin Proceedings Unit at the Office for Foreigners.

45 Information obtained from the Dublin Proceedings Unit at the Office for Foreigners.

constitutes a basis to be placed in detention or they may be detained in case of a lack of identity documents.<sup>46</sup>

Asylum seekers are informed about the Dublin procedure when they apply for international protection. They receive information in an understandable language, in writing. However, if the authorities decide to apply the Dublin procedure, asylum seekers are neither informed about the request for taking charge or taking back being submitted nor about the following steps of the procedure. The information is provided only upon request, once the asylum seeker gets to know about the procedure.

When an asylum seeker is transferred back from another Member State, they need to lodge an asylum application through the Border Guard (or an application to re-open their asylum procedure). The Border Guard either directs them to a reception centre or detains them for maximum 48 hours and requests a placement in a guarded centre to the court. Depending on the situation, their procedure is re-opened (if it was discontinued beforehand, because they left) or their application is considered subsequent, if they already received a decision before leaving Poland. Asylum seekers do not face obstacles to access the asylum procedure again if they wish to. There were cases when HFHR trying to follow the asylum seekers transferred back from another country learned from the Border Guard that they applied straight away for voluntary return and left the territory. The reason why they chose return over a (re) examination of their asylum claim is not known.

The number of asylum applications lodged in Poland in 2013 increased significantly. As statistical data on Dublin procedures show, most of the applicants went to other Member States without waiting for examination of the claim in Poland. From 1 January until 21 November 2013 there were 9101 requests directed to Poland to take back or take charge of an asylum application. 8074 positive decisions were issued and 2913 asylum seekers were transferred to Poland during the stated period.

## Appeal

### Indicators:

- Does the law provide for an appeal against the decision in the Dublin procedure:
  - Yes  No
  - o if yes, is the appeal  judicial  administrative
  - o If yes, is it suspensive  Yes  No
- Average delay for the appeal body to make a decision: 6 months<sup>47</sup>

Asylum seekers can appeal against decisions taken in the Dublin procedure to the Refugee Board (and then to the Voivodeship Administrative Court in Warsaw and the Supreme Administrative Court) following the same procedure described in the section on appeals in the regular procedure.

The appeal body does not take into account the level of reception conditions, the procedural guarantees or recognition rates in the responsible Member State, even if these issues are brought up in the appeal.<sup>48</sup>

In 2012, all decisions of the first instance authority were confirmed.<sup>49</sup> There were two cases, where the Voivodeship Administrative Court annulled the decision of the administrative authorities, as a result of an onward appeal. However, it needs to be noted, that onward appeal to the court does not have suspensive effect on the transfer.

46 No data made available by the Border Guards on how many transferees were detained upon arrival in 2012. Last available statistics on this issue can be found in the Transnational Dublin Project Final Report from May 2011, available [here](#)

47 The Refugee Board replied that there is no data available on the average length of the Dublin appeal proceedings; this information was provided by the Office for Foreigners by e-mail.

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

49 Information obtained from the Dublin Proceedings Unit at the Office for Foreigners (by e-mail).

## Personal Interview

### Indicators:

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

There is no personal interview conducted exclusively for the purpose of the Dublin procedure. The information about the possible responsibility of another Member State is taken – apart from the Eurodac database - from a form on which an asylum claim is registered by the Border Guard or then from an interview in the regular asylum procedure conducted by the Office for Foreigners. If there is a need to obtain additional information or documents from an asylum seeker involved in a Dublin procedure, they are contacted in writing or by phone. They can be asked to come to the Office for Foreigners, but in 2012 there were no such cases.<sup>50</sup>

## Legal assistance

### Indicators:

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

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

## Suspension of transfers

### Indicator:

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

According to the policy statement of the Office for Foreigners, transfers to Greece have been suspended from 1 February 2011<sup>51</sup>, as a result of the European Court of Human Rights' M.S.S judgement<sup>52</sup>. In those cases, Poland tries to establish whether another state could be responsible for examining the asylum application and if not, it takes the responsibility for examining the asylum application. When establishing the facts within the Dublin procedure or when awaiting a response from another Member State, asylum proceedings may be suspended, but asylum seekers have then full access to reception conditions.

50 Information obtained from the Dublin Proceedings Unit at the Office for Foreigners(orally and by e-mail).

51 Information available [here](#)

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

## 4. Admissibility procedures

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

An admissibility procedure is provided for in national legislation<sup>53</sup> and all asylum seekers are systematically subjected to it. The Head of the Office for Foreigners is the authority responsible for taking a decision on admissibility. If an asylum application is deemed inadmissible, a decision on discontinuing the procedure is issued. An asylum application is considered inadmissible when:<sup>54</sup>

- another Member State has granted refugee status to the applicant;
- the applicant submitted a subsequent application after receiving a final decision, based on the same circumstances;
- a spouse of an applicant lodged a new asylum application after the applicant received a final decision and when the spouse's case was a part of an application made on their behalf and there are no facts justifying a separate application of the spouse.<sup>55</sup>

There are no specific time limits that must be observed by the Head of the Office for Foreigners and the Refugee Board in this procedure, the rules governing regular procedures are applicable. There is no data on whether the time limits for taking a decision are respected in practice<sup>56</sup>.

The statistics obtained from the Office for Foreigners show, that in 2012, decisions on discontinuation of the procedure because of inadmissibility of the asylum application were received by:

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

### Appeal

#### Indicators:

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

Generally the appeal system in the admissibility procedure does not differ from the one in the regular procedure, including its suspensive effect. However, it is worth highlighting that subsequent applications do not have an automatic suspensive effect but the applicant can submit a motion for suspension of a return order, together with a subsequent asylum application, to the Office for Foreigners. It has to be duly justified. The Head of the Office for Foreigners has 5 calendar days to issue a decision on the motion. Submitting such a motion does not itself withhold a return order. If the decision is negative, the applicant has the right to submit an appeal to the Head of the Office for Foreigners within 5 calendar days. If the decision is positive, the appeal in admissibility procedure has a suspensive effect. The return order can also be withheld by the Head of the Office for Foreigners at anytime.<sup>57</sup>

53 Article 40 of the Law on Protection,

54 This list is exhaustive.

55 Article 40 section 2 of the Law on Protection

56 Letter from the Head of the Office for Foreigners BIEC-0351-242/2013/MK from 5February 2013.

57 Article 33 section 4-10 of the Law on Protection.

## Personal Interview

### Indicators:

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

The law does not require a personal interview of asylum seekers in an admissibility procedure. Only in cases when the Head of the Office Foreigners has doubts regarding the qualification of the application (e.g whether the subsequent application was based on the same circumstances), then an interview is conducted. Depending on the case it is a detailed interview just like in the regular procedure or it focuses only on specific issues.<sup>58</sup>

## Legal assistance

### Indicators:

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

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

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

There is no border procedure in Poland.

## 6. Accelerated procedures

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

Accelerated procedures are applied with regard to 'manifestly unfounded applications'. Under the Law of Protection, the application is considered manifestly unfounded if the asylum seeker:<sup>59</sup>

- provides other reasons for applying for asylum than well-founded fear of persecution for reasons of race, religion, nationality, membership of a particular social group or political opinion, or a risk of serious harm; or did not provide any information on circumstances referring to the well-founded fear of persecutions or risk of serious harm;
- comes from a safe country of origin, included in the common minimum list of safe countries of origin, established by the Council of the European Union;

58 Information obtained from the Office for Foreigners, letter DPU-07-1410/2013 from 22 February 2013.

59 Procedure regulated in article 34 of the Law on Protection, this list is exhaustive.

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

The Head of the Office for Foreigners should issue a decision in the accelerated procedure within 30 calendar days. If a decision cannot be issued within 30 calendar days, the Head of the Office for Foreigners has to inform the applicant about the reasons for the delay and the date when a decision will be issued.<sup>60</sup> There are no consequences of not respecting this time limit.

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

### Appeal

#### Indicators:

- Does the law provide for an appeal against a decision taken in an accelerated procedure?
 

<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No
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  - o if yes, is the appeal:
 

<input type="checkbox"/> judicial	<input checked="" type="checkbox"/> administrative
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  - o If yes, is it suspensive?
 

<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No
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The appeal system is broadly the same in the accelerated procedure as in the regular procedure. However, there are two differences: first, the time limit to lodge an appeal is 5 calendar days instead of 14, which constitutes a significant obstacle in practice, because it is a short time, even more so if it falls on a weekend. The second difference is that decisions on the appeal in this procedure are issued by only one member of the Refugee Board (instead of three - in the regular procedure).

### Personal Interview

#### Indicators:

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

<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
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  - o If yes, is the personal interview limited to questions relating to nationality, identity and travel route?
 

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

<input type="checkbox"/> Frequently	<input type="checkbox"/> Rarely	<input checked="" type="checkbox"/> Never
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In the vast majority of cases in an accelerated procedure, the claims were considered manifestly unfounded because the applicant provided other reasons for applying for asylum than well-founded fear of persecution for reasons of race, religion, nationality, membership of a particular social group or political

<sup>60</sup> No data was made available upon request if the time limit is respected in practice.

opinion, or a risk of serious harm; or – did not provide any information on circumstances referring to the well-founded fear of persecutions or risk of serious harm<sup>61</sup>. In those cases, there is no mandatory interview by the Head of the Office for Foreigners, unless the applicant is an unaccompanied child. The interview doesn't differ from the one in a regular procedure – it is in the same form and the same rules apply. Generally the interview is mandatory in a regular procedure, unless a decision on the refugee status can be issued on the basis of the evidence already available, or the applicant is unable to attend the hearing, or isn't able to attend due to health or psychological reasons.<sup>62</sup> (see the section on Personal interview in the Regular Procedure)

### Legal assistance

#### Indicators:

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

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

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

#### Indicators:

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

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

- rules related to the asylum procedure,
- rights and obligations of the asylum seeker and their legal consequences,
- the possibility of informing UNHCR of an asylum procedure, reading the files, making notes and copies,
- NGOs which work with asylum seekers,
- the address of the centre where the applicant will live in.<sup>63</sup>

In practice, the Border Guard informs asylum seekers in writing, in the language which the asylum seeker

61 Art 34 section 2 point 1 of the Law on Protection

62 Art 43 section 2 of the Law on Protection

63 Art 29 section 1 point 6 of the Law on Protection.



declares as understandable.<sup>64</sup> The information contains also the main rules for determining responsibility under the Dublin Regulation. Information on the Dublin procedure is rather clear and it is hard to estimate, whether it is the insufficient information or other reasons that make the asylum seekers go to other Member States despite the fact that Poland should examine their application.

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

In addition, the Office for Foreigners also offers information in the form of a booklet entitled "First steps in Poland – practical brochure for the asylum applicants in Poland".<sup>65</sup> It was published in 2011 within the framework of a project co-financed by the European Refugee Fund, in 6 languages (Russian, English, Georgian, Chechen, Arab and Polish) and contains basic information on Poland, Polish law regarding asylum seekers and social assistance.

NGOs also provide information on asylum. A leaflet entitled "Refugee procedure in Poland – vulnerable persons and victims of sexual and gender based violence" was produced by the Halina Nieć Legal Aid Centre and the Office for Foreigner in 2012<sup>66</sup> in Polish and English. In 2012, the Helsinki Foundation for Human Rights (HFHR) prepared a booklet on the asylum procedure in Polish, English, Russian, Arabic and French. The booklets are available on the webpage of the HFHR, and were sent to the Office for Foreigners, as well as detention and reception centres<sup>67</sup>. Both projects are co-funded by the European Refugee Fund and the Polish state. The booklets were sent to reception and detention centres.

There are duty hours in the Office for Foreigners twice a week where asylum seekers can get advice on their particular case from UNHCR. Information about possibility to contact UNHCR is available in reception and detention centres (in English, Russian), in the main office of Head of the Office for Foreigners (in Polish). UNHCR Office in Warsaw also informs asylum seekers about the possibility to contact with them in writing or by telephone.

In every reception centre there is an organisation, which provides integration assistance (e.g. educational and leisure activities) to asylum seeker accommodated there<sup>68</sup>.

Asylum seekers are not held at the border. Asylum seekers in detention have access to NGOs and UNHCR through phone, fax and post. In every centre there is information about NGOs providing legal assistance and information in Russian, English, and French. Asylum seekers often call NGOs and UNHCR to receive legal assistance or send letters.

There are some obstacles in practice: the Border Guard send the asylum seekers' documents by post which takes more time than fax/e-mail and can influence the efficiency of lawyers' work (in case of short deadlines). There were cases reported when asylum seekers had to pay for sending the files by fax. The phone in detention is not for free and sometimes the access is limited (one phone box per one floor).

The good practice is that the Border Guards encourage asylum seekers to contact NGOs and they provide them with the list of NGOs at the border as well.

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64 Letter from the Head of the Office for Foreigners, DPU-07-1410/2013 form 22 February 2013.

65 The booklet is available (in English) [here](#)

66 The leaflet was published within the framework of the project "Give them a chance! - Legal and information support to vulnerable asylum seekers and SGBV prevention in centres for asylum seekers in Poland" The booklet is available [here](#)

67 The booklet is available [here](#)

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

The right of NGOs to access the detention centres is ensured in the law on Protection, regardless of projects run by NGOs.<sup>69</sup> NGOs have a right to access the centre on a regular basis, they just need to send information about their planned visit to the Border Guard Commander. Helsinki Foundation for Human Rights currently runs 2 projects directed to asylum seekers and returnees (*Lawyers for refugees* V- legal and integration assistance for refugees, financed by the European Refugee Fund and state budget funds and RETURNS. Legal assistance and information for returnees- financed by the European Return Fund and state budget) which include visiting detention centres.

## D. Subsequent applications

### Indicators:

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

In 2012, 1579 out of 10753 asylum seekers lodged subsequent applications. These were submitted mainly by Russians, Georgians and Armenians.<sup>70</sup> Subsequent applications are subject to an admissibility procedure. If the application is considered inadmissible, the decision on discontinuing the procedure is issued. In 2012, 644 asylum seekers received decisions on discontinuing the procedure because their subsequent application was considered to be based on identical facts and therefore inadmissible.

In 2011 the Supreme Administrative Court in a significant judgement<sup>71</sup> highlighted that the administrative authorities, when deciding on admissibility of a subsequent asylum application:

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

This judgment is respected in practice and is cited in other cases<sup>72</sup>.

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

Subsequent applications do not have an automatic suspensive effect but the applicant can submit a motion for suspension of a return order, together with a subsequent asylum application. It has to be duly justified. The Head of the Office for Foreigners has 5 calendar days to issue a decision on the motion. Submitting such a motion does not itself withhold a return order. If the decision is negative, the applicant

69 Art 39 section 1 of the Law on Protection.

70 Letter from the Head of the Office for Foreigners, BIEC-0351-242/2013/MK from 5February 2013.

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

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

has the right to submit an appeal to the Head of the Office for Foreigners within 5 calendar days. If the decision is positive, the appeal in admissibility procedure has a suspensive effect. The return order can also be withheld by the Head of the Office for Foreigners at any time.<sup>73</sup>

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

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

### 1. Special Procedural guarantees

#### Indicators:

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

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

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

If the examination confirms that an applicant should be identified as a vulnerable asylum seeker, all the steps in the asylum procedure should be done in conditions which ensure them a freedom of expression, in a particularly tactful manner and adapted to their mental and physical state<sup>74</sup>, with the participation of a psychologist or a doctor and, where necessary, of an interpreter of a gender indicated by the asylum seeker. The law provides that activities in an asylum procedure (e.g. interview) can be performed where the applicant resides, or means of transport are provided for an asylum seeker to make evidence and statements or use health services. The time limits for submitting evidence and support for gathering evidence are not extended, but the interview should be done in a special way and manner by specifically trained staff in the presence of a psychologist. Additionally, if the examination confirmed that the applicant was subject to violence or is disabled the activities in the asylum procedure and those related to granting social assistance in the reception centre can be performed by a person of a gender designated by the applicant and who was trained to work with people affected by crime or subjected to violence and people with disabilities.

However, the existing identification mechanism is not considered sufficient and effective<sup>75</sup>. In practice, the Office for Foreigners has not developed an effective process of identifying people with special needs, including victims of violence and traumatised people<sup>76</sup>.

<sup>73</sup> Article 33 section 4-10 of the Law on Protection.

<sup>74</sup> Article 68 and 69 of the Law on Protection.

<sup>75</sup> A. Chrzanowska, W. Klaus, *Rekomendacje dla polityki lokowania ośrodków dla uchodźców (Recommendations for policy on placement of the centers for refugees)*, in A. Chrzanowska, W. Klaus, A. Kosowicz, ed., *Polityka wyboru i lokalizacji ośrodków dla uchodźców. Analiza i rekomendacje (The policy on selection and location of*

According to the UNHCR National Office Poland, the main challenge regarding the procedure concerns the identification of vulnerable persons and procedural guarantees for them. Although the relevant legal provisions are in place, the current identification methods are not sufficient. In this regard the Office for Foreigners joined the UNHCR Regional Representation for Central Europe project called "Response to Vulnerability in Asylum" which started in October 2012 and is co-financed by the EU<sup>77</sup>. The project aims at gathering data on the situation of vulnerable asylum seekers across the EU Member States, ensuring effective and proper identification of vulnerable asylum seekers as well as the creation of tools for effective, timely and tailored response to special needs of asylum seekers. UNHCR notes some developments - from September/October 2012 if the applicant stated in the asylum application that they were subject to violence, the Office for Foreigners ensures psychological consultation in order to confirm this statement.

There are 5 psychologists who conduct this consultation and decide if the assistance of a psychologist during an interview is needed. Another 4 psychologists are hired by the Central Clinical Hospital of the Ministry of the Interior in Warsaw. They provide psychological assistance to asylum seekers in reception centres.

Psychological counselling in reception centres is available twice a week. Interpreters do not assist during consultations. According to the Office for Foreigners, all the psychologists speak Russian and some of them – English.

Generally, asylum-seekers whose psychological or physical status leads to believe that they have been a victim of violence should not be placed in a detention centre. Under the law, an asylum-seeker should be released, if further detention constitutes a threat to their life or health. In practice, poor mental condition is hardly ever accepted by courts as sufficient grounds for the release of an asylum seeker. Courts do not accept psychological opinions submitted by independent psychologists (e.g. from NGOs). In practice, only courts of higher instance call on experts to give evidence. This makes proceedings last up to a couple of weeks.<sup>78</sup>

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

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

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*the centers for refugees. Analysis and recommendations*), Stowarzyszenie Interwencji Prawnej, Fundacja Polskie Forum Migracyjne, 2011, p. 17, available [here](#)

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

77 UNHCR, [Response to Vulnerability in Asylum](#).

78 Legal Intervention Association, information obtained during an interview.

## 2. Use of medical reports

### Indicators:

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

Under the law, the Head of the Office for Foreigners shall ensure medical or psychological examinations only to asylum-seekers who themselves inform the authority carrying out the procedure that they are a victim of violence or are disabled or whose psychophysical status leads to believe that they have been a victim of violence.<sup>79</sup> A psychologist examines psychological conditions of the applicant, formulates a diagnosis on post-traumatic stress disorders (classification DSM IV is applicable) and gives an opinion whether specific safeguards envisaged in the legal provisions should be applied- if the psychologist is necessary during the interview.<sup>80</sup> Methodology set in the Istanbul protocol is not used.<sup>81</sup> Head of the Office for Foreigners covers the costs of the medical reports.

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

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

### Indicators:

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

Polish law provides for an identification mechanism for unaccompanied children. An asylum seeker, who claims to be a child, in case of any doubts as to their age, may have to undergo medical examinations – with their consent or with the consent of their legal representative – in order to determine their actual age. There are no additional criteria set in law. There are 3 methods: teeth examination, X-Ray of a wrist, and genital examination. There aren't any requirements which methods should be chosen and used and what qualification doctors should have. In case of a lack of consent, the applicant is considered an adult. Results of the medical examination should contain the information about age, as well as the information about the acceptable margin of error. Carrying medical examination is triggered by the authorities and shall be ensured by the Head of the Office for Foreigners or the Border Guard.<sup>82</sup>

Usually the wrist x-ray is used as a method. In case the assessment cannot establish an exact age, young people are usually given the benefit of the doubt. Although in 2011, several Afghani youth were subjected to an age assessment examination initiated by the Border Guard (the applicants were detained)

79 Article 68 of the Law on Protection.

80 Letter from the Head of the Office for Foreigners, DPU-07-1410/2013 from 22 February 2013.

81 *Ibid.*

82 Article 30 of the Law on Protection.

and they were considered as adults, despite submitting documents from their country of origin, confirming that they were children.<sup>83</sup>

In 2013, two age assessments procedures were carried out. The asylum applicants were unaccompanied children – one from Bangladesh and one from Ivory Coast. Apart from x-rays of the wrist, their skull, spine, and teeth were also x-rayed. On the second stage of the examination, there was a meeting with a dentist, anthropologist and two doctors with the interpreters. The doctors interviewed the children about infectious diseases, place of birth, height of family members, and previous operations. They also analysed the x-rays, and requested an examination of the genitalia upon the consent of the child. The legal representative was absent during the examinations.<sup>84</sup> The results of the examinations are unknown at the moment.

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

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

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

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

### Indicators:

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

83 ECRE, Save the Children, [Comparative Study on Practices in the Field of Return of Minors](#), December 2011.

84 Information obtained from a social worker of Children's Home no 9 in Warsaw.

National legislation foresees that an application should be considered manifestly unfounded and subject to an accelerated procedure, if the applicant comes from a safe country of origin, included in the common minimum list of safe countries of origin, established by the Council of the European Union.<sup>85</sup> As such a list was never adopted by the Council of the EU, in practice there is no safe country of origin concept being implemented in Poland.

## G. Treatment of specific nationalities

In Poland there is no official policy implemented with regard to the top 5 countries of origin. Every application is examined individually. However, there is currently a policy with regards to Syrian applicants: when asylum seekers are identified as Syrian nationals, they are granted refugee status or subsidiary protection.<sup>86</sup> According to official statistics of the Office for Foreigners, 107 Syrians submitted asylum applications in 2012, 5 were granted subsidiary protection and the cases of 24 persons were discontinued, while the other cases are still pending<sup>87</sup> (there were no refugee status granted, no tolerated stay permit, no rejection).

During the period 1 January – 21 November 2013, there were 240 asylum applications lodged by Syrian nationals. In the same period there were 62 decisions on granting refugee status, 20 – subsidiary protection and 1 negative decision.<sup>88</sup> 142 cases were discontinued. There were no decisions on tolerated stay permit for Syrian nationals in 2013. The number of the asylum applicants from Syria is not high. No policy on “freezing” or postponing the examination of the applications was adopted.

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

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85 Article 34 section 1 of the Law on Protection.

86 Letter from the Head of the Office for Foreigners DPU-07-1410/2013 from 22 February 2013.

87 There is no data available under which legal condition these cases were discontinued, but most probably this is because of leaving Poland.

88 No information could have been obtained about the case so far– neither from the Head of the Office for Foreigners (meeting on 20 November 2013), nor from UNHCR (e-mail request).

## Reception Conditions

### A. Access and forms of reception conditions

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

##### Indicators:

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

Asylum seekers are entitled to material reception conditions to the same extent during all asylum procedures in Poland (there is no difference between regular, accelerated or admissibility procedures, as well as during appeals). In principle, during the onward appeal procedure before the Voivodeship Administrative Court in Warsaw asylum seekers are not entitled to material reception conditions. Although in practice, when the court suspends enforcement of the contested decision of the Refugee Board for the time of the court proceedings, asylum seekers are re-granted material reception conditions to the same extent as during the administrative asylum procedure, until the ruling of the court<sup>89</sup>.

As a general rule, reception conditions (material assistance, accommodation, medical care) are provided until 2 months after the decision on the asylum application becomes final (either positive or negative). However when the procedure is terminated with the decision on discontinuing the procedure (e.g. in admissibility procedures), reception conditions are provided until 14 days after the decision becomes final<sup>90</sup>. Reception conditions are provided in practice in this time frame. Good practice reported by some asylum seekers is that they were allowed to stay in the centre even though the period during which they were entitled to assistance had ceased. On the other hand, some asylum seekers living outside the centres were afraid to go to the office to get the benefits they were entitled to after the negative decision became final, because of fear to be detained (which is possible, but so far no such cases were reported).

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

There are some practical obstacles reported in accessing material reception conditions. Asylum seekers can apply to change assistance granted in the centre to assistance granted outside of the centre. If the Office for Foreigners agrees to that, then in practice an asylum seeker is entitled to stay in the centre until the end of the month and from the next month they are entitled to financial allowance. The problem is that

89 This is the interpretation of the Legal Department of the Office for Foreigners.

90 Article 74 section 1 point 2 of the Law on Protection



in law and in practice the financial allowance is not paid on the 1<sup>st</sup> day of the month, but by the 15<sup>th</sup> of each month<sup>91</sup>. It means that foreigners have to move from the centre at the end of the month, but do not get any financial resources to rent an apartment or even buy food for a couple days or even weeks – such cases were reported to the Helsinki Foundation for Human Rights<sup>92</sup>. The Office for Foreigners claims that asylum seekers can stay in the reception centre until the first day of the payment, but then the monthly payment is smaller, so asylum seekers decide themselves to get allowance for a whole month and not only for the part during which they were living in a centre<sup>93</sup>.

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

## 2. Forms and levels of material reception conditions

### Indicators:

- Amount of the financial allowance/vouchers granted to asylum seekers on 31/12/2012 (per month,): PLN 750 - EUR 183,6 (for a single person, outside of the centre)

In the legislation there are 2 forms of reception conditions<sup>94</sup>:

1) assistance granted in the centre, including:

- accommodation,
- provision of all meals in the centre or its financial equivalent (PLN 9<sup>95</sup> – EUR 2,20<sup>96</sup> per day per person),
- allowance for personal expenses (PLN 50 – EUR 12,23 per month),
- permanent financial assistance for purchase of hygienic articles (PLN 20 – EUR 4,90 per month),
- one-time financial assistance or coupons for purchase of clothing and footwear (PLN 140 – EUR 34,25),
- Polish language course and basic materials supplies necessary for the course,
- Supplies for school for children enjoying education and care of public institutions, primary schools, gymnasia or grammar schools and covering, as far as possible the expenses of extracurricular classes and sports and recreational classes,
- financing of tickets for public transport:
  - \* in order to take part in the proceedings for granting the refugee status,
  - \* in order to attend medical examinations or vaccinations,
  - \* in other particularly justified cases

2) assistance granted outside the centre, i.e. financial allowance for covering all the costs of the asylum seeker's stay in Poland (PLN 25 – EUR 6,12 per day for a single person, PLN 20 – EUR 4,90 per day per person in case of two family members, PLN 15 – EUR 3,67 per day per person in case of three family members, PLN 12,5 – EUR 3,05 per day per person in the case of four or more family members).

Assistance granted outside the centre includes also<sup>97</sup>:

- Polish language course and basic materials supplies necessary for the course;

91 §6 sec. 3 of the Ordinance on amount of assistance for asylum seekers

92 HFHR's letter to the Office for Foreigners from 9 September 2013, available [here](#),

93 Letter from Office For Foreigners from 23 September 2013, available [here](#),

94 Article 71 of the Law on Protection.

95 All amounts of assistance granted to asylum seekers are specified in: Ordinance on amount of assistance for asylum seekers.

96 Exchange rate as of 31 December 2012

97 Office for Foreigners claims that it includes also financing tickets for public transport.

- b) School supplies for children enjoying education and care of public institutions, primary schools, gymnasia or grammar schools and covering, as far as possible the expenses of extracurricular classes and sports and recreational classes.

Both forms of reception conditions include medical care.

Under the law, the assistance granted in the centre is a rule and it is granted to all asylum seekers. An asylum seeker can obtain assistance granted out of the centre upon request, examined by the Head of the Office for Foreigners. It can be granted for organisational, safety or family reasons or to prepare asylum seekers for an independent life after they have been granted any form of protection<sup>98</sup>.

All of the above mentioned reception conditions are used in practice. As of 31 December 2012, 1291 asylum seekers benefited from assistance in the centres and 1428 asylum seekers were granted assistance outside the centres<sup>99</sup>.

The amount of social assistance that asylum seekers receive is generally not sufficient to ensure an adequate standard of living in Poland. Especially it is very difficult to rent an apartment or even a room in Warsaw, where most of asylum seekers stay during the procedure, receiving only PLN 750-775 per month<sup>100</sup>. Because of the fact that the amount of financial allowance is not enough to rent a separate accommodation, asylum seekers are often forced to live in overcrowded and insecure places. Many of them sleep in overcrowded apartments, where they have to share beds with other people or where living conditions do not provide privacy and personal safety<sup>101</sup>.

According to the law, in case an asylum seeker performs cleaning work for the centre, provides translation or interpretation that facilitates communication between the personnel of the centre and asylum seekers, or provides cultural and educational activities for other asylum seekers who stay in the centre, the amount of the allowance for personal expenses may be raised to PLN 100 (e.g. in January 2013 - 95 asylum seekers obtained such increased allowance<sup>102</sup>).

The system of granting material reception conditions for asylum seekers is separate from the general social assistance rules applicable to nationals and therefore these two are not comparable.

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98 Article 72 section 1 of the Law on Protection.

99 Office for Foreigners, Brochure of the Department for Social Assistance (*Informator Departamentu Pomocy Socjalnej*), 21.01.2013.

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

101 K. Wysińska, *Gdzie jest mój dom? Bezdomność i dostęp do mieszkań wśród ubiegających się o status uchodźcy, uchodźców i osób z przyznaną ochroną międzynarodową w Polsce (Where is my home? Homelessness and access to housing among asylum seekers, refugees and persons granted international protection in Poland)*, UNHCR, 2013, p. 14, available [here](#).

102 Information obtained in Department for Social Assistance, Office For Foreigners, 7.02.2013. No information available on the average length of stay in the centres.

### 3. Types of accommodation

#### Indicators:

- Number of places in all the reception centres (both permanent and for first arrivals): 2500
- Number of reception centres: 13
- Are there any problems of overcrowding in the reception centres?  Yes  No
- Are there instances of asylum seekers not having access to reception accommodation because of a shortage of places?  Yes  No
- What is, if available, the average length of stay of asylum seekers in the reception centres? No data made available under request
- Are unaccompanied children ever accommodated with adults in practice?  Yes  No

In Poland there are 13 reception centres which provide altogether 2500 places<sup>103</sup>. There is no problem of overcrowding in these centres. Two centres serve for first reception<sup>104</sup> (asylum seekers are directed there after applying for asylum in order to register and carry out medical examinations). The other eleven are accommodation centres.

The Head of the Office for Foreigners is responsible for the management of all the centres. This authority can delegate its responsibility for managing the centres to social organisations, associations, etc.<sup>105</sup> Currently 9 reception centres are managed by private contractors (private owners and companies)<sup>106</sup>.

Other types of accommodation such as hotels are used only in emergency situations, for short periods of time (e.g. when staying in the centre would put an asylum seeker at risk, e.g. in case of a serious conflict with other asylum seekers staying in the centre)<sup>107</sup>.

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

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

Unaccompanied children are not accommodated in the centres. The custody court places them in a youth care facility, so unaccompanied children are not accommodated with adults in practice. Until the court makes a decision on placing a child in a regular youth care facility, an unaccompanied child can stay with a professional foster family functioning as emergency shelter or in a youth care facility for crisis situations<sup>108</sup>.

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

104 N. Klorek, *op.cit.*, p. 55. Information obtained also in Department for Social Assistance, Office for Foreigners, 7.02.2013.

105 Article 79 section 2 of the Law on Protection

106 Urząd do Spraw Cudzoziemców, *Informator Departamentu Pomocy Socjalnej*, 21.01.2013.

107 Information obtained in Department for Social Assistance, Office For Foreigners, 7.02.2013.

108 Article 61 and article 62 of the Law on Protection.

#### 4. Reduction or withdrawal of reception conditions

##### Indicators:

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

The legislation provides for a possibility to reduce or withdraw material reception conditions: an asylum seeker who grossly violates the rules of social coexistence in the centre is deprived of social assistance. The decision on depriving social assistance is issued by the Head of the Office for Foreigners. It can be re-granted to the same extent as previously, but if the violation occurs again, it can be re-granted only in the form of a payment of 1/3 of the regular financial allowance provided to asylum seekers<sup>109</sup>.

Social assistance can be reduced to 1/3 of the financial allowance provided to asylum seekers also in case of a refusal to undergo medical examinations or necessary sanitary treatment of the asylum seeker themselves and their clothes<sup>110</sup>.

The above mentioned rules of withdrawal and reduction of social assistance are used in practice very rarely<sup>111</sup>.

Moreover, in case an asylum seeker benefiting from social assistance in the centre stays outside this centre for a period exceeding 2 days, granting such assistance should be withheld by law until the moment of their return<sup>112</sup>. Asylum seekers have a possibility under the law to appeal a decision on reduction and withdrawal of reception conditions.

From 1<sup>st</sup> January 2012, the Ministry of Interior has a possibility to reduce asylum seekers' social assistance, if the limit of expenses allocated for this assistance per year (PLN 100.000.000) may be exceeded or if, in a certain period of time, expenses exceed the forecasted amount for this period by at least 10%<sup>113</sup>. The Ministry has not used this opportunity yet.

#### 5. Access to reception centres by third parties

##### Indicators:

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

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

109 Article 76 and 78 of the Law on Protection.

110 Article 81 section 3 of the Law on Protection.

111 Information obtained in Department for Social Assistance, Office For Foreigners, 7.02.2013.

112 Article 77 of the Law on Protection.

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

Asylum seekers may receive visits in the centre from 10.00 to 16.00 in a place indicated by the director of the centre. In particularly justified cases the visiting hours in the centre may be prolonged upon permission of the director of the centre, till no later than 22.00<sup>114</sup>.

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

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

The above mentioned rules do not apply to the representative of the UNHCR, who may enter the centre anytime provided that the director of the centre was notified in advance. In case of NGOs, whose statutory tasks include asylum-related matters and providing legal assistance to asylum seekers, the Head of the Office for Foreigners may issue a permit to enter the centre for the period of their activities performed for the asylum seekers residing in the centre<sup>115</sup>.

During their stay in the centre, asylum seekers communicate with legal advisers, UNHCR or NGOs mainly by phone, fax, e-mail, etc. Eight out of the thirteen 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. It does not make the contact effective<sup>116</sup> (see section on legal assistance, in the regular procedure).

## 6. Addressing special reception needs of vulnerable persons

### *Indicators:*

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

In the Polish legislation there are four categories of asylum seekers that are considered vulnerable: unaccompanied children, disabled people, victims of violence and – to the some extent – single women.

**Victims of violence and disabled people:** The Head of the Office for Foreigners ensures that medical or psychological examinations are carried out for asylum seekers who inform the authority that they were a victim of violence or are disabled or whose psychophysical status allows to assume that they were a victim of violence<sup>117</sup>. In the legislation there is no other mechanism specified to identify this vulnerable groups. The existing mechanism is not considered sufficient and effective<sup>118</sup>. In practice the Office for Foreigners has not developed the process of identifying people with special needs, including victims of violence and traumatic experiences<sup>119</sup> (see section on procedural guarantees for vulnerable groups, under Procedures for further comments).

If a medical examination confirmed that an asylum seeker is a victim of violence or is disabled, the activities related to granting assistance in the centre can be carried out by a person of the sex indicated by the asylum seeker and who was trained to work with victims of crimes or violence and with persons with disabilities<sup>120</sup>.

114 Article 7 of the Annex to the Ordinance on rules of stay in the centre for asylum seekers.

115 Article 6 of the Annex to the Ordinance on rules of stay in the centre for asylum seekers.

116 A. Gutkowska, *op.cit.*, p. 146-147.

117 Article 68 section 1 of the Law on Protection.

118 A. Chrzanowska, W. Klaus, *op.cit.*, p. 17,

119 P. Nikiel, *op.cit.*, p. 14.

120 Article 69 of the Law on Protection.

In special circumstances, justified by an asylum seeker's health condition, some of the activities and formalities related to the asylum procedure can be held in the place of their residence. An asylum seeker placed in the centre, if this is justified by their physical or psychological status, can be provided with transportation in order to give testimonies and statements in the asylum proceedings or undergo medical treatment<sup>121</sup>. Some of the reception centres are adapted to the needs of disabled asylum seekers<sup>122</sup>.

**Unaccompanied children:** The only safeguards related to special reception needs of unaccompanied children are those referring to their place of stay (youth care facilities, so that they are separated from adults). The law also refers to the qualified personnel that should undertake activities in the refugee status procedure concerning unaccompanied children (a defined profile of higher education, 2 years of relevant experience).<sup>123</sup>

**Single women:** Social assistance may be granted outside of the centre when it is necessary in order to ensure the safety of the asylum seeker, with special consideration the situation of single women<sup>124</sup>. There is also one reception centre for single women and single women with children.

There are no other specific measures provided by law or provided in practice for vulnerable groups or people with special needs to address those needs (e.g. separate accommodation for traumatised asylum seekers, specific reception centres for unaccompanied asylum seeking children, etc.).<sup>125</sup>

## **7. Provision of information**

The provisions in law on information of asylum seekers concerning social assistance are formulated generally. The authority registering the asylum application has to inform the applicant in a language understandable to them, including about the asylum procedure itself, the asylum seeker's rights, obligations, and the legal consequences of not respecting these obligations. It also provides the asylum seeker with the address of the centre to which they have to report<sup>126</sup>.

Upon admission to the centre, the asylum seeker receives (in writing and in a language understandable to them) the rules of stay in the centre (set in law), information about their rights and obligations (which includes all the basic information, including on access to the labour market or on their legal status) and information on regulations governing the provision of assistance for asylum seekers<sup>127</sup>. Moreover the rules of stay in the centre shall be displayed in a visible place in the premises of the centre, in Polish and in languages understandable to the asylum seekers residing in the centre. In the reception centre in Biała Podlaska new-coming asylum seekers also participate in a course on basic information about Poland<sup>128</sup>.

It is not envisaged in the legislation into which languages the rules of stay in the centre, information about the rights and the obligations and on regulations governing the provision of assistance for asylum seekers should be translated. It states that information has to be accessible "in an understandable language". The

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121 Article 68 section 2-4 of the Law on Protection.

122 Information obtained in Department for Social Assistance, Office For Foreigners, 7.02.2013.

123 Article 66 of the Law on Protection

124 Article 72 section 1 point1 of the Law on Protection.

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

126 Article 29 section 1 point 6 of the Law on Protection.

127 The Office for Foreigners published a guide for asylum seekers "First steps in Poland", which is handed to them upon admission to the centre. Accessible in English, Arabic, Chechen, Georgian, Polish and Russian, [here](#)

128 Information obtained in Department for Social Assistance, Office For Foreigners, 7.02.2013.

rules of stay in the centre and above-mentioned information are translated in practice into English, Russian and Georgian<sup>129</sup>.

## 8. Freedom of movement

Officially there is no restriction to the freedom of movement of asylum seekers: they can travel around Poland wherever they want. However, when an asylum seeker accommodated in a centre stays outside this centre for more than 2 days, the assistance should be withheld by law until the moment of their return.<sup>130</sup> Asylum seekers should inform the director of the centre if they want to leave for a longer period and then the assistance will still be granted.<sup>131</sup>

### B. Employment and education

#### 1. Access to the labour market

##### Indicators:

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

The legislation allows for access to the labour market for asylum seekers after six months from the date of submission of an asylum application if a first instance decision has not been given within this time, and if the procedure was prolonged for reasons beyond the asylum seeker's control. The Head of the Office for Foreigners upon the asylum seeker's request, issues a certificate, which accompanied by a temporary ID document entitles the asylum seeker to work in Poland<sup>132</sup>. The certificate is valid during the appeal procedure (first appeal only), when it was issued during the first instance procedure.

Access to employment is not limited to certain sectors, but can be problematic in practice. Many employers do not know, that the above mentioned certificate with a temporary ID document gives an asylum seeker a right to work or do not want to employ a person for such a short time (i.e. 6 months, as the employers are unaware that the procedure will actually take longer than the validity of a single ID). Secondly asylum seekers often live in centres which are located far away from big cities, which makes it difficult in practice to find a job. Moreover most asylum seekers do not know Polish well enough to get a job in Poland<sup>133</sup>.

Experts point out that the fact that asylum seekers cannot work for the first 6 months of the refugee procedure is one of the factors leading to disaccustoming them from independent functioning and getting dependent on social assistance.<sup>134</sup>

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129 *Ibid.*

130 Article 77 on the Law on Protection.

131 Information received from UNHCR National Office Poland.

132 Article 36 of the Law on Protection.

133 M. Abdoulvakhabova, *Problemy cudzoziemców w Polsce w świetle funkcjonowania Fundacji Ocalenie (The problems of the foreigners in Poland in light of functioning of the Ocalenie Foundation)*, in M. Duszczyk, P. Dąbrowski, ed., *Przestrzeganie praw cudzoziemców w Polsce. Monografia (Respect for the rights of foreigners in Poland. Monograph)*, Rzecznik Praw Obywatelskich, 2012, p. 46, available [here](#)

134 K. Wysińska, op.cit., p. 14.

## 2. Access to education

### Indicators:

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

All the children staying in Poland have a constitutional right to education. Education is mandatory until the age of 18. It is provided to asylum-seeking children in regular schools and it is not limited by law.

There are different obstacles in practice for asylum seeking children to access education. The biggest problem is a language and cultural barrier. Children do not know Polish, but they are obliged to participate in classes in Polish. However, in all centres except the reception centre in Biała Podlaska (where asylum seekers stay about 2-3 weeks) there are courses of Polish language for children being organised<sup>135</sup> and social assistance includes providing children with basic supplies necessary for learning Polish<sup>136</sup>. Moreover, children are entitled to additional, free Polish language classes, which should be organised by the authority managing the school, to which asylum seekers are attending<sup>137</sup>.

They have also a right to assistance of a person who knows the language of their country of origin, which can be employed as a teacher's assistance by the director of the school. This help is limited to a maximum of 12 months. They can also participate in additional lessons on other subjects if their education level is different. Both forms of assistance can be granted for a maximum of 12 months<sup>138</sup>. Preparatory lessons and additional Polish language classes can last together for a maximum of 5 hours per week.

The above mentioned measures are not considered sufficient by the teachers and directors of the schools concerned. In, particular they criticise the limitation to 5 hours of preparatory and additional Polish language lessons per week, as their practice showed the additional classes should take at least 6 hours per week. NGOs criticise the automatic limitation of the duration of provision of additional assistance to 12 months, as it should be adjusted individually<sup>139</sup>. In some schools, additional Polish language lessons are organised, but it often happens that the teachers have not received training in teaching Polish as a second language, nor have experience in working in a multicultural environment.<sup>140</sup>

Asylum seekers benefit from education in public secondary schools under the same conditions as Polish citizens until the age of 18 or completion of the secondary school<sup>141</sup>.

There is no access to vocational training for asylum seekers provided under the law. The only educational activities, that adults have access to, are courses of Polish language organised in all centres except the reception centre in Biała Podlaska, where asylum seekers mostly stay for a couple of weeks. The course's level is considered insufficient by some NGOs<sup>142</sup>. There are some initiatives of NGOs, organising

135 Information obtained in the Department for Social Assistance, Office For Foreigners, 7.02.2013.

136 Article 71 section 1 point 1f of the Law on protection.

137 Article 94a section 4 of the Law of 7 September 1991 on the education system, Journal of Laws 2004 no 256 position 2572, available [here](#). (Ustawa z dnia 7 września 1991 r. o systemie oświaty, Dz. U. 2004 nr 256 poz. 2572).

138 Article 94a section 4a and section 4c of the Law of 7 September 1991 on the education system

139 W. Klaus, *Prawo do edukacji cudzoziemców w Polsce (Foreigners' right to education in Poland)*, Stowarzyszenie Interwencji Prawnej, 2011, p. 8, available [here](#)

140 A. Kosowicz, *Access to Quality Education by Asylum-Seeking and Refugee Children. Poland Country Report, Situational Analysis*, Polskie Forum Migracyjne, 2007, p. 3, available [here](#).

141 Article 94a section 1a of the Law of 7 September 1991 on the education system

142 M. Abdoulvakhabova, *op.cit.*, p. 45. Office for Foreigners claims that asylum seekers are generally not interested in Polish language lessons. Those asylum seekers who participate in classes are assessing them positively (based on Department for Social Assistance in Office for Foreigners' own research).



other courses in the centres, including vocational training. These courses are sometimes publicly funded to a certain extent<sup>143</sup>.

### C. Health care

#### Indicators:

- Is access to emergency health care for asylum seekers guaranteed in national legislation?  
 Yes       No
- In practice, do asylum seekers have adequate access to health care?  
 Yes       with limitations       No
- Is specialised treatment for victims of torture or traumatised asylum seekers available in practice?  
 Yes       Yes, to a limited extent       No

Access to health care for asylum seekers is guaranteed in the national legislation to the same extent as for Polish nationals, who have health insurance. Health care for asylum seekers is publicly funded. Basic health care is organised in medical offices within each of the reception centres. Moreover, asylum seekers can benefit from medical assistance granted in institutions contracted by the Central Clinical Hospital of the Ministry of Interior, with whom the Office for Foreigners has signed an agreement to coordinate medical care for asylum seekers<sup>144</sup>.

Health care for asylum seekers includes treatment for persons suffering mental health problems. Currently, a total of 6 psychologists work in all the centres. Their help is limited though to basic consultations<sup>145</sup>. Asylum seekers can also be directed to a psychiatrist or a psychiatric hospital. According to some experts, specialised treatment for victims of torture or traumatised asylum seekers is not available in practice.<sup>146</sup>

The biggest obstacle in accessing health care that asylum seekers face is the lack of knowledge of foreign languages among doctors and nurses<sup>147</sup>. Polish authorities do not provide free services of an interpreter and most of the asylum seekers are not able to pay for such assistance on their own. The second problem is the fact that some of the clinics and hospitals, that signed an agreement with the Office for Foreigners, are situated far away from the centres, so an asylum seeker cannot be assisted by the closest medical facility (except for emergency situations)<sup>148</sup>. Another problem identified by the experts is a lack of intercultural competence among doctors<sup>149</sup>.

143 Information obtained in the Department for Social Assistance, Office For Foreigners, 7.02.2013.

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

145 Office For Foreigners claims that those psychologists' assistance concentrates on psychological support and counseling and also on diagnosis of mental disorders, including PTSD.

146 M. Książak, *Dostęp do pomocy medycznej i psychologicznej osób ubiegających się o status uchodźcy w Polsce (Access to medical and psychological care of asylum seekers in Poland)*, in A. Chrzanowska, W. Klaus, *op.cit.*, p. 180-182. This opinion is contested by the Office for Foreigners, claiming that psychological diagnosis and diagnosis of PTSD are provided to asylum seekers.

147 *Ibid.*, p. 174-176. Office For Foreigners argues that all the doctors working in the centres know English and Russian and the nurses working there know mainly Russian.

148 N. Kłorek, *op.cit.*, p. 93-94.

149 H. Grzymała-Moszczyńska, *Uchodźcy jako wyzwanie dla polskiego systemu opieki zdrowotnej (Refugees as a challenge for the Polish health care system)*, in A. Chrzanowska, W. Klaus, *op. cit.*, p. 143

From 1<sup>st</sup> January 2012, the Ministry of Interior has a possibility to reduce medical care granted to asylum seekers to basic health care in case of a substantial influx of asylum seekers, if the limit of expenses allocated for this assistance per year (PLN 100.000.000) may be exceeded or if the amount budgeted for a certain period of time expenses is exceeded by at least 10%<sup>150</sup>. The Ministry has not used this opportunity yet. The term substantial influx is not further defined in the legislation.

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

## Detention of Asylum Seekers

### D. General

#### Indicators:

- Total number of asylum seekers detained in the previous year (including those detained in the course of the asylum procedure and those who applied for asylum from detention) 764
- Number of asylum seekers detained or an estimation at the end of the previous year: 249
- Number of detention centres: 6 guarded centres
- Total capacity: 700

There are two types of detention centres in Poland: guarded centres for foreigners (6<sup>151</sup>, with max 650 places) and – more rigorous - detention centres for the purpose of expulsion (2 in Białystok and Przemyśl<sup>152</sup>, with max 50 places). Both centres serve for detention of asylum seekers and foreigners subject to return procedures. In 2012, 557 asylum seekers entered detention<sup>153</sup>. Most of them were placed in the guarded centres for foreigners (547, in comparison to 10 placed in the detention centres for the purpose of expulsion). As of 31<sup>st</sup> of December 2012, 249 asylum seekers were staying in the detention centres<sup>154</sup> in Poland. In 2012, in detention centres, 179 applications for refugee status were recorded which corresponded to 209 applicants (one application can include the spouse and children of the applicant)<sup>155</sup>. There were no cases of overcrowding.<sup>156</sup>

### E. Grounds for detention

#### Indicators:

- In practice, are most asylum seekers detained
  - o on the territory:  Yes  No
  - o at the border:  Yes  No
- Are asylum seekers detained in practice during the Dublin procedure?  
 Frequently  Rarely  Never
- Are asylum seekers detained during a regular procedure in practice?  
 Frequently  Rarely  Never
- Are unaccompanied asylum-seeking children detained in practice?  
 Frequently  Rarely  Never
  - o If frequently or rarely, are they only detained in border/transit zones?  
 Yes  No
- Are asylum seeking children in families ever detained in practice?  
 Frequently  Rarely  Never
- What is the maximum detention period set in the legislation (inc extensions): 12 months
- In practice, how long on average are asylum seekers detained? 5 months

151 Detention centres are situated in: Biała Podlaska, Białystok, Lesznowola, Kętrzyn, Krosno Odrzańskie and Przemyśl.

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

153 This number includes only foreigners who were detained at the time of submitting the application for granting refugee status in Poland. It does not include foreigners who submitted the application during their stay in a detention centre.

154 By detention centres we understand both guarded centres for foreigners and detention centres for the purpose of expulsion.

155 Letter from the Border Guard KG CU-7971/V/DK/13 from 7 October 2013.

156 Letter from the Border Guard KG-OI-124/III/13 from 8 February 2013.

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

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

Moreover asylum seekers can be placed in detention, if:

- 1) they illegally crossed or attempted to cross the border, unless:
  - a) they are so called “directly arriving” (i.e. arrived from the territory where they could be subject to persecutions/serious harm) and ,
  - b) they submit an application for granting refugee status immediately and
  - c) they explain the reasons of illegal entry;
- 2) their behaviour (or behaviour of the person on whose behalf the application is submitted) poses a threat to safety, health or life of other foreigners staying in the reception centre or for employees of the reception centre.<sup>157</sup>

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

According to the law, asylum seekers, whose psychophysical state leads to believe that they are victims of violence or have a disability, are not placed in detention centres, unless their behaviour poses a threat to safety, life or health of other foreigners staying in the reception centre or employees of the reception centre.<sup>158</sup> In practice it happens that those vulnerable asylum seekers are detained in other circumstances, even when they were diagnosed as having mental problems as a result of past events<sup>159</sup>. Polish legislation does not include any provisions concerning effective methods of identification of these groups of foreigners. Border Guard officers are not trained enough to identify all vulnerable persons. As a result, in practice, some violence victims are placed in the guarded centres<sup>160</sup>.

Problems with protecting vulnerable persons arise also in judicial proceedings. Generally no detention of a foreigner should be ordered by a judge if it may cause a serious threat to their life or health<sup>161</sup>. However, as the experience of some NGO lawyers<sup>162</sup> show, the physical rather than the psychological condition is taken into account by the judges. Analysis of the justifications of the courts' rulings concerning detention leads to the conclusion that in a large number of cases mental health is not considered by judges or there is no reference to the health of the foreigner at all<sup>163</sup>.

Unaccompanied asylum seeking children should not be detained accordingly to law, but in practice it happens when there are doubts as to their age or it they were placed in detention as irregular migrants (which is possible under the law) and only then applied for international protection.

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157 Article 87 of the Law on Protection.

158 Article 88 of the Law on Protection.

159 T. A. Dębowczyk, J. Oleszkowicz, *Praktyka sądowa stosowania detencji cudzoziemców w Polsce (The jurisprudence of the use of foreigners' detention in Poland)* in T.Sieniow ed., *Stosowanie detencji wobec cudzoziemców. Raport z monitoringu i rekomendacje (The use of foreigners' detention. Monitoring Report and Recommendations)*, Fundacja Instytut na rzecz Państwa Prawa, 2013, p. 38, available [http://panstwowprawa.org/site\\_media/storage/files/2013-07/stosowanie-detencji-wobec-cudzo467471.pdf](http://panstwowprawa.org/site_media/storage/files/2013-07/stosowanie-detencji-wobec-cudzo467471.pdf).

160 Problems identified for the project of the Halina Nieć Legal Aid Centre(Centrum Pomocy Prawnej im. Haliny Nieć) *Zmniejszenie zakresu detencji cudzoziemców szczególnie wrażliwych poszukujących ochrony w Polsce*, co-funded by the Open Society Institute, information available [here](#), also in T. A. Dębowczyk, J. Oleszkowicz, *op. cit.*, p. 38.

161 Article 103 of the Law on Foreigners.

162 i.a. from the Legal Intervention Association (*Stowarzyszenie Interwencji Prawnej*)

163 T. A. Dębowczyk, J. Oleszkowicz, *op. cit.*, p. 35.

Asylum seeking children staying on the territory of Poland with members of their family can be placed in detention centres together with accompanying adults<sup>164</sup>. In 2011 a coalition of Polish NGOs started a public campaign to stop the detention of children in Poland<sup>165</sup>. The Polish Ombudsman (*Rzecznik Praw Obywatelskich*) also got very much involved in the matter and made numerous interventions to the Ministry of Interior<sup>166</sup>. The Ministry of Interior declared at the end of 2012 that their priority was to reduce to the minimum the period during which children are detained and to further adjust the detention conditions in the two guarded centres so that they are more suitable for children, but the Ministry will not introduce a general legal ban on the detention of children<sup>167</sup>.

Asylum seekers are not automatically detained on the territory of Poland or at the Polish border. Although in some cases foreigners asking for asylum at a border were detained in order to prevent them from abusing the asylum procedure (also in case of first-time applicants)<sup>168</sup>. Accordingly to the NGOs, in 2012 1% of applicants, who asked for refugee status at the Polish border in Terespol, were detained on the basis of the abuse of the refugee procedure<sup>169</sup>. There are concerns that detention is not used as a measure of last resort and is often prolonged automatically, but the number of applicants and the number of detainees show, that there is no systematic detention of asylum seekers as such.

Detention is possible (in law and in practice) in all asylum procedures (admissibility/accelerated/ Dublin procedure, in case of illegally crossing the border and being transferred back, but rather not in case of a pending transfer from Poland).

There was a case of an asylum seeker being detained even during the first appeal procedure (even though she stayed legally on the territory of Poland). In 2011 one asylum seeker was detained during the appeal procedure, because her appeal, although lodged within the time-limits, was not registered in the system. As a result she was mistakenly considered as an irregular migrant. Even though it was a mistake, neither the second instance court, nor the Head of the Office for Foreigners agreed to release her from the detention centre. She was only released after being granted a tolerated stay permit. She spent more than 5 months in the detention centre. Helsinki Foundation for Human Rights (HFHR) lawyers lodged a complaint to the European Court of Human Rights on her behalf.<sup>170</sup> In September 2013 the Polish Government was informed about the complaint (application number 78244/11).<sup>171</sup>

There is only one alternative to detention provided under the Polish law<sup>172</sup>. An asylum seeker (or a person on whose behalf application for asylum was made) may be ordered, by means of the decision rendered by the Head of the Office for Foreigners, to stay in a specified place, which they cannot leave without permission. An asylum seeker may also be required to report to the authority indicated in the decision at specified intervals of time. The above mentioned decision can be issued if:

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

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

165 Information about a coalition of NGOs against the detention of child migrants, available [here](#)

166 More information: Biuletyn Rzecznika Praw Obywatelskich nr 11, Warszawa 2012, available [here](#)

167 Ministry of Interior's statement available [here](#)

168 More information in section B 1, also T. Sieniow, op.cit. p. 57.

169 T.Sieniow, op. cit. p. 57.

170 J. Białas, *Sprawa D.D. (D.D. Case)*, *Kwartalnik o prawach człowieka Helsińskiej Fundacji Praw Człowieka*, no. 1, Warszawa 2012.

171 Letter to HFHR from the European Court on Human Rights from 13.09.2013.

172 Article 89c of the Law on Protection.

The law does not require proof that alternatives to detention cannot be effectively applied before asylum seekers can be detained. The problem with this measure is that detention is a measure “of first resort” and only if deemed impossible, above mentioned alternative can be applied instead. Moreover it was not used in practice in 2012<sup>173</sup>.

The decision to detain an asylum seeker is issued for a period of 30 to 60 days by a court, upon the motion of the Border Guard. If a negative decision (with a return order) issued by the first instance authority is delivered to the asylum seeker prior to the expiry of the above mentioned period, the period of stay in the detention centre may be extended for a specified period of time, necessary to execute the decision on expulsion (regardless of the appeal). The period of stay in the guarded centre or in the detention centre for the purpose of expulsion may not exceed one year<sup>174</sup>. This is a total time-limit of detention for all migration-related purposes, regardless of the proceedings a third country national is subject to.

If the application for asylum is lodged while staying in the detention centre, the court automatically prolongs the detention for 90 days. The average length of detention of (all) foreigners is approximately 5 months<sup>175</sup>.

There are reported cases where the maximum detention time limit was exceeded. In 2012, one asylum seeker was detained for 398 days. The Border Guard claims that this extension was due to the fact that they did not know the duration for which the person had stayed in another guarded centre when transferred to a new detention centre. The Border Guard claims that the foreigner was released straight away after they received official information that the allowable period of his detention has been exceeded<sup>176</sup>.

## F. Detention conditions

### Indicators:

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

Asylum seekers are detained in specialised facilities called guarded centres for foreigners (and detention centres for the purpose of expulsion in certain circumstances, see General section, Detention). These centres are only for migration-related purposes. Asylum seekers are never placed in regular prisons with

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

174 Article 89 of the Law on Protection.

175 Letter from the Border Guard KG-OI-124/III/13 from 8 February 2013.

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

ordinary prisoners, but stay together with migrants in an irregular situation. There is no special facility in which only asylum seekers are detained. As of mid-November 2012, two third of the foreigners placed in the guarded centres were asylum seekers.<sup>177</sup>

Design and layout of all the premises create the impression of a very prison-like environment: thick walls, bars in the windows and on the corridors, strict regime. In addition all centres are surrounded by high walls topped with barbed wires.

Four centres are relatively new and in good condition (they were built after 2008), but two of the guarded centres need to be renovated, especially the one in Lesznowola. In the end of 2012 the Ministry of Interior declared that it will be renovated and rebuilt<sup>178</sup>.

Rooms are not sufficiently furnished: the main equipment consists of a bed, a small wardrobe and a small table. As a result, people placed in the centres cannot have all their belongings in their room, and have to place them in external storage space. Some of their belongings are also placed there for safety reasons and can be accessed only upon request.

Under the law, a room cannot be less than 3m<sup>2</sup> –for one man – and 4m<sup>2</sup>– for a woman or a child<sup>179</sup>. As a rule, the parts of the detention centres which are directly used by the detainees (rooms, bathrooms, toilets, kitchens etc.) are cleaned by the detainees themselves. The obligation to clean the common toilets was one of the reasons of the protest (including a hunger strike) which took place in 4 out of 6 of the guarded centres on 16-22 October 2012.<sup>180</sup> More than 70 foreigners took part in this protest, which was unprecedented in Poland. Mostly, the foreigners did not demand their release from the detention centre but above all they contested the conditions in which they were accommodated. They also complained about the behaviour of the border guard officers towards them<sup>181</sup>. As a consequence of these protests, the Ministry of Interior ordered five guarded centres to be inspected and afterwards decided to make significant changes in this regard (i.e. families with children are accommodated only in two centres which are the most suitable for children, detainees are allowed to move more freely within the centre)<sup>182</sup>. There will be a second monitoring conducted in the same manner (with NGOs representatives) in January 2014 in order to verify whether the changes were in fact introduced.

Detention facilities have separate wings for men and families, and sometimes also for single women. In one of the centres, there is a separate part for unaccompanied irregular migrant children. Families are placed together in one room as far as possible both under the law<sup>183</sup> and in practice. There is no separate space for other vulnerable persons.

In all guarded centres there should be a sport and recreation space<sup>184</sup>. In practice it looks different depending on the centre: some centres have a small green area with several benches, others have well-equipped basketball and volleyball courts. Time spent outside generally does not exceed 60 minutes per day. In some centres this time is prolonged, depending on the weather or the consent of the management of the centre.

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. None of the children staying there attends school. Some of the schools delegate teachers to work in detention facilities for foreigners (only in some

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177 Most of the information in this chapter about the conditions in detention centers is based on the latest report on the issue: W. Klaus, K. Rusiłowicz, ed., *op.cit.* .

178 Ministry of Interior's statement available [here](#)

179 Article 114 of the Law on Foreigners.

180 Information in English available [here](#)

181 W. Klaus, K. Rusiłowicz, ed., *op.cit.* p. 5.

182 Ministry of Interior's statement available [here](#)

183 Article 115 of the Law on Foreigners.

184 § 8 of the Ordinance on conditions and rules of stay in detention centres.

of them), but this education is very limited: it is not adapted to the children's level of knowledge (e.g. all children from 7 to 18 years old participate in the same classes), it is limited in time to a couple of hours per week and teachers are not sufficiently prepared to work with foreign children, so it mainly concentrates on Polish language lessons. Contrary to the statement of the Border Guard<sup>185</sup>, according to NGOs the existing curriculum is not implemented.<sup>186</sup>

According to the law, all detainees have access to regular health care. In all centres there is medical staff working, at least one doctor and one nurse, but sometimes only part-time (in one of the centres, which can hosts up to 58 detainees, doctors were working in 2012 only 4 hours per week). In case of emergency or the need for a specialist's assistance (e.g. gynaecologist), detainees are transferred to hospitals or clinics.

The lack of knowledge of foreign languages amongst the doctors and nurses is the most common obstacle in accessing health care. In practice during medical visits translation is generally made by other detainees, Border Guard officers or NGOs.

The legislation allows for lawyers, NGOs or UNHCR to have access to detention centres. Detained asylum seekers are entitled to maintain contact with UNHCR and organisations dealing with asylum issues or granting legal assistance (directly and by means of correspondence and telephone). Direct contact with UNHCR and organisations can be limited or restricted completely by the head of the detention centre if it is necessary to ensure safety and public order or to observe the rules of stay in the detention centre. The decision of the head of the centre is final. The Head of the Office for Foreigners and UNHCR should be informed about it.<sup>187</sup> This provision is not used in practice.

As a general rule, NGOs have to ask for the consent of a manager of the detention centre to meet with a specific asylum seeker. Only non-governmental or international organisations granting legal assistance to foreigners are not obliged to obtain the permission of the authorities for a meeting with an asylum seeker<sup>188</sup>. Lawyers 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.

In practice, NGOs who want to meet with more than one or with unspecified asylum seekers, monitor conditions in a detention centre etc. ask in writing the Border Guard Commander in Chief for a permission to visit a detention centre. Since March 2013 such consent is given by the Commander of the Regional Unit of the Border Guard<sup>189</sup>. In this situation, visits are generally not limited to visiting hours.

Non-governmental organisations generally do not face problems in accessing the centres, although there were exceptions i.e. in October 2012 Border Guard denied Helsinki Foundation for Human Rights' (HFHR) lawyers to monitor guarded centre in Przemyśl. Lawyers could only provide legal assistance, but in a limited time frame (they managed to talk with 8 out of 25 foreigners willing to obtain assistance)<sup>190</sup>. Moreover in November 2012 the possibility to provide assistance in the centre in Przemyśl was conditioned upon the HFHR lawyer's signing a declaration that he would assume the responsibility for any

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185 Letter from the Border Guard Commander in Chief Deputy from 23 July 2012 (nr FAX-KG-CU/4905/IV/JN/12).

186 W.Klaus, A. Kunicka *Detencja dzieci cudzoziemców (Detention of migrant children)* in M. Duszczyk, P. Dąbrowski, ed., *Przestrzeganie praw cudzoziemców w Polsce. Monografia (Respect for the rights of foreigners in Poland. Monograph)*, Rzecznik Praw Obywatelskich, 2012, p. 58, available [here](#).

187 Article 89a section 1 and 2 of the Law on Protection

188 §20 of the Rules of foreigners' stay in the guarded centre and arrest for the purpose of expulsion (annex to the Ordinance on conditions and rules of stay in detention centres).

189 Letter from Border Guard Commander in Chief FAX-KG/CU/1981/IW/13 from 13 March 2013.

190 [Letter](#) from Helsinki Foundation For Human Rights to Border Guard Commander in Chief 2629/2012 from 16 October 2012.



consequence of a meeting with a foreigner in a visitation room without witnesses (such declaration is not required by law)<sup>191</sup>.

## G. Judicial Review of the detention order

### Indicators:

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

Detention is ordered by the District Court upon request of the Border Guard on specific grounds (see above, grounds for detention). Prolongation of the detention is ordered by the District Court upon request of the Border Guard. the asylum seeker's stay in the detention centre can be prolonged only if they receives the Office for Foreigners' decision refusing to grant them refugee status and ordering their deportation before the end of the period for which they were initially detained (30-90 days). If the foreigner makes the application for refugee status while they stay in the detention centre, the stay is prolonged for 90 days counted from the day in which above mentioned application was made<sup>192</sup>.

The national legislation provides for a judicial review of the lawfulness of detention. Asylum seekers can appeal against a District court ruling to the Regional Court within 7 calendar days from the day the ruling is pronounced (in prolongation cases it is 7 days from the delivery of the ruling to an asylum seeker)<sup>193</sup>. In this appeal the detainee can dispute the grounds of their detention. Asylum seekers receive rulings in the language they understand (it is a literal translation of a ruling rendered in Polish). There are no specified time limits for the Regional Court to decide on the appeal, but it should be done "immediately"<sup>194</sup>. In practice there are no legal consequences for not examining the appeal immediately. Sometimes the appeals are not even examined before the period for which an asylum seeker was placed in a detention centre finishes<sup>195</sup>.

Some courts – although they have such a legal obligation – do not place an information about the right to the appeal in the judgment or even write there that the judgement cannot be appealed<sup>196</sup>.

Moreover asylum seekers have a right to request their release from detention at anytime, through a different procedure than the appeal against a District Court ruling mentioned above, by requesting a "motion for release". A release motion is also directed to the District Court. This procedure generally focuses not on the lawfulness of detention but more on changes of the person's personal situation (e.g; the person becomes ill while in detention and a longer stay could put their life and health at risk.) The court's decision in this regard is final - there is no appeal.

The court procedure concerning detention orders is not considered effective. Courts are very often deciding on detention of asylum seekers without in-depth analysis of their personal situation, and reasons for detention mentioned in the judgment are indicated very generally - without direct reference to a personal situation. The court's approval of the Border Guard's request to detain a third country nationals

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191 Letter from Helsinki Foundation For Human Rights to Border Guard Commander in Chief 2972/2012 from 23 November 2012, also: W. Klaus, K. Rusiłowicz, ed., *op.cit.* p. 23.

192 Article 89 of the Law on Protection.

193 Courts differently interpret the law in this matter – some claim that 7 days should be counted from the day of the pronouncement of the court rulling about placing the foreigner in the detention centre, some that it should be counted from the day the translated rulling is delivered to a foreigner in writing – T. Sieniow, *op. cit.* p. 54.

194 Article 106 of the Law on Foreigners.

195 T. Sieniow, *op. cit.* p. 56.

196 T. Sieniow, *op. cit.*, p. 53.

is very often automatic, and third country nationals are not heard in the appeal procedure before the Regional court<sup>197</sup>.

NGOs have highlighted this problem for some time, but in 2013 the President of the District Court in Biała Podlaska, handling a lot of asylum seekers' detention cases (Terespol border crossing point is covered by this court jurisdiction) addressed a letter to the Border Guard Commander in Chief about cases concerning prolongation of detention. The President of the Court noted in her letter<sup>198</sup>, that the Border Guard often submits the motions for extending the detention of asylum seekers on the last day of their stay, which does not give the court enough time to look into the case and analyse all the circumstances, inform the legal representative of the asylum seeker, hear the person concerned, etc. In the opinion of the President of the Court, this may infringe the right to a fair trial<sup>199</sup>.

## H. Legal assistance

### Indicators:

- Does the law provide for access to free legal assistance for the review of detention?  
 Yes       No
- Do asylum seekers have effective access to free legal assistance in practice?     Yes     No

The law provides for access to free legal assistance for the review of detention before the courts, but it is hardly ever exercised in practice. Asylum seekers can ask the court to grant them free legal assistance, if they duly prove that they are not able to bear the costs of legal assistance, without harm to the necessary maintenance of themselves and their families<sup>200</sup>. Most asylum seekers do not know about such a possibility or do not know how to fill in the form in Polish. As a result they are dependent on legal assistance granted by NGO lawyers, most of whom are not entitled to represent them before courts and do not visit detention centres on a regular basis to provide such assistance whenever needed.

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

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

199 Also: T. Sieniow, op.cit. p. 60.

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